

Doc. 355-18 – Unsealed and Redacted

15 DEPOSITION OF LOIS G. LERNER
16 CONFIDENTIAL-ATTORNEY'S EYES ONLY
17 WASHINGTON, D.C.
18 JUNE 8, 2017
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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

- - -

NORCAL TEA PARTY PATRIOTS,)

et al., ON BEHALF OF)

THEMSELVES, THEIR MEMBERS,)

and THE CLASS THEY)

REPRESENT,)

Plaintiffs,)

vs.) Case No. 1:13-cv-00341

INTERNAL REVENUE SERVICE,)

et al.,)

Defendant.)

Videotaped deposition of LOIS G. LERNER,

taken on behalf of Plaintiffs at the law office of

Steptoe & Johnson, 1330 Connecticut Avenue, N.W.,

Washington, D.C., at 9:05 a.m., Thursday, June 8,

2017, before Jennifer M. O'Connor, a Notary Public

in and for the District of Columbia.

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I N D E X

WITNESS: LOIS G. LERNER

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<p>1 City, Missouri, for the plaintiff class.</p> <p>2 MS. GAMMILL: Carly Gammill and Abigail</p> <p>3 Southerland, for the American Center for Law &</p> <p>4 Justice. We also represent one of the plaintiffs.</p> <p>5 MS. BENITEZ: Brigida Benitez and</p> <p>6 Catherine Cockerham from Steptoe & Johnson,</p> <p>7 representing the deponent, Lois Lerner.</p> <p>8 MR. SERGI: Joe Sergi -- I'll let you do</p> <p>9 yourself -- Laura Beckerman, Jeremy Hendon, Laura</p> <p>10 Conner and Joseph Ganahl on -- from the Department</p> <p>11 of Justice, on behalf of the United States and the</p> <p>12 federal defendants.</p> <p>13 MR. HEAVNER: Timothy Heaver, on behalf of</p> <p>14 the Internal Revenue Service.</p> <p>15 THE VIDEOGRAPHER: At this time, the court</p> <p>16 reporter will please swear in the witness.</p> <p>17 Whereupon,</p> <p>18 LOIS G. LERNER</p> <p>19 having first been duly sworn,</p> <p>20 was examined and testified as follows:</p> <p>21 EXAMINATION BY COUNSEL FOR PLAINTIFFS</p> <p>22 BY MR. GREIM:</p> <p>Page 10</p>	<p>1 A No, because I don't think I've ever seen</p> <p>2 it, but -- I don't believe I've ever seen it.</p> <p>3 Q Okay. Well, you understand that you're</p> <p>4 here today under subpoena?</p> <p>5 A Yes.</p> <p>6 Q So your counsel has not showed you the</p> <p>7 subpoena?</p> <p>8 A I don't believe so.</p> <p>9 Q But again, you recognize that you are here</p> <p>10 under subpoena --</p> <p>11 A Yes.</p> <p>12 Q -- today? Okay. I'm now going to show</p> <p>13 you what we've marked as Exhibit 2.</p> <p>14 And do you recognize this as a letter to</p> <p>15 you dated June 1, 2017 from the Department of the</p> <p>16 Treasury, Kathryn A. Zuba, associate chief counsel,</p> <p>17 giving you your testimonial authorization?</p> <p>18 A Let me take a look at it, please.</p> <p>19 (The witness examined the document.)</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. GREIM:</p> <p>22 Q Ms. Lerner, have you been deposed before?</p> <p>Page 12</p>
<p>1 Q Ms. Lerner, welcome. I'm going to be</p> <p>2 working this -- through some exhibits with you here</p> <p>3 today and probing your memory about your time at the</p> <p>4 IRS. We've got a little unusual arrangement here</p> <p>5 today, and so what I'm going to do with exhibits --</p> <p>6 we're going to start off with your subpoena here in</p> <p>7 a moment -- is I'm going to give you everything. I</p> <p>8 want you to take off always the top document --</p> <p>9 that's the marked exhibit -- and then just pass</p> <p>10 everything else to Ms. Benitez, who will circulate</p> <p>11 it back around the table.</p> <p>12 Is that okay?</p> <p>13 A Yes.</p> <p>14 Q All right. So first -- well, the other</p> <p>15 thing I want to clear up, have you received the</p> <p>16 witness fee that I gave your attorney earlier this</p> <p>17 morning?</p> <p>18 A Ms. Benitez has it.</p> <p>19 Q Okay. Very good. Okay, I'm going to show</p> <p>20 you what we've marked as Exhibit 1.</p> <p>21 And do you recognize this as the subpoena</p> <p>22 under which you are here testifying today?</p> <p>Page 11</p>	<p>1 A I don't know. Trying to think. Are you</p> <p>2 talking about in this case or just generally?</p> <p>3 Q Generally.</p> <p>4 A I don't believe I've been deposed.</p> <p>5 Q Have you had your testimony taken under</p> <p>6 oath before?</p> <p>7 A Yes.</p> <p>8 Q When was that?</p> <p>9 A Numerous occasions while I was with the</p> <p>10 Federal Election Commission.</p> <p>11 Q And you've appeared before Congress on</p> <p>12 this matter on a couple of occasions and been sworn</p> <p>13 under oath --</p> <p>14 A Yes.</p> <p>15 Q -- correct?</p> <p>16 MS. BENITEZ: Objection. Vague. If the</p> <p>17 witness can just give me a moment.</p> <p>18 THE WITNESS: Okay. Sorry.</p> <p>19 BY MR. GREIM:</p> <p>20 Q Have you been a -- other than in this case</p> <p>21 and other cases arising out of your time at the IRS,</p> <p>22 have you been a litigant in a case before?</p> <p>Page 13</p>

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<p>1 A Personally?</p> <p>2 Q Yes.</p> <p>3 A Lois Lerner against somebody or somebody</p> <p>4 against Lois Lerner?</p> <p>5 Q Correct.</p> <p>6 A No.</p> <p>7 Q Let's talk a little bit about your</p> <p>8 background. Just tell us, if you could, your</p> <p>9 education.</p> <p>10 A I went to law school. How far back do you</p> <p>11 want me to go?</p> <p>12 Q Let's just do law school, where you went,</p> <p>13 if you have an L.L.M., anything like that?</p> <p>14 A I went to Western New England Law School</p> <p>15 and I have a J.D. I do not have an L.L.M. So</p> <p>16 that's -- that's my highest degree.</p> <p>17 Q Okay. Go ahead and tell us your college,</p> <p>18 too.</p> <p>19 A I went to -- initially to Forsyth School</p> <p>20 for Dental Hygiene in Boston, and then I finished up</p> <p>21 my bachelor's degree at Northeastern in Boston.</p> <p>22 Q All right. What year did you graduate</p> <p style="text-align: right;">Page 14</p>	<p>1 A It appears to be a resume of mine.</p> <p>2 Q And you'll see it goes over to the back</p> <p>3 page. You have your education, you have various</p> <p>4 professional activities.</p> <p>5 And does looking at this refresh your</p> <p>6 recollection of when you joined the FEC?</p> <p>7 A Yes.</p> <p>8 Q What year was that?</p> <p>9 A 1981.</p> <p>10 Q And then you were at the FEC, according to</p> <p>11 this, all the way to 2001; is that right?</p> <p>12 A That's correct.</p> <p>13 Q So you were there for 20 years?</p> <p>14 A Yes.</p> <p>15 Q I just want to ask you about your -- your</p> <p>16 last, let's say five years at the FEC.</p> <p>17 What were your duties?</p> <p>18 A Hold on. I got to see what position I</p> <p>19 had. It looks like I was in two different</p> <p>20 positions, the associate general counsel for</p> <p>21 Enforcement, where I managed the Enforcement</p> <p>22 Division and the General Counsel's Office, and the</p> <p style="text-align: right;">Page 16</p>
<p>1 from law school?</p> <p>2 A 1978.</p> <p>3 Q If you could, just walk us through your</p> <p>4 employment history between law school and the time</p> <p>5 that you came to the FEC.</p> <p>6 A When I graduated from law school -- FEC?</p> <p>7 Q Yes, Federal Election Commission.</p> <p>8 A When I graduated from law school, I was at</p> <p>9 -- in the honors programs at the Department of</p> <p>10 Justice. That's where I was before I went to the</p> <p>11 FEC.</p> <p>12 Q Okay. When did you come to the FEC?</p> <p>13 A I don't know the year.</p> <p>14 Q All right. Well, let's do this. I'm</p> <p>15 going to hand you what we're going to mark as</p> <p>16 Exhibit 3.</p> <p>17 (Lerner Deposition Exhibit No. 3 was</p> <p>18 marked for identification.)</p> <p>19 BY MR. GREIM:</p> <p>20 Q I'm going to ask you, Ms. Lerner, if you</p> <p>21 recognize this as a resume of yours that was --</p> <p>22 well, as a resume of yours?</p> <p style="text-align: right;">Page 15</p>	<p>1 acting general counsel, where I was the legal</p> <p>2 officer for the -- for the Commission.</p> <p>3 Q Why did you leave the FEC?</p> <p>4 A For a better opportunity.</p> <p>5 Q And what was that opportunity?</p> <p>6 A To go to the IRS as the director of Exempt</p> <p>7 Organizations and Rulings and Agreements.</p> <p>8 Q Why did you view it as a better</p> <p>9 opportunity?</p> <p>10 A In the federal government there is a</p> <p>11 program called Senior Executive Service, which is</p> <p>12 the highest level that a -- excuse me, I'm looking</p> <p>13 for the right word -- career employee can -- can</p> <p>14 meet. The Federal Election Commission had opted out</p> <p>15 of the Senior Executive Service, so I was not able</p> <p>16 to become a member of the Senior Executive Service</p> <p>17 at the Federal Election Commission. At the IRS I</p> <p>18 was, and there are some benefits to being a Senior</p> <p>19 Executive level employee, both financial and</p> <p>20 flexibility wise.</p> <p>21 So I had been at the Commission for a long</p> <p>22 time. I sort of felt like I'd gone from the bottom</p> <p style="text-align: right;">Page 17</p>

1 to the top, and I was -- someone reached out to me
2 and asked me if I were interested in the job at the
3 IRS and I applied.

4 **Q Did you feel that in going to the Exempt**
5 **Organizations -- going to Exempt Organizations that**
6 **there would be at least some overlap with some of**
7 **the issues you dealt with at the FEC?**

8 A Yes.

9 **Q Who is your -- let me just ask you. Who**
10 **did you report directly to at the FEC before you**
11 **become acting general counsel?**

12 A Larry Noble, who was the general counsel.

13 **Q Do you know where Larry Noble works now?**

14 A I don't know the name of the organization.

15 **Q But you know it's an organization of some**
16 **kind?**

17 A Yes.

18 **Q Do you know what the organization does?**

19 A They are involved in campaign finance, but
20 that's all I know.

21 **Q By the way, who is it that reached out to**
22 **you about coming over to Exempt Organizations?**

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1 **Q And did that continue -- were you**
2 **president of COGEL once you came over to EO?**

3 A No.

4 **Q Was the IRS a member of COGEL?**

5 A No.

6 **Q Did you still attend COGEL meetings once**
7 **you were at the IRS?**

8 A I was invited to speak while I was at the
9 IRS. I was invited to speak at COGEL meetings while
10 I was at the IRS.

11 **Q Have you won some awards from COGEL too?**

12 A Yes.

13 **Q What awards did you win, if you can**
14 **recall?**

15 A I believe it's on my resume.

16 **Q Okay.**

17 A Maybe not. I don't have it on here, but
18 it's -- I can't recall the name of it, but it's the
19 highest level COGEL award that they give out. And
20 that occurred after I left the FEC and was at the
21 IRS.

22 **Q Did you meet someone named** [REDACTED]

Page 20

1 A Steven Miller.

2 **Q Did you know him before he reached out to**
3 **you?**

4 A I had met him once at a meeting at the
5 Federal Election Commission.

6 **Q During your time at the FEC and at the**
7 **IRS, were you a member of something called COGEL?**

8 A Yes.

9 **Q And that's C-O-G-E-L. Do you know what**
10 **that stands for?**

11 A Yes.

12 **Q What is it?**

13 A Council on Governmental Ethics Laws.

14 **Q And what did you do generally with COGEL?**

15 A COGEL is an organization made up of
16 federal, state and international oversight agencies
17 that deal with campaign finance, ethics, FOIA, and I
18 believe lobbying activities. I'm not sure. And I
19 was -- so I was not the member. The Federal
20 Election Commission was the member. But I was on
21 the steering committee and I was also the president
22 of COGEL.

Page 19

1 **through your involvement with COGEL?**

2 A Yes.

3 **Q Did you come into contact with various**
4 **campaign finance administrators at the state and**
5 **federal level through your involvement with COGEL?**

6 A Yes.

7 **Q Could you generally describe for us your**
8 **duties as a director of EO.**

9 A I was the highest level manager for the
10 organization, which contained about 900 staff
11 members throughout the country. The offices that I
12 oversaw were -- did you say director of EO or
13 director of EO Rulings and Agreements?

14 **Q Oh.**

15 A Two different jobs.

16 **Q Yes. I said director of EO. Were you**
17 **director of Rulings and Agreements separately?**

18 A Yes, when I came to the IRS I was the
19 director of Rulings and Agreements.

20 **Q Okay. Let's start with -- let's finish EO**
21 **and then we'll move down to Rulings and Agreements.**

22 A Oversaw all of the activities of the

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<p>1 Exempt Organizations Division, which included the</p> <p>2 exam function, the determinations function, the EO</p> <p>3 Technical function, and the EO Rulings function.</p> <p>4 Q Your direct report, let's say at least as</p> <p>5 far back as 2009, as EO director would have been</p> <p>6 Sarah Hall Ingram; is that right?</p> <p>7 A I had different direct reports during my</p> <p>8 time as -- let me think about this for a minute.</p> <p>9 We're talking director of EO?</p> <p>10 Q Yes, we're sticking with that for now.</p> <p>11 A Okay. When I first became director of EO,</p> <p>12 Steve Miller was my boss. Sarah Hall Ingram came</p> <p>13 over as his deputy and then I became her direct</p> <p>14 report.</p> <p>15 Q Okay. When you were -- and this is when</p> <p>16 Sarah Ingram was deputy for TE/GE?</p> <p>17 A Correct.</p> <p>18 Q Okay, now let's -- let's move back -- and</p> <p>19 let me also ask you, at some point, she moved over</p> <p>20 to a different position within the IRS and Joseph</p> <p>21 Grant took her spot; is that right?</p> <p>22 A He was acting as the -- well, she was the</p> <p>Page 22</p>	<p>1 this. At some point, were you put on administrative</p> <p>2 leave?</p> <p>3 A Yes.</p> <p>4 Q Do you recall that being May 23, 2013?</p> <p>5 A It was in May of 2013.</p> <p>6 Q So when you were placed on administrative</p> <p>7 leave, were you still reporting to Joseph Grant at</p> <p>8 that time?</p> <p>9 A I'm hesitating because I had a meeting</p> <p>10 that I went to at the Main IRS with Michael</p> <p>11 Julianelle and I don't know if he yet was the person</p> <p>12 I was reporting to or it was still Joseph.</p> <p>13 Q On what day did you officially leave the</p> <p>14 IRS? In other words, did you -- did your</p> <p>15 administrative leave end and you retired?</p> <p>16 A The 30th of September, 2013.</p> <p>17 Q Did you voluntarily resign from the IRS on</p> <p>18 September 30, 2013?</p> <p>19 A Yes.</p> <p>20 Q When you were placed on administrative</p> <p>21 leave, were you paid; was that a paid leave?</p> <p>22 A Yes.</p> <p>Page 24</p>
<p>1 -- let me take a step back here. Sarah Hall Ingram</p> <p>2 came over as the deputy to Steve Miller. Joseph</p> <p>3 Grant was the director of Employee Plans. At some</p> <p>4 point, Sarah was tasked to deal with the</p> <p>5 implementation of the Affordable Care Act. Joseph</p> <p>6 was asked to act in Sarah's position. Sarah still</p> <p>7 held the position, but Joseph acted in the position.</p> <p>8 While Joseph acted in the position, Joseph was the</p> <p>9 person that I reported to.</p> <p>10 Q Now let's go -- let's go back down -- and</p> <p>11 by the way, Joseph was the person that you reported</p> <p>12 to all the way until the time that you left the IRS;</p> <p>13 is that right?</p> <p>14 A I believe there was a really short period</p> <p>15 of time where Michael Julianelle was in there. It's</p> <p>16 very confusing, because it was towards the end. And</p> <p>17 Michael Julianelle, I believe -- when you say when I</p> <p>18 left the IRS -- I left the IRS, I believe Michael</p> <p>19 Julianelle and then Cindy Aloe (ph) were the people</p> <p>20 at the top. So I would have technically reported to</p> <p>21 them.</p> <p>22 Q Well, the -- your -- let's -- let's say</p> <p>Page 23</p>	<p>1 Q Okay, let's go back to our reporting</p> <p>2 timeline.</p> <p>3 When you came over as director of Rulings</p> <p>4 and Agreements, so according to your resume, this is</p> <p>5 the 2001 to 2005 timeframe; is that correct?</p> <p>6 A Yes.</p> <p>7 Q Who did you report to at that time as head</p> <p>8 of EO?</p> <p>9 A Steve Miller.</p> <p>10 Q By the way, what did -- what did Mr.</p> <p>11 Miller say to convince you to come to EO?</p> <p>12 A Well, I had a friend who I worked with at</p> <p>13 the Federal Election Commission who had gone over to</p> <p>14 EO as Steve's customer education and outreach</p> <p>15 director, and she told me how much she enjoyed the</p> <p>16 job and how she thought it was very different and</p> <p>17 more positive atmosphere than at the Federal</p> <p>18 Election Commission. And what Steve told me he was</p> <p>19 looking for was someone with good management skills.</p> <p>20 He had lots of technical experts, but he needed</p> <p>21 someone who was a good manager and I had a long</p> <p>22 history of management.</p> <p>Page 25</p>

1 **Q Did you find that there was a learning**
2 **curve to understanding the law of exempt**
3 **organizations once you came on?**

4 A Yes.

5 **Q How long did it take before you felt**
6 **comfortable with -- with the law of exempt**
7 **organizations?**

8 A I don't know. At one point, I took a
9 course that was given to the chief counsel people by
10 a professor from NYU. She came down from New York
11 periodically and taught the course, and I took that
12 course, and I think that really helped with my
13 understanding of EO. I also had numerous very
14 high-level technical people who worked with me who
15 could explain issues or go into details that I might
16 not understand.

17 **Q Did you know Sarah Ingram before the time**
18 **that she came in to take over the TE/GE commissioner**
19 **spot?**

20 A She was the deputy before she took that.

21 **Q I see. So she was at the IRS as soon as**
22 **you came over?**

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1 things into that timeframe unless it's much more
2 specific. But ask me the question again and I'll
3 try to answer.

4 **Q Okay. How common was it for you to deal**
5 **-- and I'm going to -- I'm going to keep this to**
6 **political advocacy, okay, to this issue.**

7 A Okay.

8 **Q How common was it for you to deal directly**
9 **with specialists at EO Technical?**

10 A Depends on who they were and what we were
11 doing. Judy Kindell was my senior technical
12 advisor. Tom Miller was my senior technical
13 advisor. And Sharon Light was my senior technical
14 advisor. They -- they reported to me, so I would
15 have a lot of interaction with them.

16 **Q Now, eventually Meghan Biss became a**
17 **technical advisor as well.**

18 A Correct.

19 **Q Right?**

20 A That was later in the process.

21 **Q And Tom Miller was not still a senior**
22 **technical advisor when -- let's say in 2013, was he?**

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1 A I think she had been there forever.

2 **Q I want to focus on the timeframe now of**
3 **let's just say 2008 to the time that you left. I'm**
4 **going to focus only on, we'll say 501(c)(4)s and**
5 **political advocacy, on that issue.**

6 **Who were the employees that you relied on**
7 **the most as experts in that area?**

8 A Well, it's not one area.

9 **Q Okay.**

10 A Political advocacy is an area in and of
11 itself. (c)(4) is a different area. But I would
12 say for political advocacy Tom Miller, Judy Kindell,
13 and Sharon Light were probably the most
14 knowledgeable.

15 **Q How common was it for you to interact with**
16 **-- and again, let's -- let's keep this time period.**
17 **In fact, let's make it -- let's make it 2009 at this**
18 **point, 2009 until the end of your time -- how common**
19 **was it for you to interact with specialists in EO**
20 **Technical?**

21 A I'm going to preface this by saying you
22 could say 2009, 2010, 2011, and I'm not able to put

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1 A As far as I know he was.

2 **Q Oh, he was?**

3 A He may not have been, but I don't recall
4 him not being a senior technical advisor.

5 **Q Did he go over to Chief Counsel's office?**

6 A Oh, you said 2013?

7 **Q Yes.**

8 A There was -- after I left, there was a
9 reorganization. Tom may have gone then, I don't
10 know.

11 **Q But when you were still there, and that's**
12 **all -- that's all I'm asking about.**

13 A Right.

14 **Q So up until the end, up until you were**
15 **placed on administrative leave, Tom Miller was still**
16 **the senior --**

17 A A senior technical advisor.

18 **Q -- technical advisor?**

19 A Yes.

20 MS. BENITEZ: So that you don't speak over
21 one another --

22 THE WITNESS: I'm sorry. Thank you.

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<p>1 MS. BENITEZ: -- just let him finish his</p> <p>2 question.</p> <p>3 BY MR. GREIM:</p> <p>4 Q Let me ask you about Carter Hull. Do you</p> <p>5 remember him?</p> <p>6 A Yes.</p> <p>7 Q What was his position at the IRS?</p> <p>8 A He's a staff --</p> <p>9 MS. BENITEZ: Objection. Vague. Go</p> <p>10 ahead.</p> <p>11 THE WITNESS: He was a staff attorney.</p> <p>12 BY MR. GREIM:</p> <p>13 Q He worked --</p> <p>14 A Well, I -- back up a minute. They were</p> <p>15 not called attorneys. That's not their title.</p> <p>16 Although most of the people that worked in EO</p> <p>17 Technical were attorneys, under the IRS schedule,</p> <p>18 only people working chief counsel can be called</p> <p>19 attorneys. So they were Tax Law Specialists.</p> <p>20 Q And by 2013, let's say by 2012, he had</p> <p>21 been at the IRS for a long time hadn't he?</p> <p>22 A I believe so, yeah.</p> <p>Page 30</p>	<p>1 First of all, how much time did you spend</p> <p>2 preparing for this deposition today?</p> <p>3 A Three afternoons. Excuse me, three</p> <p>4 mornings.</p> <p>5 Q And I'm going to ask you some questions</p> <p>6 about what you reviewed, but I don't want you to</p> <p>7 tell me, okay. So listen carefully.</p> <p>8 A Okay, I won't.</p> <p>9 Q All right. I don't want you to tell me</p> <p>10 whether or not these -- anything you reviewed,</p> <p>11 documents you reviewed, were shown to you or given</p> <p>12 to you by Counsel. I don't care whether Counsel</p> <p>13 gave it to you or not; I don't want to know that. I</p> <p>14 simply want to know what you as a witness looked at.</p> <p>15 We're not going to go through a whole litany of</p> <p>16 documents. I'm just going to ask you some general</p> <p>17 questions, okay?</p> <p>18 A Let me make sure I understand your</p> <p>19 question.</p> <p>20 Q Sure.</p> <p>21 A Your question is what did you look at,</p> <p>22 aside from what your counsel showed you to prepare</p> <p>Page 32</p>
<p>1 Q Do you know whether he had any special</p> <p>2 expertise in advocacy cases?</p> <p>3 A He did not.</p> <p>4 Q Do you recall which of the TLS, Tax Law</p> <p>5 Specialists, did have expertise in advocacy cases?</p> <p>6 A I'm having a hard time remembering who the</p> <p>7 TLSes were. I don't recall.</p> <p>8 Q How about Siri Buller?</p> <p>9 A Siri was someone who worked in this area,</p> <p>10 yes.</p> <p>11 Q How about Hilary Goehausen?</p> <p>12 A I believe she was trained on the issues</p> <p>13 and worked on the issues, yes.</p> <p>14 Q How about Elizabeth Kastenberg?</p> <p>15 A Don't know for sure.</p> <p>16 Q Okay. Well, Ms. Lerner, in a second we're</p> <p>17 going to march through a timeline. That's pretty</p> <p>18 much what we're going to do for the rest of the day</p> <p>19 here.</p> <p>20 A Okay.</p> <p>21 Q But before we do that, I just have a few</p> <p>22 other questions.</p> <p>Page 31</p>	<p>1 for this deposition?</p> <p>2 Q No, it's what did you look at. And I</p> <p>3 don't want you to tell me whether or not your</p> <p>4 counsel showed it to you. I don't want you to</p> <p>5 specify.</p> <p>6 A I don't understand that question.</p> <p>7 MS. BENITEZ: And I'm going to object to</p> <p>8 that. Counsel, as you know, anything that we have</p> <p>9 shown Ms. Lerner in preparation would constitute</p> <p>10 attorney work product. So if you want to show her</p> <p>11 an individual document, ask her if she saw it,</p> <p>12 that's one thing. But to ask her what documents she</p> <p>13 saw in preparation with Counsel would be privileged.</p> <p>14 MR. GREIM: Well, right.</p> <p>15 BY MR. GREIM:</p> <p>16 Q And I don't -- again, I don't want to know</p> <p>17 what Counsel showed you as such. I just want to</p> <p>18 know what you looked at. You know what, let's --</p> <p>19 let's not -- I don't want to have a debate. We</p> <p>20 don't have time for it. So let's -- let's do this.</p> <p>21 Did you look at press articles about</p> <p>22 yourself before coming here today?</p> <p>Page 33</p>

<p>1 A No.</p> <p>2 Q Did you look at former e-mails that you</p> <p>3 had sent or received?</p> <p>4 MS. BENITEZ: Objection. Vague.</p> <p>5 BY MR. GREIM:</p> <p>6 Q Did you look at e-mails?</p> <p>7 MS. BENITEZ: Objection. Vague.</p> <p>8 THE WITNESS: I'm trying to think. May</p> <p>9 have looked at e-mails.</p> <p>10 BY MR. GREIM:</p> <p>11 Q Did you look at the TIGTA report?</p> <p>12 A No.</p> <p>13 Q Do you remember reading the TIGTA report?</p> <p>14 A A long time ago.</p> <p>15 Q Did you review any reports of Congress?</p> <p>16 A No.</p> <p>17 Q You remember reading those reports?</p> <p>18 A No, I've never read them.</p> <p>19 Q Do you recall in January 2010 learning</p> <p>20 about the "Citizens United" decision?</p> <p>21 A Don't know when I learned about it, but I</p> <p>22 did learn about the "Citizens United" decision.</p> <p>Page 34</p>	<p>1 THE WITNESS: I don't -- which</p> <p>2 investigation?</p> <p>3 BY MR. GREIM:</p> <p>4 Q Okay. How about its investigation into</p> <p>5 the targeting of conversative groups?</p> <p>6 A Its investigation into their review of the</p> <p>7 way we were handling certain (c)(4) organizations,</p> <p>8 is that what you're talking about?</p> <p>9 Q Fair enough.</p> <p>10 A During the -- the TIGTA review of the</p> <p>11 (c)(4) program, I don't know if I was actually</p> <p>12 interviewed. I did speak with TIGTA on a couple of</p> <p>13 occasions, but I'm not sure I was interviewed.</p> <p>14 Q Were you interviewed by TIGTA as part of</p> <p>15 their review of the loss of e-mails?</p> <p>16 MS. BENITEZ: Objection. Vague.</p> <p>17 THE WITNESS: No.</p> <p>18 BY MR. GREIM:</p> <p>19 Q Okay. Were you interviewed ever by the</p> <p>20 FBI about the loss of e-mails?</p> <p>21 A Yes.</p> <p>22 Q Were you interviewed by the FBI about the</p> <p>Page 36</p>
<p>1 Q And you read it carefully, didn't you?</p> <p>2 A I believe I read it at the time, yes.</p> <p>3 Q And at the time you read it, did you form</p> <p>4 any conclusions about whether that was going to</p> <p>5 apply to you as -- at EO, at the IRS?</p> <p>6 A Are you talking about personally or</p> <p>7 institutionally?</p> <p>8 Q Personally.</p> <p>9 A No, because that wasn't my job.</p> <p>10 Q How about institutionally?</p> <p>11 A Institutionally we had discussions.</p> <p>12 Q Okay. And who was involved in those</p> <p>13 discussions?</p> <p>14 A I can't tell you the specific people, but</p> <p>15 it would have been individuals from Chief Counsel's</p> <p>16 Office and whoever was above me in my chain at the</p> <p>17 time.</p> <p>18 Q I forgot a few questions before. I jumped</p> <p>19 in here a little too early. Back to our groundwork.</p> <p>20 Have you been interviewed by TIGTA as part</p> <p>21 of its investigation?</p> <p>22 MS. BENITEZ: Objection. Vague.</p> <p>Page 35</p>	<p>1 handling --</p> <p>2 A You know, I'm going to step back here.</p> <p>3 There were a lot of people in that room and someone</p> <p>4 might have been from TIGTA, but I was not</p> <p>5 interviewed specifically by TIGTA.</p> <p>6 Q Fair enough. Okay. Were you interviewed</p> <p>7 by the FBI regarding the handling of the (c)(4)</p> <p>8 applications?</p> <p>9 A Yes.</p> <p>10 Q How long did that interview last?</p> <p>11 A I can't remember.</p> <p>12 Q A full-day interview?</p> <p>13 A Several hours at least.</p> <p>14 Q Was there any exit -- did the IRS give you</p> <p>15 an exit interview when you were placed on leave?</p> <p>16 A No.</p> <p>17 Q Did -- I've seen a reference to an exit</p> <p>18 interview, but I couldn't tell what it came from.</p> <p>19 So let me ask you this.</p> <p>20 Did TIGTA do an exit interview with you at</p> <p>21 the conclusion of its review of the handling of the</p> <p>22 (c)(4) groups?</p> <p>Page 37</p>

<p>1 A An exit interview?</p> <p>2 Q Right.</p> <p>3 A I don't even know what that means. I knew</p> <p>4 what it meant in the first context, but I don't know</p> <p>5 what it would mean in the context of TIGTA.</p> <p>6 Q Sometimes auditors perform what they call</p> <p>7 an exit interview, and so I'm just wondering, did</p> <p>8 you ever -- so it sounds like --</p> <p>9 A Can you tell me what one is?</p> <p>10 Q Well, I'm trying to find out. I've seen a</p> <p>11 reference to an exit interview and I just want to</p> <p>12 see if that rings a bell for you.</p> <p>13 A That term doesn't ring a bell.</p> <p>14 Q Okay. I just want to make sure we're</p> <p>15 clear on this.</p> <p>16 You don't recall an exit interview in</p> <p>17 connection with being placed on administrative</p> <p>18 leave?</p> <p>19 A I had a meeting. It wasn't an exit</p> <p>20 interview.</p> <p>21 Q Okay. Who was in attendance at that</p> <p>22 meeting?</p> <p style="text-align: right;">Page 38</p>	<p>1 A I said I understood that I could not</p> <p>2 maintain my position as director of EO, but that I</p> <p>3 wanted to stay in the organization because I had to</p> <p>4 prepare for my criminal investigation testimony, and</p> <p>5 I think that was kind of it.</p> <p>6 Q What was the criminal investigation</p> <p>7 testimony?</p> <p>8 A Well, there was a notice by the president</p> <p>9 that he was referring the whole matter to the</p> <p>10 Department of Justice for a criminal investigation.</p> <p>11 Q As it turned out, you did -- you did</p> <p>12 provide testimony -- or you -- I guess you</p> <p>13 participated in the interview in that investigation,</p> <p>14 right?</p> <p>15 A Yes.</p> <p>16 Q Did you provide testimony?</p> <p>17 A I don't --</p> <p>18 MS. BENITEZ: Objection. Vague.</p> <p>19 THE WITNESS: What do you mean by</p> <p>20 testimony?</p> <p>21 BY MR. GREIM:</p> <p>22 Q Well, let me just ask you, did you end up</p> <p style="text-align: right;">Page 40</p>
<p>1 A Michael Julianelle, and I don't recall the</p> <p>2 fellow's name, but he was the head of Personnel at</p> <p>3 the IRS.</p> <p>4 Q Was your performance discussed at that</p> <p>5 meeting?</p> <p>6 A No.</p> <p>7 Q What was the topic of the meeting?</p> <p>8 A Placing me on administrative leave.</p> <p>9 Q How long did the meeting last?</p> <p>10 A It was very short. I don't know how long.</p> <p>11 Q Were the reasons for your being placed on</p> <p>12 administrative leave discussed at the meeting?</p> <p>13 A Yes.</p> <p>14 Q What were the reasons given?</p> <p>15 A In order to -- let me get the wording</p> <p>16 right here. In order to restore the public</p> <p>17 confidence in the IRS, I had to be put on</p> <p>18 administrative leave.</p> <p>19 Q Did you challenge that rationale in the</p> <p>20 meeting?</p> <p>21 A Yes.</p> <p>22 Q What did you say?</p> <p style="text-align: right;">Page 39</p>	<p>1 doing the thing that you told your meeting</p> <p>2 participants that you wanted to stay around to do?</p> <p>3 MS. BENITEZ: Objection. Vague.</p> <p>4 THE WITNESS: I indicated to them that I</p> <p>5 needed to review my documents in preparation for</p> <p>6 whatever investigation. I was never able to do</p> <p>7 that, but I was interviewed by the FBI and</p> <p>8 Department of Justice, and I believe TIGTA was there</p> <p>9 too.</p> <p>10 BY MR. GREIM:</p> <p>11 Q So did that interview take place while you</p> <p>12 were on administrative leave or was it afterwards?</p> <p>13 A I have no recollection.</p> <p>14 Q Were you able to review your documents</p> <p>15 while you were on administrative leave?</p> <p>16 A No.</p> <p>17 Q So you lost access to your e-mails and</p> <p>18 your computer the day you were put on leave?</p> <p>19 A Yes.</p> <p>20 Q Has -- has DOJ Tax Division counsel ever</p> <p>21 interviewed you since the time that you left?</p> <p>22 MR. SERGI: Objection. Vague.</p> <p style="text-align: right;">Page 41</p>

<p>1 THE WITNESS: I don't know who DOJ Tax</p> <p>2 Division counsel is.</p> <p>3 BY MR. GREIM:</p> <p>4 Q Well, how about any of the attorneys in</p> <p>5 this room for the Department of Justice, have they</p> <p>6 interviewed you since the time that you left?</p> <p>7 A Yes.</p> <p>8 Q When did that happen?</p> <p>9 A Yesterday. Yesterday, day before? I</p> <p>10 can't remember.</p> <p>11 Q I want to make sure I get this clear.</p> <p>12 Were they here to prep you for your deposition --</p> <p>13 A Yes.</p> <p>14 Q -- or was it an interview?</p> <p>15 A No, they -- they prepped me. They did not</p> <p>16 interview me.</p> <p>17 Q Without asking what it was, did they show</p> <p>18 you documents at that time?</p> <p>19 A I'm hesitating because I was shown</p> <p>20 documents and I don't know if they showed them to me</p> <p>21 or my counsel showed them to me.</p> <p>22 Q Did any of the documents have an exhibit</p> <p style="text-align: right;">Page 42</p>	<p>1 I'll probably jump around.</p> <p>2 Who is Catherine Livingston, by the way?</p> <p>3 A Cathy Livingston was my contact in</p> <p>4 Counsel's office. I don't know what her title was.</p> <p>5 She was sort of second in command in the TE/GE</p> <p>6 Counsel Office, and I dealt with her on numerous</p> <p>7 issues.</p> <p>8 Q I'm going to hand you what we're marking</p> <p>9 as Exhibit 4.</p> <p>10 (Lerner Deposition Exhibit No. 4 was</p> <p>11 marked for identification.)</p> <p>12 MR. SERGI: Are you done -- Counsel, are</p> <p>13 you done with Exhibit 1? I'm sorry, Exhibit 3. Mr.</p> <p>14 Greim?</p> <p>15 MR. GREIM: Yeah, I think we're done with</p> <p>16 Exhibit 3 for now.</p> <p>17 MR. SERGI: Okay. I just wanted to lodge</p> <p>18 an objection. This appears to be part of the</p> <p>19 Senate's Finance Committee report, but there is no</p> <p>20 Bates number. I'm presuming it's the same copy that</p> <p>21 had been produced by Counsel with the NorCal Bates</p> <p>22 number. I'm not sure why it doesn't have the Bates</p> <p style="text-align: right;">Page 44</p>
<p>1 label on them?</p> <p>2 A No.</p> <p>3 Q Have you seen any of the testimony of</p> <p>4 other witnesses in this case?</p> <p>5 A No.</p> <p>6 Q Have you seen any of the reports of</p> <p>7 interviews of other employees in EO?</p> <p>8 A No.</p> <p>9 Q Does the name Barbara Bosserman ring a</p> <p>10 bell?</p> <p>11 A Yes, but I don't know why.</p> <p>12 Q Did -- she's an attorney at the Department</p> <p>13 of Justice, or she was.</p> <p>14 Did she interview you?</p> <p>15 A Not that I'm aware of.</p> <p>16 Q Was she aware -- I'm sorry. Was she</p> <p>17 present for any -- any interview by the FBI?</p> <p>18 A I don't know. The name sounds familiar.</p> <p>19 That's all I know.</p> <p>20 Q Okay. Let's go back to Citizens United.</p> <p>21 A Okay.</p> <p>22 Q This will happen a few more times, where</p> <p style="text-align: right;">Page 43</p>	<p>1 number, but I just wanted to lodge the objection for</p> <p>2 the record. Thank you.</p> <p>3 BY MR. GREIM:</p> <p>4 Q Now, you'll see that --</p> <p>5 A Bless you.</p> <p>6 Q Bless you. You'll see that Exhibit 4 is</p> <p>7 an e-mail chain starting with an e-mail from you to</p> <p>8 Sarah Ingram, Steve Miller and Nancy Marks, and then</p> <p>9 it continues with a discussion. Begins on January</p> <p>10 22, 2010, and it continues on to Sunday, January</p> <p>11 24th.</p> <p>12 Do you see that?</p> <p>13 A I see that.</p> <p>14 Q And if we go to the second to the last</p> <p>15 page -- it's really the last e-mail. It's the</p> <p>16 opening e-mail on this chain -- you see that you've</p> <p>17 sent an e-mail to the three individuals I just</p> <p>18 mentioned titled "Political activity by</p> <p>19 corporations"?</p> <p>20 A Yes.</p> <p>21 Q Now, by the way, we see a new name here.</p> <p>22 Who is Nancy Marks?</p> <p style="text-align: right;">Page 45</p>

<p>1 A She was Cathy Livingston's boss at the 2 time. 3 Q So at this time she's in Chief Counsel's 4 office? 5 A Yes. She is the head of the office of the 6 attorneys that service TE/GE, which is the IRS 7 division I was in at this time. 8 Q Okay. So she would be on the other side 9 of the chain from Sarah Ingram at this point? 10 A Yes. No, Miller. Miller. I don't -- I 11 don't know where Miller was at that time. Miller 12 was always there, but -- 13 Q Okay. 14 A -- I don't know if Ingram was at that time 15 his tech -- his deputy or she was acting and Miller 16 was being -- I don't know. 17 Q Okay. 18 A But she was the head of the office of 19 attorneys in Chief Counsel that serviced TE/GE, 20 which was the division that EO was in. 21 Q Okay. Let's look at the first sentence 22 here. You say, "I'm sure you've heard about the S</p> <p style="text-align: right;">Page 46</p>	<p>1 organizations that fell under the First Amendment 2 and organizations that fell under the tax structure. 3 Q How did "Citizens United" impact spending? 4 A "Citizens United" indicated corporations 5 could spend in elections so long as it wasn't -- I'm 6 trying to think of the word -- as long as they 7 weren't coordinating with the candidates. 8 Q Now, how did you think that this would 9 affect exempt organizations at the IRS? 10 A I didn't think it did affect them, but 11 that didn't mean that there couldn't be confusion 12 about it, because we had already heard from -- in 13 questions when we were out speaking, does this 14 change the rules. 15 Q Did you think it would have a practical 16 effect -- setting aside the legal effect of 17 "Citizens United," did you think it would have a 18 practical effect on the kinds of issues that you 19 would be seeing at exempt organizations? 20 A You know, I want to read the rest of the 21 e-mail before I -- 22 Q Go ahead.</p> <p style="text-align: right;">Page 48</p>
<p>1 Court's decision in 'Citizens United' that 2 corporations have First Amendment rights and the 3 prohibitions on corporate spending in elections are 4 unconstitutional. While I don't think that changes 5 our legal position that tax exemption is a privilege 6 and if you want the privilege you have to play by 7 the rules, I do think we need to be prepared to 8 respond to inquiries about (c)(3) and (c)(4) 9 spending in elections." 10 Did I read that right? 11 A Yes. 12 Q Now, did you have that concern after 13 "Citizens United" came out? 14 A What concern? 15 Q That the IRS needed to be prepared to 16 respond to inquiries about (c)(3) and (c)(4) 17 spending in elections. 18 A I'm not sure what you mean by concern. I 19 mean, something had happened that impacted spending. 20 We had organizations that fell within the corporate 21 piece of it and there could be confusion between the 22 case being directed at Federal Election Commission</p> <p style="text-align: right;">Page 47</p>	<p>1 A -- answer it. 2 (The witness examined the document.) 3 THE WITNESS: Okay, I'm sorry. Now, what 4 was the question? 5 MR. GREIM: I may ask you to read that 6 back. 7 (The court reporter read back the previous 8 question.) 9 THE WITNESS: I don't know what you mean 10 by "practical effect." 11 BY MR. GREIM: 12 Q Do you think that it -- did you think that 13 it would cause more political spending by 14 corporations and, therefore, cause organizations to 15 run afoul of the requirements for (c)(3)s and 16 (c)(4)s? 17 MS. BENITEZ: Objection. Vague. Calls 18 for speculation. Calls for a legal conclusion. 19 MR. HEAVNER: And to the extent that this 20 was a decision that affected the job, I want to make 21 sure we're not getting into personal opinion and the 22 speculation part, because those are out of bounds.</p> <p style="text-align: right;">Page 49</p>

<p>1 But if this was discussed in your role, thought 2 about formally through the job, that is fair. 3 THE WITNESS: I think this -- that's what 4 the e-mail says, that we've already heard from the 5 community that there is confusion. We -- it's 6 incumbent on us to do something to clarify that 7 confusion so that the organizations that we regulate 8 don't run afoul of the law. 9 BY MR. GREIM: 10 Q Okay. Do you recall having any concern 11 about groups using "Citizens United" as a precedent 12 to challenge the IRS' regulations on political 13 activity by 501(c)(4)s and (c)(3)s? 14 A Probably not at this time. 15 Q I'm going to just ask you to -- so we'll 16 go back into our e-mail chain. 17 A Okay. 18 Q You'll see that Nancy Marks responds to 19 you. You get back to Nancy Marks and you ask that 20 -- for guidance by Tuesday, if you're going to be 21 getting it for an upcoming meeting. 22 Do you see that?</p> <p style="text-align: right;">Page 50</p>	<p>1 I'll stop right there. Did you share this 2 -- her concern at this time? 3 A I don't know. 4 Q Then she says, "In prior meetings, my 5 proposal that we cooperate with that desire," in 6 parenthesis -- "(let's get an answer whatever it 7 is)" has not been greeted by" -- I'm sorry -- 8 "greeted with enthusiasm at any level." 9 Do you see that? 10 A Yes. 11 Q Do you recall having discussions with 12 Sarah Ingram before this about litigation over the 13 tax exempt issue in the courts? 14 A No. 15 Q So do you think she's referring to 16 conversations with other people? 17 MS. BENITEZ: Objection. Calls for -- 18 THE WITNESS: I -- 19 MS. BENITEZ: -- speculation. 20 THE WITNESS: I don't know. Sorry. 21 MS. BENITEZ: You have to let me finish. 22 THE WITNESS: Sorry.</p> <p style="text-align: right;">Page 52</p>
<p>1 A Hmm-hmm. I'm going to want to read the 2 whole thing, so do you want to just let me do that? 3 Q Well, we can -- we can do that. I'll tell 4 you much -- my question is just related to a small 5 part of this. 6 A It doesn't matter. I'm going to read the 7 whole thing. 8 Q Okay. Well, fair enough. Go ahead. I'm 9 going to ask you about Sarah Hall Ingram's e-mail to 10 you at the very top. 11 A Okay, but let me read the whole thing, 12 please. 13 Q Sure. Go ahead. 14 (The witness examined the document.) 15 THE WITNESS: Okay. 16 BY MR. GREIM: 17 Q All right. My question is about Ms. 18 Ingram's concern in the second paragraph of her 19 e-mail at the top where she says, "Here's my 20 concern. There are those eager to take the test of 21 the tax exemption issue to the courts and if I were 22 them, would be even more eager now."</p> <p style="text-align: right;">Page 51</p>	<p>1 MS. BENITEZ: So that only one -- 2 THE WITNESS: Yeah. 3 MS. BENITEZ: -- person speaks. 4 BY MR. GREIM: 5 Q Did you have a concern at this point that 6 applicants would use "Citizens United" to challenge 7 the IRS' regulations on political activity by 8 (c)(3)s and (c)(4)s? 9 MS. BENITEZ: Objection. Asked and 10 answered. 11 THE WITNESS: I don't know if I did at 12 this time. 13 BY MR. GREIM: 14 Q Did you eventually? 15 A Yes. 16 Q Do you remember when that was? 17 A No. 18 Q What was the concern that you eventually 19 had? 20 A Folks were stating that that's what they 21 were going to do. It was in the press. We were 22 getting asked questions in our speeches, and I even</p> <p style="text-align: right;">Page 53</p>

1 attended a meeting at NYU where the discussion about
2 how "Citizens United" affected the IRS was the topic
3 and there were academics speaking on both sides of
4 the issues. So we assumed at some point it was
5 going to be taken to the Court.

6 **Q When you said "folks were stating that**
7 **that's what they were going to do," who -- who was**
8 **stating this?**

9 A When I say -- where are you talking about?

10 **Q Well, no, just now.**

11 A Or what I just said?

12 **Q Just now, yeah.**

13 A Who was stating this about what?

14 **Q Well, you testified, "folks were stating**
15 **that that's what they were going to do." In other**
16 **words, use "Citizens United." I'm trying to probe**
17 **--**

18 A I don't know. Can I hear my whole thing
19 back on that, please.

20 MR. GREIM: Go ahead.

21 (The court reporter read back the record
22 as requested.)

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1 **like this.**

2 **Who is Joseph Urban?**

3 A I know who he is. Again, it's timing. I
4 think by then he was a senior technical advisor to
5 the commissioner of TE/GE. Prior to that, he worked
6 for me as the head of one of our EO Technical
7 groups.

8 **Q So you'll see that Mr. Urban reports on**
9 **something called a "Bright Line Project," and your**
10 **response is, "I understand all of the issues**
11 **contributing here, but I don't think we can sit by**
12 **and wait for something to get dumped on us. I'm**
13 **thinking we need to put some folks together to take**
14 **a new look at where we are and where we'd like to be**
15 **considering the court case, not for public**
16 **consumption, but for internal discussion purposes.**
17 **Cathy, can you afford to give us someone on this?"**

18 **Did I read that right?**

19 A I wasn't reading along with you, but yes.

20 **Q Now, do you know -- my first question is,**
21 **do you know whether some folks were put together to**
22 **take a new look at where you were and where you'd**

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1 BY MR. GREIM:

2 **Q Who were the folks?**

3 A General. Newspaper articles, people
4 asking questions in audiences. Nobody in
5 particular.

6 **Q You don't remember any organizations?**

7 A No.

8 **Q Do you recall that it was -- it was more**
9 **conservative organizations that were expressing the**
10 **interest and challenging the requirements after**
11 **"Citizens United"?**

12 A No.

13 **Q I'm going to hand you what we've marked as**
14 **Exhibit 5.**

15 **(Lerner Deposition Exhibit No. 5 was**
16 **marked for identification.)**

17 BY MR. GREIM:

18 **Q And Ms. Lerner, you'll see that we'll have**
19 **several exhibits where Joseph Urban sends BNA or**
20 **other articles to a group and then somebody will**
21 **respond to that group with their comments on it. So**
22 **this is the first of many that we're going to have**

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1 **like to be considering the court case?**

2 A I'm going to read the whole e-mail because
3 this relates to this, so I have to --

4 **Q Go ahead.**

5 A -- see exactly what they were talking
6 about.

7 (The witness examined the document.)

8 THE WITNESS: I don't remember whether a
9 group was put together.

10 BY MR. GREIM:

11 **Q What did you mean when you said, "I don't**
12 **think we can sit by and wait for something to get**
13 **dumped on us"?**

14 A Our job is to be proactive. Our -- our
15 job as executives was to look what might be coming
16 down on the pike and be prepared to deal with it.
17 So what I was really saying was, let's not not think
18 about this until we have a case in front of us. We
19 need to think about these issues now.

20 **Q Because someone potentially could have**
21 **brought litigation and you wanted to at least be**
22 **prepared -- prepared for it and have a -- have an**

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<p>1 internal position?</p> <p>2 A Whether it was litigation or something</p> <p>3 else, yes.</p> <p>4 Q And in fact, if you look at the very last</p> <p>5 paragraph, there's a quote from someone named Clela</p> <p>6 Mitchell.</p> <p>7 Have you heard of that person before?</p> <p>8 A Yes.</p> <p>9 Q And is this one of the folks that you were</p> <p>10 -- we talked about earlier, folks were stating that</p> <p>11 that's what they were going to do, is this an</p> <p>12 example of someone suggesting that they may try to</p> <p>13 challenge the (c)(3) and (c)(4) rules using</p> <p>14 "Citizens United"?</p> <p>15 A Not in the context of the answer I gave</p> <p>16 you.</p> <p>17 Q Well, putting that aside, is this another</p> <p>18 example of someone who is suggesting that "Citizens</p> <p>19 United" would be used for a First Amendment</p> <p>20 challenge to the (c)(3) and (c)(4) rules?</p> <p>21 MR. SERGI: Objection. Vague.</p> <p>22 THE WITNESS: I can't say. That's not</p> <p style="text-align: right;">Page 58</p>	<p>1 election year?</p> <p>2 A That would be correct, yes.</p> <p>3 Q Well, I guess logic could tell you that,</p> <p>4 but do you recall that there was substantial</p> <p>5 activity by 501(c)(4)s in the political arena during</p> <p>6 2010?</p> <p>7 MS. BENITEZ: Objection. Vague.</p> <p>8 THE WITNESS: I don't know.</p> <p>9 BY MR. GREIM:</p> <p>10 Q Do you recall many press articles and</p> <p>11 complaints about 501(c)(4)s engaging in politics in</p> <p>12 2010?</p> <p>13 A I recall many articles. I don't know the</p> <p>14 timeframes.</p> <p>15 Q Well, do you recall the articles peaking</p> <p>16 during election season?</p> <p>17 A No, I don't recall that.</p> <p>18 Q Do you remember speaking at a PLI</p> <p>19 conference in New York about the use of social</p> <p>20 welfare organizations as conduits for funding</p> <p>21 elections in 2010?</p> <p>22 A I made a lot of speeches. I don't recall</p> <p style="text-align: right;">Page 60</p>
<p>1 what it says. It says she questioned whether it was</p> <p>2 constitutional. There's nothing in there about</p> <p>3 going to court on it.</p> <p>4 BY MR. GREIM:</p> <p>5 Q Do you recall that in fact the IRS did not</p> <p>6 issue any public statements for quite some time</p> <p>7 about "Citizens United" and the effect it would have</p> <p>8 on the IRS' handling of (c)(3) and (c)(4) cases?</p> <p>9 A I don't know.</p> <p>10 MS. BENITEZ: Objection. Vague.</p> <p>11 BY MR. GREIM:</p> <p>12 Q I'm sorry. I missed your answer.</p> <p>13 A I don't know what the timeline was.</p> <p>14 Q Do you recall that the IRS didn't end up</p> <p>15 issuing any statements on the effect of "Citizens</p> <p>16 United" within the first few months after the</p> <p>17 decision came down?</p> <p>18 A I don't recall the timeline.</p> <p>19 Q Did it eventually?</p> <p>20 A I don't know. May have. I just don't</p> <p>21 remember.</p> <p>22 Q Do you recall that 2010 was a midterm</p> <p style="text-align: right;">Page 59</p>	<p>1 that particular speech right now.</p> <p>2 Q I'm going to show you what we're marking</p> <p>3 as Exhibit 6.</p> <p>4 (Lerner Deposition Exhibit No. 6 was</p> <p>5 marked for identification.)</p> <p>6 BY MR. GREIM:</p> <p>7 Q And you'll see that Joseph Urban has sent</p> <p>8 out another article, another BNA article, to you and</p> <p>9 several others on November 24, 2010. And the</p> <p>10 subject is "BNA-IRS not shutting down exempt groups</p> <p>11 used as conduit for election funding."</p> <p>12 Did I read that right?</p> <p>13 A Yes.</p> <p>14 Q If you could take just a second to review</p> <p>15 this.</p> <p>16 (The witness examined the document.)</p> <p>17 THE WITNESS: Okay.</p> <p>18 BY MR. GREIM:</p> <p>19 Q All right. So let me take you to the</p> <p>20 fourth paragraph where -- which begins with the</p> <p>21 words "advocacy organizations."</p> <p>22 Do you see that?</p> <p style="text-align: right;">Page 61</p>

<p>1 A Yes.</p> <p>2 Q It says that "Advocacy organizations got a</p> <p>3 great deal of attention from donors in the run up to</p> <p>4 the midterm elections due to the 'Citizens United'</p> <p>5 Supreme Court case, which expanded such groups'</p> <p>6 ability to influence elections."</p> <p>7 Did I read that right?</p> <p>8 A Yes.</p> <p>9 Q Now, was that -- was that your experience</p> <p>10 in 2010?</p> <p>11 MS. BENITEZ: Objection. Vague.</p> <p>12 THE WITNESS: I'm not trying to be</p> <p>13 difficult here, but 2010 means nothing to me in this</p> <p>14 context. I read this and I'm not surprised to see</p> <p>15 it, but my job was not -- my job was a continuum, so</p> <p>16 I don't know when -- when this first started</p> <p>17 happening. I'm not going to argue with the</p> <p>18 statement, but it's not my statement, so --</p> <p>19 BY MR. GREIM:</p> <p>20 Q Let's go to the last paragraph. You see</p> <p>21 where it says, "Lerner said that prior to the</p> <p>22 midterm elections there were many calls for IRS to</p> <p style="text-align: right;">Page 62</p>	<p>1 the determination of whether they were a social</p> <p>2 welfare organization related to how much non-social</p> <p>3 welfare activity they were conducting and the IRS</p> <p>4 would not have any knowledge about that until after</p> <p>5 the organization filed their tax return, which would</p> <p>6 be a year after the activity occurred. So certainly</p> <p>7 IRS couldn't be doing anything until they had seen</p> <p>8 the information.</p> <p>9 Q So one thing that you did, and probably</p> <p>10 not just you, but something that you did, was to get</p> <p>11 the word out that the IRS' enforcement mechanism</p> <p>12 hinges on 990s.</p> <p>13 MS. BENITEZ: Objection. Vague.</p> <p>14 THE WITNESS: Part of the enforcement</p> <p>15 action hinges on 990s, yes.</p> <p>16 BY MR. GREIM:</p> <p>17 Q Well, the IRS has other means of enforcing</p> <p>18 the (c)(3)/(c)(4) rules other than waiting for 990s</p> <p>19 to be filed, right?</p> <p>20 A In some cases.</p> <p>21 Q In which cases?</p> <p>22 A Organizations -- (c)(3)s have to come in</p> <p style="text-align: right;">Page 64</p>
<p>1 immediately shut these organizations down, but since</p> <p>2 then the Service has gotten the word out that it</p> <p>3 will not be taking any immediate action."</p> <p>4 You see that?</p> <p>5 A Yes.</p> <p>6 Q Who were the calls coming from to shut</p> <p>7 these organizations down?</p> <p>8 A I have no idea. As I said, newspaper</p> <p>9 articles, people in speeches, letters coming to the</p> <p>10 IRS, congressional on both sides of the aisle</p> <p>11 saying, you know, you guys have got it wrong and you</p> <p>12 need to get out of the way.</p> <p>13 Q Then you see the very end of the paragraph</p> <p>14 says, "Since then, the Service has gotten the word</p> <p>15 out that it will not be taking any immediate</p> <p>16 action."</p> <p>17 A I believe that is what the first paragraph</p> <p>18 -- second paragraph refers to. This paragraph</p> <p>19 indicates that people did not really understand the</p> <p>20 way the IRS process worked or the (c)(4) process</p> <p>21 worked, that (c)(4)s were allowed to conduct</p> <p>22 activity that wasn't social welfare activity, but</p> <p style="text-align: right;">Page 63</p>	<p>1 and get approval. At the time, (c)(4)s did not.</p> <p>2 There were many (c)(4)s that were out there that had</p> <p>3 never come into the IRS, and so the only way that</p> <p>4 you would be able to deal with them is through the</p> <p>5 examination process -- 990 examination process.</p> <p>6 Q Well, there were also special projects</p> <p>7 undertaken for self-declarers weren't there?</p> <p>8 A There was a project undertaken, but I</p> <p>9 believe, and I could be wrong, that it was later</p> <p>10 than this, and that related to -- that was an exam</p> <p>11 project, actually.</p> <p>12 Q So in fact, the exams would be another</p> <p>13 enforcement mechanism that would not have to hinge</p> <p>14 on the filing of Form 990s?</p> <p>15 A That's exactly what the exams hinge on.</p> <p>16 You don't examine somebody. You're examining their</p> <p>17 990. That's what an exam is.</p> <p>18 Q What about the application process, groups</p> <p>19 that are new that have not yet filed Form 990s, was</p> <p>20 that another way to enforce (c)(3)/(c)(4) rules?</p> <p>21 A Certainly.</p> <p>22 Q Let's go ahead and take a short break at</p> <p style="text-align: right;">Page 65</p>

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<p>1 this point.</p> <p>2 A Okay.</p> <p>3 THE VIDEOGRAPHER: Going off the record.</p> <p>4 The time is now 10:17 a.m.</p> <p>5 (A brief recess was taken.)</p> <p>6 THE VIDEOGRAPHER: We are back on the</p> <p>7 record. The time is now 10:26 a.m.</p> <p>8 BY MR. GREIM:</p> <p>9 Q Ms. Lerner, I'm going to show you what we</p> <p>10 are marking as Exhibit 7.</p> <p>11 (Lerner Deposition Exhibit No. 7 was</p> <p>12 marked for identification.)</p> <p>13 BY MR. GREIM:</p> <p>14 Q And you'll see that this is an e-mail from</p> <p>15 Michelle Eldridge to several people, including a cc</p> <p>16 to you, dated Monday, September 20, 2010, subject</p> <p>17 "New York Times story expected tomorrow on (c)(4)s."</p> <p>18 You see that?</p> <p>19 A Actually, what I'm seeing is from Steve</p> <p>20 Miller, "New York Times expected on (c)(4)s" -- oh,</p> <p>21 I see, this is underneath that. Yeah.</p> <p>22 Q Could you take a second to read Ms.</p> <p style="text-align: right;">Page 66</p>	<p>1 A No, just generally we were trying to -- as</p> <p>2 I mentioned before, this is a very complicated area.</p> <p>3 People were confused trying to explain exactly what</p> <p>4 the -- is said in Sarah's statement, that depending</p> <p>5 on the facts and circumstances, the activity of the</p> <p>6 organization and the type of an organization have</p> <p>7 different results.</p> <p>8 Q You'll see that Ms. Strom had apparently</p> <p>9 already spoken with Marc Owens.</p> <p>10 Who was that?</p> <p>11 A He's an outside practitioner.</p> <p>12 Q Had he formerly been at the IRS?</p> <p>13 A Yes.</p> <p>14 Q What was his job?</p> <p>15 A I don't know. It was before my time.</p> <p>16 Q Have you met him?</p> <p>17 A I believe I met him at a conference, yes.</p> <p>18 Q Do you recall seeing him frequently quoted</p> <p>19 in articles about the IRS' handling of (c)(4)s?</p> <p>20 A I don't know about the (c)(4) part. He's</p> <p>21 often asked by the press about IRS tax exempt</p> <p>22 issues.</p> <p style="text-align: right;">Page 68</p>
<p>1 Eldridge's e-mail.</p> <p>2 (The witness examined the document.)</p> <p>3 THE WITNESS: Yep.</p> <p>4 BY MR. GREIM:</p> <p>5 Q Did you have any role in crafting the</p> <p>6 statement of Sarah Hall Ingram?</p> <p>7 A We had discussions. I'm sure it was a</p> <p>8 group effort.</p> <p>9 Q You'll see in the top paragraph above the</p> <p>10 statement, second sentence -- third sentence from</p> <p>11 the bottom, it says, "Stephanie," referring to</p> <p>12 Stephanie Strom, "New York Times" reporter, "talked</p> <p>13 to Sarah Ingram, Lois Lerner and Judith Kindell on</p> <p>14 background, not for attribution, and explained the</p> <p>15 requirements and rules for 501(c)(4)s."</p> <p>16 You see that?</p> <p>17 A Yes.</p> <p>18 Q Do you remember what you talked about with</p> <p>19 Ms. Strom?</p> <p>20 A The rules for (c)(4)s.</p> <p>21 Q Well, do you remember beyond this anything</p> <p>22 you discussed with her?</p> <p style="text-align: right;">Page 67</p>	<p>1 Q You'll see that it says, "Stephanie has</p> <p>2 heard from various sources, including Marc Owens and</p> <p>3 others, that there is a large upswing in the money</p> <p>4 donated to 501(c)(4)s. The IRS has too few</p> <p>5 resources to monitor and deal with compliance and</p> <p>6 enforcement issues in this area."</p> <p>7 You see that?</p> <p>8 A I see it.</p> <p>9 Q Is that consistent with what you were</p> <p>10 hearing?</p> <p>11 A I'm going to read it again, and then ask</p> <p>12 you to -- ask you to tell me what it is you're</p> <p>13 asking me. Stephanie has heard that the IRS has too</p> <p>14 few resources to monitor and deal with compliance in</p> <p>15 the enforcement area; is that the question you're</p> <p>16 asking me?</p> <p>17 Q Yeah. My question is did you also hear</p> <p>18 that concern from others?</p> <p>19 A I heard that concern from others about all</p> <p>20 of my work, that we didn't have enough resources to</p> <p>21 monitor and deal with compliance.</p> <p>22 Q Including this?</p> <p style="text-align: right;">Page 69</p>

1 A Yes.
2 **Q And then you'll see it says, "One area**
3 **raised as a concern are those groups that set up the**
4 **function for a short period of time. We are not**
5 **aware of them until they have filed their return**
6 **well after their potential lobbying efforts and**
7 **other activities are complete."**

8 **You see that?**

9 A Yes.

10 **Q Is that a concern that was expressed to**
11 **you?**

12 A It's something we knew. I don't know if
13 it was a concern expressed.

14 **Q It's something that you knew was a**
15 **possibility?**

16 A Yes.

17 **Q So did the IRS take any steps to deal with**
18 **that issue?**

19 A Which issue?

20 **Q The issue of groups setting up the**
21 **function for a short period of time and you're not**
22 **aware of their activities until they have filed**

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1 **their return and the activities are complete.**

2 MS. BENITEZ: Objection. Vague.

3 THE WITNESS: I think I just explained to
4 you that the IRS didn't have any ability to deal
5 with an organization that did not come in for
6 application until it filed a 990, because the IRS
7 didn't even know it was there. So I'm not really
8 sure what your question is.

9 BY MR. GREIM:

10 **Q My question is, did you come up with any**
11 **kind of a program to deal with this concern?**

12 A Not per se, no.

13 **Q Well, did you -- what did you deem -- do**
14 **to deal with that concern?**

15 A It's -- I don't know what you're referring
16 to.

17 **Q The concern we've been talking about.**

18 A No, I know the concern, but what did we do
19 is -- I'm really trying to figure -- you've got
20 something in mind and I'm -- whatever you're showing
21 me is not -- let's just say I'm not being refreshed
22 on anything by this, so I guess --

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1 **Q That's okay.**

2 A -- I don't have an answer to -- to give to
3 this.

4 **Q That's okay. Well, you said "not per se,"**
5 **and I wanted to see if you were thinking of**
6 **something else that you would call a program. Is**
7 **there -- is there --**

8 A I'm looking at this time period. I
9 believe later we did something, but I don't believe
10 it was in this time period.

11 **Q What's the thing that you did later?**

12 A We had a program where we had a
13 questionnaire for organizations that had not come in
14 and applied for (c)(4) status to get more
15 information about them. They were holding
16 themselves out.

17 **Q In other words, self-declarers?**

18 A Yes.

19 **Q And in fact, some organizations who**
20 **applied and had to wait would have filed Form 990s**
21 **during that delay, correct?**

22 MR. SERGI: Objection. Speculation.

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1 THE WITNESS: And I don't understand the
2 question either.

3 BY MR. GREIM:

4 **Q Sure. Let's go back. So there are some**
5 **organizations who apply and maybe an entire tax year**
6 **passes before they had their application acted on,**
7 **and those organization -- organizations are required**
8 **to file 990s in the interim, right?**

9 A I don't remember, but I think so.

10 **Q Well -- and some did, right?**

11 A I don't know.

12 **Q You don't -- you don't know or don't**
13 **remember?**

14 A I don't know if they did.

15 **Q You don't recall that being an issue?**

16 A No.

17 **Q Well, do you recall there being an issue**
18 **with organizations that didn't file 990s for three**
19 **consecutive years?**

20 A Yes.

21 **Q And so some of those organizations were**
22 **actually groups that had applied and were waiting;**

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<p>1 is that right?</p> <p>2 A Not that I recall.</p> <p>3 Q Do you recall something called</p> <p>4 auto-revocation?</p> <p>5 A I know what auto-revocation is, yes.</p> <p>6 Q Which is you don't file for three</p> <p>7 consecutive -- you don't file 990s for three</p> <p>8 consecutive years, right?</p> <p>9 A Yes.</p> <p>10 Q And by operation of law you are revoked?</p> <p>11 A Correct.</p> <p>12 Q And my only question is, if a group that</p> <p>13 applied and -- if a group applied and three</p> <p>14 consecutive filing requirements passed they would be</p> <p>15 auto-revoked wouldn't they?</p> <p>16 A I don't know the answer to that question.</p> <p>17 Q Okay. We'll come -- we've got -- we've</p> <p>18 got documents.</p> <p>19 Now, do you recall whether Ms. Strom</p> <p>20 actually wrote an article after you gave her</p> <p>21 background?</p> <p>22 A Yes.</p> <p style="text-align: right;">Page 74</p>	<p>1 you produced it. So under Rule 26(a), you're</p> <p>2 required to use the documents that you produced to</p> <p>3 us. So I understand when you say you can't find our</p> <p>4 Bates numbers. We expected you to find your own.</p> <p>5 MR. GREIM: Right. Well, that's not</p> <p>6 correct, but anyway I'll go ahead.</p> <p>7 BY MR. GREIM:</p> <p>8 Q I'm going to show you what's been marked</p> <p>9 as Exhibit 8.</p> <p>10 (Lerner Deposition Exhibit No. 8 was</p> <p>11 marked for identification.)</p> <p>12 MR. SERGI: And discovery is over. So I</p> <p>13 would guess that -- the time to seek the</p> <p>14 information. And I will have the same objection to</p> <p>15 this document. This seems to be from the same</p> <p>16 report. We don't know if it's a full one. We don't</p> <p>17 know if it's a partial one, and there is no NorCAL</p> <p>18 Bates number on it, so --</p> <p>19 MR. GREIM: Mr. Sergi, you can -- you can</p> <p>20 have a standing objection without making these long</p> <p>21 explanations during --</p> <p>22 MR. SERGI: I'm going to fix the record to</p> <p style="text-align: right;">Page 76</p>
<p>1 Q Do you recall whether it was a good</p> <p>2 article?</p> <p>3 A I don't recall the substance of the</p> <p>4 article, but I know she did write one.</p> <p>5 Q Well, do you recall the IRS evaluating</p> <p>6 whether it was happy with the article that came out?</p> <p>7 A No, I don't recall.</p> <p>8 MR. SERGI: Are you doing another exhibit?</p> <p>9 MR. GREIM: I am.</p> <p>10 MR. SERGI: Okay. For the record, Exhibit</p> <p>11 7, again, doesn't have a Bates number that had been</p> <p>12 produced in this case. I believe it comes from the</p> <p>13 Senate Finance report. I believe the Bates number</p> <p>14 is NorCAL, in its production, 3735. Thank you.</p> <p>15 MR. GREIM: And Mr. Sergi, you can have a</p> <p>16 standing objection so that we don't do it in the</p> <p>17 middle here. If we could use NorCAL documents we</p> <p>18 did.</p> <p>19 MR. SERGI: Right.</p> <p>20 MR. GREIM: If it's in the system, we</p> <p>21 didn't find it. We didn't find it.</p> <p>22 MR. SERGI: I think the problem is that</p> <p style="text-align: right;">Page 75</p>	<p>1 cover your mistake because later when we go to</p> <p>2 trial, the Court is going to need to refer to this,</p> <p>3 unless you would like me to object at trial that you</p> <p>4 did not produce these as initial disclosures. What</p> <p>5 I'm trying to do is help the record. Just because</p> <p>6 you didn't fulfill your obligations under the</p> <p>7 federal rules doesn't mean that we can't have a</p> <p>8 clear record here.</p> <p>9 MR. GREIM: I'm not going to begin --</p> <p>10 MR. SERGI: I'm not instructing the</p> <p>11 witness not to answer, Mr. Greim, but had you taken</p> <p>12 the forefront to work on the documents that is your</p> <p>13 obligation as an officer of the court, we wouldn't</p> <p>14 be having the struggle here to find out what</p> <p>15 everything is.</p> <p>16 MR. GREIM: Mr. Sergi, please calm down</p> <p>17 and let us move on.</p> <p>18 MR. SERGI: I'm -- I'm just telling you so</p> <p>19 you can proceed.</p> <p>20 BY MR. GREIM:</p> <p>21 Q Okay, I've shown you what we've marked as</p> <p>22 Exhibit 8. And you'll see that at the bottom we've</p> <p style="text-align: right;">Page 77</p>

<p>1 got a -- an e-mail from a Steve Pyrek to you and 2 several others with a September 20th article from 3 Stephanie Strom and Michael Luo. 4 You see that? 5 A Yes. 6 Q And someone named Terry Lemons responds, 7 "Not that bad overall. Glad you guys talked to her. 8 I think it helped." And then you'll see that Sarah 9 Ingram has a response at the top. And I'm not going 10 to actually ask you about the article below. I'm 11 going to ask you instead about some other comments 12 that Ms. Ingram made. You'll see that she says, 13 "Thanks, as always, for the excellent support from 14 Media," Capital "M". 15 I'm going to ask you first of all, what is 16 Media? 17 MS. BENITEZ: Objection. Calls for 18 speculation. 19 BY MR. GREIM: 20 Q Is there a group within the IRS called 21 "Media"? 22 A Yes.</p> <p style="text-align: right;">Page 78</p>	<p>1 Obama speeches. 2 Q At this time, did the IRS -- was the IRS 3 trying to promote the idea that the tax law didn't 4 give it the ability to stop spending by these 5 groups? 6 A Promote the idea? I don't think they were 7 trying to promote anything. They were trying to 8 educate. 9 Q Okay. Fair enough. I mean, that's a fair 10 response. 11 So at this time, was the IRS trying to 12 educate the public that the tax law did not give it 13 the ability to stop spending by these groups? 14 A That was one of the things we were trying 15 to educate the public about. 16 Q What else was the IRS trying to educate 17 the public about at this time? 18 A I'm -- 19 MS. BENITEZ: Objection. Vague. 20 BY MR. GREIM: 21 Q On the issue of (c)(4)s. 22 A The "at this time" is a problem for me.</p> <p style="text-align: right;">Page 80</p>
<p>1 Q Okay. What is it? 2 A They're the folks that look at all the 3 stuff that comes in and keeps us apprized of it, and 4 they also are the point person for reporters who 5 want to talk to IRS -- anyone in the IRS. No one in 6 the IRS is allowed to speak on their own to anyone. 7 It all has to go through the Media Office. 8 Q Ms. Ingram goes on and says, "I do think 9 it came out pretty well. The secret donor thing 10 will continue. See Obama salvo and today's Diane 11 Reehm." 12 Now, let me ask you, do you recall 13 President Obama making lots of public statements 14 around this time about secret donors and dark money? 15 A No. 16 Q Do you recall him ever doing that? 17 A Not particularly. 18 Q You don't recall the speeches about dark 19 money groups influencing elections? 20 A You're saying President Obama. I don't 21 recall President Obama's speeches on that. I recall 22 there were speeches on that. I don't recall the</p> <p style="text-align: right;">Page 79</p>	<p>1 It's a long period of time and I don't remember what 2 happened at any particular time, so I can't really 3 answer that question. 4 Q Okay. Well, let's -- let's take out the 5 "at this time." 6 From this time until the end, until your 7 time that you left, what was the IRS trying to 8 educate the public on with respect to (c)(4)s other 9 than what we've just discussed? 10 A Other than what we've just discussed, 11 which was? 12 Q That the tax law doesn't give it the 13 ability to stop the spending by groups like this? 14 A A main concern was to educate everyone 15 about what the rules were for (c)(4) organizations 16 to maintain their tax exemption or to become tax 17 exempt. And when you say the IRS, I can only speak 18 for my division. 19 Q Right. And actually, that's all -- I will 20 say the IRS, and unless I tell you otherwise, I mean 21 your division, okay? 22 A Okay.</p> <p style="text-align: right;">Page 81</p>

<p>1 Q Did the IRS also try to educate the public</p> <p>2 about the fact that it would continue to try to</p> <p>3 enforce the law to the extent that it could?</p> <p>4 A I'm not really sure what that means.</p> <p>5 Q Okay, let's -- let's use the statement</p> <p>6 that you worked on. Let's go back to Exhibit 7,</p> <p>7 very last line.</p> <p>8 A Okay.</p> <p>9 Q See the very last line says, "The IRS</p> <p>10 remains vigilant to help protect the integrity of</p> <p>11 the tax-exempt sector"?</p> <p>12 A Yes.</p> <p>13 Q Is that one of the messages that the IRS</p> <p>14 was trying to send out to the public at this time?</p> <p>15 A That's always the IRS message, yes.</p> <p>16 Q Was it part of the IRS' mission to</p> <p>17 surprise political campaign spending?</p> <p>18 A No.</p> <p>19 Q Was it part of the IRS' mission to force</p> <p>20 disclosure of anonymous donors to (c)(4)s?</p> <p>21 A Could you tell me that again? Because I'm</p> <p>22 not sure what you're really asking me.</p> <p>Page 82</p>	<p>1 the testimony authorization from just on the</p> <p>2 application process is clearly not focused based on</p> <p>3 your question on the application process. Reserving</p> <p>4 the objection to this and the line of questions, you</p> <p>5 may answer.</p> <p>6 THE WITNESS: I need the question again.</p> <p>7 BY MR. GREIM:</p> <p>8 Q All right.</p> <p>9 A Because I think it had a double negative</p> <p>10 in it and I'm not sure what it said.</p> <p>11 MS. BENITEZ: You need to wait for the</p> <p>12 question.</p> <p>13 THE WITNESS: I'm not answering it.</p> <p>14 MS. BENITEZ: You can't --</p> <p>15 BY MR. GREIM:</p> <p>16 Q Let me -- okay, I'll go back.</p> <p>17 Was it part of the IRS' mission to ensure</p> <p>18 that donors to (c)(4)s would have their identities</p> <p>19 disclosed to the public?</p> <p>20 A No.</p> <p>21 Q Is there a difference between the mission</p> <p>22 of the IRS and the FEC?</p> <p>Page 84</p>
<p>1 Q Sure. Was it -- well, let's back up. So</p> <p>2 when someone donates to a 501(c)(4) it gets reported</p> <p>3 on Schedule B of the Form 990s, correct?</p> <p>4 A Correct.</p> <p>5 Q And the Schedule B can be seen by the IRS,</p> <p>6 right?</p> <p>7 A Correct.</p> <p>8 Q But it is not disclosed to the public at</p> <p>9 large.</p> <p>10 A Correct.</p> <p>11 Q And do you recall that among the things</p> <p>12 that you were hearing at this time was concern that</p> <p>13 individuals were able to give to 501(c)(4)s; the</p> <p>14 (c)(4)s could engage in political activity and then</p> <p>15 the donors to the (c)(4)s would never be disclosed?</p> <p>16 A Yes.</p> <p>17 Q And so was it part of the IRS' mission to</p> <p>18 ensure that the donors to (c)(4)s were disclosed to</p> <p>19 the public?</p> <p>20 MR. HEAVNER: We're going to object to</p> <p>21 this line of questioning on beyond the testimony</p> <p>22 authorization, because I've let a little bit go, but</p> <p>Page 83</p>	<p>1 A Yes.</p> <p>2 Q What is that difference?</p> <p>3 MR. HEAVNER: Objection. That's beyond</p> <p>4 the testimony authorization. I'm going to instruct</p> <p>5 you not to answer that question.</p> <p>6 MR. GREIM: I think that goes to the heart</p> <p>7 of tax administration purposes, and I think the</p> <p>8 witness should have to answer that.</p> <p>9 MR. HEAVNER: And I'm going to advise her</p> <p>10 -- continue to advise her not to answer. It's</p> <p>11 beyond the testimony authorization.</p> <p>12 MR. GREIM: On the basis that what, it's</p> <p>13 outside the application process?</p> <p>14 MR. HEAVNER: That it's beyond the</p> <p>15 testimony authorization.</p> <p>16 BY MR. GREIM:</p> <p>17 Q Okay, with respect to the application</p> <p>18 process, is there a difference between what the IRS</p> <p>19 does in the application process and the mission of</p> <p>20 the FEC?</p> <p>21 MR. HEAVNER: Again, I'm going to instruct</p> <p>22 you not to answer that based on it's beyond the</p> <p>Page 85</p>

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<p>1 scope of the testimony authorization that you're</p> <p>2 testifying under today.</p> <p>3 BY MR. GREIM:</p> <p>4 Q Okay. Is it the mission of the IRS within</p> <p>5 the application process to regulate campaign</p> <p>6 financing?</p> <p>7 A No.</p> <p>8 Q When did you first become aware, Ms.</p> <p>9 Lerner, that Tea Party groups were applying for</p> <p>10 exempt status and having their applications reviewed</p> <p>11 in EO Technical?</p> <p>12 A I don't recall.</p> <p>13 Q I'm going to hand you what we're marking</p> <p>14 as Exhibit 9.</p> <p>15 (Lerner Deposition Exhibit No. 9 was</p> <p>16 marked for identification.)</p> <p>17 BY MR. GREIM:</p> <p>18 Q You'll see that this is an April 28, 2010</p> <p>19 e-mail from Steve Grodnitzky to Lois Lerner. The</p> <p>20 subject is "SCR chart." And he says, "Please find</p> <p>21 attached a copy of the SCR chart for cases in EO</p> <p>22 Technical for the period ending April 28, 2010."</p> <p>Page 86</p>	<p>1 A No.</p> <p>2 Q Do you recall that every month Steven</p> <p>3 Grodnitzky would send you an SCR chart?</p> <p>4 A No.</p> <p>5 Q Do you recall that you would receive every</p> <p>6 month this summary of SCR's?</p> <p>7 A No.</p> <p>8 Q Let's look at his next paragraph here.</p> <p>9 You'll see he says, "Of note, we added one new SCR</p> <p>10 concerning two Tea Party cases that are being worked</p> <p>11 here in DC. Currently, there are 13 Tea Party cases</p> <p>12 out in EO Determinations and we are coordinating</p> <p>13 with them to provide direction as to how to develop</p> <p>14 those cases based on our development of the ones in</p> <p>15 DC."</p> <p>16 Did I read that right?</p> <p>17 A You did.</p> <p>18 Q Now, did you ask Mr. Grodnitzky any</p> <p>19 questions about the Tea Party cases at this time?</p> <p>20 A I don't remember this document.</p> <p>21 Q Do you have any doubt that you received</p> <p>22 it?</p> <p>Page 88</p>
<p>1 See that first part?</p> <p>2 A Yes.</p> <p>3 Q Now, let me ask you for a second, does --</p> <p>4 do the initials "SCR" mean anything to you?</p> <p>5 A Yes.</p> <p>6 Q What does that mean?</p> <p>7 A Sensitive Case Report.</p> <p>8 Q And what is the purpose of the Sensitive</p> <p>9 Case Report?</p> <p>10 A It's actually an examination document.</p> <p>11 They would notify the head of the office of the</p> <p>12 progress of sensitive cases either because they were</p> <p>13 high profile in the press or there was an issue that</p> <p>14 we were dealing with with Counsel and it was not</p> <p>15 ordinarily a Rulings and Agreements document. So I</p> <p>16 tink it was -- they just took that terminology to</p> <p>17 put together a chart of what was going on.</p> <p>18 Q Who is Steven Grodnitzky?</p> <p>19 A He was a staff member of EO Technical and</p> <p>20 at one point an acting manager, and then I think he</p> <p>21 became a manager, line manager.</p> <p>22 Q So he was not in examinations?</p> <p>Page 87</p>	<p>1 A I have some doubt that I read it.</p> <p>2 Q Do you have any doubt you received it?</p> <p>3 A I don't know. I mean, it's an e-mail to</p> <p>4 me, so I -- I don't recall the document, so I can't</p> <p>5 really answer that question.</p> <p>6 Q Why do you have doubt that you read it?</p> <p>7 A Because Steve Grodnitzky did not report to</p> <p>8 me. I had a lot of people that reported to me and</p> <p>9 generally I was cc'd on every single e-mail that</p> <p>10 came out of my office. So I probably had three to</p> <p>11 five hundred e-mails a day. The fact that my name's</p> <p>12 on it doesn't mean I read it, because his manager is</p> <p>13 on it, and oftentimes I would rely on my direct</p> <p>14 report, Mr. Choi, to raise with me any issues that</p> <p>15 would come up from his staff. So I don't remember</p> <p>16 reading this.</p> <p>17 Q Have you testified elsewhere that you</p> <p>18 receive one to two hundred e-mails a day?</p> <p>19 A I don't know.</p> <p>20 MR. SERGI: I'm going to object to this</p> <p>21 exhibit because the attachment has not been</p> <p>22 produced. Thank you.</p> <p>Page 89</p>

<p>1 MR. GREIM: And I'll just tell you that --</p> <p>2 MR. SERGI: I'm sorry. I'm sorry, when I</p> <p>3 say "not produced," I mean -- sorry -- not provided.</p> <p>4 We produced it to you guys, but it has not been</p> <p>5 provided. Sorry.</p> <p>6 MR. GREIM: And I'll represent that if we</p> <p>7 have the attachment, it's not with -- it's not with</p> <p>8 this in the production. It may -- may be elsewhere.</p> <p>9 (Lerner Deposition Exhibit No. 10 was</p> <p>10 marked for identification.)</p> <p>11 BY MR. GREIM:</p> <p>12 Q I'm going to show you now what we've</p> <p>13 marked as Exhibit 10. And you'll see that this is</p> <p>14 another e-mail from Steven Grodnitzky to you and</p> <p>15 Robert Choi, copying several others. And its</p> <p>16 subject is "SCR chart for the month of May." And he</p> <p>17 says, "Here is the SCR chart for the significant</p> <p>18 cases in EO Technical updated for the month of May."</p> <p>19 Did I read that right?</p> <p>20 A You did.</p> <p>21 Q If you turn the page, you'll see it's a</p> <p>22 little fuzzy, but you see that much of this is</p> <p style="text-align: right;">Page 90</p>	<p>1 Q Right. And we'll see, there's other --</p> <p>2 there's other clearer ones, but this is the earliest</p> <p>3 one.</p> <p>4 Now, did you follow -- follow up with Mr.</p> <p>5 Choi or Mr. Grodnitzky after receiving this report</p> <p>6 about these Tea Party notices?</p> <p>7 A I don't remember receiving this report.</p> <p>8 Q Is it significant to you that Mr.</p> <p>9 Grodnitzky's reporting only to Mr. Choi and you, not</p> <p>10 to anyone else?</p> <p>11 MS. BENITEZ: Objection. Vague.</p> <p>12 THE WITNESS: Mr. Choi is his manager, so</p> <p>13 he should be reporting to him. And as I said, I was</p> <p>14 probably cc'd on everything that came into that</p> <p>15 office.</p> <p>16 BY MR. GREIM:</p> <p>17 Q Was it your policy not to read e-mails</p> <p>18 like this?</p> <p>19 A Policy. You want to use another word.</p> <p>20 Q Practice?</p> <p>21 A As I said, depending upon how much time I</p> <p>22 had, I could not read all of the e-mails that came</p> <p style="text-align: right;">Page 92</p>
<p>1 redacted other than the first line. And you see</p> <p>2 "Name of Org/Group." It has Prescott Tea Party, LLC</p> <p>3 and Albuquerque Tea Party, Inc.</p> <p>4 A Yes, I see that.</p> <p>5 Q And then under "Group Manager," Ron</p> <p>6 Shoemaker?</p> <p>7 A I see that.</p> <p>8 Q Who is Ron Shoemaker?</p> <p>9 A Group manager.</p> <p>10 Q In EO Technical?</p> <p>11 A Yes.</p> <p>12 Q And then you'll see under "Issue,"</p> <p>13 "Whether a Tea Party organization meets the</p> <p>14 requirements under a 501(c)(3) and is not involved</p> <p>15 in political intervention."</p> <p>16 A Yes.</p> <p>17 Q Tax Law Specialist is Chip Hull.</p> <p>18 A Yeah.</p> <p>19 Q And then "Status/Next action," it talks</p> <p>20 about what's happening with it.</p> <p>21 You see that?</p> <p>22 A I do, but I can't read it.</p> <p style="text-align: right;">Page 91</p>	<p>1 through to me. If there was an e-mail coming from a</p> <p>2 subordinate of another manager, I assumed that</p> <p>3 manager was going to read it and bring to me -- to</p> <p>4 my attention anything I needed to know.</p> <p>5 Q So would you refuse to read these, or you</p> <p>6 just -- or do you just not remember having read it?</p> <p>7 MS. BENITEZ: Objection. Compound and</p> <p>8 mischaracterizes the witness' testimony.</p> <p>9 BY MR. GREIM:</p> <p>10 Q You can answer.</p> <p>11 A You can ask me again in a different way,</p> <p>12 please.</p> <p>13 Q No, I'm going to stand on that question.</p> <p>14 A Then I have to hear it again.</p> <p>15 Q To avoid this, I will -- I'm just going to</p> <p>16 ask it to you again; it will just be quicker that</p> <p>17 way.</p> <p>18 MR. GREIM: You don't have to play it.</p> <p>19 BY MR. GREIM:</p> <p>20 Q Was it your policy to refuse to read these</p> <p>21 documents?</p> <p>22 A No.</p> <p style="text-align: right;">Page 93</p>

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<p>1 Q Is it your testimony today that you just</p> <p>2 don't remember whether you read this or not?</p> <p>3 A Yes.</p> <p>4 (Lerner Deposition Exhibit No. 11 was</p> <p>5 marked for identification.)</p> <p>6 BY MR. GREIM:</p> <p>7 Q I'm going to show you now what we've</p> <p>8 marked as Exhibit 11. And you'll see it's a chain</p> <p>9 of e-mails. You'll see that the last e-mail that we</p> <p>10 have here is from Steve Grodnitzky to you and Robert</p> <p>11 Choi dated May 13, 2010. And so it's actually a few</p> <p>12 weeks before the document we just looked at. Mr.</p> <p>13 Grodnitzky says, "Please find below the April</p> <p>14 highlights for EO Technical, including case</p> <p>15 statistics. If you are looking for other types of</p> <p>16 information in the future, please let me know and I</p> <p>17 will provide for next month's highlights."</p> <p>18 You see that?</p> <p>19 A Yes.</p> <p>20 Q And then you'll see that you respond to</p> <p>21 him that same day. It's like about an hour later.</p> <p>22 And you say, "I like this format. David will kill</p> <p>Page 94</p>	<p>1 at this point here in DC, and I have asked the TLSes</p> <p>2 and frontline managers to coordinate with Cincy on</p> <p>3 how to develop the cases but not resolve anything</p> <p>4 until we get clearance from you and Rob.</p> <p>5 "Tea Party cases, like the others on the</p> <p>6 list, are the subject of an SCR and I customarily</p> <p>7 give Rob the heads up, but of course can let you</p> <p>8 know as well before anything happens. As" --</p> <p>9 Q You can stop there, because the rest goes</p> <p>10 into other matters.</p> <p>11 Now, did you direct Mr. Grodnitzky or Mr.</p> <p>12 Choi to take some different course from what they've</p> <p>13 outlined here with the Tea Party cases?</p> <p>14 MS. BENITEZ: Objection. Vague.</p> <p>15 THE WITNESS: When?</p> <p>16 BY MR. GREIM:</p> <p>17 Q In response to their report.</p> <p>18 MS. BENITEZ: Objection. Vague.</p> <p>19 THE WITNESS: I don't know.</p> <p>20 BY MR. GREIM:</p> <p>21 Q Do you think you responded to Mr.</p> <p>22 Grodnitzky?</p> <p>Page 96</p>
<p>1 you, as I'd like to see if he can do a monthly</p> <p>2 one-pager also." Then you ask, "Tea Party</p> <p>3 cases-applications for c3? What's their basis?"</p> <p>4 You see that?</p> <p>5 A Yes.</p> <p>6 Q And you go on and mention some other</p> <p>7 matters here. And then you see that Mr. Grodnitzky</p> <p>8 responds to you, doesn't he?</p> <p>9 A Yes.</p> <p>10 Q And what does he say in the first</p> <p>11 sentence?</p> <p>12 A "We have Tea Party cases here in EOT and</p> <p>13 in Cincy."</p> <p>14 Q What else does he say?</p> <p>15 A Do you want me to read the whole e-mail?</p> <p>16 Q Go ahead.</p> <p>17 A "In EOT, there is a (c)(3) application and</p> <p>18 a (c)(4) application. In Cincy, there are 10 (c)(4)</p> <p>19 applications and a couple of (c)(3)s. The</p> <p>20 organizations are arguing education, but the big</p> <p>21 issue for us is whether they're engaged in political</p> <p>22 campaign activity. We're in the development process</p> <p>Page 95</p>	<p>1 A Well, I did. I said thanks.</p> <p>2 Q Right, but do you think you responded --</p> <p>3 well, okay, fair enough.</p> <p>4 Do you -- do you think you gave Mr.</p> <p>5 Grodnitzky or Mr. Choi direction to proceed in any</p> <p>6 different manner than what they outlined here?</p> <p>7 A I don't recall.</p> <p>8 Q You think it's possible that you did?</p> <p>9 MS. BENITEZ: Objection. Calls for</p> <p>10 speculation.</p> <p>11 THE WITNESS: I don't recall. Sorry.</p> <p>12 BY MR. GREIM:</p> <p>13 Q Is there a time -- was there a time after</p> <p>14 this that you directed a different process for the</p> <p>15 handling of Tea Party cases?</p> <p>16 MS. BENITEZ: Objection. Vague.</p> <p>17 THE WITNESS: When are you talking about?</p> <p>18 BY MR. GREIM:</p> <p>19 Q Anytime after this?</p> <p>20 MS. BENITEZ: Same objection.</p> <p>21 THE WITNESS: We changed the process for</p> <p>22 handling (c)(4) cases.</p> <p>Page 97</p>

<p>1 BY MR. GREIM:</p> <p>2 Q Do you remember when that was?</p> <p>3 A No.</p> <p>4 Q Do you remember if it was in 2010?</p> <p>5 A I don't remember when it was.</p> <p>6 Q What would you need to review to refresh</p> <p>7 your memory on that?</p> <p>8 MS. BENITEZ: Objection. Vague.</p> <p>9 THE WITNESS: I don't know.</p> <p>10 BY MR. GREIM:</p> <p>11 Q Did it concern you at all at this point</p> <p>12 that there was a group of Tea Party cases that was</p> <p>13 being handled as a block?</p> <p>14 A No.</p> <p>15 Q Why not?</p> <p>16 A Because whenever we would get cases --</p> <p>17 similar cases, blocks of similar cases, such as in</p> <p>18 credit counseling, we would -- or cases that needed</p> <p>19 some assistance by the legal folks where the law was</p> <p>20 not well settled, we would assign them to a group</p> <p>21 for consistency purposes and for learning curve</p> <p>22 purposes.</p> <p style="text-align: right;">Page 98</p>	<p>1 Q Do you see a list of SCRs starting with</p> <p>2 the forwarded e-mail from Mr. Grodnitzky?</p> <p>3 A I see Mr. Grodnitzky's with SCRs -- oh, I</p> <p>4 see. Yes. And one of them says "Tea Party."</p> <p>5 Q Very good. Did you review this e-mail?</p> <p>6 A I don't know.</p> <p>7 Q Do you recall at this time stepping in to</p> <p>8 make any change in the way the Tea Party cases were</p> <p>9 being handled?</p> <p>10 A I don't recall.</p> <p>11 (Lerner Deposition Exhibit No. 13 was</p> <p>12 marked for identification.)</p> <p>13 BY MR. GREIM:</p> <p>14 Q I'm going to show you now what's marked as</p> <p>15 Exhibit 13. And you'll see that this is another</p> <p>16 e-mail from Mr. Grodnitzky to you and Robert Choi</p> <p>17 dated September 30, 2010, subject "SCR Chart for EOT</p> <p>18 and Determinations."</p> <p>19 And you see Mr. Grodnitzky says, "Rob and</p> <p>20 Lois, please find attached a chart summarizing all</p> <p>21 the SCR cases for the period ending September 30,</p> <p>22 2010 for EO Technical and Determinations. Any</p> <p style="text-align: right;">Page 100</p>
<p>1 Q And how did you know that those criteria</p> <p>2 for centralization were met with the Tea Party</p> <p>3 cases?</p> <p>4 A I assumed they had made that determination</p> <p>5 because that was their job.</p> <p>6 THE COURT REPORTER: Under your folder.</p> <p>7 (Lerner Deposition Exhibit No. 12 was</p> <p>8 marked for identification.)</p> <p>9 BY MR. GREIM:</p> <p>10 Q I'm going to show you what we're marking</p> <p>11 as Exhibit 12. And you'll see that now we're in</p> <p>12 July. We got an e-mail from Steve Grodnitzky to</p> <p>13 Theodore Lieber July 27, 2010, and Mr. Lieber</p> <p>14 forwards that to a Richard Daly with a copy to you</p> <p>15 and several others, and Mr. Lieber says, "Attached</p> <p>16 are the R&A SCRs for July. The list of SCRs are</p> <p>17 below."</p> <p>18 And I'm just going to ask you, do you see</p> <p>19 the Tea Party listed as one of the SCRs?</p> <p>20 A I see it says "July TeaParty.doc." I</p> <p>21 don't know what that means because everything else</p> <p>22 is blanked out, so I don't know what that means.</p> <p style="text-align: right;">Page 99</p>	<p>1 questions, please let me know."</p> <p>2 You see that?</p> <p>3 A Yes.</p> <p>4 Q And if you turn the page, you see the SCR</p> <p>5 chart with redactions?</p> <p>6 A Yes.</p> <p>7 Q And this is a little clearer than the</p> <p>8 other one we looked at, isn't it?</p> <p>9 A Yeah, but it's still really small.</p> <p>10 Q It is small. You see again the name of</p> <p>11 the group. There's two. It's still Prescott Tea</p> <p>12 Party, LLC and Albuquerque Tea Party, Inc.?</p> <p>13 A Yes.</p> <p>14 Q You'll see Ron Shoemaker's still the group</p> <p>15 manager, correct?</p> <p>16 A Correct.</p> <p>17 Q It shows them received 4/2/2010.</p> <p>18 A Yes.</p> <p>19 Q Correct? And then you see the issue is</p> <p>20 still whether a Tea Party organization meets the</p> <p>21 requirements under 501(c)(3) and is not involved in</p> <p>22 political intervention, right?</p> <p style="text-align: right;">Page 101</p>

<p>1 A Correct.</p> <p>2 Q Tax Law Specialist is still Chip Hull,</p> <p>3 right?</p> <p>4 A Right.</p> <p>5 Q Estimated completion date 12/31/2010,</p> <p>6 right?</p> <p>7 A Correct.</p> <p>8 Q And then it says, "Prescott case failed to</p> <p>9 answer development letter and FTEd," and the</p> <p>10 "closed" in bold, right?</p> <p>11 A Yes.</p> <p>12 Q What is FTE?</p> <p>13 A Failure to establish.</p> <p>14 Q What's that mean?</p> <p>15 A If we had an applicant come in and we</p> <p>16 needed to get further information from them, we</p> <p>17 would send them a letter detailing what information</p> <p>18 we needed. It's a very back and forth process. And</p> <p>19 if the applicant did not provide the information</p> <p>20 within a certain time period, we would close them</p> <p>21 under the code "failure to establish," notify them</p> <p>22 that if they came in with the information within a</p> <p style="text-align: right;">Page 102</p>	<p>1 Q Where do you drop off?</p> <p>2 A It's really just the glasses. It's not --</p> <p>3 it's not the paper. Anybody have a magnifying</p> <p>4 glass?</p> <p>5 Q Take a second and hold it whatever -- I'm</p> <p>6 sorry, whatever --</p> <p>7 A Yeah, I'm trying to.</p> <p>8 Q -- distance you need.</p> <p>9 (The witness examined the document.)</p> <p>10 THE WITNESS: Okay. Yes.</p> <p>11 BY MR. GREIM:</p> <p>12 Q Do you recall reading this?</p> <p>13 A No.</p> <p>14 Q Is it possible that you did?</p> <p>15 A It's possible.</p> <p>16 Q At this time, what was your understanding</p> <p>17 of the common issues the Tea Party cases presented?</p> <p>18 MS. BENITEZ: Objection. Vague.</p> <p>19 THE WITNESS: Whether they met the</p> <p>20 criteria for (c)(4) status.</p> <p>21 BY MR. GREIM:</p> <p>22 Q I mean, but that's a -- that's an issue</p> <p style="text-align: right;">Page 104</p>
<p>1 certain time period we would just reopen the case,</p> <p>2 but if they didn't come in with the information</p> <p>3 until after that time period was over they would</p> <p>4 have to pay another user fee and we'd have to open a</p> <p>5 new case.</p> <p>6 Q You'll see continuing in the "Status"</p> <p>7 column "requested and received a second (c)(3) case</p> <p>8 to review."</p> <p>9 You see that?</p> <p>10 A Hmm-hmm.</p> <p>11 Q And then "Developing both the (c)(3) and</p> <p>12 (c)(4) cases, coordinating with Cincy as to helping</p> <p>13 to develop their cases. Cincy has three 501(c)(3)</p> <p>14 and 22 501(c)(4) applications." Right?</p> <p>15 A Well, I can't read it, but --</p> <p>16 Q Did I read it correctly?</p> <p>17 A I can't read it; that's my problem. But</p> <p>18 I'm -- I can't read -- I can't read it.</p> <p>19 Q So do you -- so you can't tell whether I</p> <p>20 read it correctly or not?</p> <p>21 A I can't tell whether you read it correctly</p> <p>22 or not because I can't read it.</p> <p style="text-align: right;">Page 103</p>	<p>1 that every (c)(4) applicant has, correct?</p> <p>2 A Correct.</p> <p>3 Q So what are the issues that were common</p> <p>4 specifically to the Tea Party cases at this time?</p> <p>5 A "At this time" is a problem for me because</p> <p>6 I don't know about at this time.</p> <p>7 Q Well, what did you eventually come to</p> <p>8 understand?</p> <p>9 A There were advocacy issues, whether they</p> <p>10 were -- yeah, there were advocacy issues.</p> <p>11 Q And why did you understand -- well, okay,</p> <p>12 we saw a reference to coordination.</p> <p>13 What did you understand coordination</p> <p>14 between EO Technical and Cincinnati entail?</p> <p>15 A That was not an unusual thing. When we</p> <p>16 put the cases into a group in Cincinnati, there</p> <p>17 would be someone from -- EO Technical was the point</p> <p>18 person. They could ask questions. If they needed</p> <p>19 advice from Counsel, the request for advice from</p> <p>20 Counsel would come from EO Technical.</p> <p>21 As I said, the EO Technical people were</p> <p>22 lawyers and had oftentimes a better ability to</p> <p style="text-align: right;">Page 105</p>

<p>1 understand the issues, and they were also trying to</p> <p>2 ensure consistency and treatment.</p> <p>3 Q As a director of EO, did you have ultimate</p> <p>4 responsibility to ensure appropriate processing of</p> <p>5 applications by your subordinates?</p> <p>6 A Yes.</p> <p>7 Q I'm going to show you what we're marking</p> <p>8 as Exhibit 14.</p> <p>9 (Lerner Deposition Exhibit No. 14 was</p> <p>10 marked for identification.)</p> <p>11 BY MR. GREIM:</p> <p>12 Q You'll see that now this e-mail is from</p> <p>13 Holly Paz to Robert Choi and you dated November 3,</p> <p>14 2010, and the subject is "E-mailing SCR Report Table</p> <p>15 October 2010." That's a document name. You see</p> <p>16 that Holly Paz says, "Attached is the SCR table for</p> <p>17 October. Please let me know if you have any</p> <p>18 questions."</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q And if you turn the page, you see again</p> <p>22 the EO Technical Significant Case Report chart.</p> <p style="text-align: right;">Page 106</p>	<p>1 A Yes.</p> <p>2 Q Now, do you recall reviewing this</p> <p>3 document?</p> <p>4 A Not particularly.</p> <p>5 Q Is it possible that you did?</p> <p>6 A Possible.</p> <p>7 MR. GREIM: Let's go ahead and take a</p> <p>8 break because we got to change the tape.</p> <p>9 THE VIDEOGRAPHER: This ends disk number</p> <p>10 one in the video deposition of Lois Lerner. Going</p> <p>11 off the record. The time is 11:14 a.m.</p> <p>12 (A brief recess was taken.)</p> <p>13 THE VIDEOGRAPHER: This begins disk number</p> <p>14 two in the video deposition of Lois Lerner. We are</p> <p>15 back on the record. The time is 11:23 a.m.</p> <p>16 (Lerner Deposition Exhibit No. 15 was</p> <p>17 marked for identification.)</p> <p>18 BY MR. GREIM:</p> <p>19 Q Ms. Lerner, I'm going to hand you what</p> <p>20 we've marked as Exhibit 15. And you'll see that</p> <p>21 this is a several e-mail chain, but if we go to the</p> <p>22 very back, we'll see Michael Seto, on Tuesday,</p> <p style="text-align: right;">Page 108</p>
<p>1 A Yes.</p> <p>2 Q Okay. And you see under "Name of Group"</p> <p>3 now it says "American Junto and Albuquerque Tea</p> <p>4 Party, Inc."</p> <p>5 A Yes.</p> <p>6 Q Group manager stays the same. The issue,</p> <p>7 does it appear to be the same as what we read</p> <p>8 earlier?</p> <p>9 A Yes.</p> <p>10 Q Tax Law Specialist is still Chip Hull?</p> <p>11 A Yes.</p> <p>12 Q The estimated completion date is now March</p> <p>13 31, 2011, right?</p> <p>14 A Yes.</p> <p>15 Q And then "Subject/Next action" says,</p> <p>16 "Developing both a (c)(3) and (c)(4) case,</p> <p>17 coordinating with Cincy as to helping to develop</p> <p>18 their cases. Cincy has 40 applications."</p> <p>19 Did I read that right?</p> <p>20 A Yes.</p> <p>21 Q And then "Elevated to Commissioners now"</p> <p>22 category you see it says "No"?</p> <p style="text-align: right;">Page 107</p>	<p>1 February 1, 2011, e-mails you only, with a copy to</p> <p>2 Holly Paz and several others, with a subject "SCR</p> <p>3 Table for Jan. 2011."</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q He says, "Here is the Jan. SCR summary"?</p> <p>7 A Hmm-hmm.</p> <p>8 Q And then you'll see on this one you have a</p> <p>9 response to several of these, right?</p> <p>10 A Hold on, let me look at it.</p> <p>11 (The witness examined the document.)</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. GREIM:</p> <p>14 Q Okay. And so later that day, on February</p> <p>15 1, you e-mail back to Mr. Seto with a copy to all</p> <p>16 the others, and now you've added Judith Kindell,</p> <p>17 right? Do you see that?</p> <p>18 A Yes.</p> <p>19 Q She is also cc'd. You say, "Thanks. A</p> <p>20 couple of comments. The very first matter you have</p> <p>21 on here, one, Tea Party matter, very dangerous.</p> <p>22 This could be the vehicle to go to court on the</p> <p style="text-align: right;">Page 109</p>

1 **issue of whether 'Citizens United' overturning the**
2 **ban on corporate spending applies to tax-exempt**
3 **rules. Counsel and Judy Kindell need to be in on**
4 **this one, please. Needs to be in" -- "in this.**
5 **Cincy should probably NOT" -- "NOT" in all capitals**
6 **-- "have these cases. Holly, please see what**
7 **exactly they have, please."**

8 **Did I read that right?**

9 A You did.

10 **Q What did you mean by "Tea Party matter**
11 **very dangerous"?**

12 A Well, it's really in relation to the next
13 sentence, that the Tea Party case could be the
14 vehicle to go to the Supreme Court, in which case,
15 we had to be very careful that we had developed the
16 case correctly, dotted all the I's, crossed all the
17 T's, and made sure that we had a good case to take
18 to court if that's what was going to happen.

19 **Q And the specific issue with "Citizens**
20 **United" that you referenced here was "overturning**
21 **the ban on corporate spending applies to tax-exempt**
22 **rules," right? I'm sorry, I should have said**

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1 were referring to was a case -- well, I can't say,
2 because you didn't give me the SCR. I'm assuming
3 that it had the name "Tea Party" in it.

4 **Q Well, we looked at several SCRs just now,**
5 **didn't we?**

6 A We did, but I don't know if the -- the
7 cases on those SCRs are the same as this case.

8 **Q Well, let's go and look at Holly Paz's**
9 **response to you the next day. You see that she**
10 **says, "Tea Party-Cases in Determs are being**
11 **supervised by Chip Hull at each step. He reviews**
12 **info" -- "info from TPs, correspondence to TPs, et**
13 **cetera."**

14 **I read that right so far?**

15 A Yes.

16 **Q "No decisions are going out of Cincy until**
17 **we go all the way through the process with the**
18 **(c)(3) and (c)(4) cases here."**

19 **I read that right?**

20 A Correct.

21 **Q "I believe the (c)(4) will be ready to go**
22 **over to Judy soon."**

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1 **"whether." I skipped the word "whether." Let me go**
2 **back again.**

3 A Okay.

4 **Q The specific "Citizens United" issue was**
5 **whether that case overturned the ban on corporate**
6 **spending, applied to taxes and accrual; is that**
7 **right?**

8 A Yes.

9 **Q Now, remember we asked several questions**
10 **about this earlier. We were really looking at**
11 **e-mails from a 2010 timeframe.**

12 **Do you recall that?**

13 A Yes.

14 **Q Okay, so now it's a year later.**

15 **Do you recall at this point being**
16 **concerned that some of the Tea Party groups wanted**
17 **to use "Citizens United" for this type of challenge?**

18 A I think I said before that lots of groups
19 were talking about using these cases as a challenge
20 to the Supreme Court. I don't know that I was
21 particularly concerned about cases that had Tea
22 Party in them or not, but I -- this case that they

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1 A Okay.

2 **Q Now, is that consistent with what we've**
3 **seen in the SCR so far about cases being in -- I'm**
4 **sorry, two cases being in D.C. and other cases being**
5 **in Cincinnati?**

6 A Yes.

7 **Q Now, let's look. We'll keep going on to**
8 **the next -- to your response to her shortly**
9 **afterwards on February 2, 2011.**

10 **Do you see -- you say, "Thanks. Even if**
11 **we go with a 4 on the Tea Party cases, they may want**
12 **to argue they should be 3s, so it would be great if**
13 **we can get there without saying the only reason they**
14 **don't get a 3 is political activity."**

15 **Did I read that right?**

16 A Yes.

17 **Q What did you mean?**

18 A There are different rules for (c)(3)s and
19 (c)(4)s, and in the past, (c)(3)s have an issue with
20 private benefit and inurement, and in the past, we
21 had had cases where organizations had come in asking
22 for status as educational organizations to educate

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<p>1 people about the electoral process and running for 2 office, which sounds like political because what 3 political is for the IRS and what political means 4 for the general public are very different. 5 But in those cases, it turned out that 6 they were only providing the education to one side 7 of the aisle, so the cases were actually determined 8 on a private benefit basis, not on a political 9 activity basis. And I was trying to ensure that 10 people were thinking about that and that whatever 11 the cases were had been developed to -- as far as 12 the extent possible on all issues. 13 Q Because it was your view, wasn't it, that 14 if the private benefit argument was used and the 15 political activity argument was not used, that it 16 may not implicate "Citizens United." 17 A Well, private benefit would not have 18 implicated "Citizens United." 19 Q And did you expect that your instructions 20 about how the cases should be worked would then be 21 implemented by Holly Paz and Michael Seto? 22 A Yes.</p> <p style="text-align: right;">Page 114</p>	<p>1 as the Tax Law Specialist? 2 A That's correct. 3 Q Why were you concerned about having Carter 4 Hull on the -- on the cases? 5 A He had no experience in this area. He had 6 experience in the (c)(4) area in general. Prior to 7 "Citizens United," he had no experience in the 8 political activity arena. 9 Q Were you concerned that he was a slow 10 learner? 11 A I had many concerns about his work. 12 Q Well, what were the other concerns? 13 A He had briefed me on a few items and I was 14 not impressed with his briefings. 15 Q Did you know who Mr. Hull's reviewer was? 16 A No, I don't think I did. 17 Q Do you recall it was Elizabeth Kastenberg? 18 A I don't recall. 19 MR. SERGI: While he marks his next 20 exhibit, I will note for the record that the 21 relevant attachment that Ms. Lerner was referring to 22 is at USA_NorCAL_RFP_0050175. It was not produced</p> <p style="text-align: right;">Page 116</p>
<p>1 Q Did you have any concern knowing that 2 Carter Hull had the cases at EOT? 3 A Yes. 4 Q What was your concern? 5 A I didn't think he was up to the task. 6 Q Did you ask that he be moved off the 7 cases? 8 A I did ultimately ask that he be moved off 9 the cases. 10 Q Why didn't you do it as soon as you 11 learned that he was on the cases? 12 A The cases you're talking about that they 13 had in D.C., those were cases to be developed to 14 design guidance, not cases that were going to just 15 be worked and go out the door. So whoever was 16 working them was working them with Judy Kindell, who 17 is also supposed to be working with Counsel. That's 18 a very different situation than having someone just 19 hand in the cases and going out the door. 20 Q So given that Judy Kindell and Counsel 21 were going to be involved as well, you weren't as 22 concerned that it was Carter Hull who was assigned</p> <p style="text-align: right;">Page 115</p>	<p>1 to the witness, and so I object to this document 2 under the rule of completeness. 3 (Lerner Deposition Exhibit No. 16 was 4 marked for identification.) 5 BY MR. GREIM: 6 Q Okay, I'm going to show you what's marked 7 as Exhibit 16. And you'll see here that we've got a 8 chain of e-mails again, starting with a Judy Kindell 9 e-mail to you and Holly Paz. 10 A Hold on. 11 Q And then it ends at -- that -- 12 A No, no, wait a second. 13 Q Go ahead. 14 A When I'm -- oh, down here. I'm sorry. 15 Q Right. That's the very bottom. 16 A Yes. 17 Q This was pulled off a Blackberry, I 18 believe. So you'll see it's from Judy Kindell to -- 19 to you and Holly Paz, copying several others, on 20 April 7th. Then you'll see the e-mail chain 21 continues throughout April 7. The final e-mail is 22 from Holly Paz to you and Judith Kindell.</p> <p style="text-align: right;">Page 117</p>

<p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q Okay. And do you see here that Ms.</p> <p>4 Kindell is reporting on a conversation that she had</p> <p>5 with Chip Hull and Elizabeth Kastenbergs about two</p> <p>6 cases they have that are related to the Tea Party,</p> <p>7 one a (c)(3) application and the other a (c)(4)</p> <p>8 application? I'm just reading from the first</p> <p>9 sentence of her e-mail.</p> <p>10 A Yes.</p> <p>11 Q And then you see she says, "I recommended</p> <p>12 that they develop the private benefit argument</p> <p>13 further and that they coordinate with Counsel."</p> <p>14 Did I read that correctly?</p> <p>15 A Yes.</p> <p>16 Q And is that the private benefit argument</p> <p>17 that you just told us about?</p> <p>18 A Yes.</p> <p>19 Q She says, "They also mentioned that there</p> <p>20 are number of other (c)(3) and (c)(4) application"</p> <p>21 -- "applications of orgs related to the Tea Party</p> <p>22 that are currently in Cincinnati."</p> <p style="text-align: right;">Page 118</p>	<p>1 Q Let me ask you, did you share Ms. Paz's</p> <p>2 concern about working the Tea Party cases directly</p> <p>3 out of the D.C. office?</p> <p>4 A I'm sorry. Yes.</p> <p>5 Q Why is that?</p> <p>6 A Because we didn't have enough people to do</p> <p>7 them.</p> <p>8 Q Let's look at your response to her a</p> <p>9 little later on the 7th. You see -- you say, "Yes,</p> <p>10 but these could blow up like crazy if the Determs</p> <p>11 folks let one out incorrectly. Think MN</p> <p>12 Firefighters. Can Cindy have all of them assigned</p> <p>13 to one or two folks who don't make a move without</p> <p>14 Counsel/Judy involvement?"</p> <p>15 Did I read that right?</p> <p>16 A Yes.</p> <p>17 Q What is -- what were you referring to with</p> <p>18 the Minnesota firefighters?</p> <p>19 A You know, it wasn't a (c)(4) issue. My</p> <p>20 recollection is it wasn't a (c)(4) issue.</p> <p>21 MR. HEAVNER: I'm going to object. You</p> <p>22 can't talk about specifics about the entity. You</p> <p style="text-align: right;">Page 120</p>
<p>1 Did I read that correctly?</p> <p>2 A Yes.</p> <p>3 Q Okay. Now, let's look at Holly Paz, her</p> <p>4 response here. She says, "The last information I</p> <p>5 have is that there are approximately 40 Tea Party</p> <p>6 cases in Determs."</p> <p>7 Did I read that right?</p> <p>8 A Yes.</p> <p>9 Q And is Determs, is that the same thing as</p> <p>10 Cincinnati?</p> <p>11 A It's short for Determinations, Cincinnati,</p> <p>12 yes.</p> <p>13 Q Okay. And then she says, "With so many</p> <p>14 EOT and guidance folks" -- God bless you -- "tied up</p> <p>15 with ACA," -- parenthesis -- "(cases and guidance)</p> <p>16 and the possibility looming that we may have to work</p> <p>17 reinstatement cases up here to prevent a backlog in</p> <p>18 Determs, I have serious reservations about our</p> <p>19 ability to work all of the Tea Party cases out of</p> <p>20 this office."</p> <p>21 I read that right?</p> <p>22 A Yes.</p> <p style="text-align: right;">Page 119</p>	<p>1 can talk generally about the topic, but under 6103,</p> <p>2 which will be beyond the testimony authorization and</p> <p>3 upon 6103, don't talk about the specifics of the</p> <p>4 organization.</p> <p>5 BY MR. GREIM:</p> <p>6 Q My question is -- I don't want to get into</p> <p>7 details of that case. I want to know what you mean</p> <p>8 -- why you're referring to them when you say "blow</p> <p>9 up like crazy."</p> <p>10 A If your determinations were to release the</p> <p>11 case either approval or a denial and had done it</p> <p>12 incorrectly, it could have a large impact on a</p> <p>13 bigger group of cases. And so my concern was, we</p> <p>14 don't want to have one of these done incorrectly and</p> <p>15 go out the door because it would happen before we'd</p> <p>16 know it, and have to deal with it afterwards. I</p> <p>17 would prefer to be conservative and deal with them</p> <p>18 internally and make sure they were correct before</p> <p>19 they go out the door.</p> <p>20 Q Now, at this point, how did you know that</p> <p>21 the cases were sufficiently similar that if there</p> <p>22 was a mistake made on one that it would affect all</p> <p style="text-align: right;">Page 121</p>

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<p>1 the others?</p> <p>2 A What I knew was that the issues related to</p> <p>3 advocacy, which is very, very difficult, it is not a</p> <p>4 black and white issue; it is a gray issue.</p> <p>5 Cincinnati folks were used to dealing with very</p> <p>6 black and white set of law issues. My concern was</p> <p>7 that these cases were similar enough in terms of</p> <p>8 getting my folks to understand the rules on</p> <p>9 advocacy, that they should be worked in one or two</p> <p>10 groups with oversight and coordination with Counsel.</p> <p>11 Q But how did you know at this point that</p> <p>12 they were similar enough?</p> <p>13 MS. BENITEZ: Objection. Vague.</p> <p>14 THE WITNESS: I don't know what you're</p> <p>15 asking me.</p> <p>16 BY MR. GREIM:</p> <p>17 Q Well, you said that you believe the cases</p> <p>18 were similar enough with respect to advocacy that</p> <p>19 they should be worked together.</p> <p>20 My question is, how did you know that at</p> <p>21 this point?</p> <p>22 A Because I had been told that the issues in</p> <p>Page 122</p>	<p>1 speculation.</p> <p>2 THE WITNESS: I did not say that I thought</p> <p>3 they could rise or fall together. That is not what</p> <p>4 I said.</p> <p>5 BY MR. GREIM:</p> <p>6 Q Okay. Okay. What made you think -- what</p> <p>7 did you know at this time that made you think that</p> <p>8 the decision on one could have a effect on the</p> <p>9 decision on the others?</p> <p>10 MS. BENITEZ: Objection. Vague.</p> <p>11 THE WITNESS: We had cases that were</p> <p>12 coming in with factual scenarios that indicated</p> <p>13 there may be political activity and/or lobbying.</p> <p>14 That was why we were asking our people in D.C. to</p> <p>15 develop a couple of these cases, so that we could</p> <p>16 know the various scenarios and that we could provide</p> <p>17 guidance to the staff who are working the cases so</p> <p>18 that they did not treat them all exactly the same.</p> <p>19 But they would need to understand what political</p> <p>20 advocacy and lobbying advocacy were -- were, the</p> <p>21 distinctions between them, and the level at which it</p> <p>22 was okay and the level at which it was not.</p> <p>Page 124</p>
<p>1 the cases were potential political advocacy or</p> <p>2 lobbying.</p> <p>3 Q Who told -- who had told you that?</p> <p>4 A I -- Judy Kindell had told me. Holly had</p> <p>5 told me.</p> <p>6 Q All by the time of this e-mail?</p> <p>7 A I can't give you timeframes. I just have</p> <p>8 a recollection of being told that. I knew they were</p> <p>9 advocacy cases.</p> <p>10 Q So are you sure that by the time --</p> <p>11 A No, I'm not sure.</p> <p>12 MS. BENITEZ: Let him finish his question.</p> <p>13 BY MR. GREIM:</p> <p>14 Q Because I'm trying to ask you about the</p> <p>15 idea of "blowing up like crazy." So I'm trying to</p> <p>16 understand what led you to use those words.</p> <p>17 And my question is, what did you know at</p> <p>18 the time you wrote this e-mail about the cases that</p> <p>19 would make you think that they could rise or fall</p> <p>20 together?</p> <p>21 A I did --</p> <p>22 MS. BENITEZ: Objection. Calls for</p> <p>Page 123</p>	<p>1 BY MR. GREIM:</p> <p>2 Q Okay. Why did you believe that all the</p> <p>3 cases being held implicated political advocacy for</p> <p>4 lobbying?</p> <p>5 MS. BENITEZ: Objection. Asked and</p> <p>6 answered.</p> <p>7 THE WITNESS: I was told that those were</p> <p>8 the issues in the cases.</p> <p>9 BY MR. GREIM:</p> <p>10 Q Who would have told you that before April</p> <p>11 7, 2011?</p> <p>12 MS. BENITEZ: Objection. Asked and</p> <p>13 answered.</p> <p>14 THE WITNESS: I can't say specifically and</p> <p>15 I can't say specifically about the date because I</p> <p>16 don't remember when I was told things. I just</p> <p>17 remember I was told things.</p> <p>18 BY MR. GREIM:</p> <p>19 Q Is it possible that you weren't told those</p> <p>20 things before April 7th?</p> <p>21 MS. BENITEZ: Objection. Calls for</p> <p>22 speculation.</p> <p>Page 125</p>

<p>1 THE WITNESS: Told what things?</p> <p>2 BY MR. GREIM:</p> <p>3 Q That all the cases involved political</p> <p>4 advocacy and lobbying.</p> <p>5 A I don't know.</p> <p>6 Q Let's look at Ms. Paz's response to you.</p> <p>7 She says, "They are currently being assigned to one</p> <p>8 group. They consult with Chip on all development.</p> <p>9 They have been told not to issue determs until they</p> <p>10 work through the test cases we have here."</p> <p>11 I read that right?</p> <p>12 A Yes.</p> <p>13 Q And did you agree with that process at</p> <p>14 this time?</p> <p>15 A Yes.</p> <p>16 Q Did seeing the name "Tea Party" on these</p> <p>17 groups concern you at this time?</p> <p>18 A I had been told and -- I had been told</p> <p>19 that they had numbers of cases coming in from Tea</p> <p>20 Party organizations.</p> <p>21 Q Did it concern you that they were Tea</p> <p>22 Party organizations?</p> <p style="text-align: right;">Page 126</p>	<p>1 articles about Tea Party groups advocating about</p> <p>2 taxes and the Bill of Rights at this time?</p> <p>3 A No.</p> <p>4 Q You just didn't know -- you didn't know if</p> <p>5 the Tea Party movement was involved?</p> <p>6 MS. BENITEZ: Objection. Asked and</p> <p>7 answered.</p> <p>8 BY MR. GREIM:</p> <p>9 Q Is that your testimony?</p> <p>10 A I knew there was a Tea Party movement.</p> <p>11 Q You knew they were conservative, right?</p> <p>12 A Yes.</p> <p>13 Q But you didn't know -- beyond that, you</p> <p>14 didn't know anything else about it?</p> <p>15 A I didn't pay much attention to it.</p> <p>16 Q I'm not asking whether you paid much</p> <p>17 attention. I'm trying to probe what you knew.</p> <p>18 Just from a person that reads the paper,</p> <p>19 what did you know about the Tea Party movement at</p> <p>20 this time?</p> <p>21 A I don't know.</p> <p>22 Q Can you tell me today, other than that</p> <p style="text-align: right;">Page 128</p>
<p>1 A No. Why would they?</p> <p>2 Q That's my question to you.</p> <p>3 A No.</p> <p>4 Q You understand what the Tea Party movement</p> <p>5 was?</p> <p>6 A No, not really.</p> <p>7 Q You -- did you know the kind of issues</p> <p>8 that they advocated for and against?</p> <p>9 MS. BENITEZ: Objection. Vague.</p> <p>10 THE WITNESS: Not really.</p> <p>11 BY MR. GREIM:</p> <p>12 Q Did you know if they were more liberal or</p> <p>13 conservative group?</p> <p>14 A I would say I probably thought they were</p> <p>15 more conservative group.</p> <p>16 Q Some of the issues that they talked about</p> <p>17 a lot were the Constitution, Bill of Rights and</p> <p>18 taxes; is that fair to say?</p> <p>19 A I don't know.</p> <p>20 Q You didn't know at the time?</p> <p>21 A I don't really pay attention.</p> <p>22 Q So you weren't paying attention to</p> <p style="text-align: right;">Page 127</p>	<p>1 they were conservative, anything else you know about</p> <p>2 the Tea Party movement?</p> <p>3 MR. HEAVNER: Objection. That's beyond</p> <p>4 the scope of the testimony authorization. I'm going</p> <p>5 to instruct you not to answer on that basis.</p> <p>6 MR. GREIM: Well, I think that's directly</p> <p>7 within the authorization because it's the groups</p> <p>8 that are the plaintiffs in this case.</p> <p>9 MR. HEAVNER: The testimony authorization</p> <p>10 is for the period December 1, 2009 through the end</p> <p>11 of her employment with the Internal Revenue Service,</p> <p>12 and the question called for her belief now, her</p> <p>13 understanding now.</p> <p>14 BY MR. GREIM:</p> <p>15 Q All right. What is your understanding</p> <p>16 about the activities that these groups conducted</p> <p>17 between 2009 and 2013, other than what you've just</p> <p>18 told us?</p> <p>19 MS. BENITEZ: Objection. Vague.</p> <p>20 THE WITNESS: I don't have any</p> <p>21 understanding.</p> <p>22 BY MR. GREIM:</p> <p style="text-align: right;">Page 129</p>

<p>1 Q Did you ever read their application files?</p> <p>2 A Let me think. I may have looked at one or</p> <p>3 two of the applications in the context of the guide</p> <p>4 -- of looking at the guidance.</p> <p>5 Q Other than that, your testimony is you</p> <p>6 didn't look at any application files?</p> <p>7 A It wasn't my job to look at applications.</p> <p>8 Q Did you see any other compilations, other</p> <p>9 than the application files themselves, or summaries</p> <p>10 of the kinds of activities that the Tea Party groups</p> <p>11 were doing?</p> <p>12 MS. BENITEZ: Objection. Vague.</p> <p>13 THE WITNESS: I don't recall.</p> <p>14 BY MR. GREIM:</p> <p>15 Q I'll show you what we're marking as</p> <p>16 Exhibit 17.</p> <p>17 (Lerner Deposition Exhibit No. 17 was</p> <p>18 marked for identification.)</p> <p>19 BY MR. GREIM:</p> <p>20 Q And you'll see there's a chain of e-mails</p> <p>21 here that starts on May 26th. Bates number on the</p> <p>22 bottom is NorCAL_RFP_39511. And it goes through to</p> <p style="text-align: right;">Page 130</p>	<p>1 A Yes.</p> <p>2 Q "Joseph, Cindy also believes that there is</p> <p>3 an application in Cincy on this as part of a larger</p> <p>4 look. It is being coordinated with EO Tech."</p> <p>5 Did I read that right?</p> <p>6 A Yes.</p> <p>7 Q Now, is that larger look being coordinated</p> <p>8 with EO Tech, is that the Tea Party cases we've been</p> <p>9 discussing so far?</p> <p>10 A The (c)(4) cases, yes.</p> <p>11 Q Okay. And then you'll see that Holly</p> <p>12 responds to you and actually reports, "Lois, this</p> <p>13 case just arrived up here from Cincy. It has not</p> <p>14 yet been assigned. Mike and I talked and plan to</p> <p>15 assign it to Siri, not Chip, and we'll make sure</p> <p>16 that Siri's work is closely overseen by a (c)(4)</p> <p>17 specialist. We will set up a briefing for you once</p> <p>18 Siri has had time to familiarize herself with the</p> <p>19 file."</p> <p>20 Did I read that right?</p> <p>21 A Yes.</p> <p>22 Q All right. Now, is it your recollection</p> <p style="text-align: right;">Page 132</p>
<p>1 May 27th on the front of the page. So we'll kind of</p> <p>2 work through from the beginning. You see it begins</p> <p>3 with an e-mail from Nanette Downing to you and</p> <p>4 Joseph Grant.</p> <p>5 Now, who is Nanette Downing?</p> <p>6 A She was the director of Examinations.</p> <p>7 Q And so she reported to you?</p> <p>8 A Yes.</p> <p>9 Q She says, "We've received two referrals</p> <p>10 and tracking sheets for both are attached. One was</p> <p>11 called Crossroads GPS and the other Crossroads</p> <p>12 Grassroots Policy Strategies. They cannot determine</p> <p>13 that these were the same entities. Crossroads GPS</p> <p>14 was not an entity, but Crossroads Grassroots Policy</p> <p>15 Strategies is a 501(c)(4). This referral has been</p> <p>16 sent to committee for review."</p> <p>17 I read that right?</p> <p>18 A You did.</p> <p>19 Q And then you respond later that day and</p> <p>20 say, "It looks to me like Crossroads GPS is simply</p> <p>21 an acronym for Crossroads Grassroots Policy</p> <p>22 Strategies." I guess a smiley face?</p> <p style="text-align: right;">Page 131</p>	<p>1 that even as Crossroads GPS was applying coming up</p> <p>2 through Cincinnati, that there were also referrals</p> <p>3 on -- on that entity for examination?</p> <p>4 A Yes.</p> <p>5 Q And that was -- that was possible to</p> <p>6 happen, right?</p> <p>7 A The referrals come in from the outside, so</p> <p>8 if we receive a referral, we send it down to</p> <p>9 Examination. That's the process.</p> <p>10 Q So would Examination be looking at the</p> <p>11 applicant at the same time Determinations is</p> <p>12 processing the application?</p> <p>13 A It's a possibility.</p> <p>14 Q And that's what happened with Crossroads</p> <p>15 GPS, right?</p> <p>16 A I have a different recollection, but --</p> <p>17 Q Okay. What -- what's your recollection?</p> <p>18 A My recollection is that that seems like a</p> <p>19 waste of resources and that perhaps Exam should hold</p> <p>20 up until Cincinnati was done with the application,</p> <p>21 if the organization wasn't approve, there would be</p> <p>22 no need for an exam. If it was approved, they could</p> <p style="text-align: right;">Page 133</p>

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<p>1 do the exam.</p> <p>2 Q Let's forge ahead. So then you respond to</p> <p>3 Holly Paz later on Friday, and you say, "Okay, but</p> <p>4 Cindy tells me there is a whole passel of," quote,</p> <p>5 'Tea Party-related' cases being working in Cincy</p> <p>6 that Chip is overseeing/coordinating? I need to be</p> <p>7 briefed on that, please."</p> <p>8 Did I read that right?</p> <p>9 A Yes.</p> <p>10 Q Okay. And again, this is the same set of</p> <p>11 cases that you referred to two e-mails beforehand on</p> <p>12 May 26th, right, the larger look?</p> <p>13 A Yes.</p> <p>14 Q And then do you see Paz answers your</p> <p>15 question later that day. She says, "Yes, there is.</p> <p>16 We have taken a few of the cases here to serve as</p> <p>17 templates for resolution of the ones in Cincinnati.</p> <p>18 Currently, we have one (c)(3) and one (c)(4) here."</p> <p>19 Did I read that right so far?</p> <p>20 A Yes.</p> <p>21 Q Now, what did you understand the templates</p> <p>22 for resolution to mean?</p> <p>Page 134</p>	<p>1 with Determs on the development of their</p> <p>2 applications, but they know they are not to issue</p> <p>3 any decisions before our position on the cases here</p> <p>4 is approved."</p> <p>5 Did I read that right?</p> <p>6 A Yes.</p> <p>7 Q Now, who is -- who at this point was</p> <p>8 supposed to approve the position on the cases that</p> <p>9 were in D.C.?</p> <p>10 A The cases that they were working in D.C.</p> <p>11 were test cases to develop guidance to assist the</p> <p>12 people in Cincinnati on the issues. So they were</p> <p>13 going to reach out, get the facts on the cases,</p> <p>14 analyze the cases along with Counsel. When everyone</p> <p>15 was in agreement that the -- the cases had -- excuse</p> <p>16 me -- the facts had been analyzed correctly, then</p> <p>17 the design of the guide sheet would go forward from</p> <p>18 that.</p> <p>19 Q So who would approve the position on the</p> <p>20 test cases under this plan you just described?</p> <p>21 A Both EO Determinations and ultimately</p> <p>22 Counsel, because if cases went to court, or if there</p> <p>Page 136</p>
<p>1 A Guide sheets.</p> <p>2 Q Okay. And then it goes on and she says,</p> <p>3 "Chip and others met with Judy last month to discuss</p> <p>4 these cases and she recommended some additional</p> <p>5 development."</p> <p>6 Did I read that right?</p> <p>7 A Yes.</p> <p>8 Q And we, in fact, saw Judy Kindell's report</p> <p>9 on that meeting just one or two exhibits ago, right?</p> <p>10 A I can't even remember that.</p> <p>11 Q Let's forge ahead. She says, "We are in</p> <p>12 the process of doing that right now. We plan to</p> <p>13 send the cases to Counsel before issuance."</p> <p>14 Did I read that right?</p> <p>15 A Yes.</p> <p>16 Q And in fact, isn't that what you had</p> <p>17 suggested before, that Judy and Counsel should be in</p> <p>18 on the approval of these cases?</p> <p>19 A On -- and the development.</p> <p>20 Q And the development, right?</p> <p>21 A Yes.</p> <p>22 Q And then she says, "Chip is coordinating</p> <p>Page 135</p>	<p>1 were denials, Counsel had to approve that.</p> <p>2 Q And in fact, you yourself would have to</p> <p>3 approve the position as well, right?</p> <p>4 A No.</p> <p>5 Q Well, let's look at the next sentence. It</p> <p>6 says, "We were envisioning briefing you on the two</p> <p>7 cases we have here after Counsel has weighed in."</p> <p>8 Is that okay with you? Did I read that</p> <p>9 right?</p> <p>10 A Yes, you did.</p> <p>11 Q So after Counsel had weighed in and were</p> <p>12 brought in, you were supposed to be briefed on these</p> <p>13 two cases; is that right?</p> <p>14 A Correct.</p> <p>15 Q Did that happen?</p> <p>16 A I don't believe it did.</p> <p>17 Q Why not?</p> <p>18 A Because if I recall correctly, there were</p> <p>19 ultimately more than two cases because there were</p> <p>20 FTEs. There were numerous cases that had to be done</p> <p>21 and -- in order for them to get the information they</p> <p>22 needed for the guidance.</p> <p>Page 137</p>

<p>1 Q So the two cases weren't stable; they had</p> <p>2 to replace them?</p> <p>3 A Yes, numerous times.</p> <p>4 Q And so your testimony is that the briefing</p> <p>5 contemplated here by Ms. Paz, under the plan that</p> <p>6 you've described, never actually happened because</p> <p>7 they kept having to replace the test cases?</p> <p>8 A I don't remember a briefing on the two</p> <p>9 cases.</p> <p>10 Q How did you know that the two cases in</p> <p>11 Cincinnati presented issues similar to the ones</p> <p>12 being -- I'm sorry.</p> <p>13 How did you know that the two cases in</p> <p>14 D.C. presented similar issues to the ones being held</p> <p>15 in Cincinnati?</p> <p>16 A It was my understanding that these cases</p> <p>17 had advocacy issues in them, both lobbying and</p> <p>18 political activity. How I knew that and who told me</p> <p>19 I can't recall.</p> <p>20 Q How did you gain the understanding not</p> <p>21 just that they both had advocacy issues, but that</p> <p>22 they had advocacy issues that were similar enough</p> <p style="text-align: right;">Page 138</p>	<p>1 Cincinnati?</p> <p>2 MS. BENITEZ: Objection. Asked and</p> <p>3 answered.</p> <p>4 THE WITNESS: I think I just told you</p> <p>5 that, that they were advocacy, slash -- potential</p> <p>6 advocacy/lobbying in many -- in the cases. That --</p> <p>7 that's what I was told.</p> <p>8 BY MR. GREIM:</p> <p>9 Q But what was it then about the Tea Party</p> <p>10 cases that presented the same types of</p> <p>11 advocacy/lobbying issues?</p> <p>12 A I don't know how to answer that question.</p> <p>13 Q Well, did you know?</p> <p>14 A I was told that there was</p> <p>15 lobbying/political activity issues in these cases,</p> <p>16 and not just Tea Party cases, in many (c)(4) cases.</p> <p>17 Q Well, why weren't all (c)(4) cases that</p> <p>18 presented advocacy and lobbying held up?</p> <p>19 A As far as I know they were.</p> <p>20 Q Okay. Who told you that they all were?</p> <p>21 A When I asked for the cases to be held, I</p> <p>22 asked for the (c)(4) cases that had lobbying and</p> <p style="text-align: right;">Page 140</p>
<p>1 that guidance developed from working the two test</p> <p>2 cases would be useful in developing the Cincinnati</p> <p>3 cases?</p> <p>4 A Oh, actually, they didn't have to be</p> <p>5 similar enough. What we were trying to do was give</p> <p>6 our staff a range of the kinds of cases they might</p> <p>7 see that would have these political activity or</p> <p>8 advocacy issues in them, and an understanding that</p> <p>9 in case A there was a whole lot of political</p> <p>10 activity and because of the facts and circumstances</p> <p>11 there, it couldn't be approved. In case B, same</p> <p>12 kind of activity, but the amount was such that it</p> <p>13 could be approved. Those were very difficult</p> <p>14 questions to parse out.</p> <p>15 So the facts and circumstances of the</p> <p>16 cases didn't have to be the same. The issues that</p> <p>17 the cases -- that arose in the case needed to be the</p> <p>18 same, and then we needed to give our staff guidance</p> <p>19 on how to gauge those issues.</p> <p>20 Q Okay. And so how did you know that the</p> <p>21 issues that arose in the test cases were the same as</p> <p>22 the issues that were arising in the cases in</p> <p style="text-align: right;">Page 139</p>	<p>1 political activity issues in them to be held. That</p> <p>2 was the issue that we needed to work through with</p> <p>3 Counsel. That was the issue that we needed to</p> <p>4 provide guidance on, and that was the issue that we</p> <p>5 needed to get right.</p> <p>6 Q Was this before April of 2011?</p> <p>7 A I don't know when.</p> <p>8 Q So it could have been after two thousand</p> <p>9 -- April of two -- of 2011?</p> <p>10 A I don't know when.</p> <p>11 Q Well, let me -- let me try to tie this</p> <p>12 back to one of your earlier e-mails under Exhibit</p> <p>13 15, in February. Let's go to your February 1, 2011</p> <p>14 e-mail. The Bates number at the bottom is --</p> <p>15 A I know, I'm just trying to figure out what</p> <p>16 date there is there and -- okay.</p> <p>17 Q Okay.</p> <p>18 A I'm sorry, go ahead.</p> <p>19 Q Sure. It's your February 1, 2011 e-mail,</p> <p>20 6:28 to Michael Seto, copy to Holly Paz and Judy</p> <p>21 Kindell. You see it? I think --</p> <p>22 A Yes.</p> <p style="text-align: right;">Page 141</p>

<p>1 Q I think we're there.</p> <p>2 A Six -- yeah, 6:28, yeah.</p> <p>3 Q Right. So you say, "Tea Party Matter" --</p> <p>4 capital T, capital P, capital M -- "very dangerous."</p> <p>5 And so my question is, what is the matter</p> <p>6 that's dangerous? What did you understand that</p> <p>7 matter to be?</p> <p>8 MS. BENITEZ: Objection. Asked and</p> <p>9 answered.</p> <p>10 THE WITNESS: I'm responding to an SCR</p> <p>11 which you haven't shown me, so that makes it a</p> <p>12 little bit more difficult. But an SCR is a list of</p> <p>13 specific cases. And when I say "Tea Party Matter"</p> <p>14 and that's number one, and then I go on and name</p> <p>15 other cases as number two and number three, this is</p> <p>16 a specific case with the name "Tea Party" in it.</p> <p>17 This case is what I'm talking about, not the general</p> <p>18 (c)(4) advocacy issues.</p> <p>19 BY MR. GREIM:</p> <p>20 Q But, of course, the cases that you're</p> <p>21 referring to are the test cases?</p> <p>22 A I don't know that. I didn't see the SCR</p> <p style="text-align: right;">Page 142</p>	<p>1 on. That says "Tea Party Matter." Just from that,</p> <p>2 I'm assuming it was a particular Tea -- case with</p> <p>3 the name "Tea Party" in it. I can't say that for</p> <p>4 sure, but that's what I think it is.</p> <p>5 Q If we go on to the rest of item number one</p> <p>6 --</p> <p>7 A The what?</p> <p>8 Q Let's stick -- let's stick with the same</p> <p>9 e-mail we've just been talking about.</p> <p>10 MS. BENITEZ: Is that Exhibit 15?</p> <p>11 MR. GREIM: It is.</p> <p>12 BY MR. GREIM:</p> <p>13 Q So you conclude, you say, "Cincy should</p> <p>14 probably not have these cases. Holly, please see</p> <p>15 what exactly they have."</p> <p>16 A I'm looking for that. I'm sorry.</p> <p>17 Q Okay, skip the next sentence about Citizen</p> <p>18 --</p> <p>19 A Is this from the first page or a different</p> <p>20 page?</p> <p>21 Q We're looking at the "Tea Party Matter</p> <p>22 very dangerous" comment.</p> <p style="text-align: right;">Page 144</p>
<p>1 and I don't remember what the test cases were.</p> <p>2 Q Whatever -- whatever you were referring to</p> <p>3 was what was on the SCR though.</p> <p>4 MS. BENITEZ: Objection. Vague.</p> <p>5 THE WITNESS: I can't see the SCR, so</p> <p>6 that's my assumption, but I don't know for sure.</p> <p>7 BY MR. GREIM:</p> <p>8 Q So your testimony is that "Tea Party</p> <p>9 Matter" means the cases?</p> <p>10 MS. BENITEZ: Objection.</p> <p>11 BY MR. GREIM:</p> <p>12 Q The two cases that were on the SCR?</p> <p>13 A I don't know.</p> <p>14 MS. BENITEZ: Objection. Mischaracterizes</p> <p>15 the witness' testimony and asked and answered.</p> <p>16 BY MR. GREIM:</p> <p>17 Q Okay. Well, if I said something that you</p> <p>18 didn't testify to, then let me know.</p> <p>19 A What I believe I said was that exhibit</p> <p>20 appears to be my response to reviewing an SCR.</p> <p>21 There are specific cases listed besides that one on</p> <p>22 there that I am responding to and giving my thoughts</p> <p style="text-align: right;">Page 143</p>	<p>1 A Okay. Sorry.</p> <p>2 Q Okay? And then at the end you say, "Cincy</p> <p>3 should probably not have these cases. Holly, please</p> <p>4 see what exactly they have, please."</p> <p>5 A Correct.</p> <p>6 Q Right? Now, Cincy did not have the two</p> <p>7 test cases. D.C. had the two test cases, right?</p> <p>8 A Yes.</p> <p>9 Q So you're referring here not just to the</p> <p>10 two test cases; you're referring to the body of</p> <p>11 cases, aren't you?</p> <p>12 A No. I'm referring to whatever the SCR</p> <p>13 said, which the other SCRs you showed me had</p> <p>14 specific case names and who they were assigned to.</p> <p>15 I don't have the SCR, so I can't tell you.</p> <p>16 Q And they all said that there were a body</p> <p>17 of cases being held in Cincinnati, didn't they?</p> <p>18 A I don't recall.</p> <p>19 Q Okay, let's go back. Let's look at the</p> <p>20 last one we had before this.</p> <p>21 MS. BENITEZ: What's the exhibit?</p> <p>22 MR. GREIM: Exhibit 14.</p> <p style="text-align: right;">Page 145</p>

<p>1 BY MR. GREIM:</p> <p>2 Q We'll look at the second page, the first</p> <p>3 page of the chart. And you'll see "Name of</p> <p>4 Organization/Group." American Junto has replaced</p> <p>5 Prescott.</p> <p>6 Albuquerque Tea Party is still there over</p> <p>7 on the far left, right?</p> <p>8 A Right.</p> <p>9 Q And then if we read over to "Status/Next</p> <p>10 action," it says, "Developing both a (c)(3) and</p> <p>11 (c)(4) case, coordinating with Cincy as to helping</p> <p>12 to develop their cases. Cincy has 40 applications."</p> <p>13 A Correct.</p> <p>14 Q Right? And you refer back in Exhibit 15</p> <p>15 now, you say here, "Cincy should probably not have</p> <p>16 these cases," right?</p> <p>17 A Right.</p> <p>18 Q So the SCRs refer to Cincy, Cincinnati,</p> <p>19 having a body of the Tea Party cases, didn't they?</p> <p>20 MS. BENITEZ: Objection. Lacks</p> <p>21 foundation. Asked and answered. Argumentative at</p> <p>22 this point.</p> <p>Page 146</p>	<p>1 SCR, so I cannot really answer this question.</p> <p>2 However, based on the other SCRs that I have seen in</p> <p>3 this document where I am giving specific responses</p> <p>4 to specific cases, I believe that "Tea Party Matter</p> <p>5 dangerous" relates to a particular case and the --</p> <p>6 and the statement that these cases should not be in</p> <p>7 Cincinnati relates to the 40 or so cases that are in</p> <p>8 Cincinnati because I can see from this case that it</p> <p>9 is too complicated for the people in Cincinnati to</p> <p>10 be handling.</p> <p>11 MR. SERGI: I'm going to renew my rule of</p> <p>12 completeness objection, because now the witness has</p> <p>13 asked several times to see the attachments, which</p> <p>14 the government has produced.</p> <p>15 BY MR. GREIM:</p> <p>16 Q Why in your response to question one did</p> <p>17 you tie the cases in Cincinnati to the two test</p> <p>18 cases in D.C.?</p> <p>19 A Are we still talking about where I say</p> <p>20 this is dangerous and the cases shouldn't be in</p> <p>21 Cincinnati?</p> <p>22 Q We are.</p> <p>Page 148</p>
<p>1 THE WITNESS: The SCR, which may or may</p> <p>2 not be the SCR that goes along with this, does two</p> <p>3 things. It named specific cases and also tells me</p> <p>4 that there are a bunch of cases in Cincinnati. If</p> <p>5 you look at the rest of my responses on this e-mail,</p> <p>6 I am responding to specific cases. So I'm</p> <p>7 responding to the specific case, I believe, and then</p> <p>8 I'm saying, looking at that case, I don't think</p> <p>9 Cincinnati should have those 40 other cases.</p> <p>10 BY MR. GREIM:</p> <p>11 Q And so together, that is the Tea Party</p> <p>12 matter, correct; the two test cases --</p> <p>13 A No.</p> <p>14 Q -- in D.C. and then the cases in</p> <p>15 Cincinnati?</p> <p>16 A No.</p> <p>17 MS. BENITEZ: Objection. Vague.</p> <p>18 THE WITNESS: I'm sorry. I'm sorry.</p> <p>19 MS. BENITEZ: Lacks foundation. Asked and</p> <p>20 answered.</p> <p>21 THE WITNESS: You are twisting my words.</p> <p>22 That is not what I said. I said I do not have the</p> <p>Page 147</p>	<p>1 A I believe I just explained it, but I will</p> <p>2 do it again. In looking at the particular case, it</p> <p>3 became clear to me that these issues were difficult</p> <p>4 and complicated and I did not feel that Cincinnati</p> <p>5 was the best place for them to be handled because we</p> <p>6 didn't have any guidance to give them.</p> <p>7 Q Did the IRS eventually develop guidance to</p> <p>8 enable it to handle all the cases?</p> <p>9 A No.</p> <p>10 Q Do you recall whether there was a meeting</p> <p>11 to consider what to do with the Crossroads case?</p> <p>12 MS. BENITEZ: Objection. Vague.</p> <p>13 THE WITNESS: I -- no.</p> <p>14 BY MR. GREIM:</p> <p>15 Q Do you know whether the Crossroads GPS</p> <p>16 case was actually transferred directly to EOT for</p> <p>17 processing?</p> <p>18 A I believe it was.</p> <p>19 Q At what point did you learn that there was</p> <p>20 something called a BOLO?</p> <p>21 A I don't know the date.</p> <p>22 Q What did BOLO stand for?</p> <p>Page 149</p>

<p>1 A I believe it was be on the lookout.</p> <p>2 Q How was it used?</p> <p>3 MS. BENITEZ: Objection. Lacks</p> <p>4 foundation.</p> <p>5 THE WITNESS: We've talked about the fact</p> <p>6 that when we saw groups of cases that were either</p> <p>7 coming in from a single practitioner or had similar</p> <p>8 issues, we would consolidate them in different teams</p> <p>9 in Cincinnati. All the cases that came into</p> <p>10 Cincinnati initially were looked at through the</p> <p>11 screening group, and they were parsed out from</p> <p>12 thereon. Excuse me. The cases that were</p> <p>13 consolidated, initially people only knew about them</p> <p>14 via an e-mail, oh, we're putting the credit</p> <p>15 counseling cases in group three.</p> <p>16 After awhile, that became cumbersome</p> <p>17 because there were many group assignments. So Cindy</p> <p>18 had come forward and said, do you mind if we put out</p> <p>19 a list of all of the consolidated cases to give to</p> <p>20 the screeners so they will know where to forward</p> <p>21 those cases. At the time, it was not called the "be</p> <p>22 on the lookout" list. I did not learn that that's</p> <p style="text-align: right;">Page 150</p>	<p>1 the Tea Party or advocacy cases from the people</p> <p>2 working on them?</p> <p>3 A I probably asked for several briefings.</p> <p>4 Q Do you recall being surprised to learn</p> <p>5 that Crossroads was part of the Tea Party case</p> <p>6 group?</p> <p>7 MS. BENITEZ: Objection. Vague.</p> <p>8 THE WITNESS: No.</p> <p>9 (Lerner Deposition Exhibit No. 18 was</p> <p>10 marked for identification.)</p> <p>11 BY MR. GREIM:</p> <p>12 Q I'm going to show you what we've marked as</p> <p>13 Exhibit 18. You'll see at the bottom Holly Paz is</p> <p>14 e-mailing Cindy Thomas with a couple of questions on</p> <p>15 June 1, 2011. So we're now three or four days after</p> <p>16 the last set of e-mails we just looked at.</p> <p>17 Now, who is Cindy Thomas?</p> <p>18 A She was the head of the determinations</p> <p>19 processing in Cincinnati.</p> <p>20 Q So you'll see Holly has two things. She</p> <p>21 says one, "Can you please send me a copy of the</p> <p>22 Crossroads Grassroots Policy Strategies application?</p> <p style="text-align: right;">Page 152</p>
<p>1 what it was called until much later, but that's the</p> <p>2 list.</p> <p>3 BY MR. GREIM:</p> <p>4 Q Do you recall what the list looked like?</p> <p>5 A I'm not sure I ever saw the list.</p> <p>6 Q Was it a table or a chart or was it just a</p> <p>7 numbered list?</p> <p>8 A I'm not sure I ever saw --</p> <p>9 MS. BENITEZ: Objection. Calls for</p> <p>10 speculation.</p> <p>11 THE WITNESS: I'm not sure I ever saw the</p> <p>12 list. I'm sorry.</p> <p>13 BY MR. GREIM:</p> <p>14 Q Do you recall asking Judy Kindell to take</p> <p>15 a look at the Crossroads GPS application so that she</p> <p>16 could summarize the issues for you?</p> <p>17 A No.</p> <p>18 Q Do you recall being concerned that the</p> <p>19 criteria being used to pull groups into the Tea</p> <p>20 Party case group were resulting in over-inclusion?</p> <p>21 A I don't know.</p> <p>22 Q Do you remember asking for a briefing on</p> <p style="text-align: right;">Page 151</p>	<p>1 Lois wants Judy to look at it so she can summarize</p> <p>2 the issues for Lois."</p> <p>3 Do you see that?</p> <p>4 A Yes.</p> <p>5 Q Do you recall asking Judy to do that?</p> <p>6 A No, but I may have.</p> <p>7 Q Number two, you'll see she asks, "What</p> <p>8 criteria are being used to label a case a Tea Party</p> <p>9 case. We want to think about whether those criteria</p> <p>10 are resulting in over-inclusion."</p> <p>11 Do you see that?</p> <p>12 A Yes.</p> <p>13 Q Do you recall wanting to find out whether</p> <p>14 the criteria were in fact resulting in</p> <p>15 over-inclusion?</p> <p>16 MS. BENITEZ: Objection. Lacks</p> <p>17 foundation.</p> <p>18 THE WITNESS: No.</p> <p>19 BY MR. GREIM:</p> <p>20 Q Then you'll see that Cindy Thomas reports</p> <p>21 a few e-mails above that there is a description for</p> <p>22 the BOLO and it says, "Organizations involved with</p> <p style="text-align: right;">Page 153</p>

<p>1 the Tea Party movement applying for exemption under 2 a 501(c)(3) or 501(c)(4)." 3 Do you recall that being on the BOLO list? 4 A I never -- 5 MS. BENITEZ: Objection. Lacks 6 foundation. 7 THE WITNESS: I never saw the BOLO list. 8 BY MR. GREIM: 9 Q And then she -- Cindy Thomas says, "I 10 asked screening manager if the applications actually 11 state/specify," quote, "Tea Party," -- closed 12 quote, "And if not, how the screeners determine 13 application is part of this group. I'll let you 14 know what he says. Should have by Friday morning at 15 the latest." 16 You see that? 17 A Yes. 18 Q And then Holly Paz says, "Thank you. We 19 were curious because Crossroads is associated with 20 the Republican party, not necessarily the Tea 21 Party." 22 Did I read that right?</p> <p style="text-align: right;">Page 154</p>	<p>1 participate. We're aiming for the week of 6/27." 2 Read that right? 3 A Yes. 4 Q Do you recall that briefing occurring? 5 A No. 6 Q Do you recall getting a report on the Tea 7 Party cases in late June of 2011? 8 MS. BENITEZ: Objection. Asked and 9 answered. 10 THE WITNESS: What do you mean by 11 "report"? 12 BY MR. GREIM: 13 Q Common English version. Do you recall a 14 meeting where people gave you information about the 15 Tea Party cases? 16 A Yes, but I don't know if it was that date. 17 Q What meeting are you remembering? 18 MS. BENITEZ: Objection. Vague. 19 BY MR. GREIM: 20 Q Well, you say yes, but I don't know if 21 it's that date. I want to know what the meeting is 22 that triggered a recollection but you're not sure it</p> <p style="text-align: right;">Page 156</p>
<p>1 A Yes. 2 Q Now, Holly says, "We were curious." 3 Do you remember considering that 4 Crossroads was associated with the Republican Party 5 and not necessarily with Tea Party? 6 A No. 7 Q Do you remember discussing that with Holly 8 Paz? 9 A No. 10 Q Is it surprising to see Holly Paz say that 11 based on what you remember from talking with her? 12 MS. BENITEZ: Objection. Calls for 13 speculation. Lacks foundation. 14 THE WITNESS: She was checking up on what 15 was going on in her area, so I don't find that 16 surprising. 17 BY MR. GREIM: 18 Q You'll see at the very bottom -- I'm 19 sorry, I tricked you into moving on. If you go back 20 to the very bottom of 18, Holly Paz tells Cindy 21 Thomas, "Lois wants a briefing on these cases. 22 We'll take the lead, but would like you to</p> <p style="text-align: right;">Page 155</p>	<p>1 was on that date. 2 A You asked the question, do you I remember 3 being briefed on these cases? Yes, I do remember 4 being briefed on these cases. 5 Q Do you remember a first meeting where 6 there were many people in attendance and you learned 7 several things for the first time about the Tea 8 Party cases? 9 A That's too vague. I don't know what 10 you're talking about. We didn't work in a world 11 where we only learned things from meetings. We 12 talked to people in the hallway and somebody would 13 come in and tell you, so I don't really know what 14 you're talking about. 15 Q We'll come back to that. I'm going to 16 show you what we're marking as Exhibit 19. 17 (Lerner Deposition Exhibit No. 19 was 18 marked for identification.) 19 BY MR. GREIM: 20 Q You'll see that this is a several page 21 document, BOLO iteration history. 22 MR. SERGI: Actually, just a second. I</p> <p style="text-align: right;">Page 157</p>

<p>1 think you gave us some --</p> <p>2 MR. GREIM: Oh, I gave you my own notes on</p> <p>3 something. It was in the folder.</p> <p>4 MR. SERGI: So we're missing one more of</p> <p>5 these.</p> <p>6 MR. GREIM: Oh, because I -- because I</p> <p>7 probably marked on one that you should have gotten.</p> <p>8 BY MR. GREIM:</p> <p>9 Q And you'll see that on May 21, 2012 -- so</p> <p>10 now we're a year later -- Holly Paz sends you a</p> <p>11 document called "BOLO Spreadsheets," and then you in</p> <p>12 turn forward that on later that day to Nikole Flax.</p> <p>13 You see that?</p> <p>14 A Yes.</p> <p>15 Q Then if we turn, you can see that there's</p> <p>16 a left-hand column with dates that go back in time.</p> <p>17 The latest date is 1/25/12.</p> <p>18 A Am I going to the bottom?</p> <p>19 Q Well, let's -- let's --</p> <p>20 A Oh, 1/25/12.</p> <p>21 Q We're backwards.</p> <p>22 A Okay.</p> <p>Page 158</p>	<p>1 A Right.</p> <p>2 Q Then the instruction over on the right</p> <p>3 says, "Any cases should be sent to Group 7822."</p> <p>4 Same group we just read, right?</p> <p>5 A Hmm-hmm.</p> <p>6 Q "And then Liz Hofacre is coordinating.</p> <p>7 These cases are currently being coordinated with</p> <p>8 EOT," right?</p> <p>9 A Correct.</p> <p>10 Q And then it even goes beyond that.</p> <p>11 There's just kind of a run -- table that is entitled</p> <p>12 "Pre-BOLO Spreadsheet."</p> <p>13 Do you see that in the upper left-hand box</p> <p>14 that's shaded?</p> <p>15 A Yes.</p> <p>16 Q Under there it says, "7/27/10." The next</p> <p>17 column over says, "Tea Party," right?</p> <p>18 A Yes.</p> <p>19 Q And then there is a issue description that</p> <p>20 says, "These case involve" -- another -- it has the</p> <p>21 same language that we just read up in the last row,</p> <p>22 correct?</p> <p>Page 160</p>
<p>1 Q Yeah, we're just going to explore this a</p> <p>2 little bit. You'll see the next column over says</p> <p>3 "Current political issues." Then it's got a</p> <p>4 description in the third column over and instruction</p> <p>5 in the -- in really the second to last big column.</p> <p>6 A Yeah.</p> <p>7 Q "Forward cases to Group 7822. Stephen</p> <p>8 Seok is the coordinator."</p> <p>9 A Right.</p> <p>10 Q So that's the last entry. Then if you go</p> <p>11 to the next page, you can see the end of that part</p> <p>12 of the table. The date should say, I believe,</p> <p>13 8/12/10.</p> <p>14 A Yes.</p> <p>15 Q There, instead of "Current political</p> <p>16 issues," the next column over says "Tea Party,"</p> <p>17 right?</p> <p>18 A Yes.</p> <p>19 Q And then it says, "These case involve</p> <p>20 various level organizations in the Tea Party</p> <p>21 movement, are applying for exemption under a</p> <p>22 501(c)(3) or 501(c)(4)," right?</p> <p>Page 159</p>	<p>1 A Yes.</p> <p>2 Q And the instruction box has the same</p> <p>3 language that we just read in the last row, right?</p> <p>4 A Yes.</p> <p>5 Q Now, do you recall that there was a time</p> <p>6 in 2010 when the Tea Party cases were being</p> <p>7 centralized, but there wasn't actually a BOLO</p> <p>8 spreadsheet yet?</p> <p>9 A Yes.</p> <p>10 Q Then actually you can even go a little</p> <p>11 further. If you turn one more page, and you can see</p> <p>12 it says "Pre-BOLO Spreadsheet, 05/06/10. Tea</p> <p>13 Parites" -- it looks like it's misspelled -- the</p> <p>14 next box over, and then the instruction says,</p> <p>15 "Coordinate with Group 7825," a different group.</p> <p>16 You see that?</p> <p>17 A Yes.</p> <p>18 Q Now, my question to you is do you</p> <p>19 recall -- if we look at the structure of this --</p> <p>20 let's go back just to the BOLO iteration history.</p> <p>21 Do you recall that the way the BOLO was set up there</p> <p>22 would be a label like the second -- this is the</p> <p>Page 161</p>

<p>1 second column over now from the left -- like current 2 political issues or advocacy orgs that was assigned 3 to an issue? 4 A No, I never saw the BOLO list. 5 Q Well, let me ask you this. Did you at 6 least at some point see the entries on the BOLO list 7 even if you didn't see the entire list? 8 A I don't believe I did. 9 Q Well, do you recall getting this table of 10 BOLO entries? 11 A I don't actually recall getting it. 12 Q Do you think you reviewed it? 13 A I don't recall getting it. 14 Q Do you recall understanding, even if you 15 never saw the BOLO, that there was an issue title 16 and then a longer description of what that issue was 17 supposed to be? 18 MS. BENITEZ: Objection. Vague and lacks 19 foundation. 20 THE WITNESS: I don't recall. 21 BY MR. GREIM: 22 Q Do you recall making a direction -- giving</p> <p style="text-align: right;">Page 162</p>	<p>1 and then they changed it. 2 Q And then you had to change it back again; 3 do you recall that? 4 A Yes, much later. 5 Q Do you recall Steve Miller asking you 6 about the Crossroads case in May of 2011? 7 A No. 8 Q Do you recall conversations with Steve 9 Miller about the Crossroads case -- and let me back 10 up -- about the Crossroads application? 11 A Not specifically, no. 12 Q Do you recall a meeting in which Justin 13 Lowe, Carter Hull, Elizabeth Kastenberg and Holly 14 Paz briefed you on the handling of the Tea Party 15 cases soon after the May and June e-mail exchanges 16 we just looked at? 17 A I recall a meeting where they briefed me. 18 I don't know when it was. 19 Q And do you recall that whenever that 20 meeting was it was after that meeting that you 21 directed the change to the BOLO issue and 22 description?</p> <p style="text-align: right;">Page 164</p>
<p>1 a direction on two different occasions changing the 2 label of the issue on the BOLO list and the 3 description that went along with that issue? 4 A I remember directing Holly and Cindy that 5 calling these cases Tea Party cases was incorrect, 6 that they should be focusing on the issues in the 7 cases, not who the organizations were, and that they 8 needed to reflect the issues as advocacy issues. 9 That's what I recall. 10 Q Do you remember telling them that they 11 were to do that in the BOLO? 12 A Yes. 13 Q Okay. Do you recall working on a draft of 14 an issue description for the BOLO? 15 A Vaguely. 16 Q Do -- okay. Do you recall having to 17 instruct that the BOLO be changed on two different 18 occasions? 19 A Yes. 20 Q So you did it first in 2011. Do you 21 recall that? 22 A I don't know when it was, but I did do it</p> <p style="text-align: right;">Page 163</p>	<p>1 A Yes. 2 Q That was one of the directives you gave as 3 a result of that meeting? 4 A Yes. 5 Q Do you remember any other directives that 6 you gave as a result of that meeting? 7 A I also directed everybody to quit 8 referring to the cases as Tea Party cases. 9 Q Why did you do that? 10 A Because they were using it as a shorthand 11 for a much broader group of cases and it could be 12 misunderstood. 13 Q Anything else that you directed as a 14 result of that meeting? 15 A Not that I recall. Oh, sorry. Yes. I 16 told Holly to take Chip Hull off the cases. 17 Q All right. Why is that? 18 MS. BENITEZ: Objection. Asked and 19 answered. 20 THE WITNESS: I did not think he was 21 capable of doing the job that we needed done. 22 BY MR. GREIM:</p> <p style="text-align: right;">Page 165</p>

<p>1 Q Do you recall directing that the 2 organizations that were granted exemption at the end 3 of the process should be sent to the ROO for a 4 follow-up? 5 A I don't recall that. 6 Q Do you recall directing that EOT should 7 come up with some sort of a guidance document to be 8 used by Determinations in processing the cases that 9 they had? 10 A That's the document they were trying to 11 get to by developing the (c)(3) and (c)(4) cases, so 12 yes. 13 Q Do you recall directing that EO Technical 14 should go through the cases that to that point had 15 been compiled in Cincinnati and tried to triage by 16 making recommendations about what should be done 17 with the different groups? 18 A That was a different process. 19 Q Did that process I just described happen 20 after the meeting we've just been discussing? 21 A Yes. 22 Q Do you recall having a separate discussion</p> <p style="text-align: right;">Page 166</p>	<p>1 A No. 2 Q Okay. "Also, I changed the description." 3 She's referencing the -- the reference and the 4 description, right? 5 A Yes. 6 Q And then she says, "These actions were 7 completed as a result of a conference call that was 8 held today with EOT and Lois Lerner." 9 Did I read that right? 10 A Yes. 11 Q Does that refresh your recollection that 12 that's what she told Cindy Thomas to do? 13 A She may have been on the phone while we 14 were having the other meeting. That's why when you 15 asked me if I had a separate conversation -- 16 Q So this may have been the same meeting? 17 A It may have been. 18 Q And then you say the EOT contact person 19 may be changing as well. 20 A Yes. 21 Q And that's -- I'm sorry, she said that, 22 not you. And that refers to Carter Hull moving out</p> <p style="text-align: right;">Page 168</p>
<p>1 with Cindy Thomas after the meeting that we've just 2 discussed where you talked about the labels used to 3 refer to the cases? 4 A I'm sorry? 5 Q Do you recall having a separate discussion 6 with Cindy Thomas after the meeting we just 7 discussed where you talk with her about the labeling 8 of the cases? 9 A I don't recall it. 10 Q I'm handing you what we're marking as 11 Exhibit 20. 12 (Lerner Deposition Exhibit No. 20 was 13 marked for identification.) 14 BY MR. GREIM: 15 Q And you'll see that this starts at the 16 bottom with an e-mail from Cindy Thomas to Ron Bell. 17 And she says, "I changed reference from Tea Party 18 cases to advocacy orgs on the BOLO list that is 19 housed on the NERD" -- N-E-R-D. 20 A I don't know what that is. 21 Q Is there not a person in the office who's 22 just called the NERD?</p> <p style="text-align: right;">Page 167</p>	<p>1 and somebody else moving in? 2 A Yes. 3 Q And then she says, "Also, the Washington 4 office will be putting together" -- "putting a 5 document together with recommended actions that 6 should be taken regarding these cases. After we get 7 this document, we'll figure out next steps." 8 I read that right? 9 A Correct. 10 Q Is that the guidance sheet that we were 11 talking about earlier? 12 A I don't know. 13 Q Is that consistent with the directions -- 14 is what Cindy Thomas is saying here consistent with 15 the directions that you gave, whether it was a 16 meeting or a phone call? 17 A Yes. 18 Q Let me take you to the next e-mail of the 19 chain. Cindy Thomas is forwarding her own e-mail 20 down now to others in Cincinnati, Steven Bowling and 21 John Shafer. 22 A Hmm-hmm.</p> <p style="text-align: right;">Page 169</p>

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1 **Q Do you -- have you ever met either of**
2 **those individuals, Steve Bowling or John Shafer?**
3 A I might have met John Shafer once.
4 **Q Do you know who they are?**
5 A They're people in Cincinnati.
6 **Q And you -- do you know what they do?**
7 A Well, everybody in Cincinnati does
8 determinations.
9 **Q But do you know what they do as -- you**
10 **know, whether they're managers or something else?**
11 A I can't recall.
12 **Q Okay. Let's go on. She says, "Please**
13 **refer to the e-mail below. During the call, Lois**
14 **expressed concern with the," quote, "'label' we**
15 **assigned to these cases. Her concern was centered**
16 **around the fact that these type of things can get us**
17 **into trouble down the road when outsiders request**
18 **information and accuse us of picking on certain**
19 **types of organizations, even though we all know that**
20 **isn't what is taking place."**
21 **Did I read that right?**
22 A Yes.

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1 **Q Is that something that you expressed**
2 **either in a phone call or in a meeting that you**
3 **remember?**
4 A Yes, that is when I said you can't call
5 these Tea Party cases because they're not all Tea
6 Party organizations and that's not the issue, and if
7 you refer to them that way, it can create problems.
8 **Q And then you see the next paragraph down,**
9 **she says, "Lois did want everyone to know that we**
10 **are handling the cases as we should, i.e., the**
11 **screening group starts seeing a pattern of cases and**
12 **is elevating the issue."**
13 A Which was our regular way of doing
14 business.
15 **Q You'll see that in the third paragraph she**
16 **reports more, and I'm going to focus you on the last**
17 **sentence after the word "NOTE." She says, "One of**
18 **the recommended actions is going to be to send ROO**
19 **referrals for those cases that cause us concern**
20 **resulting from organizations making changes after**
21 **being questioned during our case development."**
22 **Did I read that right?**

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1 A You did.
2 **Q Is that one of the recommended -- was that**
3 **one of the recommended actions?**
4 A Actually, that was just a regular standard
5 process. That's what the ROO was for. If --
6 whether it be these, the (c)(4) cases or a (c)(3)
7 case or a totally different issue, if the Cincinnati
8 folks had worked the case, had gone back and forth
9 with the applicant, got information that made them
10 uncomfortable or seemed inconsistent but the
11 papering of the case -- because these cases were all
12 handled just based on paper -- if they had no reason
13 to deny them, they would approve the organizations.
14 They send it to the ROO to be looked at later down
15 the road when the organization was actually up and
16 running and they could see what activities they were
17 doing.
18 **Q So the ROO was done in every case where**
19 **there was back and forth?**
20 A No.
21 **Q Tell me --**
22 A If you look -- if you look at that

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1 sentence, she says "going to be send to ROO
2 referrals for those cases that cause us concern."
3 That's when you send something to the ROO.
4 **Q Okay. So what is it that has to cause**
5 **someone concern to send it to the ROO?**
6 A As I said, it would be a case by case
7 decision, but oftentimes there would be long
8 discussions back and forth on various issues, and
9 the people in Cincinnati did these cases a lot.
10 That's what they did for a living.
11 So they would get a sense this just
12 doesn't seem right, but there's nothing here that
13 gives me the authority to deny this, so the
14 organization's not up and running. We'll send it to
15 the ROO, have the ROO take a look down the road and
16 make sure that they're doing what they said they
17 were going to be doing. If so, everything's fine.
18 If not, there could be a referral to exam.
19 **Q So the ROO referral should be done on a**
20 **case-by-case basis?**
21 A Yes.
22 **Q I'm going to show you -- I think we'll**

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<p>1 probably take a break pretty quick here -- what we 2 are going to mark as Exhibit 21. 3 (Lerner Deposition Exhibit No. 21 was 4 marked for identification.) 5 BY MR. GREIM: 6 Q This one's going to require a little 7 assembling, so we might need some paperclips when 8 we're all done. Do your best. 9 So you'll see that we've put two pages 10 together here. One is -- start with an e-mail from 11 Hilary Goehausen to Michael Seto July 6, 2011. That 12 is Bates labeled NorCAL_RPF_1903. Then on the back 13 we've got a memo dated July 6, 2011 from Hilary 14 Goehausen to Mike Seto dated NorCAL_RFP_29209. So 15 we've got one after the other. We went looking for 16 the attachment, which we have to do, and they're not 17 next to each other. We tried to match these up. We 18 can't always do it. 19 And you'll see here you're not copied on 20 any of these e-mails. I recognize that. But the 21 bottom, Michael Seto tells several people, "You did 22 a great job briefing Lois. Thanks, Mike." And he</p> <p style="text-align: right;">Page 174</p>	<p>1 Q I am. 2 A Sorry. 3 Q That's all right. 4 A I was at the next one. Yes. 5 Q Okay. Now, turn to the next page here. 6 We'll see the subject is "Notes from meeting on 7 c3/c4 'advocacy organization' applications with Lois 8 on July 5." 9 Do you see that? 10 A Yes. 11 Q Okay. And then she goes and she has five 12 bullet points. See those bullet points? 13 A Yes. 14 Q The very first bullet point, "EO Technical 15 will develop and draft a checklist for Cincinnati 16 to use when working c3/c4 'advocacy organization' 17 applications to assist in spotting issues associated 18 with these types of cases." 19 Did I read that right? 20 A Yes. 21 Q And again, your recollection is that's one 22 of the things that you directed EO Technical to do</p> <p style="text-align: right;">Page 176</p>
<p>1 sends that to Justin Lowe, Carter Hull, Elizabeth 2 Kastenbergs and Hilary Goehausen. 3 Do you see that? 4 A Yes. 5 Q Do you recall those individuals in a 6 meeting with you briefing you? 7 A No. 8 Q Okay. All right. And then Hilary 9 responds later that -- or the next day. Says she'll 10 type up "relevant notes from yesterday's meeting 11 with Lois and have them to you this afternoon." And 12 then finally at the top, she says, "Hi Mike. 13 Attached please find a few notes from the meeting 14 yesterday regarding ideas for the next steps to take 15 regarding c3/c4 applications. If there is any 16 additional information you'd like, please let me 17 know." 18 Do you see that? 19 A Where's the place that -- 20 Q I'd point you to the top. 21 A Oh, he's up here. Are you still on this 22 one?</p> <p style="text-align: right;">Page 175</p>	<p>1 after this meeting? 2 A Yes. 3 Q Next it says, "Cincinnati will send 15 to 4 20 developed cases to EO Technical in order for 5 Technical to review." 6 Do you know if that happened? 7 A I don't. 8 Q Do you recall asking that that be done? 9 A I don't. 10 Q Next, "TLSs in EO Technical will continue 11 to be available to Cincinnati in order to answer 12 questions, walk through issues, etc." 13 Do you recall that being the case after 14 your meeting? 15 A Yes. 16 Q The next point, "Require c3/c4 'advocacy 17 organizations,'" -- in quotation marks -- "to make 18 certain representations regarding compliance with 19 the checklist and certain issues," in parenthesis, 20 "(i.e. they won't politically intervene) in order to 21 pin them down in the future if they engage in 22 prohibited activities."</p> <p style="text-align: right;">Page 177</p>

<p>1 Did I read that right?</p> <p>2 A You did.</p> <p>3 Q Was that discussed in the meeting?</p> <p>4 A I don't recall.</p> <p>5 Q Could it have been?</p> <p>6 A I don't recall.</p> <p>7 Q Do you recall that the IRS eventually did</p> <p>8 this?</p> <p>9 MS. BENITEZ: Objection. Calls for</p> <p>10 speculation.</p> <p>11 THE WITNESS: I don't know.</p> <p>12 BY MR. GREIM:</p> <p>13 Q Do you recall the expedited process for</p> <p>14 applications?</p> <p>15 A I believe that happened after I left.</p> <p>16 Q Then a final points says, "Cincinnati will</p> <p>17 also look to see if these organizations have</p> <p>18 registered with the FEC and if so, they should ask</p> <p>19 additional questions."</p> <p>20 Did I read that right?</p> <p>21 A Yes.</p> <p>22 Q Is that something that you asked to have</p> <p style="text-align: right;">Page 178</p>	<p>1 A Actually, I'm not sure this is the meeting</p> <p>2 I was recalling, because Holly Paz is not in this</p> <p>3 meeting. The meeting I was recalling had Holly Paz</p> <p>4 in it, or if she was in the meeting, nobody cc'd</p> <p>5 her.</p> <p>6 Q Well, do you recall the meeting referenced</p> <p>7 here, referenced in this document?</p> <p>8 MS. BENITEZ: Objection. Asked and</p> <p>9 answered.</p> <p>10 THE WITNESS: I'm not sure.</p> <p>11 BY MR. GREIM:</p> <p>12 Q Do you have any reason to doubt that the</p> <p>13 meeting happened?</p> <p>14 A No.</p> <p>15 Q Let's go ahead, if you're okay, and take a</p> <p>16 lunch break.</p> <p>17 A Sounds like a good idea.</p> <p>18 THE VIDEOGRAPHER: This ends disk number</p> <p>19 two in the video deposition of Lois Lerner. Going</p> <p>20 off the record. The time is now 12:50 p.m.</p> <p>21 (Whereupon, at 12:50 p.m., a luncheon</p> <p>22 recess was taken.)</p> <p style="text-align: right;">Page 180</p>
<p>1 happen with the organizations?</p> <p>2 A I don't recall.</p> <p>3 Q Could you have?</p> <p>4 MS. BENITEZ: Objection. Calls for</p> <p>5 speculation.</p> <p>6 THE WITNESS: I don't recall.</p> <p>7 BY MR. GREIM:</p> <p>8 Q Do you have any reason to think anything</p> <p>9 that Ms. Goehausen wrote here is an inaccurate</p> <p>10 reflection of the meeting?</p> <p>11 MS. BENITEZ: Objection. Lacks</p> <p>12 foundation.</p> <p>13 THE WITNESS: I don't know.</p> <p>14 BY MR. GREIM:</p> <p>15 Q Does anything stand -- stand out to you,</p> <p>16 as you review it, as wrong or inconsistent with your</p> <p>17 recollection?</p> <p>18 A I don't have a recollection, so I can't</p> <p>19 answer that.</p> <p>20 Q Well, you recall a meeting. Is anything</p> <p>21 in here that you read look like something that could</p> <p>22 not have happened that you think is wrong?</p> <p style="text-align: right;">Page 179</p>	<p>1 AFTERNOON SESSION</p> <p>2 (1:57 p.m.)</p> <p>3 THE VIDEOGRAPHER: This begins disk number</p> <p>4 three in the video deposition of Lois Lerner. We</p> <p>5 are back on the record. The time is now 1:57 p.m.</p> <p>6 Whereupon,</p> <p>7 LOIS G. LERNER</p> <p>8 having previously been duly sworn,</p> <p>9 was examined and testified further as follows:</p> <p>10 CONTINUED EXAMINATION BY COUNSEL FOR PLAINTIFFS</p> <p>11 BY MR. GREIM:</p> <p>12 Q Ms. Lerner, before lunch we were talking</p> <p>13 about either one or two meetings in late June, early</p> <p>14 July of 2011. Now I want to ask you if you recall</p> <p>15 having a meeting a few weeks after that with Nan</p> <p>16 Marks and Counsel's office on the same topic.</p> <p>17 A No.</p> <p>18 Q I'm going to hand you what we are marking</p> <p>19 as Exhibit 22.</p> <p>20 (Lerner Deposition Exhibit No. 22 was</p> <p>21 marked for identification.)</p> <p>22 BY MR. GREIM:</p> <p style="text-align: right;">Page 181</p>

1 **Q You'll see here, this is another e-mail**
2 **chain that starts on Monday, July the 18th, 2011,**
3 **with an e-mail from Janine Cook to Holly Paz, and**
4 **then it continues on into July the 19th, the**
5 **following day. Starting at the very back, you'll**
6 **see that -- well, first of all, who's Janine Cook?**
7 A She is the -- in Counsel's office. I
8 don't know what her title was.
9 **Q Did you end up working with her quite a**
10 **bit on issues relating to a guide sheet?**
11 A Yes.
12 **Q That was -- that was after these initial**
13 **meetings, right?**
14 A Yes.
15 **Q So you'll see that Janine Cook says,**
16 **"Holly, do you have any additional background for**
17 **meeting next week with Lois and Nan about increase**
18 **in exemption requests from advocacy orgs? Thanks."**
19 **Then you'll see that Holly Paz responds to her the**
20 **next day and says, "Below is some background on what**
21 **we are seeing."**
22 **She has a little background section, and**

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1 **I'm going to direct you to the second part of her**
2 **e-mail here where she talks about -- she attributes**
3 **some plans from you in the smaller print. You'll**
4 **see she says, "Lois would like to discuss our**
5 **planned approach for dealing with these cases. We**
6 **suspect we will have to approve the majority of the**
7 **(c)(4) applications."**
8 **Did I read that part right so far?**
9 A You read it correctly.
10 **Q Then she says, "Given the volume of the**
11 **applications and the fact that this is not a new**
12 **issue, just an increase in frequency of the issue,**
13 **we plan to EOD" -- "EO Determinations work the**
14 **cases."**
15 **Did I read that right so far?**
16 A You did.
17 **Q She missed the word "have" in there.**
18 **So let me ask you so far, did you at this**
19 **time suspect that you'd have to approve the majority**
20 **of the (c)(4) applications?**
21 A I don't remember.
22 MS. BENITEZ: Objection. Lacks

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1 foundation.
2 BY MR. GREIM:
3 **Q Did you intend or did you -- were you**
4 **making plans at this time to discuss the approach**
5 **for dealing with the cases with Counsel?**
6 A I don't understand your question.
7 **Q Well, earlier you said that it was**
8 **important to have Counsel onboard with your approach**
9 **for dealing with the cases, right?**
10 A Correct.
11 **Q And so is that what you were planning to**
12 **do here with this meeting?**
13 MS. BENITEZ: Objection. Vague.
14 THE WITNESS: I don't know. I don't know.
15 I didn't write the e-mail.
16 BY MR. GREIM:
17 **Q Let's go on. She says, "Given the volume**
18 **of applications" -- let's look at that sentence --**
19 **"and the fact that this is not a new issue (just an**
20 **increase in frequency of the issue)," did Paz report**
21 **that to you as well?**
22 MS. BENITEZ: Objection. Vague.

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1 THE WITNESS: Did Paz report what to me?
2 BY MR. GREIM:
3 **Q That this is not a new issue, just an**
4 **increase in frequency of the issue.**
5 A I don't even know what she means by that
6 in this context.
7 **Q Well, did you ever discuss with Paz that**
8 **the advocacy issue that people were seeing with**
9 **these cases was not -- was not a new issue, just an**
10 **increase in frequency of the issue?**
11 A No. I think it was a new issue.
12 **Q So you disagree with this?**
13 A I don't know what she means by this, so I
14 can't disagree with it. I can see a couple of
15 things that she might have meant.
16 **Q Well, and then she says, "We planned to"**
17 **-- I think have -- "EO Determinations work the**
18 **cases."**
19 **That was the plan at this point, wasn't**
20 **it?**
21 A With assistance from EO Technical.
22 **Q Right. And then she goes on and says,**

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<p>1 "However, we plan to have EO Technical compose some 2 informal guidance regarding development of these 3 cases" -- parenthesis -- "(review websites, check to 4 see whether org is registered with FEC, get 5 representations regarding amount of political 6 activity, etc.)" 7 Did I read that right? 8 A You did. 9 Q And was that the plan at this point? 10 A I don't remember. 11 Q Well, do you think Paz would have reported 12 something to Counsel that was not what you had 13 discussed with her? 14 MS. BENITEZ: Objection. Lacks foundation 15 and calls for speculation. 16 THE WITNESS: I don't know -- I don't 17 remember what I said to her, so I don't know if what 18 she reported was what I said. 19 BY MR. GREIM: 20 Q And then she says, "EO Technical will also 21 designate point people for Determs to consult with 22 questions."</p> <p style="text-align: right;">Page 186</p>	<p>1 Q Well, my question now is would Ms. Paz 2 have incorrectly reported the plan to Counsel's 3 office? 4 A I would not think so. 5 Q There's nothing in Ms. Paz's e-mail about 6 some sort of case-by-case decision on whether to 7 report -- to refer to Review of operations, is 8 there? 9 A No, but that's our regular process. She 10 wouldn't have had to say it. 11 Q Well, do you know that that -- that the 12 regular process was followed here? 13 A I think I told you that I don't recall any 14 of this, so it's really hard for me to respond to 15 that. 16 Q All right, so it's possible then that the 17 plan was to refer all the groups to Review of 18 operations? 19 MS. BENITEZ: Objection. Calls for 20 speculation. 21 MR. HEAVNER: And I'm going to object and 22 advise you not to answer because since your</p> <p style="text-align: right;">Page 188</p>
<p>1 You see that? 2 A Yes. 3 Q Do you recall that part of the plan? 4 A That was our regular way of doing 5 business. 6 Q With all cases? 7 A With groups of cases that were sent to 8 special groups to -- to develop. 9 Q And then at the end she says, "We will 10 also refer these organizations to the Review of 11 operations for follow-up in a later year." 12 Did I read that right? 13 A You did. 14 Q Was that also part of the plan? 15 A I don't recall the plan. 16 Q Do you have any reason to think that Ms. 17 Paz would incorrectly report the plan to Counsel? 18 A I saw another e-mail earlier that I 19 described what I thought it meant, which means 20 something different than this, so I don't know what 21 I said and which -- which reflection of what I said 22 actually reflects what I said.</p> <p style="text-align: right;">Page 187</p>	<p>1 testimony is you don't recall any of this, a 2 response to that question or related to this would 3 be speculation and beyond the testimony 4 authorization. 5 BY MR. GREIM: 6 Q Is there any part of the plan that you -- 7 are you going to follow the instruction not to 8 answer the question? 9 A Yes, I'm going to follow his instruction. 10 Q Are you -- is there any part of the plan 11 that you did not share with Ms. Paz? 12 MS. BENITEZ: Objection. Vague. 13 THE WITNESS: I don't remember. 14 BY MR. GREIM: 15 Q So is it possible that you made plans for 16 dealing with the advocacy organizations that you 17 didn't tell to Holly Paz? 18 MS. BENITEZ: Objection. Vague. Calls 19 for speculation. 20 THE WITNESS: Repeat the question, please. 21 BY MR. GREIM: 22 Q Is it possible that you made plans for</p> <p style="text-align: right;">Page 189</p>

<p>1 dealing with the advocacy organizations that you did</p> <p>2 not share with Holly Paz?</p> <p>3 A Unlike --</p> <p>4 MS. BENITEZ: Same objection.</p> <p>5 THE WITNESS: Unlikely, but anything in</p> <p>6 the world is possible.</p> <p>7 BY MR. GREIM:</p> <p>8 Q The point is, you just don't have any</p> <p>9 memory of this; is that right?</p> <p>10 A I do not recall.</p> <p>11 Q By the way, did you keep any notes of</p> <p>12 these meetings?</p> <p>13 MS. BENITEZ: Objection. Vague.</p> <p>14 THE WITNESS: I don't know.</p> <p>15 BY MR. GREIM:</p> <p>16 Q Did you keep notes at meetings? Did you</p> <p>17 make it a practice to do that?</p> <p>18 A No, I didn't.</p> <p>19 Q Did you sometimes keep notes at meetings?</p> <p>20 A I'm sure I did at some times.</p> <p>21 Q Did you have any place where you stored</p> <p>22 your notes?</p> <p style="text-align: right;">Page 190</p>	<p>1 since.</p> <p>2 Q Have you seen any hand -- or I'm sorry --</p> <p>3 notes from your computer since you went on</p> <p>4 administrative leave?</p> <p>5 A I have --</p> <p>6 MS. BENITEZ: Objection. Asked and</p> <p>7 answered.</p> <p>8 BY MR. GREIM:</p> <p>9 Q Well, my question before was about</p> <p>10 handwritten notes. Now my question's about your</p> <p>11 computer.</p> <p>12 Did you see -- have you seen any notes</p> <p>13 that were stored on your computer since you went on</p> <p>14 administrative leave?</p> <p>15 A I have had no access to my computer since</p> <p>16 I went on administrative leave.</p> <p>17 Q Now, I know you've had no access to them.</p> <p>18 My question is whether you have seen notes that were</p> <p>19 kept on your computer after you went on</p> <p>20 administrative leave?</p> <p>21 MS. BENITEZ: Objection. Asked and</p> <p>22 answered.</p> <p style="text-align: right;">Page 192</p>
<p>1 A Computer.</p> <p>2 Q So did you type your notes up or write</p> <p>3 them on a notepad?</p> <p>4 A Probably did both.</p> <p>5 Q Did you receive a request for your</p> <p>6 documents relating to the issue of the handling of</p> <p>7 the advocacy organizations?</p> <p>8 A I did.</p> <p>9 Q Did you turn over your notes?</p> <p>10 A Yes, I did. I -- I'm sorry. Let me back</p> <p>11 up. I didn't let you finish your question. I</p> <p>12 turned over all the documents that I had.</p> <p>13 Q And that included what?</p> <p>14 A That included whatever was in my computer,</p> <p>15 because when I went on administrative leave, I was</p> <p>16 not allowed to take anything out of my office.</p> <p>17 Q So did you have handwritten notes in your</p> <p>18 office at that time?</p> <p>19 A If I had any handwritten notes, that's</p> <p>20 where they would have been.</p> <p>21 Q Have you ever seen them since?</p> <p>22 A No, I haven't seen anything from my office</p> <p style="text-align: right;">Page 191</p>	<p>1 THE WITNESS: No.</p> <p>2 BY MR. GREIM:</p> <p>3 Q Did you keep any records from work at</p> <p>4 home?</p> <p>5 MS. BENITEZ: Objection. Vague.</p> <p>6 THE WITNESS: What do you mean by records</p> <p>7 from work?</p> <p>8 BY MR. GREIM:</p> <p>9 Q Notes.</p> <p>10 A No.</p> <p>11 Q Printed off e-mails.</p> <p>12 A What time period?</p> <p>13 Q 2009 to 2013?</p> <p>14 A If I did, which I don't recall, they would</p> <p>15 have been turned over when we had to turn over all</p> <p>16 -- all my documents.</p> <p>17 Q Did you get a notice to turn over</p> <p>18 documents before or after you left the -- you were</p> <p>19 placed on administrative leave?</p> <p>20 A I don't recall. I think after. I'll take</p> <p>21 that back. Probably as soon as the -- there was an</p> <p>22 investigation announced, we all got an e-mail saying</p> <p style="text-align: right;">Page 193</p>

<p>1 that we couldn't destroy anything, yes.</p> <p>2 Q Do you remember actually searching your</p> <p>3 home for any records and turning them over to</p> <p>4 someone?</p> <p>5 A I searched -- when I left, I was -- I took</p> <p>6 a box of documents with me which was reviewed by</p> <p>7 Joseph Grant before I left the building. They were</p> <p>8 personal things. And I searched that box again to</p> <p>9 see if there was anything, and I don't recall</p> <p>10 whether I found anything and gave it to my</p> <p>11 attorneys -- actually, they searched the box -- or</p> <p>12 not.</p> <p>13 Q Okay. My question is whether you searched</p> <p>14 any documents, not the documents you took from the</p> <p>15 office and brought home after you went on</p> <p>16 administrative leave. My question is about</p> <p>17 documents that you already were keeping at home</p> <p>18 between 2009 and 2013.</p> <p>19 A I didn't have any documents at home.</p> <p>20 Q Did you ever send e-mails to yourself at</p> <p>21 your personal account?</p> <p>22 A Yes.</p> <p style="text-align: right;">Page 194</p>	<p>1 Q Well, let me -- let me just ask you this.</p> <p>2 Did you not search your home e-mail for responsive</p> <p>3 documents because you assumed that you would have</p> <p>4 sent all those back to your IRS account?</p> <p>5 MS. BENITEZ: Objection. Mischaracterizes</p> <p>6 the witness' testimony.</p> <p>7 THE WITNESS: You didn't ask me that</p> <p>8 question before. So ask me the question you want me</p> <p>9 to answer.</p> <p>10 BY MR. GREIM:</p> <p>11 Q Okay. Did you -- well, did you not search</p> <p>12 your home computer for responsive e-mails when you</p> <p>13 got the litigation hold request because you assumed</p> <p>14 that anything on your home computer -- I'm sorry --</p> <p>15 in your home e-mail address would have just been</p> <p>16 sent to your IRS e-mail address?</p> <p>17 MS. BENITEZ: Same objection and vague.</p> <p>18 THE WITNESS: I think I'd like the</p> <p>19 question rephrased and leave the "not" out because</p> <p>20 it's kind of a double negative, so I'm not sure what</p> <p>21 you're saying.</p> <p>22 BY MR. GREIM:</p> <p style="text-align: right;">Page 196</p>
<p>1 Q Did you search those e-mails?</p> <p>2 A Everyone has searched those e-mails.</p> <p>3 Q What do you mean?</p> <p>4 A The personal -- everything that I sent to</p> <p>5 my personal account was in order to work on it and</p> <p>6 then it was sent back to the IRS. So anything I had</p> <p>7 was in my IRS e-mails. There was nothing in my</p> <p>8 personal e-mails from the IRS from work that was not</p> <p>9 sent back to the IRS.</p> <p>10 Q What about the e-mails that the IRS lost?</p> <p>11 MS. BENITEZ: Objection.</p> <p>12 THE WITNESS: I don't --</p> <p>13 MS. BENITEZ: Lacks foundation.</p> <p>14 THE WITNESS: What do you mean what about</p> <p>15 them?</p> <p>16 BY MR. GREIM:</p> <p>17 Q Didn't you have a hard drive crash on your</p> <p>18 IRS computer?</p> <p>19 A Yes.</p> <p>20 Q And weren't e-mails lost as a result of</p> <p>21 that?</p> <p>22 A I don't know if they were actually lost.</p> <p style="text-align: right;">Page 195</p>	<p>1 Q All right. Let me back up to this</p> <p>2 question. Did you search your private, non-work</p> <p>3 e-mail address for responsive documents when you got</p> <p>4 the litigation hold request?</p> <p>5 A I don't know.</p> <p>6 Q Do you have any doubt that you would have</p> <p>7 searched it?</p> <p>8 A I know I searched it for the congressional</p> <p>9 request, but I don't know -- I'm not saying I</p> <p>10 didn't. I just -- I recall doing it for the</p> <p>11 congressional request.</p> <p>12 Q What about back when the litigation hold</p> <p>13 went out though, did you take any steps then to make</p> <p>14 sure that the work e-mails you sent yourself were</p> <p>15 kept and preserved on your private e-mail account?</p> <p>16 MS. BENITEZ: Objection. Asked and</p> <p>17 answered.</p> <p>18 THE WITNESS: Everything I sent to myself</p> <p>19 was sent back to the IRS.</p> <p>20 BY MR. GREIM:</p> <p>21 Q That's not my question though. My</p> <p>22 question is, when the litigation hold notice went</p> <p style="text-align: right;">Page 197</p>

<p>1 out, did you go to your private e-mail account and 2 make sure, from that point forward, that none of the 3 work-related e-mails on the private e-mail account 4 were preserved? 5 A Nothing has been deleted from my personal 6 server from the day they did that, so -- 7 Q The day who did what? 8 A The day we got the hold, nothing has been 9 deleted from my personal server. 10 Q And you've turned over everything from 11 your personal server to Congress, you said? 12 A Congress subpoenaed it. 13 Q Have you turned it over to the IRS? 14 A Oh, everything that Congress got went to 15 the IRS first because of 6103. This was all done 16 through Counsel. I get the subpoena, my counsel 17 talks to the IRS, how should we handle this, because 18 they got to look at it for 6103. It goes there and 19 then it goes where it needs to go. 20 Q So your -- your private e-mails were 21 produced to the IRS first through Counsel so that 22 they could do a 6103 review?</p> <p style="text-align: right;">Page 198</p>	<p>1 Q I'm going to hand you what we're marking 2 as Exhibit 23. 3 (Lerner Deposition Exhibit No. 23 was 4 marked for identification.) 5 BY MR. GREIM: 6 Q You'll see this is a two-page document 7 starting with an e-mail from you to David Fish, Mike 8 Seto -- 9 A Oh, I'm sorry. I thought I didn't give 10 you yours. 11 Q -- Cindy Thomas, Donna Abner, Judy Kindell 12 and Sharon Light, with a cc to Holly Paz, dated 13 November 3, 2011. And you start off -- and the 14 subject is "R & A Priorities." 15 Do you see that? 16 A Yes. 17 Q You say, "I'm getting a little nervous 18 about the amount we have on our plate and how we are 19 juggling" -- "how we are handling. I know everyone 20 is working hard and juggling, but I'm wondering 21 whether the juggling decisions are being made 22 holistically enough."</p> <p style="text-align: right;">Page 200</p>
<p>1 A I believe that's correct. 2 Q Now, we talked a few moments ago about -- 3 actually, we talked for much of the morning about 4 the system of test cases in D.C. and the rest of the 5 cases being held in Cincinnati. 6 You remember that? 7 A Yes. 8 Q Did the system of working the test cases 9 in D.C. to develop guidance for the other cases in 10 Cincinnati cause a significant backlog of advocacy 11 cases? 12 A It caused a backlog of advocacy cases. 13 Q Did it significantly affect the operations 14 of EO Determinations? 15 MS. BENITEZ: Objection. Vague. 16 THE WITNESS: EO Determinations had a 17 backlog on all its cases. 18 BY MR. GREIM: 19 Q So was the backlog on advocacy 20 organizations the same as the backlog on all the 21 other cases Determinations had? 22 A I can't say.</p> <p style="text-align: right;">Page 199</p>	<p>1 And you go on, and then you give direction 2 to various people in the shorter paragraphs below. 3 One of those is to Cindy and Donna. 4 We already talked about who Cindy was. 5 Who is Donna? 6 A Donna Abner. Cindy and Donna were the -- 7 the partner people in Cincinnati. Cindy was the 8 head and Donna was the quality reviewer. 9 Q Quality assurance? 10 A Yeah. 11 Q Okay. So you say, "Cindy and Donna-lists 12 of backlogs of any specific type of cases and what 13 is contributing to the backlog, i.e., are you 14 waiting for assistance from R & A, are you focusing 15 on something that impacts your ability to get this 16 piece done? Also, are there kinds of cases that 17 D.C. has pushed to Cincinnati but in hindsight may 18 be better suited to D.C.?" 19 Did I read that right? 20 A You did. 21 Q Okay. Now, if you turn the page, you'll 22 see that Cindy Thomas then responds to your request</p> <p style="text-align: right;">Page 201</p>

<p>1 that very same day, with a copy to David Fish. And</p> <p>2 she covers many areas, but I want you to focus on</p> <p>3 the areas that talk about -- well, the first couple</p> <p>4 paragraphs.</p> <p>5 So first of all, you say she says, "For EO</p> <p>6 Determinations, there aren't any significant volumes</p> <p>7 of work that D.C. has pushed to us that are better</p> <p>8 suited for EOT. We had issues with certain types of</p> <p>9 cases in the past, such as set-asides, voter</p> <p>10 registration and National Merit Scholarship cases,</p> <p>11 however, we've worked through these issues."</p> <p>12 Did I read that part right?</p> <p>13 A Yes.</p> <p>14 Q Okay. Then she says, "The backlog of work</p> <p>15 involves advocacy organizations."</p> <p>16 You see that?</p> <p>17 A Yes.</p> <p>18 Q She says, "As of about a month ago, there</p> <p>19 were 161 of these cases sitting idle and we probably</p> <p>20 have more by now. The control dates for these cases</p> <p>21 go back to the end of 2009 and all through 2010."</p> <p>22 Did I read that right?</p> <p style="text-align: right;">Page 202</p>	<p>1 about earlier this morning, isn't it?</p> <p>2 A Yes.</p> <p>3 Q Okay. She says, "We're getting calls from</p> <p>4 POAs wanting to know who has put the halt on working</p> <p>5 these cases and threatening to contact their</p> <p>6 congressional offices."</p> <p>7 Did I read that right?</p> <p>8 A Yes.</p> <p>9 Q Now, was that something that was</p> <p>10 significant to you that now you may be getting calls</p> <p>11 from Congress people about the delays on these</p> <p>12 cases?</p> <p>13 A Yes.</p> <p>14 Q She says, "Just today, I instructed one of</p> <p>15 my managers to get additional information" -- I'm</p> <p>16 sorry -- "to get an additional information letter</p> <p>17 out to one of these organizations-if nothing else,</p> <p>18 to buy time, so he didn't contact his Congressional</p> <p>19 Office."</p> <p>20 Did I read that part right?</p> <p>21 A Yes.</p> <p>22 Q Now, was that appropriate?</p> <p style="text-align: right;">Page 204</p>
<p>1 A Yes.</p> <p>2 Q Now, is that consistent with your</p> <p>3 understanding as of this time?</p> <p>4 A That's what it says on here.</p> <p>5 Q And did you believe what she told you?</p> <p>6 A I don't remember this. You asked me a</p> <p>7 different question than that, but go ahead. Ask me</p> <p>8 the next one.</p> <p>9 Q So you don't remember Cindy Thomas</p> <p>10 responding to your question about being nervous</p> <p>11 about the amount of work and she responds and says</p> <p>12 the backlog of work involves advocacy organizations;</p> <p>13 you don't remember that?</p> <p>14 A I recall Cindy telling me that they had</p> <p>15 backlog and that they needed more people and that</p> <p>16 this was part of it. That's what I remember.</p> <p>17 Q Well, let's go on. She says, "We've been</p> <p>18 waiting for EO in D.C. to get us a guidance</p> <p>19 reference document with lessons learned from the c4</p> <p>20 and c3 cases they worked and coordinated with Judy</p> <p>21 Kindell and Counsel."</p> <p>22 Now, that's the guidance document we spoke</p> <p style="text-align: right;">Page 203</p>	<p>1 MS. BENITEZ: Objection. Vague.</p> <p>2 THE WITNESS: I don't know whether it was</p> <p>3 or not. I don't know whether the additional</p> <p>4 information letter was an appropriate letter. I</p> <p>5 don't know anything about the particular cases. But</p> <p>6 I do know that we were getting calls from</p> <p>7 congressional offices about the delay on these</p> <p>8 cases.</p> <p>9 BY MR. GREIM:</p> <p>10 Q Well, is buying time to keep a taxpayer</p> <p>11 from contacting their Congress person a sufficient</p> <p>12 reason to send out an additional information letter?</p> <p>13 A Depends on whether the additional</p> <p>14 information letter was necessary anyway. I can't</p> <p>15 tell from this.</p> <p>16 Q Okay. So -- so just from reading this,</p> <p>17 this wouldn't have raised any concerns with you,</p> <p>18 that she said she did this?</p> <p>19 A I think --</p> <p>20 MS. BENITEZ: Objection. Mischaracterizes</p> <p>21 the witness' testimony.</p> <p>22 BY MR. GREIM:</p> <p style="text-align: right;">Page 205</p>

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<p>1 Q You can answer.</p> <p>2 A I think everything that is being said in</p> <p>3 here would raise concerns with me because we've got</p> <p>4 a backlogged inventory and that's my job.</p> <p>5 Q My question is about this sentence though.</p> <p>6 She instructed a manager "to get an additional</p> <p>7 information letter out to one of the</p> <p>8 organizations-if nothing else to buy time, so he</p> <p>9 didn't contact his Congressional Office."</p> <p>10 A I didn't --</p> <p>11 MS. BENITEZ: Is there a question?</p> <p>12 MR. GREIM: Yeah.</p> <p>13 BY MR. GREIM:</p> <p>14 Q And my question is, didn't that raise a</p> <p>15 concern with you to hear that she had done that?</p> <p>16 A I don't know if it did or not.</p> <p>17 Q After you reviewed this, did you consider</p> <p>18 that maybe something new was needed to move the</p> <p>19 cases forward?</p> <p>20 A With regard to this, you mean this e-mail?</p> <p>21 Q The advocacy -- yes. Yes.</p> <p>22 A Well, I have to finish reading the e-mail</p> <p>Page 206</p>	<p>1 A The one person I remember was Judy</p> <p>2 Kindell, but that's only because she was my senior</p> <p>3 tech advisor, so she would report to me. I don't</p> <p>4 recall who else was working with them on it.</p> <p>5 Q Remember that Hilary Goehausen was working</p> <p>6 on it?</p> <p>7 A I don't remember.</p> <p>8 Q Justin Lowe?</p> <p>9 A Justin Lowe sounds familiar, right.</p> <p>10 Q Now, we haven't mentioned him yet. Who is</p> <p>11 -- who is he?</p> <p>12 A He was an EO Technical staff attorney. I</p> <p>13 don't think he was -- I think that he was just a</p> <p>14 staff attorney.</p> <p>15 Q Do you recall that Goehausen was actually</p> <p>16 working on two different things at this point? One</p> <p>17 of them was the guide sheet. The other one was a</p> <p>18 review of each one of the groups with a</p> <p>19 recommendation on what could be done with the group,</p> <p>20 whether it could be quickly processed or further</p> <p>21 developed.</p> <p>22 A No.</p> <p>Page 208</p>
<p>1 because I haven't read it all.</p> <p>2 Q Okay. I'll represent to you that the rest</p> <p>3 of her e-mail deals with other things, but you can</p> <p>4 go ahead if you feel it might help you.</p> <p>5 (The witness examined the document.)</p> <p>6 THE WITNESS: Okay. So what's the</p> <p>7 question?</p> <p>8 BY MR. GREIM:</p> <p>9 Q I have actually -- oh, I think the</p> <p>10 question was, did -- did this e-mail spur you to</p> <p>11 change the method you were using at this time for</p> <p>12 processing the cases?</p> <p>13 A I don't remember.</p> <p>14 Q All right. Now, we saw that was November</p> <p>15 3, 2011.</p> <p>16 Is it your recollection that this -- that</p> <p>17 at this time EO Technical was still working on the</p> <p>18 guide sheet?</p> <p>19 A If they didn't have one yet, they were</p> <p>20 still working on it.</p> <p>21 Q Do you remember who it was at EO Technical</p> <p>22 who's working on the guide sheet primarily?</p> <p>Page 207</p>	<p>1 MS. BENITEZ: Objection. Vague.</p> <p>2 BY MR. GREIM:</p> <p>3 Q Okay. I'm going to show you what we've</p> <p>4 marked as Exhibit 24.</p> <p>5 (Lerner Deposition Exhibit No. 24 was</p> <p>6 marked for identification.)</p> <p>7 THE WITNESS: Oh, wrong one.</p> <p>8 BY MR. GREIM:</p> <p>9 Q This is a long e-mail chain about this</p> <p>10 whole process. So if you go to the very back,</p> <p>11 you'll see that Cindy Thomas is e-mailing Holly Paz</p> <p>12 in September. So at this point, we are now about</p> <p>13 two months after your initial meetings on this and</p> <p>14 she says, "Per our discussion when you were in</p> <p>15 Cincinnati, we agreed that Justin and Hilary would</p> <p>16 review the advocacy cases in TEDS and would triage</p> <p>17 them. Attached is a list of all the cases we have</p> <p>18 that includes the name," then other information.</p> <p>19 She says, "The cases can be pulled up in</p> <p>20 TEDS by the EIN. I also included a column for</p> <p>21 action to be taken. I thought they could use this</p> <p>22 column to let us know if a case can be approved,</p> <p>Page 209</p>

<p>1 needs more information, etc. If they choose to 2 handle it another way, that's fine too. Please let 3 me know if you need me to take any other action. 4 Thanks." So then you'll see that from there Hilary 5 Goehausen e-mails Michael Seto and reports on the 6 progress of her work.</p> <p>7 Now, does what I've shown you so far 8 refresh your recollection that Hilary Goehausen was 9 not just doing a guide sheet; she was also doing a 10 triage of all the cases that were being held in 11 Cincinnati?</p> <p>12 A No.</p> <p>13 Q You'll see that if we go now to -- there's 14 an October 25th e-mail -- well, let me just -- let 15 me skip ahead, because you're not copied on any of 16 these e-mails. I just want to see if -- what from 17 this you can remember. If you go to the very front 18 page, you'll see now it's Sunday, November 6th, so 19 it's three days after Cindy Thomas' e-mail to you 20 that we just talked about.</p> <p>21 Mike Seto e-mails Cindy Thomas and says, 22 "This is the follow-up on my e-mail I sent you a few</p> <p style="text-align: right;">Page 210</p>	<p>1 developed by EOT for a check/guide sheet that you 2 were going to review it and approve it?</p> <p>3 A I would always review something like that.</p> <p>4 Q Why?</p> <p>5 A Because it was going to come out of my 6 office and I needed to feel comfortable with it and 7 I might need to take it even higher than me, and I 8 might want to go across to Counsel on a legal issue 9 like this that was complicated.</p> <p>10 Q And it was going to be used on 161 groups 11 it looks like.</p> <p>12 A Correct.</p> <p>13 Q And then you'll see David Fish responds 14 and says, "Based on feedback received, the document 15 won't work in its present form. I think we need to 16 work with Determs to make it a usable document. 17 Mike will check with Hilary on clarifying the cases 18 that can be approved, etc."</p> <p>19 So you see David Fish now responding at 20 the end of this process and then finally, Cindy 21 Thomas e-mails Judy Kindell and says, "Per Lois' 22 request, I'm forwarding this information to you.</p> <p style="text-align: right;">Page 212</p>
<p>1 minutes ago. I read through the list and I'd like 2 to have Hilary to make the list a bit more clear on 3 which cases need to be developed, the type of 4 development needed, whether a particular case can be 5 approved without further development, whether the 6 organization is not an advocacy organization, 7 therefore, not needed to be included on the list."</p> <p>8 So you see that first section I just read 9 to you?</p> <p>10 A Yes.</p> <p>11 Q Does that refresh your memory that Hilary 12 Goehausen was preparing this triage list?</p> <p>13 A No.</p> <p>14 Q Okay. Okay. Then you'll see the next 15 paragraph says, "The check/guide sheet is with 16 David, Tom Miller and Judy Kindell for review. I 17 can send you a draft copy. Let me know. I think we 18 may have to clear the check/guide sheet with Lois, 19 but I will check with David."</p> <p>20 You see that?</p> <p>21 A Yes.</p> <p>22 Q Now, did you understand that whatever was</p> <p style="text-align: right;">Page 211</p>	<p>1 Attachment 2 includes Hilary's comments regarding 2 the advocacy cases."</p> <p>3 So do you recall wanting to have Judy 4 Kindell look at the guide sheet and the list of 5 Goehausen triage cases?</p> <p>6 A I knew Judy was working with regard to the 7 guide sheet. I don't remember the list on the 8 advocacy cases.</p> <p>9 Q Okay. But you knew that as of November 10 2011, the guide sheet that you had said should be 11 done back in July was actually still being worked 12 on?</p> <p>13 A In fact, what had happened was they had 14 the draft guide sheet that they gave to Cincinnati 15 to get their comments on. They came back with 16 comments saying this isn't useful for -- for our 17 needs. So yeah, that's what David's referring to.</p> <p>18 Q Did it concern you that four months after 19 the initial meeting the guide sheet still wasn't 20 ready?</p> <p>21 A Yes.</p> <p>22 Q What did you do about that?</p> <p style="text-align: right;">Page 213</p>

<p>1 A Told them they needed to get moving and</p> <p>2 get the guide sheet done.</p> <p>3 Q Now, as it turned out, the guide sheet was</p> <p>4 eventually given to Determinations for use; is that</p> <p>5 right?</p> <p>6 A I don't believe it was.</p> <p>7 Q Didn't you tell Congress that you gave the</p> <p>8 guide sheet to staff for -- for use -- their use at</p> <p>9 determinations?</p> <p>10 A I don't believe I did.</p> <p>11 (Lerner Deposition Exhibit No. 25 was</p> <p>12 marked for identification.)</p> <p>13 BY MR. GREIM:</p> <p>14 Q I'm going to show you what we've marked as</p> <p>15 Exhibit 25.</p> <p>16 MR. SERGI: Before we move off Exhibit 24,</p> <p>17 I just want to point out that there are no</p> <p>18 attachments and they're the next two consecutive</p> <p>19 Bates numbers.</p> <p>20 BY MR. GREIM:</p> <p>21 Q And you'll see that this is a multi e-mail</p> <p>22 chain here, starting at the bottom with Don</p> <p style="text-align: right;">Page 214</p>	<p>1 Did I read that right?</p> <p>2 A You did.</p> <p>3 Q And you forward that up to Nikole Flax</p> <p>4 finally, right?</p> <p>5 A Yes.</p> <p>6 Q Now, when you say "we have told everyone</p> <p>7 that we gave this to staff to use in the cases,"</p> <p>8 were you referring to a meeting you already had with</p> <p>9 Congress at this point?</p> <p>10 A I think I misspoke in my e-mail, because I</p> <p>11 did have a meeting with Congress, and that isn't</p> <p>12 what I told them.</p> <p>13 Q Okay. So you don't believe you told</p> <p>14 Congress that there was already a guide sheet that</p> <p>15 had been given to EO Determinations?</p> <p>16 A No, I told them there was a guide sheet</p> <p>17 that we were developing. When I spoke to Congress,</p> <p>18 I could only speak to them in general terms, not</p> <p>19 about any specific cases. I was trying to give them</p> <p>20 the process. They were asking me about cases being</p> <p>21 put into groups. I explained our process, that we</p> <p>22 work a few cases. We tried to develop a guide</p> <p style="text-align: right;">Page 216</p>
<p>1 Spellmann to several people. Holly Paz forwards it</p> <p>2 to you on March 5, 2012 and then you respond.</p> <p>3 Now, at the bottom, Don Spellmann, on</p> <p>4 March 5th, says, "We'd like to come over and talk</p> <p>5 about the advocacy guide sheet and present our</p> <p>6 suggestions. We'll bring a revised draft with us."</p> <p>7 And then he gives some scheduling suggestions. He</p> <p>8 says, "We're thinking this discussion will be below</p> <p>9 the Lois/Janine level. We could do the same thing</p> <p>10 on Friday, the 9th."</p> <p>11 Did I read that part right?</p> <p>12 A Yes.</p> <p>13 Q And Holly Paz forwards that to you. And</p> <p>14 your response is, "Not sure we have that much time,</p> <p>15 guys. This is at the commissioner level. I met</p> <p>16 with Miller Friday and I will be going up to the</p> <p>17 Senate" -- "to Senate Finance this Thursday. We</p> <p>18 have told everyone that we gave this to staff to use</p> <p>19 in the cases, so we need to be able to make it</p> <p>20 public yesterday. We'll move our schedules around,</p> <p>21 but I'm guessing there will still need to be work</p> <p>22 once we've talked. Can we do a call today?"</p> <p style="text-align: right;">Page 215</p>	<p>1 sheet. We give it to our staff so that they can</p> <p>2 then work the cases.</p> <p>3 They asked me if they could have the guide</p> <p>4 sheet and I said I don't know and I will find out.</p> <p>5 And that's when I went back and I spoke to Steve</p> <p>6 Miller and he said, "Has Counsel approved the guide</p> <p>7 sheet? We haven't given it to staff for use." And</p> <p>8 I went and checked with Counsel and they had not</p> <p>9 approved the guide sheet yet.</p> <p>10 Q Would it surprise you to learn that in</p> <p>11 fact the guide sheet had been given to staff for</p> <p>12 use?</p> <p>13 A It had, but not the one that I'm talking</p> <p>14 about. The other one that -- the first one that we</p> <p>15 just talked about a minute ago where we gave it to</p> <p>16 staff for use and they came back and said it's no</p> <p>17 good, we used it. It's no good.</p> <p>18 So there are two guide sheets. There's</p> <p>19 the one that they developed that they sent to staff</p> <p>20 to try and use. So yes, they did give that to -- to</p> <p>21 staff for use, kind of as a test. Got their</p> <p>22 comments. They came back and said, this doesn't</p> <p style="text-align: right;">Page 217</p>

<p>1 work.</p> <p>2 Then there is the one that Counsel and</p> <p>3 Judy were working on -- Judy and company were</p> <p>4 working on later on, and that's what this e-mail is</p> <p>5 about, let's get together on that.</p> <p>6 Q Let's go back to the first guide sheet.</p> <p>7 You said there were two different ones. There was</p> <p>8 the one from like the late fall basically of 2011.</p> <p>9 Then there's this one in early 2012.</p> <p>10 A And I don't know anything about the</p> <p>11 earlier one because I didn't learn about it until</p> <p>12 after the fact.</p> <p>13 Q Okay. Were you aware that in fact after</p> <p>14 -- after Determination said it wouldn't be useful,</p> <p>15 that there were changes made and was actually used</p> <p>16 by -- by staff in determinations?</p> <p>17 A No, I was not aware of that.</p> <p>18 Q Okay.</p> <p>19 MS. BENITEZ: You can just let him finish</p> <p>20 his question.</p> <p>21 BY MR. GREIM:</p> <p>22 Q And do you know what the genesis of the</p> <p style="text-align: right;">Page 218</p>	<p>1 BY MR. GREIM:</p> <p>2 Q Yeah, there probably were.</p> <p>3 A Give it to me again.</p> <p>4 Q I tried to -- I tried to walk through --</p> <p>5 let me -- let me try to do this another way.</p> <p>6 Is it possible that an earlier version of</p> <p>7 the guide sheet being discussed here in Exhibit 25</p> <p>8 -- well, let me -- I'll start over again another</p> <p>9 time.</p> <p>10 A Okay.</p> <p>11 Q Is it possible that the guide sheet that</p> <p>12 Counsel was reviewing in the first part of 2012 had</p> <p>13 already been given to staff in earlier form in late</p> <p>14 2012 for use by staff?</p> <p>15 A What --</p> <p>16 MS. BENITEZ: Objection. Vague. I think</p> <p>17 you meant 2008, 2011.</p> <p>18 MR. GREIM: I did.</p> <p>19 BY MR. GREIM:</p> <p>20 Q But go ahead, if you understand my</p> <p>21 question.</p> <p>22 A What I know is they put something</p> <p style="text-align: right;">Page 220</p>
<p>1 second guide sheet was from the spring of 2012,</p> <p>2 right? I shouldn't call it the spring. The</p> <p>3 beginning of 2012.</p> <p>4 A What do you mean by "genesis"?</p> <p>5 Q Well, do you know whose idea was it to do</p> <p>6 another guide sheet that would be looked at by</p> <p>7 Counsel?</p> <p>8 A I think it's all one iteration from their</p> <p>9 perspective. They were working on a guide sheet.</p> <p>10 They had one. They gave it to them. They got</p> <p>11 comments. They came back, it's no good. They put</p> <p>12 something else together. I just wasn't involved in</p> <p>13 seeing the earlier one.</p> <p>14 Q Well, is it possible that the guide sheet</p> <p>15 was just given to staff, they began to use it, and</p> <p>16 then Counsel began to review it after staff had</p> <p>17 already begun using it; Counsel's review happened in</p> <p>18 early 2012, and it's that guide sheet that was never</p> <p>19 finalized?</p> <p>20 MS. BENITEZ: Objection. Vague.</p> <p>21 THE WITNESS: I thought there were a</p> <p>22 couple questions in there.</p> <p style="text-align: right;">Page 219</p>	<p>1 together. They sent it -- the people in EO</p> <p>2 Technical, without Counsel, put something together,</p> <p>3 sent it to Cindy to give to her staff to see if it</p> <p>4 was useful, try it out. Cindy came back and said,</p> <p>5 "This isn't any good. It doesn't help us." They</p> <p>6 continued to work to the point where I went up to</p> <p>7 the Hill and said, "We're working on a guide sheet."</p> <p>8 They asked for the guide sheet. I give the guide</p> <p>9 sheet.</p> <p>10 Miller said, "Is it" -- "Has it been</p> <p>11 approved by Counsel?" I went back and asked, "Has</p> <p>12 this been approved by Counsel?" The answer was no.</p> <p>13 So we could not give the guide sheet. We could not</p> <p>14 use the guide sheet. We could not put the guide</p> <p>15 sheet up until we had gotten it approved by Counsel,</p> <p>16 and this is an early meeting to try and get that</p> <p>17 done. This e-mail refers to an early meeting to try</p> <p>18 and get that done. Don Spellmann is from Counsel.</p> <p>19 Q I'm going to show you what we're marking</p> <p>20 as Exhibit 26.</p> <p>21 (Lerner Deposition Exhibit No. 26 was</p> <p>22 marked for identification.)</p> <p style="text-align: right;">Page 221</p>

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<p>1 BY MR. GREIM:</p> <p>2 Q I'm going to start off and point out to</p> <p>3 you that this begins with an e-mail on February 24,</p> <p>4 2012. So we're about, you know, a little over a</p> <p>5 week before the e-mail we just looked at, Exhibit</p> <p>6 25. And you are reporting on a meeting that you</p> <p>7 just had with Congress. You are sending this to Don</p> <p>8 Spellmann, Janine Cook and Holly Paz. You say,</p> <p>9 "Just came back from the meeting."</p> <p>10 A Where are we?</p> <p>11 Q I'm sorry, we're on -- we're on the second</p> <p>12 page of the exhibit. We're starting at the very</p> <p>13 bottom of the e-mail chain. And it says, "Just came</p> <p>14 back from the meeting and they have asked for</p> <p>15 several things. One, Don/Janine-The guidance</p> <p>16 provided to Cincy that Don reviewed. I'm hoping you</p> <p>17 can let us know your concerns as soon as possible so</p> <p>18 we can finalize the draft. We will be sending it</p> <p>19 over to them and putting it out on the web and with"</p> <p>20 -- "with other check sheets/guide sheets."</p> <p>21 Did I read that right?</p> <p>22 A Yes.</p> <p>Page 222</p>	<p>1 Q Okay. Tell me what -- what are you saying</p> <p>2 here?</p> <p>3 A I think -- I think it's after the fact,</p> <p>4 but I don't know for sure. The guidance was</p> <p>5 provided to Cincy and Don's now reviewed it. That's</p> <p>6 what I think this means.</p> <p>7 Q Oh, sure.</p> <p>8 A But I don't know for sure.</p> <p>9 Q Okay. Okay. Is your testimony that you</p> <p>10 gave a few minutes ago about the progress of the</p> <p>11 guidance sheet still the same? Would you change it</p> <p>12 based on what you've read here under point one?</p> <p>13 MS. BENITEZ: Objection. Vague.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MR. GREIM:</p> <p>16 Q Then you'll see that Holly Paz, one of the</p> <p>17 people you asked for deliverables from, got back to</p> <p>18 you five days later, and you'll see she addressed</p> <p>19 the guidance issue close to the bottom of her</p> <p>20 e-mail. You should be able to see it right above</p> <p>21 your e-mail to her, the second to last paragraph.</p> <p>22 She says -- I'm sorry, if you flip the</p> <p>Page 224</p>
<p>1 Q Okay. Does this change your answer</p> <p>2 before? Is your recollection still the same?</p> <p>3 MS. BENITEZ: Objection. Compound.</p> <p>4 Vague.</p> <p>5 THE WITNESS: I need to read this.</p> <p>6 BY MR. GREIM:</p> <p>7 Q Go ahead. Take -- just read the whole</p> <p>8 e-mail, if you don't mind.</p> <p>9 (The witness examined the document.)</p> <p>10 THE WITNESS: Okay. What's the question?</p> <p>11 BY MR. GREIM:</p> <p>12 Q Okay. I want you to focus on the very</p> <p>13 first point of your e-mail, the one that I read out</p> <p>14 loud a moment ago.</p> <p>15 A Hmm-hmm.</p> <p>16 Q You're asking, "Don/Janine, from the</p> <p>17 guidance provided to Cincy that Don reviewed."</p> <p>18 So do you recall now that at some point</p> <p>19 before you went to Congress Don had already begun</p> <p>20 reviewing the guidance that had already been</p> <p>21 provided to Cincy?</p> <p>22 A No. I don't think that's what that means.</p> <p>Page 223</p>	<p>1 page, you'll see the section. Second to the last</p> <p>2 paragraph, she says, "EO Technical provided guidance</p> <p>3 regarding the development of applications by</p> <p>4 advocacy organizations to EO Determinations in</p> <p>5 November of 2011."</p> <p>6 Did I read that right?</p> <p>7 A You did.</p> <p>8 Q So does that refresh your recollection</p> <p>9 that at least at this point you knew that Technical</p> <p>10 had provided guidance to EO Determinations in</p> <p>11 November of 2011?</p> <p>12 A The only guidance I knew that they had</p> <p>13 provided was guidance that was, is this useful to</p> <p>14 you? Give us your comments. That's the only</p> <p>15 guidance I knew about. If this is the same</p> <p>16 guidance, then that's the guidance.</p> <p>17 Q Okay. And then finally, let's go back to</p> <p>18 your e-mail to Joseph Grant -- really to Nikole Flax</p> <p>19 copied to Joseph Grant on the 29th. Again, we talk</p> <p>20 about this guidance issue. It's the very first part</p> <p>21 of your e-mail. You see -- you say, "I asked Holly</p> <p>22 for the info below as part of the follow-up from the</p> <p>Page 225</p>

Hill staff meeting on Friday. They had asked for a timeline of when we saw the uptick and whether they could get the guidance we provided staff in the case guiding" -- "grading guide. I told them I'd get back to them. Didn't know if case guide and guidance could be made available."

Did I read that right?

A Correct.

Q Now, what would be the reason for not making available what had already been provided to Determinations?

A It wasn't a finalized document. It wasn't an IRS document. There's lots of things in the IRS that you can't just turn over. Just because Congress asked for it doesn't mean you have to turn it over. In fact, there are many cases where you can't turn something over unless it's a particular committee. I was just checking to make sure that my -- up my chain there was no reason why we couldn't turn it over. I wanted to turn it over, but I needed to find out if that was okay.

Q Fair enough. I mean -- I guess my

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question is this. Is there -- are you aware of any legal reason why you couldn't turn over to Congress the guide sheet that had been provided to Determinations back in November?

A Legal is maybe too strong a word.

Q But that is my question.

A Legal reason?

Q Right.

A I don't know.

Q Putting that aside, was there -- if the IRS had the option of deciding whether or not to turn it over, is it your testimony that you needed to get an approval from your chain of command before you did it?

A I'm not the IRS. Yes, I would have to get approval from my chain of command before I made anything public, whether it be on my website or giving it to Congress or handing it over to somebody that walked in the door.

Q And did you get approval to turn over the guide that had been given to Determinations in November?

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A No.

Q And did -- were you told -- well, who did you ask?

A I asked Steven Miller, who said, "Has Counsel approved the guide sheet?" I said, "I don't know. I'll find out." Counsel had not approved the guide sheet. We weren't going to turn it over, and Cincinnati had told us it wasn't useful.

Q And Counsel never did approve the guide sheet, right?

A No, they didn't. I could use some water. Get some -- oh, I'm hooked.

Q Do you know any --

A Some water, please. I'm sorry. I just need water.

Q Do you know any reason why -- aside from the fact that you needed approval from your chain of command, do you know any reason why the guide sheet that was given to Determinations in November of 2011 but that -- but had not yet been approved by Counsel could not just be turned over to Congress?

MS. BENITEZ: Objection. Asked and

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answered.

THE WITNESS: It was a draft. It was not a final document.

BY MR. GREIM:

Q Why is that a reason though? If it's given to Determinations for determines -- Determinations' use, why is that -- why is the fact that it's a draft a reason not to turn it over?

A It was given to Determinations to see if it was useful. Try this out. Does this help you with your issues? If the answer is no, it's not going to be a document that we give to Determinations to go through the -- go through and deal with their cases. It's a process.

If we gave it to them and they said, wow, this is gangbusters, then I assume Holly would have come to me and said, this is what we want to give to -- to the Determinations staff and we're going to put it up on the website. This was all part of the process of still developing the guide sheet.

Q Well, if Determinations used a revised version of that guide sheet --

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<p>1 A I don't know that they did.</p> <p>2 Q Okay.</p> <p>3 A I'm sorry, I didn't wait for the question.</p> <p>4 Q No, that's okay. That helps me. I mean,</p> <p>5 this is one case where it helped.</p> <p>6 So if the Determinations actually accepted</p> <p>7 the document without further edits and began to use</p> <p>8 it, is there any reason not to turn that over to</p> <p>9 Congress?</p> <p>10 A If. I don't -- I don't know. I can't</p> <p>11 answer that question. It's a -- it's a what if</p> <p>12 Eleanor Roosevelt could fly question. If. It</p> <p>13 didn't --</p> <p>14 Q Are there other facts you would have to</p> <p>15 know other than the fact that --</p> <p>16 A I --</p> <p>17 Q -- Determinations began to use it?</p> <p>18 A I have never --</p> <p>19 MS. BENITEZ: Objection. Calls for</p> <p>20 speculation.</p> <p>21 THE WITNESS: I have never been in a</p> <p>22 situation where that occurred, so I don't know the</p> <p style="text-align: right;">Page 230</p>	<p>1 Were you concerned at this point that if</p> <p>2 you did not provide the guidance to Congress that</p> <p>3 Congress would be displeased?</p> <p>4 MS. BENITEZ: Objection. Vague.</p> <p>5 THE WITNESS: I don't think I thought</p> <p>6 about it one way or the other. I was just asking --</p> <p>7 they asked me for a bunch of stuff and I said, "I'll</p> <p>8 get back to you and let you know whether I can get</p> <p>9 that to you."</p> <p>10 BY MR. GREIM:</p> <p>11 Q You didn't feel any pressure to get the</p> <p>12 guidance to Congress?</p> <p>13 A Not particularly. Congress asks for stuff</p> <p>14 all the time.</p> <p>15 Q I'm going to show you what we're marking</p> <p>16 as Exhibit 27.</p> <p>17 (Lerner Deposition Exhibit No. 27 was</p> <p>18 marked for identification.)</p> <p>19 BY MR. GREIM:</p> <p>20 Q All right.</p> <p>21 A What's the date of that document by the</p> <p>22 way, the one we just finished? Because that will</p> <p style="text-align: right;">Page 232</p>
<p>1 answer.</p> <p>2 BY MR. GREIM:</p> <p>3 Q Doesn't Holly Paz tell you that EO</p> <p>4 Technical provided guidance regarding the</p> <p>5 development of applications by advocacy</p> <p>6 organizations to EO Determinations in November of</p> <p>7 2011; she tells you that doesn't she?</p> <p>8 A That's the draft guidance.</p> <p>9 Q How do you know that?</p> <p>10 A I know it from after the fact. I never</p> <p>11 saw it, but when I sat down and had a meeting with</p> <p>12 my staff before I went up the Hill to find out where</p> <p>13 we were on all of this to prepare myself for my</p> <p>14 testimony, I was told that they had sent a guide</p> <p>15 sheet down to Cincinnati, asked them whether it was</p> <p>16 useful, got the response back that it was not</p> <p>17 useful. So they were continuing to work on that.</p> <p>18 Q Who told you that?</p> <p>19 A Judy Kindell, I believe.</p> <p>20 Q Did you believe at this point, or were you</p> <p>21 concerned at this point that if you did not produce</p> <p>22 documents to Congress -- strike that.</p> <p style="text-align: right;">Page 231</p>	<p>1 matter to me.</p> <p>2 Q The Exhibit 26 was -- you asked what date</p> <p>3 it was. It would matter. That date is February 29,</p> <p>4 2012. Now we're going to go to March 2. March 2.</p> <p>5 A Hmm-hmm.</p> <p>6 Q You'll see there's an e-mail from you to</p> <p>7 Janine Cook responding to one of her to you earlier</p> <p>8 that day. She is forwarding on a Paul Streckfus</p> <p>9 e-mail, and you see she tells you, "Fun all around.</p> <p>10 (Streckfus email today). We're working diligently</p> <p>11 on reviewing the advocacy guide. Let us know if you</p> <p>12 want our assistance on anything else."</p> <p>13 You see that?</p> <p>14 A Hmm-hmm.</p> <p>15 Q And the title of Streckfus' -- what he's</p> <p>16 sending on to you says, "House Oversight chairman</p> <p>17 seeks additional information from the IRS on</p> <p>18 tax-exempt sector compliance as reports of IRS</p> <p>19 questioning grassroots political groups raises new</p> <p>20 concerns."</p> <p>21 Did I read that part right?</p> <p>22 A Hmm-hmm.</p> <p style="text-align: right;">Page 233</p>

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<p>1 Q Okay. So you respond to Janine and you</p> <p>2 say, "If only you could help-we're going to get</p> <p>3 creamed by" -- I'm sorry -- "we're going to get</p> <p>4 creamed. Being able to provide the guidance piece</p> <p>5 ASAP will be the best-thanks."</p> <p>6 Did I read that right?</p> <p>7 A Yes.</p> <p>8 Q Okay. Now, Counsel was still working on</p> <p>9 the guidance piece at this point, right?</p> <p>10 A Yes.</p> <p>11 Q What did you mean "we're going to get</p> <p>12 creamed"?</p> <p>13 A I need to read the article.</p> <p>14 Q Okay.</p> <p>15 A I mean the letter. I'm sorry.</p> <p>16 Q Okay.</p> <p>17 (The witness examined the document.)</p> <p>18 THE WITNESS: There were two purposes of</p> <p>19 the guidance. One -- well, there was -- one purpose</p> <p>20 was to provide it to our staff so that they could</p> <p>21 work the cases. And the other purpose was to put it</p> <p>22 on our website so that people who were applying</p> <p style="text-align: right;">Page 234</p>	<p>1 sheet that had already been given to Determinations?</p> <p>2 A Because it wasn't approved and Counsel</p> <p>3 didn't agree with it. So they said it was legally</p> <p>4 not correct.</p> <p>5 Q Was it legally not correct?</p> <p>6 A I don't know.</p> <p>7 Q Did you have to wait for Counsel approval</p> <p>8 before using the guidance?</p> <p>9 A Steve Miller told me that I had to get</p> <p>10 Counsel's approval before we could use the guidance.</p> <p>11 Q Did you want to use the guidance as it</p> <p>12 was?</p> <p>13 A I wanted some guidance.</p> <p>14 Q Did you inform Steve Miller about the</p> <p>15 backlog at this point?</p> <p>16 A Steve Miller had been informed about the</p> <p>17 backlog all along, because we had -- I forget what</p> <p>18 they were called -- monthly meetings where each</p> <p>19 division and subsection in divisions reports to the</p> <p>20 commissioner and the deputy commissioner about</p> <p>21 status. So we had been reporting about the backlog</p> <p>22 for quite some time.</p> <p style="text-align: right;">Page 236</p>
<p>1 would understand what the rules were, which we did a</p> <p>2 lot, particularly in areas where there was</p> <p>3 confusion, because oftentimes applications were held</p> <p>4 up for development because the applicant didn't</p> <p>5 understand what was okay under that subsection and</p> <p>6 what wasn't okay under that subsection.</p> <p>7 So a lot of organizations, both in the</p> <p>8 (c)(4) case and in other subsections, if their</p> <p>9 application was held up, they would go to their</p> <p>10 congress person and they would say, the IRS isn't</p> <p>11 working my thing, and they would come to us and then</p> <p>12 we'd have to deal with that.</p> <p>13 So in this case, we were getting letters</p> <p>14 from congress people about the fact that these</p> <p>15 applications were being held up, and the main reason</p> <p>16 they were being held up was because we needed the</p> <p>17 guidance sheet so that we could start working the</p> <p>18 cases. So I'm saying to Janine, we're going to get</p> <p>19 creamed because we're not getting these cases out.</p> <p>20 I need the guidance sheet.</p> <p>21 BY MR. GREIM:</p> <p>22 Q Well, why not just provide the guidance</p> <p style="text-align: right;">Page 235</p>	<p>1 Q Well, do you know when you first reported</p> <p>2 to Steve Miller about the backlog?</p> <p>3 A No, I don't.</p> <p>4 Q Did you report to Steve Miller after you</p> <p>5 learned how the groups were being culled back in</p> <p>6 June of 2011?</p> <p>7 A What do you mean "culled"?</p> <p>8 Q Well, after your meetings in June and July</p> <p>9 of 2011 that we covered earlier, did you report that</p> <p>10 information to Steve Miller?</p> <p>11 MS. BENITEZ: Objection. Vague.</p> <p>12 THE WITNESS: When you ask me questions</p> <p>13 about timeframes I can't say for sure whether I did.</p> <p>14 BY MR. GREIM:</p> <p>15 Q Well, you said that Steve Miller knew</p> <p>16 about the backlog all along. I want to know when</p> <p>17 you first told him about it.</p> <p>18 A I don't know.</p> <p>19 Q How long did you wait to tell him?</p> <p>20 MS. BENITEZ: Objection. Asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: It was a regular meeting</p> <p style="text-align: right;">Page 237</p>

<p>1 where I was talking to him about all of the issues 2 in my division, and I would have raised with him 3 that we have a backlog in these cases. We're 4 waiting for Counsel to get the guide sheet ready. I 5 take that back, because I don't think I said 6 anything to him about the guide sheet until I came 7 back from that congressional meeting. 8 But we had backlog in these cases. We had 9 some other backlogs. We needed more staffing. 10 Those are the kinds of briefings that I was giving 11 him, along with every other piece of my area that I 12 oversaw. 13 BY MR. GREIM: 14 Q It turned out that a guide sheet was never 15 developed, right? 16 A One was never approved. 17 Q Well, it turned out that a guide sheet was 18 never actually used to process the applications, 19 right? 20 A I believe that is true. 21 Q Are you the person that made the decision 22 to move forward with processing without having a</p> <p style="text-align: right;">Page 238</p>	<p>1 THE WITNESS: I'm not going to do that. 2 MS. BENITEZ: Vague. 3 BY MR. GREIM: 4 Q Well, I think -- tell me. I think I'm -- 5 tell me what it is that my question provoked, and 6 then we'll -- then I'll go back and sort it out. 7 A Oh, no. 8 MS. BENITEZ: Objection. Vague. 9 BY MR. GREIM: 10 Q How did processing eventually unfold? 11 A There was a change in the way we processed 12 the cases. 13 Q What was that change? 14 A At some point there was a concern between 15 what we were hearing from Cincinnati and what we 16 were hearing from Congress as to how the cases were 17 being handled. So we decided to send a group of 18 people down to Cincinnati to look and see what was 19 going on. They came back and felt that the staff 20 were very confused about what they should be doing 21 on these cases, and we designed a plan to assist 22 them in processing the cases without a guide sheet.</p> <p style="text-align: right;">Page 240</p>
<p>1 finalized guide sheet? 2 A I don't know. 3 Q Was Steve Miller? 4 A I don't know. 5 Q Do you -- do you not remember or did you 6 know at the time? 7 A I don't remember. I'm not even 8 remembering how it happened. 9 Q Do you know whether processing of the 10 applications as it eventually occurred after March 11 of 2012 suffered for lack of a guide sheet? 12 MS. BENITEZ: Objection. Vague. 13 THE WITNESS: Can I suggest that perhaps 14 you lay a little bit more foundation, then I can be 15 a little bit more forthcoming. Because I've got 16 something going on in my head, but I don't know if 17 it's what you're talking about. 18 BY MR. GREIM: 19 Q Well, it might be. Go ahead. 20 A Oh, no. 21 Q Well, no, tell me what you're thinking. 22 MS. BENITEZ: Objection.</p> <p style="text-align: right;">Page 239</p>	<p>1 Q And did that process unfold adequately 2 without the guide sheet? 3 A We had senior technical advisors from D.C. 4 going down and doing face-to-face training rather 5 than the guide sheet. 6 Q Is that what was in your head which you 7 wanted more foundation? 8 A Yes. 9 Q That process of going down to Cincinnati 10 and doing the face-to-face training could have been 11 done after you -- after your June and July 2011 12 meetings couldn't it? 13 MS. BENITEZ: Objection. Vague. 14 THE WITNESS: I suppose it could have been 15 done any time. 16 BY MR. GREIM: 17 Q Did anyone ever suggest to you -- strike 18 that. 19 What were some concerns that you were 20 hearing from Congress in early 2012 about the 21 processing of the applications? 22 A The cases were taking too long, people</p> <p style="text-align: right;">Page 241</p>

<p>1 were being asked too many questions. That was 2 mostly it.</p> <p>3 Q How about that certain types of 4 organizations, like the Tea Party, were being 5 singled out for greater scrutiny, did you hear that?</p> <p>6 A I heard that in the news.</p> <p>7 Q Not from Congress?</p> <p>8 A Perhaps we got letters from them.</p> <p>9 Q I'm going to show you what we're marking 10 as Exhibit 28.</p> <p>11 (Lerner Deposition Exhibit No. 28 was 12 marked for identification.)</p> <p>13 BY MR. GREIM:</p> <p>14 Q You'll see this is an e-mail chain from 15 Don Spellmann to Victoria Judson.</p> <p>16 Who is she?</p> <p>17 A Victoria Judson was the head of the 18 Counsel Office that serviced us.</p> <p>19 Q And you'll see this is February 28, 2012. 20 You'll see that Spellmann reports to Vicki Judson, 21 "Hi Vicki, we wanted you to be aware that the EO 22 client" -- is that you?</p> <p style="text-align: right;">Page 242</p>	<p>1 Q Well, you're the one that gave them the 2 turnaround time, right?</p> <p>3 A This is what this e-mail says, but I'm not 4 on the e-mail, and if I said "quick," I said 5 "quick." I don't know if I said under two weeks or 6 I said quick and he's saying under two weeks.</p> <p>7 Q Okay. Well, you wanted it quickly, right?</p> <p>8 A I wanted it quickly.</p> <p>9 Q "EO is under a lot of pressure from the 10 Hill to share it with them and publicly distribute 11 it."</p> <p>12 Was that correct?</p> <p>13 A Yes.</p> <p>14 MS. BENITEZ: Objection. Lacks 15 foundation.</p> <p>16 BY MR. GREIM:</p> <p>17 Q And then Janine responds and says, "Vicki, 18 one" -- "one other background piece is that Lois 19 (and others from the client, I assume, but don't 20 know who) went to the Hill last week to discuss the 21 topic." And then you'll see finally, Spellmann 22 says, "Lois told me the Hill gripes included" --</p> <p style="text-align: right;">Page 244</p>
<p>1 A Yes.</p> <p>2 Q "Asked us for an accelerated review of a 3 guide sheet they drafted for organizations that 4 engage in lobbying, political intervention and 5 general issue advocacy. It summarizes the law for 6 applicable organizations. Explains" -- "Explains 7 how to distinguish politics from issue advocacy and 8 provides comprehensive case development questions."</p> <p>9 Did I read that right?</p> <p>10 A Yes.</p> <p>11 Q "EO will use the guide to process 12 exemption applications and provide general guidance 13 to the public on IRS.gov. The turnaround time is 14 very quick, under two weeks."</p> <p>15 Did I read that part right?</p> <p>16 A Yes.</p> <p>17 Q Now, did you think two weeks was too fast 18 of a turnaround time?</p> <p>19 MS. BENITEZ: Objection. Lacks 20 foundation.</p> <p>21 THE WITNESS: I don't know.</p> <p>22 BY MR. GREIM:</p> <p style="text-align: right;">Page 243</p>	<p>1 "include the applications are taking too long to 2 process, the requests for information are too 3 burdensome, and some types of organizations like Tea 4 Party are being singled out for greater scrutiny."</p> <p>5 Did I read that right?</p> <p>6 A You read it right.</p> <p>7 Q Is that what you told Spellmann?</p> <p>8 A I cannot verify that that's what I told 9 Spellmann. I told you before that I thought they 10 were complaining the process was taking too long and 11 we were asking for too much information. I do not 12 recall saying "Tea Party" to him.</p> <p>13 Q So you think Spellmann just mis-remembered 14 that or do you think you might have told him that 15 the Tea Party being singled out was one of the 16 issues?</p> <p>17 MS. BENITEZ: Objection. Calls for 18 speculation.</p> <p>19 THE WITNESS: And I can't speculate on 20 that.</p> <p>21 BY MR. GREIM:</p> <p>22 Q Well, I'm asking not about what somebody</p> <p style="text-align: right;">Page 245</p>

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<p>1 else said. I'm asking about what you told him.</p> <p>2 A And I don't remember what I told him other</p> <p>3 than generally we need this thing quickly because</p> <p>4 they are complaining this is taking too long. You</p> <p>5 know, there is -- we're getting all these letters</p> <p>6 that we have to respond to.</p> <p>7 Q So you think that maybe at this time</p> <p>8 Congress wasn't raising issues with you about</p> <p>9 targeting Tea Party groups?</p> <p>10 A No, I didn't --</p> <p>11 MS. BENITEZ: Objection. Mischaracterizes</p> <p>12 witness' testimony.</p> <p>13 THE WITNESS: I didn't say that.</p> <p>14 MS. BENITEZ: Let me finish.</p> <p>15 THE WITNESS: I thought you were done.</p> <p>16 I'm sorry. Say it again.</p> <p>17 BY MR. GREIM:</p> <p>18 Q Is it possible that at this time one of</p> <p>19 the complaints you heard from Congress was that you</p> <p>20 were targeting Tea Party groups for greater</p> <p>21 scrutiny?</p> <p>22 MS. BENITEZ: Objection. Calls for</p> <p style="text-align: right;">Page 246</p>	<p>1 questions about the advocacy groups?</p> <p>2 A I went up several times. I don't know the</p> <p>3 dates.</p> <p>4 Q Did there come a time when all responses</p> <p>5 to Congress had to be routed through you?</p> <p>6 MS. BENITEZ: Objection. Vague.</p> <p>7 THE WITNESS: No.</p> <p>8 BY MR. GREIM:</p> <p>9 Q You don't recall that at some point --</p> <p>10 well, let me back up.</p> <p>11 Usually, isn't there an office within the</p> <p>12 IRS that's responsible for responses and answering</p> <p>13 questions to Congress?</p> <p>14 A Yes.</p> <p>15 Q What is that?</p> <p>16 A I think you're talking about Legislative</p> <p>17 Affairs?</p> <p>18 Q Yes.</p> <p>19 A Yes.</p> <p>20 Q And it wouldn't be ordinary, would it, for</p> <p>21 you to have to coordinate responses to Congress,</p> <p>22 would it?</p> <p style="text-align: right;">Page 248</p>
<p>1 speculation.</p> <p>2 MR. HEAVNER: To the extent that it is</p> <p>3 speculation and not within your personal knowledge,</p> <p>4 it's beyond testimony authorization.</p> <p>5 THE WITNESS: I believe we had received</p> <p>6 letters from various congressmen about their</p> <p>7 constituents, some of who may have been Tea Party</p> <p>8 organizations that said we were taking too long with</p> <p>9 their applications.</p> <p>10 BY MR. GREIM:</p> <p>11 Q My question is not about whether they</p> <p>12 happen to be Tea Party. It's whether Congress was</p> <p>13 saying to you that they were being singled out</p> <p>14 because they were the Tea Party.</p> <p>15 MS. BENITEZ: Objection. Asked and</p> <p>16 answered now several times.</p> <p>17 THE WITNESS: I don't recall that that was</p> <p>18 specifically what was said.</p> <p>19 BY MR. GREIM:</p> <p>20 Q Now, from this point forward, starting</p> <p>21 with your February 24, 2012 meeting, did you have</p> <p>22 other meetings and interactions with Congress on</p> <p style="text-align: right;">Page 247</p>	<p>1 MS. BENITEZ: Objection. Vague.</p> <p>2 THE WITNESS: Coordinate with who?</p> <p>3 BY MR. GREIM:</p> <p>4 Q Coordinate the IRS' responses to questions</p> <p>5 from Congress.</p> <p>6 A It would be very ordinary.</p> <p>7 Q Okay. Well, my question is is that what</p> <p>8 you did here?</p> <p>9 A Requests from Congress for information</p> <p>10 from the IRS come into Legislative Affairs. They</p> <p>11 are then parsed out to the part of the IRS that owns</p> <p>12 the issue to draft an initial response. That can go</p> <p>13 back and forth numerous times, and ultimately,</p> <p>14 somebody above my pay grade approves the letter and</p> <p>15 it goes out from Legislative Affairs.</p> <p>16 Q I'm going to show you what we're marking</p> <p>17 as Exhibit 29.</p> <p>18 (Lerner Deposition Exhibit No. 29 was</p> <p>19 marked for identification.)</p> <p>20 BY MR. GREIM:</p> <p>21 Q You see this starts off with a e-mail from</p> <p>22 a Cumbuka Ortey to Nikole Flax on Monday, June 18,</p> <p style="text-align: right;">Page 249</p>

Lois G. Lerner - Confidential
June 8, 2017

1 **2012. "Response on 501(c) organization and IRS**
2 **information requests."**

3 **Do you see that?**

4 A Yes.

5 **Q And he says, "Good morning, Nikole, we**
6 **received the attached letter from the chairman of**
7 **the House Judiciary Committee. He wrote on behalf**
8 **of the San Antonio Tea Party and other organizations**
9 **about tax-exempt applications. He also requested a**
10 **response on how recent IRS information requests are**
11 **supported by law. Because you have reviewed**
12 **previous responses on this topic, we wanted to make**
13 **sure the attached draft response we received from**
14 **Lois Lerner's office is okay."**

15 **And then you'll see this forwarded on.**
16 **Steve Grodnitzky e-mails Nikole Flax. She responds.**
17 **He attaches a new letter. It goes through a long**
18 **chain. And finally, Nikole Flax e-mails Grodnitzky**
19 **back, and you, and says, "Not a big deal. If we get**
20 **others like this, we should not use this response,**
21 **but the one that EO was working now for Smith,**
22 **Forbes and Marchant. Thanks."**

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1 was being looked at through the commissioner's
2 office. That's where Nikole was. So yes, because
3 Nikole and I were working on the -- these were the
4 response letters, which were often very long.

5 **Q Shall we take another break?**

6 A Sure.

7 MS. BENITEZ: Sure.

8 THE VIDEOGRAPHER: Going off the record.
9 The time is now 3:10 p.m.

10 (A brief recess was taken.)

11 THE VIDEOGRAPHER: We are back on the
12 record. The time is now 3:24 p.m.

13 BY MR. GREIM:

14 **Q Ms. Lerner, do you remember working on the**
15 **response to, I think it's Congressman Levin, maybe**
16 **it's Senator Levin.**

17 A Senator.

18 **Q -- Senator Levin as part of the**
19 **congressional inquiries?**

20 A Yes.

21 **Q And one of the questions he asked about**
22 **was the 51/49 percent test of whether there was a**

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1 **Did I read that right? I was in the**
2 **middle of page 1, Ms. Lerner.**

3 A Yes, I see it now.

4 **Q And then you respond, and you say -- on**
5 **June 21, you say, "Yes, this is being dealt with a**
6 **bit differently than the usual. There were a few**
7 **that went the usual route early on, but now all of**
8 **these go through me/Nikole before going out. Andy**
9 **Megosh in our office is the point person, so I've**
10 **added him to this as well. That way we are all on**
11 **the same page."**

12 **Did I read that right?**

13 A Yes.

14 **Q So is that the process that was adopted to**
15 **deal with congressional requests on the handling of**
16 **the advocacy groups?**

17 A I'm trying to remember. I still think
18 there was some of them that -- it depended on what
19 the question was and how it -- what was being asked.
20 Some of them could still be dealt with at the staff
21 level and go over to Leg Affairs, but at this point,
22 they were more in-depth, and this was something that

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1 **51/49 percent test for determining social welfare**
2 **purposes for a 501(c)(4). Do you recall that?**

3 A I recall that was a question in the
4 congressionals.

5 **Q I'm going to hand you what we're marking**
6 **as Exhibit 30.**

7 (Lerner Deposition Exhibit No. 30 was
8 marked for identification.)

9 BY MR. GREIM:

10 **Q You'll see at the bottom of the exhibit is**
11 **an e-mail from you to Nikole Flax, May 23, 2012.**
12 **You see the subject is "Levin 05-22-2012.doc."**

13 **Did I read that right?**

14 A Yes.

15 **Q And then you say, "Okay, Judy and I have**
16 **scrubbed. Have made minor revisions to other stuff.**
17 **Call if you have a problem. The GCM I mentioned,**
18 **38215, has a memo attached suggesting we shouldn't**
19 **do (c)(4) regs without doing (c)(3) regs."**

20 **Now, is GCM, what does that stand for?**

21 A General Counsel's Memo.

22 **Q And it says, "In making that" --**

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<p>1 A Yeah, I guess it's General Counsel.</p> <p>2 Q It says, "In making that argument, it</p> <p>3 includes this sentence, "Thus, at least, no 51</p> <p>4 percent to 49 percent dichotomy between the quantum</p> <p>5 of qualifying activities and non-qualifying</p> <p>6 activities will be tolerated under Section 501(c)(3)</p> <p>7 regulations, as it seems to be under Section</p> <p>8 501(c)(4) regulations."</p> <p>9 Did I read that right?</p> <p>10 A You did.</p> <p>11 Q This is an e-mail you sent to Nikole Flax?</p> <p>12 A Yes.</p> <p>13 Q Do you remember doing or being required to</p> <p>14 do a large document review for Representative Camp?</p> <p>15 A I personally did not do that.</p> <p>16 Q Do you recall that that had to be done?</p> <p>17 A Yes.</p> <p>18 Q Do you remember who had to work on that</p> <p>19 review?</p> <p>20 A No, I don't.</p> <p>21 Q Do you recall that that review turned up</p> <p>22 anything embarrassing in the application files?</p> <p style="text-align: right;">Page 254</p>	<p>1 this is a pretty impractical solution. Can we</p> <p>2 consider Plan B? Will he be all right with a</p> <p>3 sampling? Will he be willing to reconsider strategy</p> <p>4 once he gets the results of the first 250? Anything</p> <p>5 else, let us know. Thanks."</p> <p>6 And then you see Nikole Flax responds to</p> <p>7 you later that day and says, "I will raise, but</p> <p>8 given what they found today, not sure how we can be</p> <p>9 comfortable not looking at everything. Are there</p> <p>10 any lower level folks that could do it? I think the</p> <p>11 idea is to know what is there and that we are not</p> <p>12 providing files not responsive." And then you</p> <p>13 respond and say, "Was my face red? Did they tell</p> <p>14 you what they found?"</p> <p>15 Now, what is it -- why did your face turn</p> <p>16 red?</p> <p>17 A Because Nikole -- I just asked Nikole if</p> <p>18 we could shorten up the process, and she said they</p> <p>19 found something that would make that not the right</p> <p>20 way to go, but I don't know what it was.</p> <p>21 Q Oh, you never learned what it was?</p> <p>22 A I don't believe so. I may have, but I</p> <p style="text-align: right;">Page 256</p>
<p>1 MS. BENITEZ: Objection. Vague.</p> <p>2 THE WITNESS: I don't recall.</p> <p>3 BY MR. GREIM:</p> <p>4 Q I'm going to show you what we're marking</p> <p>5 as Exhibit 31.</p> <p>6 (Lerner Deposition Exhibit No. 31 was</p> <p>7 marked for identification.)</p> <p>8 MR. SERGI: While he hands that out, I</p> <p>9 will -- want to note that Exhibit 30 has an</p> <p>10 attachment that was not included that is the next</p> <p>11 consecutive Bates number.</p> <p>12 BY MR. GREIM:</p> <p>13 Q You'll see the back of Exhibit 30 (sic) is</p> <p>14 an e-mail from you to Nikole Flax copying Nancy</p> <p>15 Marks and Joseph Grant, July 10, 2012. You say, "We</p> <p>16 have a bit of a problem with the Camp document</p> <p>17 review. Judy and Joe have been working full time on</p> <p>18 the 250 files that Cindy has sent up thus far. Judy</p> <p>19 goes on vacation for a week."</p> <p>20 And then you go on with the issues with</p> <p>21 reviewing this. You say at the bottom, "I get that</p> <p>22 he wants to know what he might be up against, but</p> <p style="text-align: right;">Page 255</p>	<p>1 don't remember what it is.</p> <p>2 Q Now, as part of her review of -- first of</p> <p>3 all, what was the Camp production? What was being</p> <p>4 produced there?</p> <p>5 A My recollection is that it related to gift</p> <p>6 tax issues, but I could be wrong.</p> <p>7 Q Well, do you recall that Judy Kindell was</p> <p>8 tasked to look through the files of bucketed cases?</p> <p>9 A What do you mean by "bucketed cases"?</p> <p>10 Q Well, do you remember that there was a</p> <p>11 bucketing process?</p> <p>12 A Yes.</p> <p>13 Q What was the bucketing process?</p> <p>14 A That was part of the changed procedure</p> <p>15 that we talked about a little earlier where we went</p> <p>16 down to Cincinnati and a group of EO Technical</p> <p>17 people walked through the cases that the Cincinnati</p> <p>18 Determinations people were working on and they put</p> <p>19 them into different groups. One group could be</p> <p>20 approved now without further adieu. One needed</p> <p>21 slight information. One needed further development,</p> <p>22 and one looked like it was on the track to denial.</p> <p style="text-align: right;">Page 257</p>

<p>1 That was the bucketing.</p> <p>2 Q I'm going to show you what we're marking</p> <p>3 as Exhibit 32.</p> <p>4 (Lerner Deposition Exhibit No. 32 was</p> <p>5 marked for identification.)</p> <p>6 BY MR. GREIM:</p> <p>7 Q You'll see that this is an e-mail from</p> <p>8 Judith Kindell to you, copying Sharon Light,</p> <p>9 entitled "Bucketed cases," Wednesday, July the 18th,</p> <p>10 2012. And you'll see that Kindell reports to you</p> <p>11 "Of the 84 (c)(3) cases, slightly over half appear</p> <p>12 to be conservative-leaning groups based solely on</p> <p>13 the name. The remainder do not lean" -- "do not</p> <p>14 obviously lean either side of the political</p> <p>15 spectrum. Of the 199 (c)(4) cases, approximately</p> <p>16 three-quarter appear to be conservative leaning</p> <p>17 while fewer than 10 appear to be</p> <p>18 liberal/progressive-leaning groups based solely on</p> <p>19 the name. The remainder do not obviously lean to</p> <p>20 either side of the political spectrum."</p> <p>21 Did I read that right?</p> <p>22 A You did.</p> <p style="text-align: right;">Page 258</p>	<p>1 Q Okay. Who's the actual person who made</p> <p>2 the request?</p> <p>3 A It would have come to me through Nikole,</p> <p>4 but I don't know if it was Mr. Shulman or Steve</p> <p>5 Miller.</p> <p>6 Q How do you know it came from all the way</p> <p>7 up in the commissioner's office?</p> <p>8 A Because I remember that.</p> <p>9 Q Did someone tell you that either Mr.</p> <p>10 Shulman or Mr. Miller wanted to know?</p> <p>11 A I don't remember that specifically.</p> <p>12 Q But you remember that one of them wanted</p> <p>13 to know?</p> <p>14 A Nikole asked me. She was from the</p> <p>15 commissioner's office.</p> <p>16 Q Did you ever use this information again?</p> <p>17 A I don't believe so.</p> <p>18 Q Do you recall that there were --</p> <p>19 eventually there was something called T-A-S -- I'm</p> <p>20 sorry, that there was something called O-A-Rs or</p> <p>21 OARs issued by something called T-A-S?</p> <p>22 A Yes.</p> <p style="text-align: right;">Page 260</p>
<p>1 Q Why did you have Judith Kindell perform</p> <p>2 this review?</p> <p>3 A Because I was asked up my chain whether we</p> <p>4 had cases on both sides of the political spectrum,</p> <p>5 and since we don't keep track of cases that way, I</p> <p>6 was asked to have her look at them and see if she</p> <p>7 could make any determinations based on names.</p> <p>8 Q What did the IRS do with the results of</p> <p>9 this analysis?</p> <p>10 A I don't know.</p> <p>11 Q Do you know what the purpose of the review</p> <p>12 was other than to determine the political leanings</p> <p>13 of the groups based on their name?</p> <p>14 MS. BENITEZ: Objection. Asked and</p> <p>15 answered.</p> <p>16 THE WITNESS: I think it was to respond to</p> <p>17 the requests that I got saying do we know whether</p> <p>18 there are cases on both sides.</p> <p>19 BY MR. GREIM:</p> <p>20 Q Who made the request?</p> <p>21 A It was made from the commissioner's</p> <p>22 office, IRS commissioner's office.</p> <p style="text-align: right;">Page 259</p>	<p>1 Q Were they a burden?</p> <p>2 MS. BENITEZ: Objection. Vague.</p> <p>3 THE WITNESS: They were part of our</p> <p>4 process. When we got them, we had to respond to</p> <p>5 them. So any -- any additional work you had to do</p> <p>6 could be a burden.</p> <p>7 BY MR. GREIM:</p> <p>8 Q The -- what was the purpose of this -- of</p> <p>9 OARs?</p> <p>10 A They came from Taxpayer Advocacy Office</p> <p>11 and any taxpayer who is having a problem with any</p> <p>12 office in the IRS could go to TAS and say, I'm</p> <p>13 dealing with the XYZ office and they're not getting</p> <p>14 back to me. Can you give them a push and help me</p> <p>15 get my information or help me get my answer. And</p> <p>16 then the Taxpayer Advocate folks would send a letter</p> <p>17 to the appropriate office and you are asked for a</p> <p>18 response or asked for a due date, et cetera, et</p> <p>19 cetera, and then we had to respond back to them,</p> <p>20 giving them information about where we were in the</p> <p>21 process or what was going on so they could talk to</p> <p>22 the taxpayer.</p> <p style="text-align: right;">Page 261</p>

<p>1 Q Did it actually help to advance the 2 taxpayer's interests? 3 A I can't say. 4 (Lerner Deposition Exhibit No. 33 was 5 marked for identification.) 6 BY MR. GREIM: 7 Q I'm going to show you what's marked as 8 Exhibit 33. This is a two-page exhibit and a long 9 e-mail chain, but at the end of it, Holly Paz tells 10 you, "FYI," and you first appear at the end of this 11 -- "FYI" -- "FYI, TAS may have made a global 12 decision to close OARS" -- O-A-R-S -- "on advocacy 13 cases." She sends this to you on Sunday, August 12, 14 2012. 15 Do you see that? 16 A Yes. 17 Q What's your response to her the next day? 18 A I say, "Well, that's a wonderful piece of 19 news." 20 Q Why was that a good piece of news? 21 A Because if we had to answer piecemeal 22 large numbers of OARs, it was going to take staff</p> <p style="text-align: right;">Page 262</p>	<p>1 as Exhibit 34. 2 (Lerner Deposition Exhibit No. 34 was 3 marked for identification.) 4 BY MR. GREIM: 5 Q You'll see that the bottom is an e-mail 6 from Margo Stevens to you, copying Kirsten Witner -- 7 Witter on May 21, 2012, Subject, "Returning Donor 8 Information." And Ms. Stevens says, "Lois, I wanted 9 to get back with you with respect to your question 10 whether TEGE could return to those organizations 11 from whom donor names were solicited in 12 questionnaires following their submission of 13 applications for recognition of their tax-exempt 14 status under 501(c)(4), now that TEGE has reviewed 15 those files and determined that such information was 16 not needed across the board and not used in making 17 the agency's determination on exempt status." 18 Did I read that right? 19 A Yes. 20 Q And then she says, "As you noted, had such 21 information been relied upon for that determination, 22 such information would be considered a," quote</p> <p style="text-align: right;">Page 264</p>
<p>1 off of working the cases, and this was not an 2 unusual thing either. This is the same thing they 3 did in the credit counseling area where we sat down 4 and explained to the taxpayer advocate folks why the 5 cases were being delayed, and they could globally 6 respond to any taxpayer who came in rather than 7 having to send us a letter, us and the response, and 8 send it back to the taxpayer. 9 So basically after a conversation and an 10 explanation of what was going on, they knew when 11 cases came in under a particular area what the 12 response was, and they didn't send us anymore OARs 13 until the issue was resolved. 14 Q Do you recall that several -- that many of 15 the development letters that were issued by 16 Determinations asked for donor information? 17 A Never saw them, but I did hear that, yes. 18 Q And do you recall that eventually 19 Counsel's office advised you that that information 20 could be destroyed or expunged from the file? 21 A Yes. 22 Q I'm going to show you what we're marking</p> <p style="text-align: right;">Page 263</p>	<p>1 "supporting document," closed quote, "that IRC 2 6104 would obligate us to make available for public 3 inspection." 4 Did I read that part right? 5 A Correct. 6 Q And then she says, "As we briefly 7 discussed, I am aware that TEGE has not strictly 8 construed the definition of "support document" to 9 mean every item of information that may be requested 10 by the IRS or received from the applicant during the 11 course of processing an application." 12 And she goes and says, "Based upon our 13 understanding of what occurred here, they have 14 advised me that the information is not a," quote, 15 "record," closed quote, "within the FRA, and as 16 such, it may be destroyed or returned as you deem 17 appropriate." 18 Did I read that right? 19 A Yes. 20 Q Now, you didn't forward this to Holly Paz 21 on May 21, 2012, right? 22 A I just want to read the rest of that</p> <p style="text-align: right;">Page 265</p>

<p>1 e-mail, please.</p> <p>2 Q Go ahead. Go ahead.</p> <p>3 (The witness examined the document.)</p> <p>4 THE WITNESS: Okay.</p> <p>5 BY MR. GREIM:</p> <p>6 Q Then you say, "It looks like we can return</p> <p>7 the contributor information we don't use. We'll</p> <p>8 need a carefully drafted letter to describe what we</p> <p>9 are doing. Perhaps best to send it past</p> <p>10 Disclosure."</p> <p>11 Did I read that right?</p> <p>12 A Yes.</p> <p>13 Q And so the basis of Counsel's advice here</p> <p>14 regarding the donor information is that it was not</p> <p>15 needed across the board; is that right?</p> <p>16 A I don't think that's exactly what she</p> <p>17 said.</p> <p>18 Q Okay. Did you understand it differently?</p> <p>19 A Yes. I'm going to look at it again, okay?</p> <p>20 Q Go ahead.</p> <p>21 (The witness examined the document.)</p> <p>22 THE WITNESS: I think what she's saying</p> <p style="text-align: right;">Page 266</p>	<p>1 as Exhibit 35.</p> <p>2 (Lerner Deposition Exhibit No. 35 was</p> <p>3 marked for identification.)</p> <p>4 BY MR. GREIM:</p> <p>5 Q And you'll see that the bottom part of the</p> <p>6 e-mail, it's another Joseph Urban e-mail to the</p> <p>7 group, forwarding a news story. And Urban -- this</p> <p>8 is on Thursday, April 12, 2012 -- sends it to you</p> <p>9 and several others. He says, "Some background.</p> <p>10 Here is a link to the Liberty Defense Foundation</p> <p>11 website where the organ" -- "organization says it is</p> <p>12 a (c)(4)," and then he links to a</p> <p>13 protecttheteaparty.com address.</p> <p>14 He then says, "Here's a link to a Fox News</p> <p>15 interview," and he links to that. Then he says,</p> <p>16 "Here's an article from CNS News." The article</p> <p>17 follows. And then you see above, you respond just</p> <p>18 to Joe and say, "So, what's the plan? Is this group</p> <p>19 already (c)(4) or is it applying?"</p> <p>20 Did I read your response right?</p> <p>21 A You did.</p> <p>22 Q What plan did you have in mind for this</p> <p style="text-align: right;">Page 268</p>
<p>1 here is that this is not information that you need</p> <p>2 for all applications, and it wasn't used in making</p> <p>3 the determination in particular applications, so</p> <p>4 therefore, it's not information that you need to</p> <p>5 disclose.</p> <p>6 Q Do you see the middle that she says, "Now</p> <p>7 that TEGE has reviewed those files and determined</p> <p>8 that such information was not needed</p> <p>9 across-the-board and not used in making the agency's</p> <p>10 determination on exempt status"?</p> <p>11 A Yes, but I don't know what she meant by</p> <p>12 that.</p> <p>13 Q I see. So you didn't tell her that. TEG</p> <p>14 -- or is it your testimony TE/GE did not tell her</p> <p>15 that?</p> <p>16 A I don't recall.</p> <p>17 Q So TEG hee -- TE/GE may well have reviewed</p> <p>18 the files and determined that such information was</p> <p>19 not needed across the board; you just don't</p> <p>20 remember?</p> <p>21 A I don't know.</p> <p>22 Q I'm going to show you what we're marking</p> <p style="text-align: right;">Page 267</p>	<p>1 group?</p> <p>2 A I have to read this article.</p> <p>3 Q Go ahead.</p> <p>4 (The witness examined the document.)</p> <p>5 THE WITNESS: I don't recall what I meant</p> <p>6 by "what's the plan?"</p> <p>7 BY MR. GREIM:</p> <p>8 Q Did you believe that the IRS should take</p> <p>9 some action regarding a group that was launched to</p> <p>10 combat the IRS?</p> <p>11 MR. HEAVNER: Objection. This is not a</p> <p>12 class member, and so if you're responding generally</p> <p>13 to how these were handled, that's okay, but anything</p> <p>14 specific to this group, other than its name and</p> <p>15 identifying information, is 6103 and should not be</p> <p>16 responded to.</p> <p>17 THE WITNESS: What was the question?</p> <p>18 BY MR. GREIM:</p> <p>19 Q Did you believe that the IRS should have</p> <p>20 some plan for dealing with groups that were formed</p> <p>21 to combat the IRS?</p> <p>22 A I don't believe that's what that meant.</p> <p style="text-align: right;">Page 269</p>

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<p>1 Q Okay. What did it mean?</p> <p>2 A I don't know, but it didn't mean that.</p> <p>3 Q Why was it important to know whether this</p> <p>4 group is already a (c)(4) or applying?</p> <p>5 A I think I was just curious. Was this one</p> <p>6 of the applications that was sitting there and that</p> <p>7 that's what they were upset about or were they a</p> <p>8 (c)(4)?</p> <p>9 Q Do you know if someone reviewed this</p> <p>10 group's return information to answer your question?</p> <p>11 A Oh, I have no idea. They would have --</p> <p>12 the only thing that would have happened was call</p> <p>13 Cincinnati and find out whether there was an</p> <p>14 application pending. But I don't know.</p> <p>15 Q What interested you so much about this</p> <p>16 group?</p> <p>17 A It wasn't the group that interested me.</p> <p>18 It's just that anybody who's coming and saying, you</p> <p>19 know, the IRS is doing something that we are not</p> <p>20 doing, we have to deal with the -- with the fallout</p> <p>21 from the press and notify those above us that this</p> <p>22 is going on and let them decide what they want to do</p> <p>Page 270</p>	<p>1 seems to cover all communications between you and</p> <p>2 other IRS officials and Congress regarding the Tea</p> <p>3 Party or the advocacy groups between -- between 2010</p> <p>4 and 2013.</p> <p>5 Have you seen this before?</p> <p>6 A I don't remember it.</p> <p>7 Q Did you ask anyone to compile it?</p> <p>8 MS. BENITEZ: Objection. Lacks</p> <p>9 foundation.</p> <p>10 THE WITNESS: I do not believe I asked</p> <p>11 somebody to compile this.</p> <p>12 BY MR. GREIM:</p> <p>13 Q Do you have any understanding of who might</p> <p>14 have compiled it?</p> <p>15 MS. BENITEZ: Objection. Calls for</p> <p>16 speculation.</p> <p>17 THE WITNESS: I don't even know where it</p> <p>18 came from.</p> <p>19 BY MR. GREIM:</p> <p>20 Q The IRS gave it to us.</p> <p>21 A Okay. That helps. Looks to me like it</p> <p>22 was something that was prepared --</p> <p>Page 272</p>
<p>1 about it. Sometimes they want to respond, sometimes</p> <p>2 they don't.</p> <p>3 Q Yeah, but it's -- but your question</p> <p>4 actually deals with its tax status and whether it's</p> <p>5 applying or not.</p> <p>6 What does that have to do with your public</p> <p>7 response?</p> <p>8 A That was just --</p> <p>9 MS. BENITEZ: Objection. Asked and</p> <p>10 answered.</p> <p>11 THE WITNESS: My curiosity.</p> <p>12 BY MR. GREIM:</p> <p>13 Q Do you know whether your curiosity was</p> <p>14 satisfied in this case?</p> <p>15 A I don't remember this e-mail at all.</p> <p>16 Q I'm going to show you what we're going to</p> <p>17 mark as Exhibit 36.</p> <p>18 (Lerner Deposition Exhibit No. 36 was</p> <p>19 marked for identification.)</p> <p>20 BY MR. GREIM:</p> <p>21 Q And it's a several page document entitled</p> <p>22 "Congressional Timeline." And it goes through and</p> <p>Page 271</p>	<p>1 MR. HEAVNER: Let me interrupt you. If</p> <p>2 you have personal knowledge, testify to that</p> <p>3 personal knowledge. But if you're speculating --</p> <p>4 THE WITNESS: I'm not speculating. It was</p> <p>5 prepared -- thank you -- prepared -- now I forgot</p> <p>6 what I was going to say -- in anticipation of</p> <p>7 hearings, I believe.</p> <p>8 BY MR. GREIM:</p> <p>9 Q Why do you say that?</p> <p>10 A Because that's what it looks like to me.</p> <p>11 We did a lot of things over time that didn't have to</p> <p>12 do with this, and something like this would have</p> <p>13 been included in preparation for a hearing for</p> <p>14 somebody that was going to testify.</p> <p>15 Q Do you recall at some point that Steve</p> <p>16 Miller asked for -- or asked Nan Marks to conduct an</p> <p>17 internal review of the handling of the advocacy</p> <p>18 cases?</p> <p>19 A Yes.</p> <p>20 Q Was that in 2012?</p> <p>21 A I believe so, yes.</p> <p>22 Q Do you know why Nan Marks led it and not</p> <p>Page 273</p>

<p>1 you?</p> <p>2 A Yes.</p> <p>3 Q Why?</p> <p>4 A Because we had a history of -- and there</p> <p>5 was a problem in a -- well, the issue came up</p> <p>6 because information I was giving Steve and</p> <p>7 information that was coming in from the public</p> <p>8 appeared to be inconsistent, and the information I</p> <p>9 was giving Steve was coming up my chain. So we</p> <p>10 wanted to find out why is this inconsistency going</p> <p>11 on, and since I was the head of the office and I</p> <p>12 have an interest, that would have been sort of a</p> <p>13 conflict for me to go and do the investigation.</p> <p>14 So we always would select someone who is a</p> <p>15 senior technical advisor to the commissioner to do</p> <p>16 it.</p> <p>17 Q Did you have any concerns with Nan Marks</p> <p>18 interacting directly with people that reported to</p> <p>19 you to get information about what had occurred?</p> <p>20 A No, I respected Nan Marks a great deal.</p> <p>21 Q Did you have any concern about Joseph</p> <p>22 Grant doing that?</p> <p style="text-align: right;">Page 274</p>	<p>1 review, when we talked about the Cincinnati visit,</p> <p>2 you were very clear that you were not planning on</p> <p>3 doing an op review out there. It was to be more</p> <p>4 like a meet and greet in a town hall, which is what</p> <p>5 my folks are expecting and planning."</p> <p>6 Did I read that right so far?</p> <p>7 A Yes.</p> <p>8 Q Now, what's an op review?</p> <p>9 A Operational review.</p> <p>10 Q So did you have an operational review</p> <p>11 before this?</p> <p>12 A We had operational reviews of lower areas</p> <p>13 periodically. Just go down, you meet with the</p> <p>14 managers and the director of the area. They give</p> <p>15 you a report of what's going on, what are the good</p> <p>16 things, what are the not-so-good things, what help</p> <p>17 they needed from us.</p> <p>18 Q Who gave you your op review?</p> <p>19 MS. BENITEZ: Objection. Vague.</p> <p>20 THE WITNESS: Oh, I'm not -- I'm not sure.</p> <p>21 Could you ask it again in a different way, please.</p> <p>22 BY MR. GREIM:</p> <p style="text-align: right;">Page 276</p>
<p>1 A I respected Joseph as well.</p> <p>2 (Lerner Deposition Exhibit No. 37 was</p> <p>3 marked for identification.)</p> <p>4 BY MR. GREIM:</p> <p>5 Q I'm going to show you what we've marked as</p> <p>6 Exhibit 37.</p> <p>7 THE WITNESS: Oh, sorry. I thought I --</p> <p>8 keeping them all. I thought it was a really big</p> <p>9 exhibit.</p> <p>10 BY MR. GREIM:</p> <p>11 Q And you'll see at the bottom of this</p> <p>12 e-mail chain, it's an e-mail from you to Joseph</p> <p>13 Grant and someone named, I don't know how you say</p> <p>14 his first name.</p> <p>15 A Moises.</p> <p>16 Q Moises Medina, April 4, 2012. The subject</p> <p>17 is "Cincinnati Visit." You see that?</p> <p>18 A This is the last part, one?</p> <p>19 Q Yes.</p> <p>20 A Yeah.</p> <p>21 Q Do our usual start with the back. Now,</p> <p>22 you start off with, "I'm confused. During my op</p> <p style="text-align: right;">Page 275</p>	<p>1 Q Sure. I'm just looking at the -- your</p> <p>2 first sentence to Joseph Grant. You say, "During my</p> <p>3 op review when we talked about the Cincinnati visit,</p> <p>4 you were very clear that you were not planning on</p> <p>5 doing an op review out there."</p> <p>6 A Joseph Grant, at that point I reported</p> <p>7 directly to him, so yes, he would do my op review.</p> <p>8 Q Okay. So in your op review -- review with</p> <p>9 Joseph Grant, did you discuss the Cincinnati visit?</p> <p>10 A I believe so, yes.</p> <p>11 Q And was one of the topics of Mr. Grant's</p> <p>12 review of you the handling of the advocacy cases as</p> <p>13 of this time?</p> <p>14 A No.</p> <p>15 Q So in evaluating your performance as head</p> <p>16 of EO in April of 2012, the handling of the advocacy</p> <p>17 cases was not covered in your op review?</p> <p>18 A An op review is not a performance review.</p> <p>19 It's a report of what's going on in your division.</p> <p>20 It's not a performance review. So I was reporting</p> <p>21 to him as to what was going on, where our stress</p> <p>22 levels were, what was going well, where I needed</p> <p style="text-align: right;">Page 277</p>

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<p>1 help, what more resources I needed.</p> <p>2 Q So did you raise the handling of the</p> <p>3 advocacy cases in your op review with Joseph Grant?</p> <p>4 A I would have talked to him about the</p> <p>5 difficulties we were having.</p> <p>6 Q Let's go on back to your e-mail. You say,</p> <p>7 "I remember specifically because I said either Holly</p> <p>8 or I should be there if it was an op review. We</p> <p>9 just got a very extensive information request from</p> <p>10 Imraan." That's I-m-r-a-a-n. "Sure looks like op</p> <p>11 review material."</p> <p>12 And I'll stop there for a second. Who's</p> <p>13 Imraan?</p> <p>14 A Geez, I don't remember what his job was.</p> <p>15 He was a statistics guy. He worked in the TE/GE</p> <p>16 commissioner's office and he was the one who put</p> <p>17 together our statistics, I believe.</p> <p>18 Q Like on how quickly you worked cases, how</p> <p>19 long you spent on them, things like that?</p> <p>20 A Anything the commissioner might have</p> <p>21 wanted or anybody above the commissioner might have</p> <p>22 wanted, and the information that we always reported</p> <p style="text-align: right;">Page 278</p>	<p>1 issue?</p> <p>2 A Well, I think they were already</p> <p>3 investigating at that point.</p> <p>4 Q April of 2012?</p> <p>5 A I don't know when it started, but I think</p> <p>6 they were, because that's why they were getting the</p> <p>7 request.</p> <p>8 Q Now, why were you concerned -- why was</p> <p>9 this not a good time for the Cincinnati staff to</p> <p>10 answer questions from -- you know, internally within</p> <p>11 TE/GE just because a TIGTA review was coming?</p> <p>12 A It wasn't because the TIGTA review was</p> <p>13 coming. If you read that, you can see that they are</p> <p>14 absolutely overwhelmed. They're behind on their --</p> <p>15 their caseload. They've got the OARs that we were</p> <p>16 talking about. They've got the auto-revocation</p> <p>17 process, which was a whole huge other thing they</p> <p>18 were dealing with.</p> <p>19 What I was saying to Joseph was this isn't</p> <p>20 a good time to be going out there and stressing them</p> <p>21 even more. Let them get through this first and then</p> <p>22 go and do the op review. Because there's not really</p> <p style="text-align: right;">Page 280</p>
<p>1 to the IRS that the -- that the IRS reported out on</p> <p>2 statistics.</p> <p>3 Q You say, "I'm especially concerned that</p> <p>4 information about pipeline is being asked about."</p> <p>5 What's pipeline?</p> <p>6 A How many cases you've got in your</p> <p>7 pipeline.</p> <p>8 Q "One of my commitments," you say, "is to</p> <p>9 analyze the pipeline and make recommendations. I</p> <p>10 just spoke with both Cindy and Holly about the</p> <p>11 impact the auto-revocation process is having on the</p> <p>12 work and gave them instructions about the overall</p> <p>13 analysis I would like. Add to that the fact that</p> <p>14 Cincinnati is smack dab in the middle of the (c)(4)</p> <p>15 congressional inquiries and is about to get a</p> <p>16 request from TIGTA on all of that, this is not a</p> <p>17 good time to be asking them for anything or to be</p> <p>18 talking to them about issue in their work."</p> <p>19 Did I read that right?</p> <p>20 A Yes.</p> <p>21 Q So at this point, did you realize that</p> <p>22 TIGTA was going to be investigating the advocacy</p> <p style="text-align: right;">Page 279</p>	<p>1 any need to do -- there's no specific time to do it.</p> <p>2 Q But isn't this the review that ultimately</p> <p>3 led to the bucketing process --</p> <p>4 A No.</p> <p>5 Q -- doing the cases again?</p> <p>6 A Sorry I didn't let you finish, but no,</p> <p>7 this is not the review.</p> <p>8 Q So were you concerned at all that asking</p> <p>9 Cincinnati questions about its handling of the cases</p> <p>10 could impact its responses to a TIGTA review?</p> <p>11 MS. BENITEZ: Objection. Mischaracterizes</p> <p>12 the witness' testimony.</p> <p>13 MR. GREIM: Well, I'm asking a question,</p> <p>14 not characterizing anything.</p> <p>15 BY MR. GREIM:</p> <p>16 Q Are you -- were you -- were you concerned</p> <p>17 that being questioned internally would affect</p> <p>18 staff's responses to a TIGTA review?</p> <p>19 A No. I was concerned that they were</p> <p>20 overworked.</p> <p>21 Q And so you suggest to Mr. Grant, if we</p> <p>22 look forward, he responds to your concern, and then</p> <p style="text-align: right;">Page 281</p>

1 you get back to him and say, "I did that, but timing
2 would be bad if we have to go to Cincy now. So I
3 will assume we can go over this here, as I get the
4 information I've already asked for. Thanks."

5 That's on April 4, 2012?

6 A Yes.

7 Q So is it correct then that you wanted to
8 just gather the information yourself from Cincinnati
9 and give that to Mr. Grant rather than having him go
10 directly there?

11 A What I was telling him was I've already
12 asked for most of the information that you're asking
13 for. Rather than you asking for it again, which was
14 not uncommon in the IRS, and putting more work and
15 stress on them, why don't we talk about what I'm
16 putting together and see if that satisfies your
17 needs. If not, then make another time when they're
18 a little less stressed and go on out there.

19 Q So Mr. Grant responds to you and says, "I
20 think we are in agreement, but just to be sure, I'm
21 planning to go to Cincy at the end of the month.
22 I'm traveling with Nan Marks and Imraan. It is

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1 Marks did end up getting information directly from
2 Cincinnati without going through you on the (c)(4)
3 application letters and the other items you
4 mentioned?

5 A I don't know.

6 MR. SERGI: Counsel, for the -- it's more
7 than the record, but this is a JW Bates number. We
8 have no documents with a JW Bates number. Has this
9 been produced in discovery by Plaintiffs?

10 MR. GREIM: I believe we found this on the
11 internet.

12 MR. SERGI: Okay, but it's part of your
13 initial disclosures or any discovery responses has
14 this been --

15 MR. GREIM: I'm not going to go into
16 discovery with you right now.

17 MR. SERGI: Okay.

18 MR. GREIM: We can talk about it
19 afterwards.

20 MR. SERGI: Well, you are using something
21 that's surprising a witness with a document that
22 hasn't been produced, so I'm noting it for the

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1 Nan's first trip to Cincy and will be an
2 educational" -- "education for her on the DL process
3 for both EO and EP. It is not an op review for
4 either function. I do not expect that you would
5 need to be there. As you suggest below, we can
6 cover the questions here in D.C. at our regular EO
7 op reviews as you get the information."

8 And then your response to him later is,
9 "Fine with me. Just trying to keep the stress level
10 manageable in Cincinnati. They are pretty freaked.
11 Please don't ask them about closures, pipelines,
12 wait time for full development cases or the (c)(4)
13 application letters."

14 Did I read that right?

15 A Yes.

16 Q "I know Imraan is really interested in
17 that stuff in general. I promise to give him info.
18 That just won't" -- "wouldn't be the best place to
19 ask things."

20 Did I read that right?

21 A Yes.

22 Q Do you know whether Mr. Grant and Ms.

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1 record and objecting to the use of this exhibit
2 since this is a trial deposition.

3 (Lerner Deposition Exhibit No. 38 was
4 marked for identification.)

5 BY MR. GREIM:

6 Q I'm going to hand you what we've marked as
7 Exhibit 38. You'll see that this is Bates number
8 RFP26695.

9 A Yes.

10 Q From David Fish to Cindy Thomas, March 1,
11 2012, and the subject is, "Are all advocacy cases
12 assigned to one group?" The actual e-mail says,
13 "Lois needs to know."

14 Do you see that?

15 A Yes.

16 Q Do you recall getting -- finding the
17 answer to this question?

18 A No, I don't.

19 Q Then Cindy responds to David, "No. We
20 have a representative from almost every group on a
21 team, but the cases are being controlled through one
22 group." Then you see Fish sends this information to

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<p>1 you later that day and says, "Steve Bowling is 2 responsible for all the cases, but he did not have 3 enough grade 13s to work them all." And he forwards 4 the information up. 5 Do you see that? 6 A Hmm-hmm. 7 Q And then your response is, "That's 8 actually a good response. So we have consistent 9 manager, but cases are dispersed all around. No," 10 quote "task force," in quotation marks. 11 Did I read that right? 12 A Yes. 13 Q Why was it important that there be no task 14 force? 15 A It wasn't important there be no task 16 force. I was asked the question of whether we had a 17 task force, and we didn't. 18 Q Why is it good though that there was no 19 task force? 20 A Because task force was being -- I was 21 asked about being -- whether there was a task force. 22 That has implications beyond our regular work and so</p> <p style="text-align: right;">Page 286</p>	<p>1 A I'm not very good at dates. I don't 2 recall. 3 Q I'm going to show you what we're marking 4 as Exhibit 39. 5 (Lerner Deposition Exhibit No. 39 was 6 marked for identification.) 7 BY MR. GREIM: 8 Q You'll see at the very bottom of this 9 e-mail -- 10 A Bottom. 11 MR. SERGI: There's only two. 12 THE WITNESS: Oh, sorry. I keep stealing 13 your copies. 14 BY MR. GREIM: 15 Q There's an e-mail from an Emma Price at 16 TIGTA to Joseph Grant. 17 A Yes. 18 Q Sending an engagement letter entitled 19 "Consistency in Identifying and Reviewing 20 Applications for Tax-Exempt Status Involving 21 Political Advocacy Issues." 22 A Yes.</p> <p style="text-align: right;">Page 288</p>
<p>1 to me, this -- what I was getting in response was 2 we're doing these the regular way we always do 3 everything. We've got it all under one single 4 manager, even if it's divided up among various 5 groups. But that's our regular way of doing 6 business. 7 Q So this doesn't meet your definition of a 8 task force? 9 A No. 10 THE WITNESS: Yeah, thank you. 11 BY MR. GREIM: 12 Q Do you know whether Nan Marks ultimately 13 drew any conclusions from her review? 14 A Yes. 15 Q And do you recall Ms. Marks later saying 16 that her conclusions were similar to the conclusions 17 TIGTA drew? 18 A I don't recall that. 19 Q Would that surprise you? 20 A I don't know. 21 Q When did you first learn about a TIGTA 22 investigation?</p> <p style="text-align: right;">Page 287</p>	<p>1 Q It's a mouthful. Did I read that right? 2 A Yes. 3 Q Okay. Now, you'll see this is June 22nd. 4 The e-mail where you were e-mailing with Joseph 5 Grant about the -- about TIGTA was back in April, 6 wasn't it? That's Exhibit 37. 7 A I'm trying to find the TIGTA -- Yes. 8 Q So the message about TIGTA eventually gets 9 to you by Rich Daly on Friday, June 22, 2012, along 10 with Sarah Ingram and others. 11 A Yes. 12 Q And you see Daly reports that TIGTA is 13 going to look at how we deal with the applications 14 from (c)(4)s. And then he goes down to the bottom 15 after putting some details. He says, "TIGTA expects 16 to issue its report in the spring." 17 Did I read that right? 18 A Yes. 19 Q I guess that would have to be spring of 20 2013 at that point. 21 A I would think so, yes. 22 Q Where I come from, June 22nd does not feel</p> <p style="text-align: right;">Page 289</p>

<p>1 like spring. Okay, so you respond to everybody on</p> <p>2 the 25th, and you say, "It is what it is. Although</p> <p>3 the original story isn't as pretty as we'd like,</p> <p>4 once we learned this were off track, we have done</p> <p>5 what we can to change the process, better educate</p> <p>6 our staff and move the cases. So, we will get</p> <p>7 dinged, but we took steps before the 'dinging' to</p> <p>8 make things better and we have written procedures.</p> <p>9 So, it is what it is."</p> <p>10 Did I read that right?</p> <p>11 A Yeah.</p> <p>12 Q Actually, I think there were two "whats,"</p> <p>13 but --</p> <p>14 A That's true. Could you read that again.</p> <p>15 Q You say, "So it is what what it is."</p> <p>16 Is this the e-mail you sent to the group?</p> <p>17 A Yes. And the reason I knew about the</p> <p>18 TIGTA stuff before this is this is the formal</p> <p>19 notification, but they talk to you before that.</p> <p>20 Q Now, you learned in June of 2011, we saw</p> <p>21 in your initial meetings what the criteria were that</p> <p>22 had been used to compile the advocacy cases at that</p> <p>Page 290</p>	<p>1 Q Do you know whether she did?</p> <p>2 A I believe she sat in on at least some of</p> <p>3 them.</p> <p>4 Q Do you know why?</p> <p>5 A I know what she told me.</p> <p>6 Q What did she tell you?</p> <p>7 A Staff were very uncomfortable about</p> <p>8 talking to TIGTA and so she was there for moral</p> <p>9 support.</p> <p>10 (Lerner Deposition Exhibit No. 40 was</p> <p>11 marked for identification.)</p> <p>12 BY MR. GREIM:</p> <p>13 Q I'm handing you what we've marked as</p> <p>14 Exhibit 40.</p> <p>15 A Oh, they were copied, I think.</p> <p>16 Q Well, we better just stop with Exhibit 40</p> <p>17 and take another break. So you'll get to review</p> <p>18 this over the break, if you wish.</p> <p>19 A Okay.</p> <p>20 THE VIDEOGRAPHER: This ends disk number</p> <p>21 three of the video deposition of Lois Lerner. Going</p> <p>22 off the record. The time is now 4:11 p.m.</p> <p>Page 292</p>
<p>1 point; is that correct?</p> <p>2 A I've already forgotten what those SCRs</p> <p>3 said.</p> <p>4 Q You remember we test -- you testified this</p> <p>5 morning that you had meetings in late June, early</p> <p>6 July with Holly Paz and others where they briefed</p> <p>7 you on the advocacy cases.</p> <p>8 Do you recall that testimony?</p> <p>9 A Yes.</p> <p>10 Q And then as a result of that, you issued</p> <p>11 several directives, which we talked about this</p> <p>12 morning.</p> <p>13 A Yes.</p> <p>14 Q Now, the bucketing process did not occur</p> <p>15 until 2012; is that right?</p> <p>16 A Correct.</p> <p>17 Q Do you recall when TIGTA began to</p> <p>18 interview witnesses?</p> <p>19 A I do not.</p> <p>20 Q Did you require Holly Paz to sit in on the</p> <p>21 interviews?</p> <p>22 A I did not.</p> <p>Page 291</p>	<p>1 (A brief recess was taken.)</p> <p>2 THE VIDEOGRAPHER: This begins disk number</p> <p>3 four in the video deposition of Lois Lerner. We are</p> <p>4 back on the record. The time is now 4:21 p.m.</p> <p>5 BY MR. GREIM:</p> <p>6 Q Now, I'm showing you what we've marked as</p> <p>7 Exhibit 40 right before our break. It's an e-mail</p> <p>8 chain, and I want to focus you on the statement that</p> <p>9 Holly Paz makes to Cheryl Medina of TIGTA.</p> <p>10 Does that name ring a bell, Cheryl Medina?</p> <p>11 A Yes.</p> <p>12 Q So on July 17, 2012, Ms. Paz says,</p> <p>13 "Cheryl, attached is the list of closed advocacy</p> <p>14 cases you requested." She's inserted names of</p> <p>15 "individuals meeting the criteria of your interview</p> <p>16 request into your potential interviewees document."</p> <p>17 MS. BENITEZ: Where is --</p> <p>18 THE WITNESS: No.</p> <p>19 MS. BENITEZ: I'm sorry, Eddie. I'm sorry</p> <p>20 to interrupt you. Where --</p> <p>21 THE WITNESS: She needs a copy.</p> <p>22 MS. BENITEZ: Where are the --</p> <p>Page 293</p>

<p>1 THE WITNESS: Did I give your copies out</p> <p>2 --</p> <p>3 MS. BENITEZ: Did we get copies of that?</p> <p>4 THE WITNESS: -- ahead of time or did you</p> <p>5 just give me this one?</p> <p>6 MR. GREIM: I think I gave them out.</p> <p>7 MS. BENITEZ: Let me see.</p> <p>8 THE WITNESS: Is it under here?</p> <p>9 MS. BENITEZ: Oh, yes, it is. I'm sorry.</p> <p>10 I apologize.</p> <p>11 MR. GREIM: All right.</p> <p>12 MS. BENITEZ: Okay. Go ahead. I'm sorry.</p> <p>13 BY MR. GREIM:</p> <p>14 Q She says, "A number of the Cincinnati</p> <p>15 folks (including Cindy, Joseph Herr and Liz Hofacre)</p> <p>16 are not available the week of 7/30. Moreover, Lois</p> <p>17 would like me to sit in" -- "in on all the</p> <p>18 interviews so that we will be in the best position</p> <p>19 to respond to TIGTA's report and recommendations."</p> <p>20 Did I read that right?</p> <p>21 A You did.</p> <p>22 Q Does this refresh your recollection that</p> <p style="text-align: right;">Page 294</p>	<p>1 Q And you'll see that several pages, the</p> <p>2 last five pages deal with the ROO inventory.</p> <p>3 A Yes.</p> <p>4 Q And then you'll see that right before that</p> <p>5 there are referrals for future year, one page.</p> <p>6 A Yes.</p> <p>7 Q Now, are any of these applicants?</p> <p>8 A These are all exam -- this is in the exam</p> <p>9 function.</p> <p>10 Q I under --</p> <p>11 A That's all I know.</p> <p>12 Q Sure. I understand it's the exam</p> <p>13 function, but we already saw referrals on crossroads</p> <p>14 and applicants.</p> <p>15 So my question is, are any of these</p> <p>16 applicants?</p> <p>17 A I don't know who the applicants were.</p> <p>18 Q So we have to go through and compare this</p> <p>19 with all the applicants to understand that from</p> <p>20 this.</p> <p>21 A To understand what?</p> <p>22 Q To understand who is an applicant.</p> <p style="text-align: right;">Page 296</p>
<p>1 in fact you wanted her to send in -- sit in on all</p> <p>2 the interviews?</p> <p>3 A It does not, but that's what it says.</p> <p>4 Q And ultimately, Ms. Paz and you did</p> <p>5 respond to TIGTA's report and recommendations,</p> <p>6 right?</p> <p>7 A Yes, that was our responsibility.</p> <p>8 Q I'll show you what we're marking as</p> <p>9 Exhibit 41.</p> <p>10 (Lerner Deposition Exhibit No. 41 was</p> <p>11 marked for identification.)</p> <p>12 BY MR. GREIM:</p> <p>13 Q You'll see the date is November 30, 2012.</p> <p>14 Nan Downing and Liz Taylor (sic) are sending you a</p> <p>15 fax with, it looks like five different reports.</p> <p>16 What is the purpose of this document? Or</p> <p>17 why did you ask for this fax?</p> <p>18 A This has to do with examinations, not</p> <p>19 applications.</p> <p>20 Q Was this in -- was this gathering</p> <p>21 information for TIGTA?</p> <p>22 A I have no clue.</p> <p style="text-align: right;">Page 295</p>	<p>1 A I can't tell who applicants are from this</p> <p>2 document.</p> <p>3 Q Under your procedures, are there any of</p> <p>4 these categories that could not have been applicants</p> <p>5 or that could only have been applicants?</p> <p>6 A Let me look again.</p> <p>7 Q And just -- if it helps you, just the</p> <p>8 title's here on the first page under the notes.</p> <p>9 A Oh. This does not help me know whether</p> <p>10 they are applicants.</p> <p>11 Q Do you know what the purpose of obtaining</p> <p>12 this information was?</p> <p>13 A No.</p> <p>14 Q I'm going to show you what we're marking</p> <p>15 as Exhibit 42.</p> <p>16 (Lerner Deposition Exhibit No. 42 was</p> <p>17 marked for identification.)</p> <p>18 BY MR. GREIM:</p> <p>19 Q You'll see this is an e-mail from you to</p> <p>20 Troy Patterson and Holly Paz dated November 2, 2012,</p> <p>21 at least in the same month as the document we just</p> <p>22 looked at, with two attachments. One is called</p> <p style="text-align: right;">Page 297</p>

<p>1 "Long Political Advocacy Timeline HOP comments."</p> <p>2 The other one is "Lerner answers TIGTA questions</p> <p>3 (advocacy) (final)."</p> <p>4 Do you see that?</p> <p>5 A Am I looking at the cover? Where is the</p> <p>6 --</p> <p>7 Q You're looking --</p> <p>8 A H-O-P?</p> <p>9 Q -- up here. These are --</p> <p>10 A Oh, you're talking about the -- in the</p> <p>11 heading. Sorry, I was --</p> <p>12 Q Yes.</p> <p>13 A -- looking in the document. "Long</p> <p>14 Political Timeline. Lerner answers TIGTA question.</p> <p>15 (Final) document." Okay.</p> <p>16 Q And do you see that those two attachments</p> <p>17 are actually behind this e-mail?</p> <p>18 A I'm just looking at the e-mails so I know</p> <p>19 what this says. Okay, so there's that.</p> <p>20 (The witness examined the document.)</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. GREIM:</p> <p style="text-align: right;">Page 298</p>	<p>1 A Yes.</p> <p>2 Q And I want to take you down -- well, how</p> <p>3 about this. This is probably something. Why don't</p> <p>4 you read your entire e-mail.</p> <p>5 A Thank you.</p> <p>6 (The witness examined the document.)</p> <p>7 THE WITNESS: Okay.</p> <p>8 BY MR. GREIM:</p> <p>9 Q Okay. I'm going to focus on a couple of</p> <p>10 statements here. At the end of the first long</p> <p>11 paragraph you say, "When we describe the process,</p> <p>12 they acknowledge that that approach sounds</p> <p>13 reasonable, but seem to be saying that</p> <p>14 reasonableness is overshadowed by the fact that the</p> <p>15 criteria looked bad to folks on the outside, so</p> <p>16 there is no way we could cure the initial bad</p> <p>17 impression."</p> <p>18 Did I read that right?</p> <p>19 A You did.</p> <p>20 Q Now, how did you come to understand that</p> <p>21 the criteria looked bad to folks on the outside?</p> <p>22 A That's what they said.</p> <p style="text-align: right;">Page 300</p>
<p>1 Q And is this a document that you sent to</p> <p>2 TIGTA for purposes of its investigation?</p> <p>3 A Yes. By the way, this isn't an</p> <p>4 investigation. TIGTA does audits of my programs,</p> <p>5 not investigations. Only the criminal part of TIGTA</p> <p>6 does investigations.</p> <p>7 Q Do you recall that toward the end of the</p> <p>8 audit --</p> <p>9 A Are you done with this one?</p> <p>10 Q Yes, I think we are for now -- that toward</p> <p>11 the end of the audit you began to go back and forth</p> <p>12 with TIGTA about the conclusions it was reaching?</p> <p>13 A Yes.</p> <p>14 (Lerner Deposition Exhibit No. 43 was</p> <p>15 marked for identification.)</p> <p>16 BY MR. GREIM:</p> <p>17 Q I'm going to show you what we've marked as</p> <p>18 Exhibit 43. And you'll see that this begins at the</p> <p>19 back with an e-mail from you to Troy Patterson, a</p> <p>20 copy to Holly Paz. Subject is "Follow-Up."</p> <p>21 A Yes.</p> <p>22 Q January 31, 2013?</p> <p style="text-align: right;">Page 299</p>	<p>1 Q No, that's what TIGTA told you.</p> <p>2 A Yes.</p> <p>3 Q Well, was there anything wrong with the</p> <p>4 criteria that were used?</p> <p>5 A Well, we've had that discussion before.</p> <p>6 The way that they were originally selecting the</p> <p>7 cases and naming the cases was not the best way to</p> <p>8 do it. Let me take two steps back. I've had</p> <p>9 numerous, numerous TIGTA audits of my programs, so I</p> <p>10 knew what TIGTA was looking for in the context of an</p> <p>11 audit. Is the IRS treating taxpayers fairly? Are</p> <p>12 there procedures to make sure that that's happening?</p> <p>13 We had another audit that had to do with political</p> <p>14 activity in (c)(3)s.</p> <p>15 So I was going into this based on that</p> <p>16 previous experience. And what I was hearing from</p> <p>17 the staff was something very different than what I</p> <p>18 heard in the -- in that audit. So what I was trying</p> <p>19 to say to them was, yes, initially it may have</p> <p>20 looked bad, but we've found that we could have done</p> <p>21 a better job. We corrected the procedures and at</p> <p>22 the end of the day, many people that might have been</p> <p style="text-align: right;">Page 301</p>

1 pulled into this were determined to be approved, so
2 therefore, the IRS was not being political about
3 this.

4 And they -- they were very narrow in their
5 thinking, so Troy and I had worked together on
6 numerous occasions and I was going to him and
7 saying, perhaps you should be in on the meeting as
8 well to understand how your guys are thinking about
9 this, how we're thinking about this, and come to
10 some agreement in the middle.

11 **Q Now, was Troy in charge of the audit?**

12 A He was the manager in charge of it.

13 **Q Who was -- who was in charge of it**
14 **ultimately?**

15 A The Treasury inspector general, who is a
16 political appointee.

17 **Q Now, so you say you wanted to bring him**
18 **into the meeting.**

19 **Was he otherwise not going to be in -- in**
20 **the meeting?**

21 A No. The way the audit process works, it's
22 very back and forth. It's a discussion. It's

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1 **frontline staff doing things that appeared to be**
2 **politically motivated. But I am not onboard to**
3 **anything that occurred here shows that the IRS was**
4 **politically motivated in the actions taken."**

5 **Did I read that right?**

6 A Yes.

7 **Q What do you mean you're willing to take**
8 **the blame for not having provided sufficient**
9 **direction initially?**

10 A I'm head of the office. If my people did
11 not get sufficient training or whatever they needed
12 to do their job and they did it in a less than
13 stellar fashion, ultimately I'm the one responsible.
14 But my real query with him here is it was my
15 understanding that this audit was to look into what
16 we'd done and determine whether the IRS was
17 politically motivated with the way that it handled
18 these cases, and that was what I was talking to him
19 about.

20 Mistakes being made in cases do not
21 translate into IRS is politically motivated.

22 **Q What could you have done differently in**

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1 drafts back and forth and comments, just to make
2 sure -- because you've got line people going out and
3 doing things, then you have management coming in,
4 and the job for them was to make sure that what
5 their folks were -- what his job was, to make sure
6 that what his folks were seeing was actually
7 matching up with what was happening, and part of
8 doing that is talking to me and saying, do you have
9 any issues with this, are there some things that you
10 find unclear. That's why I said, it's a very
11 iterative process, lots and lots of back and forth.

12 So he was unable to be at the first
13 meeting, and I was saying, I really think we can use
14 your judgment in this second meeting. I'm not sure
15 your staff are getting it. And they're not my
16 staff, so I can't tell them what to do.

17 **Q Let me take you to the second to last**
18 **paragraph. It starts off "So I'm not sure."**

19 A Yes.

20 **Q Halfway down you say, "I am willing to**
21 **take the blame for not having provided sufficient**
22 **direction initially, which may have resulted in**

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1 **managing these cases?**

2 A Perhaps we could have sent people down
3 there earlier or we could have gotten the guidance
4 out earlier.

5 **Q Anything else?**

6 A Not unless I was in there on a day-to-day
7 basis, and that wasn't my job and I couldn't have
8 done that anyway. I think people were working very
9 hard under very difficult circumstances with really,
10 really difficult issues.

11 **Q Was it correct to use the names and policy**
12 **positions of groups to select them for additional**
13 **development?**

14 A I think I've already said it was not.

15 **Q When did you say that?**

16 A When I told them that they needed to
17 change the BOLO list and that that was not
18 appropriate for them to be picking cases based on
19 the name of the organization. Back in 2011, I think
20 it was.

21 **Q Have you taken the blame for not having**
22 **provided sufficient direction initially?**

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<p>1 A I'm not sure what you're saying.</p> <p>2 Q Well, I'm just using your own words here.</p> <p>3 You say you're willing to take the blame for not</p> <p>4 having provided sufficient direction initially. I'm</p> <p>5 asking you have you taken the blame for not having</p> <p>6 provided sufficient direction initially?</p> <p>7 A I don't think I've been asked to take that</p> <p>8 specifically. What I was saying to Troy, and this</p> <p>9 was if you want to write up a report that says our</p> <p>10 management controls were not good enough, that I'm</p> <p>11 onboard with. I am not onboard with you saying that</p> <p>12 the IRS was politically motivated in its actions.</p> <p>13 Q If you could go back to the e-mail that we</p> <p>14 looked at earlier today where you said Tea Party --</p> <p>15 A What number?</p> <p>16 Q Well, I think it's pretty early. I'll</p> <p>17 find it for you. It's the one where you say "Tea</p> <p>18 Party" --</p> <p>19 MR. SERGI: Tea Party Matter.</p> <p>20 BY MR. GREIM:</p> <p>21 Q "Tea Party matter is dangerous."</p> <p>22 MR. SERGI: Exhibit --</p> <p style="text-align: right;">Page 306</p>	<p>1 A I believe I testified previously that what</p> <p>2 I meant by "dangerous" was this was a case that</p> <p>3 might be going to the Supreme Court and we needed to</p> <p>4 handle it correctly. We needed to cross our T's and</p> <p>5 dot our I's and make sure that Counsel is onboard</p> <p>6 with it. So I don't think there was anything wrong</p> <p>7 with it.</p> <p>8 Q That's what led to -- to the delays isn't</p> <p>9 it?</p> <p>10 A I believe I think this is a particular</p> <p>11 case. You keep wanting to make it a larger matter.</p> <p>12 Q All right. Was it a mistake to instruct</p> <p>13 your subordinates not to allow any determinations on</p> <p>14 the Tea Party cases without involvement of Counsel</p> <p>15 and Judy Kindell?</p> <p>16 A No, I don't think that was a mistake at</p> <p>17 the time.</p> <p>18 Q Is it because of the possibility of the</p> <p>19 Supreme Court challenge?</p> <p>20 A It was because these were difficult</p> <p>21 issues. I wanted to make sure that they were</p> <p>22 handled correctly.</p> <p style="text-align: right;">Page 308</p>
<p>1 BY MR. GREIM:</p> <p>2 Q Joe is --</p> <p>3 MR. SERGI: -- 15.</p> <p>4 BY MR. GREIM:</p> <p>5 Q -- one step ahead, several steps ahead.</p> <p>6 It is Exhibit 15 and it's on page 2.</p> <p>7 A I remember this one.</p> <p>8 Q Would you tell Mr. Seto still -- and Ms.</p> <p>9 Paz and Kindell -- would you still say Tea Party</p> <p>10 matter very dangerous?</p> <p>11 MR. HEAVNER: Objection. Speculation. To</p> <p>12 the extent that it is speculation and he's asking</p> <p>13 you to answer it as of now, it's beyond the</p> <p>14 testimony authorization and you should not answer</p> <p>15 that question.</p> <p>16 THE WITNESS: I'm not going to answer the</p> <p>17 question. He told me not to.</p> <p>18 BY MR. GREIM:</p> <p>19 Q Was it a mistake for you to tell Mr. Seto,</p> <p>20 Ms. Paz and Ms. Kindell and others the Tea Party</p> <p>21 matter was very dangerous in January -- in February</p> <p>22 of 2011?</p> <p style="text-align: right;">Page 307</p>	<p>1 Q Do you recall asking your subordinates to</p> <p>2 investigate whether there really was an uptick in</p> <p>3 (c)(4) applications in 2010?</p> <p>4 A I believe I asked folks to -- wouldn't say</p> <p>5 investigate -- to check into whether there was an</p> <p>6 uptick because we were responding to congressional</p> <p>7 inquiries and I wanted to make sure the information</p> <p>8 we were giving was correct.</p> <p>9 Q I'm going to show you what we're marking</p> <p>10 as Exhibit 44.</p> <p>11 (Lerner Deposition Exhibit No. 44 was</p> <p>12 marked for identification.)</p> <p>13 BY MR. GREIM:</p> <p>14 Q And you'll see that this starts back on</p> <p>15 April 28, 2013, an e-mail from Nikole Flax to you,</p> <p>16 Joseph Grant and Richard M. Daly regarding a revised</p> <p>17 response to the TIGTA audit. And then there's</p> <p>18 various comments going through here. You see Mr.</p> <p>19 Daly -- who is Richard Daly, by the way.</p> <p>20 A He was a senior technical advisor to the</p> <p>21 commissioner of TE/GE.</p> <p>22 Q You'll see in paragraph 2 he says, "We</p> <p style="text-align: right;">Page 309</p>

1 **talk about the number of (c)(4) applications**
 2 **doubling between 2008 and 2012." It says, "The**
 3 **relevant period begins in 2010. It would be better**
 4 **to have stats for that period."**

5 **So then he makes some other**
 6 **recommendations. You respond to him later that day,**
 7 **copying everyone and say, "We've had this**
 8 **conversation before. We don't have stats for the**
 9 **2010 to '12 period. Everyone is aware it was in,"**
 10 **quote, "our draft also."**

11 **Did I read that part right?**

12 A Yes.

13 **Q And then you see Ms. Paz's response to you**
 14 **and says, "We do have numbers on (c)(4) apps from**
 15 **2010 to 2012 if you want to use those." She says,**
 16 **"I used 2008 because it allowed me to say they**
 17 **doubled without having to give numbers to make the**
 18 **point, as you would if you want to focus 2010-2012."**

19 **Do you see that?**

20 A Yes.

21 **Q And then she gives numbers.**

22 A Yes.

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1 in with the advocacy issues. This is -- this is
 2 sort of at the -- the tail end of many, many other
 3 things, lots of congressional inquiries that we
 4 responded to, discussions internally, staffing
 5 discussions. So we had been talking about the
 6 numbers going up after "Citizens United" for a
 7 while.

8 **Q So you -- you recall then in 2010 people**
 9 **talking to you about the numbers going up?**

10 A They started telling me that we were
 11 getting these applications in, yeah. I don't know
 12 if it's 2010, but at some point they said, we're
 13 starting to get more applications and I don't know
 14 why I said that we didn't have stats for the
 15 previous years.

16 **Q Well, we saw the SCRs for almost every**
 17 **month in 2010 where you were getting reports on the**
 18 **number of applications being held in Cincinnati,**
 19 **didn't we?**

20 A That was a specific group of (c)(4) cases.
 21 We had lots of other (c)(4) cases. This is (c)(4)
 22 cases in general, I believe.

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1 **Q Do you see that the number for 2009 is**
 2 **1,571, right?**

3 A Yes.

4 **Q The number for 2010 is 1,591, correct?**

5 A Yes.

6 **Q And as we saw earlier, 2010 is the year**
 7 **that centralization of the applications occurred,**
 8 **isn't it?**

9 A Say that again, please.

10 **Q 2010 is the year that centralization of**
 11 **the applications occurred isn't it?**

12 A I don't know if they had centralized prior
 13 to that, because it was my understanding from that
 14 SCR that there were only a couple of cases in 2010,
 15 so -- but she's talking about (c)(4) applications,
 16 not necessarily the group of applications you're
 17 talking about. We had lots of other (c)(4)
 18 applications.

19 **Q So how did you understand that there**
 20 **actually was a spike in applications in 2010?**

21 A Because that's when they started talking
 22 to me about the -- the applications that were coming

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1 **Q Right.**

2 A So that's the difference.

3 **Q But the way that you would have learned**
 4 **about the cases at issue here increasing would have**
 5 **been from the SCR reports you got in 2010, right?**

6 A Not necessarily. It might have been from
 7 discussions I was having with whoever was the
 8 director of Rulings and Agreements rather than the
 9 SCRs, because as I told you, I didn't always look
 10 carefully at those.

11 **Q But your testimony is that you learned**
 12 **about this yourself in 2010, right?**

13 A I don't know exactly when I learned about
 14 it. I don't -- I told you, dates are -- this is all
 15 one big thing to me right now. So when something
 16 happened, I can't say for sure. It seems likely,
 17 but I can't say for sure.

18 **Q At some point, was a decision made to get**
 19 **out ahead of a TIGTA report and make an announcement**
 20 **about the topic of the TIGTA report?**

21 A Yes.

22 **Q And who was involved in those discussions?**

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<p>1 A Cathy Berry (ph), who was in Legislative 2 Affairs; Steve Miller; me; Sharon Light; and I 3 believe Nikole Flax.</p> <p>4 Q And the statement was one that was going 5 to be made by you, correct?</p> <p>6 A Steve Miller asked me to make the 7 statement.</p> <p>8 Q The question was simply when and where 9 exactly, right?</p> <p>10 A When and where what?</p> <p>11 Q You were going to make the statement.</p> <p>12 MS. BENITEZ: Objection. Vague.</p> <p>13 THE WITNESS: No, the question was, Lois, 14 I want you to make the statement. What's the 15 statement going to say? How is this going to 16 happen? What are we going to do besides make the 17 statement?</p> <p>18 BY MR. GREIM:</p> <p>19 Q And you had wanted to make a public 20 statement to respond to Tea Party complaints a year 21 earlier, hadn't you?</p> <p>22 A I had raised the issue.</p> <p style="text-align: right;">Page 314</p>	<p>1 whether the (c)(4) process should be the speech 2 topic? I would need to know soon to get it 3 together, but a lot of it's what we are saying in 4 the Congressional. Talk amongst those who would be 5 interested and let me know as soon as possible."</p> <p>6 A Right.</p> <p>7 Q Did I read that right?</p> <p>8 A You did.</p> <p>9 Q Ultimately, were you allowed to do this?</p> <p>10 A No.</p> <p>11 Q Do you recall who wrote the first draft of 12 your remarks?</p> <p>13 A Steve Miller.</p> <p>14 Q Could it have been Nikole Flax?</p> <p>15 A Oh, I don't believe so. It was 16 handwritten and he handed it to me.</p> <p>17 Q When was that?</p> <p>18 A When we had the meeting.</p> <p>19 Q When was the meeting?</p> <p>20 A I don't remember.</p> <p>21 Q Okay. I'm going to show you what we're 22 marking as Exhibit 46.</p> <p style="text-align: right;">Page 316</p>
<p>1 Q And at that point you did not get approval 2 to make a statement?</p> <p>3 A I did not.</p> <p>4 Q Why did you want to make a statement a 5 year earlier?</p> <p>6 A Because I thought it was important to just 7 make the regulated community aware of where we were.</p> <p>8 Q Was it because Tea Party folks were making 9 allegations regarding the IRS?</p> <p>10 A I don't recall.</p> <p>11 (Lerner Deposition Exhibit No. 45 was 12 marked for identification.)</p> <p>13 BY MR. GREIM:</p> <p>14 Q I'm going to show you what we've marked as 15 Exhibit 45. You see at the bottom there is an 16 e-mail from you to Nikole Flax and Terry Lemons?</p> <p>17 A Hmm-hmm.</p> <p>18 Q And you say, "I saw today's press on the 19 Press Club press conference by Tea Party folks 20 making allegations regarding IRS and (c)(4) issue. 21 I am doing the opening speech at Georgetown 22 conference next Wednesday. Should we consider</p> <p style="text-align: right;">Page 315</p>	<p>1 (Lerner Deposition Exhibit No. 46 was 2 marked for identification.)</p> <p>3 MR. SERGI: For the record, Exhibit 45 4 has, once again, the JW Bates number, so we will 5 object that we haven't seen it.</p> <p>6 BY MR. GREIM:</p> <p>7 Q I think this goes with that. I'm sorry. 8 Do you recognize this as an e-mail from 9 you to Holly Paz with draft comments and redlines to 10 a preexisting statement?</p> <p>11 A That's what it looks like.</p> <p>12 Q And you see that -- and this is from you, 13 right?</p> <p>14 A Yes.</p> <p>15 Q You see that there are -- most of the 16 redlines are additions, paragraphs, towards the 17 beginning that relate to "Citizens United"?</p> <p>18 A Yes.</p> <p>19 Q Did you think it was important to put the 20 advocacy cases in the context of "Citizens United"?</p> <p>21 A I thought it would make for a better 22 understanding of what had occurred.</p> <p style="text-align: right;">Page 317</p>

<p>1 Q And why do you think "Citizens United" was 2 important to understand what had occurred? 3 A Because prior to "Citizens United," there 4 was no question that political activity was not 5 allowed by corporations, so we didn't have the 6 issue. 7 Q Now, ultimately, the "Citizens United" 8 statements came out of your statement, correct? 9 A This is -- what statement do you think 10 this is? 11 Q I'm -- I'll ask the questions here. What 12 -- I'll ask you, what statement is this? 13 A This is not my speech. 14 Q I understand that you gave a different 15 speech. 16 A This was not a draft of my speech. 17 Q What was this a draft of? 18 A I believe it was a draft that Holly and 19 Joseph Grant and I put together in response to the 20 TIGTA report. 21 Q Well, let me show you what we're marking 22 as Exhibit 47.</p> <p style="text-align: right;">Page 318</p>	<p>1 think." 2 Right? 3 A Correct. 4 Q And then finally, you say, "Thanks, 5 although I would have preferred we kept the Citizens 6 United background in. I get why you took it out. I 7 saw it as an opportunity to" -- "for us to show that 8 much of this has been foisted on us and the tools we 9 have to deal with it are limited." 10 So having seen this, does it refresh your 11 recollection at all about what Exhibit 46 related 12 to? 13 A Yes. I think it's a draft of the TIGTA 14 report. Look at the second paragraph. 15 Q And I just send you back down to your 16 e-mail to Nikole Flax where you say, "We need to be 17 careful not to be inconsistent with what we have 18 said in the past in congressional responses and to 19 TIGTA." 20 A Right. 21 Q So does it suggest to you that this is not 22 to TIGTA?</p> <p style="text-align: right;">Page 320</p>
<p>1 (Lerner Deposition Exhibit No. 47 was 2 marked for identification.) 3 BY MR. GREIM: 4 Q And you'll see that Nikole Flax, the day 5 after the document we just looked at, sends you an 6 e-mail entitled "Speech." She says, "Sorry for the 7 fire drill. Don't say anything regarding (c)(4)s at 8 the speech. Sounds like Steve may get a question at 9 his hearing tomorrow instead. I will send a revised 10 version of the response when we are done with edits. 11 Thanks." 12 Did I read that right? 13 A You did. 14 Q And then if you go up, you'll say, "I 15 figured, but I do hope it won't look like the last 16 one. We need to be careful not to be inconsistent 17 with what we have said in the past in congressional 18 responses and to TIGTA." 19 Did I read that right? 20 A Correct. 21 Q And then she goes on and says, "This is 22 the latest, but still being tweaked. See what you</p> <p style="text-align: right;">Page 319</p>	<p>1 A No. 2 Q Okay. 3 A Steve had not given me the handwritten 4 notes yet at this point, so it couldn't have been my 5 speech. 6 Q Well, what about the fact that the subject 7 line is entitled "Speech"? 8 A Because Nikole is saying to me sorry for 9 the fire drill. We're not going to say anything in 10 the speech about (c)(4)s. It's the speech that I'm 11 giving the next day. Steve may get an opportunity 12 to answer it instead. 13 Q Well, regardless of what it was for, let 14 me ask you this. 15 Do you know why Nikole Flax took the 16 Citizens United background out? 17 A I don't. 18 Q You say, "I get why you took it out." 19 Do you recall why -- what that was -- what 20 you were thinking? 21 A I think I was thinking that her boss told 22 her to take it out.</p> <p style="text-align: right;">Page 321</p>

<p>1 Q But did you understand why?</p> <p>2 A No.</p> <p>3 Q Do you recall that both you and Mr. Miller</p> <p>4 testified before Congress two days before you made</p> <p>5 the announcement?</p> <p>6 A Yes. Not together though.</p> <p>7 Q Do you recall being asked about the IRS'</p> <p>8 investigation in your testimony?</p> <p>9 MS. BENITEZ: Objection. Vague.</p> <p>10 THE WITNESS: No.</p> <p>11 MR. SERGI: While Mr. Greim marks the</p> <p>12 exhibit, the last exhibit, 47, has an attachment</p> <p>13 that is a memo from the deputy inspector for audit</p> <p>14 regarding TIGTA, and that's at</p> <p>15 USA_NorCAL_RFP_0022335. It was produced by the</p> <p>16 government.</p> <p>17 (Lerner Deposition Exhibit No. 48 was</p> <p>18 marked for identification.)</p> <p>19 BY MR. GREIM:</p> <p>20 Q I'm going to hand you what's marked as</p> <p>21 Exhibit 48. And you'll see that this a hearing on</p> <p>22 -- the title is "The IRS' Colleges and Universities</p> <p style="text-align: right;">Page 322</p>	<p>1 political and business leagues to see if they're</p> <p>2 abusing the tax-exempt status. I don't want to</p> <p>3 speak for the chairman or the ranking member, but I</p> <p>4 know my constituents in Queens do not want their tax</p> <p>5 dollars being used to subsidize political campaigns.</p> <p>6 I suspect neither do any of the members of this</p> <p>7 panel."</p> <p>8 Did I read that right?</p> <p>9 A Yes.</p> <p>10 Q And he says, "So Ms. Lerner, if you could</p> <p>11 comment briefly on the status of the IRS</p> <p>12 investigation into these political not-for-profits I</p> <p>13 would appreciate that as well."</p> <p>14 Did I read that right?</p> <p>15 A Yes.</p> <p>16 Q And your response is, "Well, there was a</p> <p>17 questionnaire that began this discussion and there</p> <p>18 is also a questionnaire out there -- you can look at</p> <p>19 it on our website right now -- that is seeking</p> <p>20 information from Section 501(c)(4), (5) and (6)</p> <p>21 organizations and a big piece of that questionnaire</p> <p>22 relates to their political activities. So that is</p> <p style="text-align: right;">Page 324</p>
<p>1 Compliance Project" at the House Ways and Means</p> <p>2 Committee.</p> <p>3 A Correct.</p> <p>4 Q May 8, 2013.</p> <p>5 A Yes.</p> <p>6 Q And if you look and you'll see that you</p> <p>7 were the witness for this hearing; is that right?</p> <p>8 A Yes, that's correct.</p> <p>9 Q I'll represent to you that this is still</p> <p>10 available. We just pulled it off the internet. And</p> <p>11 I'll take you to page 9. The middle of the page</p> <p>12 you'll see that Mr. Crowley asks you some questions</p> <p>13 that are not really about the colleges anymore.</p> <p>14 A Correct.</p> <p>15 Q And so you'll see that he has a large</p> <p>16 chunk of testimony -- or I'm sorry, question in the</p> <p>17 middle of the page. You see the paragraph which --</p> <p>18 which begins "This hearing highlights"?</p> <p>19 A Yes.</p> <p>20 Q And he says, "This hearing highlights</p> <p>21 certain compliance problems in the tax-exempt sphere</p> <p>22 and I hope the IRS aggressively looks into these</p> <p style="text-align: right;">Page 323</p>	<p>1 our beginning."</p> <p>2 And that's where your testimony ended on</p> <p>3 that topic, right?</p> <p>4 A Correct.</p> <p>5 Q Now, you disclosed the self-declarer</p> <p>6 project there, didn't you?</p> <p>7 MS. BENITEZ: Objection. Vague.</p> <p>8 THE WITNESS: It sounds like I'm talking</p> <p>9 about the self-declarer project.</p> <p>10 BY MR. GREIM:</p> <p>11 Q And you didn't tell Representative Crowley</p> <p>12 about the matters that you were going -- that you</p> <p>13 disclosed at the ABA meeting two days later, did</p> <p>14 you?</p> <p>15 MS. BENITEZ: Objection. Vague.</p> <p>16 THE WITNESS: He asked me about the status</p> <p>17 of the IRS investigation into political</p> <p>18 not-for-profits. That was not having anything to do</p> <p>19 with the application process.</p> <p>20 BY MR. GREIM:</p> <p>21 Q So you didn't take his question as having</p> <p>22 to deal with what you disclosed at the ABA meeting</p> <p style="text-align: right;">Page 325</p>

<p>1 two days later?</p> <p>2 A No.</p> <p>3 Q Is that your testimony?</p> <p>4 A Yes.</p> <p>5 MR. SERGI: I will note this document was</p> <p>6 not produced to the government in discover -- in</p> <p>7 discovery or as a 26A.</p> <p>8 BY MR. GREIM:</p> <p>9 Q Is it your testimony that the</p> <p>10 organizations that we're talking about in this</p> <p>11 litigation here are not political not-for-profits?</p> <p>12 A I don't even know what that means.</p> <p>13 Q Well, Representative Crowley -- Crowley</p> <p>14 asked you about political not-for-profits, right?</p> <p>15 A He asked me about investigations.</p> <p>16 Q Investigations into political</p> <p>17 not-for-profits.</p> <p>18 A Correct.</p> <p>19 Q Right? And so it's your testimony that</p> <p>20 you don't consider what the IRS was doing</p> <p>21 investigations into political not-for-profits?</p> <p>22 A I don't believe processing applications</p> <p style="text-align: right;">Page 326</p>	<p>1 MR. SERGI: While she reads that, I will</p> <p>2 note for the record that while this was produced by</p> <p>3 Plaintiffs, a substantially similar copy was</p> <p>4 produced by the United States as</p> <p>5 USA_NorCAL_RFP0020958.</p> <p>6 (The witness examined the document.)</p> <p>7 THE WITNESS: Okay.</p> <p>8 BY MR. GREIM:</p> <p>9 Q And the answer to my question, yes?</p> <p>10 A It looks like my speech, yes.</p> <p>11 Q Let me take you to the fourth paragraph</p> <p>12 and you'll see that after talking about</p> <p>13 centralization, you pivot and you say, "However, in</p> <p>14 these cases, the way they did the centralization was</p> <p>15 not so fine. Instead of referring to the cases as</p> <p>16 advocacy cases, they actually use case names on this</p> <p>17 list. They use names like Tea Party or Patriots and</p> <p>18 they selected cases simply because the applications</p> <p>19 had those names in the title."</p> <p>20 Did I read that right?</p> <p>21 A You did.</p> <p>22 Q And by this time you had learned that</p> <p style="text-align: right;">Page 328</p>
<p>1 for determination letters is an investigation.</p> <p>2 Q You think that's what the rest of Congress</p> <p>3 who were there at the Ways and Means hearing</p> <p>4 understood that day?</p> <p>5 MS. BENITEZ: Objection. Calls for</p> <p>6 speculation.</p> <p>7 MR. HEAVNER: Objection. She can't --</p> <p>8 THE WITNESS: You'd have to ask them.</p> <p>9 MR. HEAVNER: Objection. Do not answer</p> <p>10 that question. You can't -- beyond the scope of the</p> <p>11 testimony authorization.</p> <p>12 (Lerner Deposition Exhibit No. 49 was</p> <p>13 marked for identification.)</p> <p>14 BY MR. GREIM:</p> <p>15 Q I'm going to hand you what we've marked as</p> <p>16 Exhibit 49. And you'll see here that Rick Hasen, or</p> <p>17 Hasen -- I'm not sure how you say his name, but I</p> <p>18 read a lot of his stuff -- posted on his blog the</p> <p>19 day after your comments, your response to the Tea</p> <p>20 Party question. And just take a second, and could</p> <p>21 you tell me that -- whether you recognize this as</p> <p>22 the statement that you made?</p> <p style="text-align: right;">Page 327</p>	<p>1 cases had been selected simply because the</p> <p>2 applications had those names in the title?</p> <p>3 A Correct.</p> <p>4 Q You say, "That was wrong. That was</p> <p>5 absolutely incorrect, insensitive and</p> <p>6 inappropriate."</p> <p>7 Did I read that right?</p> <p>8 A Yes.</p> <p>9 Q You still agree with that today, that that</p> <p>10 was wrong?</p> <p>11 A Yes.</p> <p>12 Q Do groups' names reflect their political</p> <p>13 viewpoint?</p> <p>14 MS. BENITEZ: Objection. Vague.</p> <p>15 THE WITNESS: I don't know what your</p> <p>16 question means.</p> <p>17 BY MR. GREIM:</p> <p>18 Q Let me ask you this. Were groups also</p> <p>19 selected because of their policy positions that they</p> <p>20 were espousing?</p> <p>21 A Not as far as I know.</p> <p>22 Q So those were not some of the selection</p> <p style="text-align: right;">Page 329</p>

<p>1 criteria, but the positions that the groups were 2 advocating? 3 A Actually, I'm thinking back to some of the 4 SCRs you showed me, and I think there were some 5 things like that on there. 6 Q Is that also wrong? 7 A That is incorrect. 8 Q Let's move down to the next paragraph. 9 You say -- 10 A Starting with? I'm sorry, I've lost the 11 paragraphs. 12 Q -- "The other thing." 13 A Okay. 14 Q "The other thing that happened was they 15 also in some cases, cases sat around for a while. 16 They also sent some letters out that were far too 17 broad, asking questions of these organizations that 18 weren't really necessary for the type of 19 application. In some cases you probably read that 20 they asked for contributor names. That's not 21 appropriate, not usual, there are some very limited 22 times when we might need that, but in most of these</p> <p style="text-align: right;">Page 330</p>	<p>1 advocacy cases? 2 A At what time? 3 Q May of 2013. 4 A Did I refuse to what? 5 Q Confirm that there were groups on the 6 other side of the political spectrum from the -- 7 from the Tea Party cases. 8 A I don't remember. 9 (Lerner Deposition Exhibit No. 50 was 10 marked for identification.) 11 BY MR. GREIM: 12 Q I'm showing you what we've marked as 13 Exhibit 50. And you'll see that this e-mail chain 14 begins with "The Washington Post" Editorial Board 15 contacting the IRS and the IRS is working on a 16 proposed answer. Ultimately Nikole Flax asks you a 17 question on May 10, 2013, 3:44 p.m. She says, "No, 18 the numbers are not even, but want to add the 19 following. Can you live with it?" And she's 20 referring back to the all capital language, which 21 you'll see on the -- under the IRS statement on the 22 back page.</p> <p style="text-align: right;">Page 332</p>
<p>1 cases where they were asked they didn't do it 2 correctly and they didn't do it with a higher level 3 of review. As I said, some of them sat around for 4 too long." 5 Did I read that right? 6 A You did. 7 Q You still agree with that? 8 A That's correct. 9 MS. BENITEZ: You need to pause to give 10 him an opportunity -- 11 BY MR. GREIM: 12 Q Did you tell the press at this time that 13 you first learned of the -- this issue through media 14 reports? 15 MS. BENITEZ: Objection. Vague. 16 THE WITNESS: I don't know. I remember 17 the speech. That's all I know. 18 BY MR. GREIM: 19 Q By the way, at this point, did you refuse 20 to confirm to your superiors that there were groups 21 on the other side of the political spectrum from the 22 Tea Parties and the groups that were part of the</p> <p style="text-align: right;">Page 331</p>	<p>1 A Let me read the whole statement. 2 Q Go ahead. 3 (The witness examined the document.) 4 THE WITNESS: Okay. 5 BY MR. GREIM: 6 Q And then your response on May 10th is, "I 7 can't confirm that there was anyone on the other 8 side of the political spectrum. I think that 9 sentence presumes we keep track of which side of the 10 aisle and/or falls. We don't. The one with names 11 used were only know because that have been very loud 12 in the press. I think that line is dangerous." 13 Did I read your statement correctly there? 14 A You did. 15 Q And then Flax presses you and says, "We 16 know the balance may be off, but we had been told 17 earlier that there are a few, and this is an 18 important point." Your response is, "It isn't the 19 balance I'm focused on. It's the good" -- "It's the 20 idea that we know. That sounds like we track it and 21 we don't. Doesn't look good if it looks like we 22 check to see what side of the aisle an org is on."</p> <p style="text-align: right;">Page 333</p>

<p>1 A Correct.</p> <p>2 Q Did I read that right?</p> <p>3 A You did.</p> <p>4 Q Do you know whether the IRS ultimately</p> <p>5 included the CAPS language in its statement?</p> <p>6 A I don't.</p> <p>7 Q Ms. Lerner, were you concerned about the</p> <p>8 increasing amount of money in political campaigns?</p> <p>9 MS. BENITEZ: Objection. Vague.</p> <p>10 THE WITNESS: When? Where? How?</p> <p>11 BY MR. GREIM:</p> <p>12 Q In two thousand -- after "Citizens</p> <p>13 United."</p> <p>14 MS. BENITEZ: Objection. Vague.</p> <p>15 THE WITNESS: I don't recall.</p> <p>16 (Lerner Deposition Exhibit No. 51 was</p> <p>17 marked for identification.)</p> <p>18 BY MR. GREIM:</p> <p>19 Q I'm going to show you a document we've</p> <p>20 marked as Exhibit 51. You'll see that -- well,</p> <p>21 first of all, who's Ruth Madrigal?</p> <p>22 A She is a woman who works in Treasury.</p> <p style="text-align: right;">Page 334</p>	<p>1 A Yes.</p> <p>2 Q And then your response is what?</p> <p>3 A "This is the case we were" -- "we were</p> <p>4 looking for."</p> <p>5 Q Why were you looking for this case?</p> <p>6 A Because if this was true, many of the</p> <p>7 issues that we had with our inventory might have</p> <p>8 been dealt with through the finding in this case,</p> <p>9 but these were not our organizations. They were FEC</p> <p>10 organizations.</p> <p>11 Q Did you think that Crossroads should have</p> <p>12 been handled by the FEC?</p> <p>13 A I didn't think about anything in</p> <p>14 particular.</p> <p>15 Q Did you hope the FEC would save the day on</p> <p>16 the issue of money and political campaigns?</p> <p>17 MS. BENITEZ: Objection. Vague. Calls</p> <p>18 for speculation.</p> <p>19 MR. HEAVNER: And objection. To the</p> <p>20 extent that that was part of the service, you may</p> <p>21 answer, but otherwise, do not.</p> <p>22 THE WITNESS: I'm not going to answer it.</p> <p style="text-align: right;">Page 336</p>
<p>1 Q And she was one of the contacts for the</p> <p>2 plan -- the work plan for the IRS that was published</p> <p>3 this year, correct?</p> <p>4 A Not exactly.</p> <p>5 Q Okay. What did I get wrong?</p> <p>6 A There is a guidance plan that's put out</p> <p>7 that is Treasury and Chief Counsel's guidance plan.</p> <p>8 Q So she's forwarding here to you and</p> <p>9 Counsel and Nan Marks information on a 4th Circuit</p> <p>10 case that upholds a major purpose test for political</p> <p>11 committees; is that right?</p> <p>12 A I don't know. I'd have to read it. Oh,</p> <p>13 it says that, but I don't know what this says.</p> <p>14 (The witness examined the document.)</p> <p>15 THE WITNESS: Okay.</p> <p>16 BY MR. GREIM:</p> <p>17 Q And then Ms. Madrigal says, "Don't know</p> <p>18 who in your organization is keeping tabs on (c)(4)s,</p> <p>19 but since we mentioned potentially addressing them</p> <p>20 off-plan in 2013, I've got my radar up and this</p> <p>21 seemed interesting."</p> <p>22 Did I read that right?</p> <p style="text-align: right;">Page 335</p>	<p>1 MR. GREIM: I -- we'll go a little</p> <p>2 further, but if we're going to block the witness'</p> <p>3 testimony based on a claim that none of this relates</p> <p>4 to the witness' duties, then I think we'll have an</p> <p>5 issue. But let's see if this -- if this continues.</p> <p>6 (Lerner Deposition Exhibit No. 52 was</p> <p>7 marked for identification.)</p> <p>8 BY MR. GREIM:</p> <p>9 Q I'm going to hand you what we've marked as</p> <p>10 Exhibit 52. And you see this is an e-mail from</p> <p>11 Sharon Light to you and Holly Paz, Tuesday, July 10,</p> <p>12 2012. And she's forwarding an article from NPR,</p> <p>13 saying, "Democrats Say Anonymous Donors Unfairly</p> <p>14 Influencing Senate Races."</p> <p>15 Did I read that part right?</p> <p>16 A Yes.</p> <p>17 Q And your response is, "Perhaps the FEC</p> <p>18 will save the day."</p> <p>19 Did I read that correctly?</p> <p>20 A Yes.</p> <p>21 Q Were you hoping that the FEC would step in</p> <p>22 and stop groups like Crossroads GPS from spending</p> <p style="text-align: right;">Page 337</p>

<p>1 money against Democrats?</p> <p>2 A No.</p> <p>3 Q How did you want the FEC to save the day?</p> <p>4 A I'm going to read the article.</p> <p>5 Q Go ahead.</p> <p>6 (The witness examined the document.)</p> <p>7 THE WITNESS: This is just a follow-on to</p> <p>8 the previous e-mail where the Court had determined</p> <p>9 that if an organization acted a certain way and its</p> <p>10 major purpose was political, it fell under the</p> <p>11 Federal Election Commission rather than the IRS,</p> <p>12 again, diminishing my inventory.</p> <p>13 BY MR. GREIM:</p> <p>14 Q Larry Noble was your former boss at the</p> <p>15 FEC, right?</p> <p>16 A He was.</p> <p>17 Q You see at the end of the article Mr.</p> <p>18 Noble says, "But it will have a chilling effect on</p> <p>19 these groups of billionaire-raised contributions</p> <p>20 because it will call into question whether or not</p> <p>21 they're really going to be able to keep their donors</p> <p>22 confidential"?</p> <p style="text-align: right;">Page 338</p>	<p>1 he says, "Those words are exactly the same ones I</p> <p>2 use to describe 'Citizens United.' It's absolutely</p> <p>3 unbelievable and a total disgrace that the Supreme</p> <p>4 Court has endorsed this concept. My take on this is</p> <p>5 that the right wing and five of the Supreme Court</p> <p>6 Justices have concluded the wealthy among us are</p> <p>7 entitled to decide what happens here." Then he goes</p> <p>8 on.</p> <p>9 And your response is, "We are witnessing</p> <p>10 the end of America. There has always been a</p> <p>11 struggle between the capitalistic ideals and the</p> <p>12 humanistic ideals. Religion has usually tempered</p> <p>13 the selfishness of capitalism, but the rabid</p> <p>14 hellfire piece of religion has hijacked the game and</p> <p>15 the end" -- "and in the end, we will all lose out.</p> <p>16 It's all tied together. Money can buy Congress and</p> <p>17 the presidency, so in turn money packs the Supreme</p> <p>18 Court and the Court backs the money. The 'old boys'</p> <p>19 still won" -- "win."</p> <p>20 Did I read that correctly?</p> <p>21 A Yeah.</p> <p>22 Q Did you believe that money influenced the</p> <p style="text-align: right;">Page 340</p>
<p>1 A Yes, I see that.</p> <p>2 Q I'm going to show you what we're marking</p> <p>3 as Exhibit 53.</p> <p>4 (Lerner Deposition Exhibit No. 53 was</p> <p>5 marked for identification.)</p> <p>6 BY MR. GREIM:</p> <p>7 Q You'll see this is an e-mail chain between</p> <p>8 you and [REDACTED] --</p> <p>9 A Yes.</p> <p>10 Q -- on June 1, 2012. Now, during this</p> <p>11 time, TIGTA has begun its -- its audit, correct?</p> <p>12 A I don't remember what the date was.</p> <p>13 Q We'll move on. You'll see that on June 1,</p> <p>14 2:19 p.m., [REDACTED] tells you, "Okay,</p> <p>15 speaking of regressive politics, does 'Citizens</p> <p>16 United' scare you as much as it scares me?" And</p> <p>17 your response shortly afterwards is, "'Citizens</p> <p>18 United' is by far the worst thing that has ever</p> <p>19 happened to this country. More on that later."</p> <p>20 Did I read that correctly?</p> <p>21 A You did.</p> <p>22 Q And then if you go to his response to you,</p> <p style="text-align: right;">Page 339</p>	<p>1 Supreme Court's "Citizens United" decision?</p> <p>2 A No.</p> <p>3 Q Did you believe that the Tea Party groups</p> <p>4 were agents in money coming into the campaign</p> <p>5 finance system?</p> <p>6 A No.</p> <p>7 Q What did you mean when you said that</p> <p>8 "Citizens United" -- "with 'Citizens United' we're</p> <p>9 witnessing the end of America"?</p> <p>10 A I think what I said in the e-mail is what</p> <p>11 I meant.</p> <p>12 Q Did you think that legislation -- that</p> <p>13 there should be a legislative fix to the Supreme</p> <p>14 Court's decision in "Citizens United"?</p> <p>15 A The Supreme Court made the decision. You</p> <p>16 can't do legislative fix to the Supreme Court.</p> <p>17 Q Do you think -- did you think that</p> <p>18 legislation should be passed to deal with the</p> <p>19 effects of a "Citizens United" case?</p> <p>20 MS. BENITEZ: Objection. Calls for</p> <p>21 opinion. This is a fact witness.</p> <p>22 THE WITNESS: I don't even remember the</p> <p style="text-align: right;">Page 341</p>

<p>1 question. I'm sorry.</p> <p>2 BY MR. GREIM:</p> <p>3 Q I'm going to show you what we're marking</p> <p>4 as Exhibit 54.</p> <p>5 (Lerner Deposition Exhibit No. 54 was</p> <p>6 marked for identification.)</p> <p>7 BY MR. GREIM:</p> <p>8 Q Who is Robert Stern?</p> <p>9 A He is the person that used to be the</p> <p>10 secretariat for the COGEL organization that we spoke</p> <p>11 about earlier, and I think he may be a professor as</p> <p>12 well.</p> <p>13 Q Do you know if he's affiliated with</p> <p>14 something called the Corporate Reform Coalition?</p> <p>15 A I wouldn't have known that without looking</p> <p>16 at this.</p> <p>17 Q Do you see that he sent you an e-mail on</p> <p>18 June 11, 2012 with a press release entitled</p> <p>19 "Post-Citizens United, Some States Shine More Light</p> <p>20 on Campaign Spending Than Others"?</p> <p>21 A Yes.</p> <p>22 Q Then he asks you for your opinion on what</p> <p style="text-align: right;">Page 342</p>	<p>1 Q I'm going to show you what we've marked as</p> <p>2 Exhibit 55. And you'll see here that Joseph Urban</p> <p>3 has sent another one of his e-mails out to the</p> <p>4 group, sending it to you, David Fish, Joseph Grant</p> <p>5 and Holly Paz and several others on February 13,</p> <p>6 2012. Subject, "Legislation Would Require Donor</p> <p>7 Disclosure By Politically Active Exempt</p> <p>8 Organizations."</p> <p>9 Do you see that?</p> <p>10 A Yes.</p> <p>11 Q And your response to this on that same day</p> <p>12 to the entire group is, "Wouldn't that be great?</p> <p>13 And I won't hold my breath."</p> <p>14 Did I read that correctly?</p> <p>15 A You did.</p> <p>16 Q Why did you think this would be great?</p> <p>17 A It would take care of my inventory, once</p> <p>18 again.</p> <p>19 Q So how would donor disclosure take care of</p> <p>20 your inventory?</p> <p>21 A A lot of the press around the (c)(4)s, in</p> <p>22 general (c)(4)s, had to do with the fact that</p> <p style="text-align: right;">Page 344</p>
<p>1 you think. You see that?</p> <p>2 A Yes.</p> <p>3 Q And your response is, "I like it. Very</p> <p>4 easy to find specific information as well as get the</p> <p>5 big picture. You done good. Now, if you could only</p> <p>6 fix the darn law."</p> <p>7 Did I read that correctly?</p> <p>8 A You did.</p> <p>9 Q What law did you want to see fixed?</p> <p>10 A It was a joke.</p> <p>11 Q Well, in fact you e-mail with your</p> <p>12 colleagues about legislation regarding disclosure of</p> <p>13 donors of tax-exempt organizations, didn't you?</p> <p>14 A Pardon?</p> <p>15 Q You e-mailed your colleagues regarding</p> <p>16 proposed laws for the disclosure of donors for</p> <p>17 tax-exempt organizations, didn't you?</p> <p>18 MS. BENITEZ: Objection. Lacks</p> <p>19 foundation.</p> <p>20 (Lerner Deposition Exhibit No. 55 was</p> <p>21 marked for identification.)</p> <p>22 BY MR. GREIM:</p> <p style="text-align: right;">Page 343</p>	<p>1 organizations were looking for (c)(4) status because</p> <p>2 if they filed as 527s, which were political</p> <p>3 committees, they would have to report all of their</p> <p>4 donors to the FEC, and that would be public, and</p> <p>5 that organizations may be going to (c)(4) status so</p> <p>6 that they didn't have to reveal their donors.</p> <p>7 If that were true and they had to reveal</p> <p>8 their donors, they would no longer be sending me</p> <p>9 lots of applications and I wouldn't have to be</p> <p>10 processing them. So it would take care of some of</p> <p>11 my inventory.</p> <p>12 Q It had nothing to do with your concern</p> <p>13 about money from tax-exempt organizations and</p> <p>14 politics?</p> <p>15 A In my job, that's not my -- in my purview,</p> <p>16 it is not my job as director of Exempt Organizations</p> <p>17 to have an opinion one way or the other about those</p> <p>18 things. My job is to follow the law and process the</p> <p>19 applications.</p> <p>20 Q Is it your testimony that you don't allow</p> <p>21 your political beliefs to interfere with your</p> <p>22 judgment?</p> <p style="text-align: right;">Page 345</p>

<p>1 A I think that's a very good statement of my 2 beliefs.</p> <p>3 Q Did you think "Citizens United" was not 4 just a bad thing for the country but also for the 5 IRS?</p> <p>6 A I don't recall.</p> <p>7 Q You don't recall having an opinion one way 8 or the other?</p> <p>9 A Are you asking me in my personal capacity?</p> <p>10 Q No. You said that the donor disclosure 11 issue mattered to you in your official capacity. 12 Now I'm asking you --</p> <p>13 A It did in the context of my inventory. 14 (Lerner Deposition Exhibit No. 56 was 15 marked for identification.)</p> <p>16 BY MR. GREIM:</p> <p>17 Q Okay. I'm going to hand you what we've 18 marked as Exhibit 56. Oops, you get one more of 19 those. And you'll see here, Ms. Lerner, that at the 20 bottom it's the same e-mail from Joseph Urban to the 21 same group, but this time you're sending it to 22 somebody different, to Jane S. Ley, L-e-y.</p> <p style="text-align: right;">Page 346</p>	<p>1 them and tell them -- try to convince them not to 2 include a recommendation in their report that 3 (c)(4)s disclose their donors.</p> <p>4 Q So you say, "It is unlikely to pass, but 5 we tried."</p> <p>6 What do you mean "we tried"?</p> <p>7 A We tried to convince the GRECO people that 8 it would not be appropriate to make donors of 9 (c)(4)s public, because not all of them were making 10 political contributions. They were contributing to 11 the organization. The organization might take some 12 political action, but the person who donated wasn't 13 necessarily connected to that action. So my job was 14 to explain to them the difference between a 15 political committee and a (c)(4) with regard to the 16 donors.</p> <p>17 Q So she responds, "Thanks for the 18 information, Lois. Yes, it certainly does hit the 19 GRECO recommendation. It will be interesting to see 20 what sort of traction it gets."</p> <p>21 And so is Ms. Ley telling you that this 22 disclosure law would comply with the GRECO</p> <p style="text-align: right;">Page 348</p>
<p>1 A Yes.</p> <p>2 Q Who is that?</p> <p>3 A At that time, she was the head of, I want 4 to say the Ethics. Is that the right name of the 5 agency? Government Ethics.</p> <p>6 Q So you tell Ms. Ley, "Looks like the U.S. 7 has met it's GRECO" -- G-R-E-C-O -- "requirement!" 8 exclamation point. "It is unlikely to pass, but we 9 tried."</p> <p>10 A Yes.</p> <p>11 Q What is the GRECO requirement?</p> <p>12 A I can't remember what GRECO stands for, 13 but it is an international organization of which the 14 United States is a member. Something about European 15 states. And they were reviewing transparency in 16 elections and they were reviewing transparency in 17 U.S. elections. And one of their complaints was 18 that (c)(4)s were not -- they felt that the United 19 States was very good in transparency in everything 20 except the (c)(4)s, that the (c)(4)s should have to 21 disclose their donors.</p> <p>22 And my job was to go and testify before</p> <p style="text-align: right;">Page 347</p>	<p>1 recommendation?</p> <p>2 MS. BENITEZ: Objection. Calls for 3 speculation.</p> <p>4 THE WITNESS: The GRECO recommendation did 5 say that we should require that the United States 6 should require (c)(4) donors to be disclosed, but 7 it's a recommendation, and the fact that a piece of 8 legislation had been put forward that would require 9 that met the requirements of responding to the GRECO 10 recommendation.</p> <p>11 BY MR. GREIM:</p> <p>12 Q And so your response to Ley in regarding 13 -- regarding what kind of traction it gets, your 14 response to her is, "None would be my prediction, 15 but hope I'm wrong."</p> <p>16 A Correct.</p> <p>17 Q Did I read that correctly? So you hope 18 that this legislation would pass?</p> <p>19 A Because it would help my inventory. 20 (Lerner Deposition Exhibit No. 57 was 21 marked for identification.)</p> <p>22 BY MR. GREIM:</p> <p style="text-align: right;">Page 349</p>

<p>1 Q I'm showing you what we've marked as</p> <p>2 Exhibit 57. And you'll see that Richard Daly is</p> <p>3 sending an e-mail to you and several others,</p> <p>4 including David Fish, Dawn Marx and Nanette Downing,</p> <p>5 Holly Paz forwarding a "New York Times" article from</p> <p>6 March 8, 2012 entitled "The IRS Does Its Job."</p> <p>7 He reports this as "Favorable New York</p> <p>8 Times editorial today about IRS work investigating</p> <p>9 (c)(4)s and urging an across the board look at these</p> <p>10 entities." And then you see Nancy Marks replies to</p> <p>11 all with a smiley face, and then you reply just to</p> <p>12 Nancy Marks later on March 8th with a comment "From</p> <p>13 the left" -- "liberal leftist media," and another</p> <p>14 smiley face.</p> <p>15 Did I read that right?</p> <p>16 A You did.</p> <p>17 Q Was the IRS happy to have major media</p> <p>18 encouraging it in its investigation of (c)(4)s?</p> <p>19 A The IRS was always happy to get a positive</p> <p>20 article in the media about it.</p> <p>21 Q Including its work investigating (c)(4)s,</p> <p>22 right?</p> <p style="text-align: right;">Page 350</p>	<p>1 disclosed to the public on the following exempt</p> <p>2 organization return. The organization is the</p> <p>3 Republican Governors Public Policy Committee."</p> <p>4 You see that?</p> <p>5 A Yes.</p> <p>6 Q And then you responded saying, "While this</p> <p>7 happens sometimes, this is not the best org it could</p> <p>8 have happened with. Sigh."</p> <p>9 A Yes.</p> <p>10 Q What did you mean by that?</p> <p>11 A Oftentimes -- in fact there was a whole</p> <p>12 TIGTA report on it. Oftentimes when the 990s were</p> <p>13 redacted, a Schedule B is -- not oftentimes,</p> <p>14 sometimes -- could be left on the -- left in the</p> <p>15 990. So when they were copied to the disks and</p> <p>16 given out to the public, or given to GuideStar and</p> <p>17 put up on their website, the information about the</p> <p>18 donors to an organization would be there.</p> <p>19 So we had a process for dealing with it,</p> <p>20 and what I was saying was, you know, a small unknown</p> <p>21 organization, it's going to be enough of a problem,</p> <p>22 buy anything that has either Republican or Democrat</p> <p style="text-align: right;">Page 352</p>
<p>1 A Any positive article.</p> <p>2 Q Did you believe that Republican or</p> <p>3 conservative groups complained more about IRS</p> <p>4 misconduct than their progressive counterparts?</p> <p>5 MS. BENITEZ: Objection. Vague.</p> <p>6 THE WITNESS: It depends on the context.</p> <p>7 (Lerner Deposition Exhibit No. 58 was</p> <p>8 marked for identification.)</p> <p>9 BY MR. GREIM:</p> <p>10 Q I'm going to show you what's marked as</p> <p>11 Exhibit 58.</p> <p>12 MR. SERGI: While he hands that out, I</p> <p>13 will object to that last exhibit as being a JW</p> <p>14 document not produced. I will note a copy of the</p> <p>15 article was produced at USA_NorCAL_RFP0018403, which</p> <p>16 is the case, I think.</p> <p>17 BY MR. GREIM:</p> <p>18 Q And you'll see that this is a -- someone</p> <p>19 named Connie Peek e-mailing a David Hamilton and</p> <p>20 then copying you and several others on March 13,</p> <p>21 2013, saying, "Hello. An individual contacted the</p> <p>22 IRS through TEGE and informed us a Schedule B was</p> <p style="text-align: right;">Page 351</p>	<p>1 in it, we're going to be hearing from the Hill about</p> <p>2 that.</p> <p>3 Q Did you believe that the Tea Party groups</p> <p>4 were itching for a constitutional challenge?</p> <p>5 A I don't --</p> <p>6 MR. SERGI: Objection. Vague.</p> <p>7 THE WITNESS: I don't remember.</p> <p>8 (Lerner Deposition Exhibit No. 59 was</p> <p>9 marked for identification.)</p> <p>10 BY MR. GREIM:</p> <p>11 Q I'm going to show you what we've marked as</p> <p>12 Exhibit 59. And you'll see that this e-mail chain</p> <p>13 begins with a March 29, 2013 e-mail from you to</p> <p>14 Nancy Marks, Holly Paz and David Fish.</p> <p>15 A Yes.</p> <p>16 Q And you're asking about the redaction</p> <p>17 process for proposed denials and how much</p> <p>18 information could become public if -- if there was a</p> <p>19 denial. You see that?</p> <p>20 A Yes. But I'm going to want to read the</p> <p>21 whole thing.</p> <p>22 Q Go ahead. Why don't you go ahead and do</p> <p style="text-align: right;">Page 353</p>

1 that.

2 (The witness examined the document.)

3 MS. BENITEZ: Eddie, while the witness is
4 doing that, by my count, I think you have just a few
5 minutes left, so I assume you're wrapping up?

6 MR. GREIM: Let's take a short break.

7 THE VIDEOGRAPHER: Going off the record.
8 The time is now 5:43 p.m.

9 (A brief recess was taken.)

10 THE VIDEOGRAPHER: We are back on the
11 record. The time is now 6:05 p.m.

12 BY MR. GREIM:

13 Q Ms. Lerner, during the break, did you have
14 a chance to look at Exhibit 59?

15 A I did very quickly, but I need to look at
16 it a little bit more.

17 Q Well --

18 A Oh, go ahead.

19 Q I'm going to just change my question.

20 A All right.

21 Q My point -- my question is simply this.
22 Is this an e-mail from you to Nancy Marks, Holly Paz

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1 Senate. If it had switched, it would be the same as
2 a Rep president." And you ask a question.

3 Did I read that correctly?

4 A I don't know where you are.

5 Q I was in --

6 A I'm looking. I'm looking. In the first
7 page or the second page?

8 Q First page.

9 A Okay.

10 Q Did I read that correctly?

11 A You did.

12 Q This is an e-mail exchange with [REDACTED]
13 [REDACTED] ?

14 A Yes.

15 (Lerner Deposition Exhibit No. 61 was
16 marked for identification.)

17 BY MR. GREIM:

18 Q I'm going to show you what we've marked as
19 Exhibit 61.

20 And who is [REDACTED] ?

21 A [REDACTED].

22 Q You'll see at the bottom of page 1, he

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1 and David Fish April 1, 2013?

2 A Looks like it.

3 Q And what you say to them is, "Sorry, these
4 guys are itching for a Constitutional challenge.
5 Not your father's EO."

6 A That's what it says.

7 Q I'm going to show you what we're marking
8 as Exhibit 60.

9 (Lerner Deposition Exhibit No. 60 was
10 marked for identification.)

11 BY MR. GREIM:

12 Q You'll see this is an e-mail chain from
13 someone named [REDACTED].

14 Who is that?

15 A [REDACTED].

16 Q And you'll see the exchange happens on
17 November 7, 2012.

18 A Yes.

19 Q In the middle you'll see [REDACTED]
20 says, "Democrats have a majority of the Senate and
21 Republicans have a majority in the House." Your
22 response is "Whoo-hoo. I was important to keep the

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1 says, "Well, you should hear the wacko wing of the
2 GOP," then he goes on. Your response is, "Great.
3 Maybe we are through if there are that many
4 assholes."

5 Did I read that correctly?

6 A You read it correctly.

7 Q And then he responds to you at the top.
8 You say, "So we don't need to worry about alien
9 terrorists. It's our own crazies that will take us
10 down."

11 Did I read that correctly?

12 A You did.

13 Q This is an e-mail exchange you have with
14 [REDACTED] ?

15 A It is.

16 (Lerner Deposition Exhibit No. 62 was
17 marked for identification.)

18 BY MR. GREIM:

19 Q I'm going to show you what we've marked as
20 Exhibit 62. You see this as an e-mail exchange you
21 had with [REDACTED] on November 7th and 8th,
22 2012?

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1 A Yes.
2 **Q And it's entitled, "Hooray for Obama"?**
3 A Yep.
4 **Q Do you recognize this as an e-mail**
5 **exchange you had with him?**
6 A I don't remember it.
7 **Q Well, let's look at what [REDACTED] says**
8 **then. He says, "I was right with you regarding" --**
9 **I'm looking at the second e-mail from the top. "I**
10 **was right with you regarding the radio. I've been**
11 **listening exclusively to NPR to and from work for**
12 **years, but lately I've found myself turning off the**
13 **radio with surprising frequency." I'm -- I'm sorry.**
14 **I have to withdraw that. Let me take you back to**
15 **his initial e-mail to you. It's the very bottom.**
16 **[REDACTED] says, "I was reasonably**
17 **certain Obama would get reelected. Still, it was a**
18 **relief when the results came in. Nice to see that**
19 **Citizens United did not carry the day. Also, I**
20 **believe Romney got a lot of bad advice regarding**
21 **playing up to the Tea Party." And he asks me --**
22 **asks you about your trip to London.**

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1 **You see that?**
2 A I do.
3 **Q Did you believe that the Tea Party played**
4 **a role in the 2012 election?**
5 MS. BENITEZ: Objection. Calls for
6 opinion. This is a fact witness.
7 BY MR. GREIM:
8 **Q In your role at the IRS at this time, were**
9 **you concerned about the role that the Tea Party**
10 **played in the 2012 election?**
11 MS. BENITEZ: Objection. Calls for
12 opinion. If it's in her personal capacity or her --
13 in her capacity --
14 MR. GREIM: I think the question spoke for
15 itself. I didn't ask about her personal capacity.
16 MS. BENITEZ: Okay. If you had an opinion
17 in your capacity as head of EO.
18 THE WITNESS: I'm sorry. Could you repeat
19 the question, because I lost --
20 BY MR. GREIM:
21 **Q Okay.**
22 A -- in the back and forth?

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1 **Q My question was, in your role at the IRS,**
2 **were you -- were you concerned about the role that**
3 **the Tea Party played in the 2012 election?**
4 A No.
5 (Lerner Deposition Exhibit No. 63 was
6 marked for identification.)
7 BY MR. GREIM:
8 **Q I'm going to show you what we've marked**
9 **now as Exhibit 63. You'll see this is an e-mail**
10 **exchange that you had with [REDACTED] on March 6,**
11 **2014. And at the bottom you are sending [REDACTED]**
12 **[REDACTED] a series of links about your appearance**
13 **before Congress where you took the 5th Amendment.**
14 A Hmm-hmm.
15 **Q Then you say, "They called me back to**
16 **testify on the IRS," quote "scandal, and I took the**
17 **5th again because they had been so evil and**
18 **dishonest in my lawyers' dealings with them."**
19 MR. HEAVNER: Objection. First, the dates
20 on this are beyond the testimony authorization, so
21 even commenting on the e-mail would be beyond the
22 testimony authorization.

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1 MR. GREIM: I'm just going to ask her to
2 authenticate it.
3 BY MR. GREIM:
4 **Q Is this an e-mail exchange you had with**
5 **[REDACTED] on March 6, 2014?**
6 MR. HEAVNER: It is okay to authenticate
7 it, but not to talk about it substantively.
8 THE WITNESS: I don't remember it.
9 BY MR. GREIM:
10 **Q I'll take you to the top. You tell [REDACTED]**
11 **[REDACTED] "Look, my view is that Lincoln was our**
12 **worst president and not our best."**
13 **(Telephone interruption.)**
14 THE WITNESS: Sorry. I thought that was
15 turned off. I'm still in the deposition. I thought
16 the phone was turned off. Talked to you later.
17 Sorry. That was [REDACTED]. [REDACTED] out of town.
18 BY MR. GREIM:
19 **Q You say, "Look, my view is that Lincoln**
20 **was our worst president and not our best. He should**
21 **have let the South go. We really do seem to have**
22 **two totally different mindsets," and then you go on.**

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1 **So is this an e-mail exchange you had with**
2 **██████████ on March 6, 2014?**
3 MS. BENITEZ: Objection. Asked and
4 answered.
5 THE WITNESS: I don't remember it.
6 BY MR. GREIM:
7 **Q Do you have any reason to doubt that this**
8 **is an e-mail exchange you had with ██████████ --**
9 **██████████ on March 6, 2014?**
10 A I don't remember it.
11 **Q Do you think it's not a true e-mail**
12 **exchange with ██████████?**
13 MS. BENITEZ: Objection. Asked and
14 answered.
15 THE WITNESS: I don't remember it.
16 BY MR. GREIM:
17 **Q Ms. Lerner, did you harbor an animus**
18 **against conservatives like the Tea Party groups?**
19 A No.
20 (Lerner Deposition Exhibit No. 64 was
21 marked for identification.)
22 BY MR. GREIM:

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1 **Q Okay. I'm going to show you what's marked**
2 **as Exhibit 64. And you'll see that this is a**
3 **forwarded e-mail from Mr. Streckfus -- I'm sorry.**
4 **It's an e-mail from you to Holly Paz and David Fish,**
5 **sending the weekly Paul Streckfus report. And your**
6 **question to them on January 24, 2013 is, "Has this**
7 **org actually come in? If so, do we have it in D.C.?**
8 **Need to be careful to make sure we are comfortable.**
9 **I'm not going to ABA because I'm not feeling so**
10 **great. Will be later in today."**
11 **And do you see that this is --**
12 A I'm not seeing that. I'm sorry. Where --
13 where is it?
14 **Q You'll have to go -- you'll have to go to**
15 **the very first e-mail above Mr. Streckfus'.**
16 A Okay.
17 **Q So you've asked several questions about**
18 **this group and then Holly Paz responds the next day.**
19 **I'm sorry, responds later on the 24th. It says,**
20 **"I'm not aware we have received this, but will**
21 **check. It's hard to have certainty without the**
22 **org's EIN." And then you recall what it is. You**

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1 **say, "I know this is the second article I've read**
2 **about this. You may want to look for the earlier**
3 **one. May say whether they intend to apply."**
4 **And then finally, Sharon Light explains**
5 **that this is -- this group is called Priorities USA.**
6 **It's an Obama organization that will also have a**
7 **D.C. office. And then do you see your response at**
8 **the very top saying, "Oh, maybe I can get the DC**
9 **office job."**
10 A That's what it says.
11 **Q Were you hoping to get a D.C. office job**
12 **with this organization?**
13 A No. It was a joke.
14 **Q Did you refer this organization for**
15 **examination?**
16 A I don't refer organizations for
17 examination. I would -- I personally don't refer
18 organizations for examination.
19 **Q Finally -- well, just need one more. I'm**
20 **going to show you what we've marked as Exhibit 65.**
21 **(Lerner Deposition Exhibit No. 65 was**
22 **marked for identification.)**

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1 BY MR. GREIM:
2 **Q Pardon me. Can I see one of those? I may**
3 **have made a mistake. Thank you.**
4 MS. BENITEZ: Here's the other one, Eddie.
5 THE WITNESS: Do you need this one back
6 too?
7 BY MR. GREIM:
8 **Q No, I don't. That's okay. Does anyone**
9 **have one with highlighting?**
10 A No.
11 **Q All right. Do you recall sitting down for**
12 **an interview with "Politico"?**
13 A Yes.
14 **Q This was in 2014?**
15 A Yes.
16 **Q And do you recall telling "Politico," "I**
17 **didn't do anything wrong" regarding the scandal?**
18 MR. HEAVNER: Objection. Because of the
19 timeframe, this is beyond the scope of the testimony
20 authorization, therefore, you should not answer that
21 question.
22 MR. SERGI: I'll also object that this has

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<p>1 not been previously produced as an exhibit. 2 MS. BENITEZ: And I'll also note that I 3 believe our time is up. 4 MR. GREIM: I'm just -- 5 MS. BENITEZ: I think we're at the seven 6 hours. 7 MR. GREIM: I'm just at the very end here. 8 MS. BENITEZ: I don't know what that 9 means, Eddie. 10 BY MR. GREIM: 11 Q This is -- this is -- this is about your 12 actions during -- 13 MS. BENITEZ: Mr. Greim. 14 BY MR. GREIM: 15 Q -- the timeframe -- 16 MS. BENITEZ: You've had seven hours. 17 MR. GREIM: I don't think we need to cut 18 off in the middle of a pending question that was 19 taken up with objections. 20 MS. BENITEZ: You can ask that question 21 and then we're done. You've had seven hours. Ask 22 your question.</p> <p style="text-align: right;">Page 366</p>	<p>1 of it -- corrected all of it and moved forward. 2 BY MR. GREIM: 3 Q Was there -- 4 MS. BENITEZ: I think we're now done with 5 your questioning, Mr. Greim. 6 MR. GREIM: Well, I object. The witness, 7 in the middle of questioning, answered a phone call. 8 But we'll -- we'll stop. 9 MS. BENITEZ: The witness turned off her 10 phone. You had seven hours. Those are the rules. 11 I don't make them, but I follow them. 12 MR. GREIM: Well, you cut off questioning. 13 Go ahead. 14 MS. BENITEZ: No, I did not. 15 MR. GREIM: You may have questions from 16 the IRS. 17 MS. BENITEZ: If you didn't plan 18 appropriately, that's on you. 19 MR. SERGI: Are we passing the witness? 20 MS. BENITEZ: Yes. 21 MR. GREIM: I think I'm being cut off. So 22 I'm not passing the witness, but --</p> <p style="text-align: right;">Page 368</p>
<p>1 BY MR. GREIM: 2 Q Well, I want to authenticate this 3 document. I want an answer to the question. 4 MS. BENITEZ: Ask your question. 5 MR. HEAVNER: The question that I advised 6 her not to answer? 7 MR. GREIM: This is about her conduct 8 during the timeframe -- 9 MR. HEAVNER: The response you -- I 10 understood your question to be there's an article 11 that's -- she was interviewed for an article and the 12 timeframe being beyond the scope of the testimony 13 authorization means that you cannot answer that 14 question. 15 BY MR. GREIM: 16 Q Did you do anything wrong in your handling 17 of the Tea Party groups? 18 MR. SERGI: Objection. Asked and 19 answered. 20 THE WITNESS: I'm sorry. I think we 21 talked about that. Took too much time. Used 22 incorrect terminology when I started. Correct all</p> <p style="text-align: right;">Page 367</p>	<p>1 MS. BENITEZ: You have reached your seven 2 hours which are allowed under the Federal Rules of 3 Civil Procedure. 4 MR. GREIM: You've said that several 5 times. I'm done. I can't talk anymore, so -- 6 MS. BENITEZ: Those are the rules. 7 EXAMINATION BY COUNSEL FOR THE UNITED STATES 8 AND FEDERAL DEFENDANTS 9 BY MR. SERGI: 10 Q Ms. Lerner, is it all right if we don't 11 look at each other? That's okay? 12 A No, I like looking at you. 13 Q You can hear me? 14 A Go ahead. 15 Q I don't want you to move, but I want to 16 get you out of here. So first, before I start 17 asking actual questions, I want to make a 18 clarification for the record, which is Exhibit 33 19 was being used. You don't have to turn to it. It 20 has redactions on the last page of the document, and 21 I know there was an issue of mandamus and as a 22 result there were no redactions. This was produced</p> <p style="text-align: right;">Page 369</p>

<p>1 -- the version you used was produced prior to the</p> <p>2 mandamus opinion. It was also produced un-redacted</p> <p>3 as USA_NorCAL_RFP39229. I won't ask you any</p> <p>4 questions about it because I don't believe the</p> <p>5 redactions were a part of the questioning. Okay.</p> <p>6 Now, if you could take a look at Exhibit</p> <p>7 16. And you were asked about this on direct.</p> <p>8 MS. BENITEZ: She's got --</p> <p>9 THE WITNESS: I have it.</p> <p>10 BY MR. SERGI:</p> <p>11 Q You see the reference there -- well,</p> <p>12 actually, in general this -- this e-mail is talking</p> <p>13 about Tea Party cases?</p> <p>14 A Yes.</p> <p>15 Q Okay. Is that a reference to specific</p> <p>16 organizations, or is that a shorthand for the -- I'm</p> <p>17 sorry.</p> <p>18 What does the term "Tea Party cases" mean</p> <p>19 --</p> <p>20 MR. GREIM: Objection. Vague.</p> <p>21 BY MR. SERGI:</p> <p>22 Q -- in the context of these e-mails?</p> <p style="text-align: right;">Page 370</p>	<p>1 marked for identification.)</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. SERGI:</p> <p>4 Q Okay. You -- there was --</p> <p>5 MR. SERGI: I'm sorry. Did everybody get</p> <p>6 their copies?</p> <p>7 THE WITNESS: Oh, I'm sorry. Oh, did I --</p> <p>8 am I supposed to pass them on?</p> <p>9 BY MR. SERGI:</p> <p>10 Q Oh, yeah, it's exactly the reverse of what</p> <p>11 it was before.</p> <p>12 THE WITNESS: Sorry, guys. That's a --</p> <p>13 MS. BENITEZ: Hold on. Hold on.</p> <p>14 THE WITNESS: Go ahead.</p> <p>15 MR. SERGI: I apologize. We just had</p> <p>16 these copied here.</p> <p>17 MS. BENITEZ: There's just one here.</p> <p>18 MR. SERGI: There's only one copy?</p> <p>19 MS. BENITEZ: There's only one here. This</p> <p>20 is just one document, as far as I can tell.</p> <p>21 MS. BECKERMAN: Then we need to make some</p> <p>22 copies.</p> <p style="text-align: right;">Page 372</p>
<p>1 MR. GREIM: Objection. Vague.</p> <p>2 THE WITNESS: Very early on it would have</p> <p>3 meant cases that had the name "Tea Party" in them,</p> <p>4 but as time went by and we got more (c)(4) advocacy</p> <p>5 cases, the staff that was working them shorthanded</p> <p>6 it and referred to all of them as Tea Party cases.</p> <p>7 BY MR. SERGI:</p> <p>8 Q Okay.</p> <p>9 MR. GREIM: Objection. Non-responsive</p> <p>10 also.</p> <p>11 MR. SERGI: You're objecting to the</p> <p>12 testimony? Mr. Greim, is that an objection to the</p> <p>13 testimony?</p> <p>14 MR. GREIM: Objection that the testimony</p> <p>15 did not answer the question.</p> <p>16 BY MR. SERGI:</p> <p>17 Q If you could take a look at Exhibit 15.</p> <p>18 A 15?</p> <p>19 Q 1-5. It's the one right before it. I'm</p> <p>20 also going to hand you what has been marked as</p> <p>21 Exhibit 15A.</p> <p>22 (Lerner Deposition Exhibit No. 15A was</p> <p style="text-align: right;">Page 371</p>	<p>1 MR. SERGI: Oh, well never mind then. You</p> <p>2 know what, I'll ask my other questions while Laura</p> <p>3 goes and makes copies of these. Just these two.</p> <p>4 MS. BENITEZ: Catherine.</p> <p>5 MS. BECKERMAN: These copies.</p> <p>6 MR. SERGI: This is everything. Oh, you</p> <p>7 think these are all crooked? I'm sorry.</p> <p>8 MS. BECKERMAN: This.</p> <p>9 MR. SERGI: This will count against my</p> <p>10 seven hours. I'm sorry.</p> <p>11 MS. BENITEZ: We're not going to be here</p> <p>12 seven hours, I guarantee that.</p> <p>13 MS. BECKERMAN: So this is 47A, these two</p> <p>14 documents together, and they are definitely file</p> <p>15 copies of it.</p> <p>16 MR. SERGI: Okay.</p> <p>17 MS. BECKERMAN: One, two, three, four,</p> <p>18 five.</p> <p>19 MR. SERGI: I apologize.</p> <p>20 MS. BECKERMAN: This one, I thought it was</p> <p>21 just the one here.</p> <p>22 MR. SERGI: I was not coached well enough.</p> <p style="text-align: right;">Page 373</p>

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<p>1 So that's 47A. We're going to do that next.</p> <p>2 THE WITNESS: This is 15, which everybody</p> <p>3 has.</p> <p>4 MR. SERGI: So --</p> <p>5 THE WITNESS: But he wants me to look at</p> <p>6 these.</p> <p>7 MS. BENITEZ: No, just look at this one.</p> <p>8 THE WITNESS: Oh, we're not doing that.</p> <p>9 Okay.</p> <p>10 BY MR. SERGI:</p> <p>11 Q So while Laura figures out 15, I will now</p> <p>12 turn to Exhibit 47, which you were asked about. And</p> <p>13 so if you can look at Exhibit 47 first.</p> <p>14 MS. BENITEZ: Here's another copy.</p> <p>15 MR. HEAVNER: Well, actually one of those</p> <p>16 was mine.</p> <p>17 MS. BENITEZ: Oh, I'm sorry. Okay, I need</p> <p>18 that one back.</p> <p>19 MR. GREIM: Yeah, because I've actually</p> <p>20 got two copies.</p> <p>21 MR. SERGI: I think that's fine. We made</p> <p>22 lots.</p> <p>Page 374</p>	<p>1 A I believe so, yes.</p> <p>2 Q Okay. And during that testimony, you had</p> <p>3 mentioned that you actually didn't think this</p> <p>4 referred to your speech, but it actually referred to</p> <p>5 the TIGTA response.</p> <p>6 Do you recall that?</p> <p>7 A Yes.</p> <p>8 Q Okay. I have produced 47A. What 47 is is</p> <p>9 apparently an image production of that document.</p> <p>10 47A is the actual native format production with an</p> <p>11 attachment of the same document.</p> <p>12 So my question to you is, does this -- if</p> <p>13 you look at the document 47A as it has been</p> <p>14 produced, does this reflect -- refresh your</p> <p>15 recollection as to what this document -- what this</p> <p>16 Exhibit 47A refers to?</p> <p>17 A Yes.</p> <p>18 Q And what is this e-mail referring to?</p> <p>19 A The draft TIGTA response.</p> <p>20 Q Thank you. You can put that aside. I</p> <p>21 will take these slightly out of order. If you could</p> <p>22 -- while we wait for that other document, if you</p> <p>Page 376</p>
<p>1 MS. BENITEZ: Well, you may want to give</p> <p>2 one to your co-counsel.</p> <p>3 MR. GREIM: Sure. First we'll get copies.</p> <p>4 MR. SERGI: When I'm ready, you're ready.</p> <p>5 BY MR. SERGI:</p> <p>6 Q I'm ready when you're ready, Ms. Lerner.</p> <p>7 MS. BENITEZ: Go ahead. This is 47.</p> <p>8 THE WITNESS: What is this then? They go</p> <p>9 together. Okay. All right.</p> <p>10 (Lerner Deposition Exhibit 47A was marked</p> <p>11 for identification.)</p> <p>12 BY MR. SERGI:</p> <p>13 Q So during your deposition you were shown</p> <p>14 Exhibit 47.</p> <p>15 A Yes.</p> <p>16 Q What I have is -- as you -- I'm sorry, do</p> <p>17 you remember testifying about this? It's the one</p> <p>18 call -- it's an e-mail called "Speech."</p> <p>19 A One second. Oh, it's called "Speech."</p> <p>20 Yes, I do remember that one.</p> <p>21 Q Okay. So you recall your testimony on</p> <p>22 this document?</p> <p>Page 375</p>	<p>1 could take a look at Exhibit 50, which was handed to</p> <p>2 you previously by Mr. Greim.</p> <p>3 A Yes.</p> <p>4 Q Okay. Do you see the first e-mail on the</p> <p>5 page? It says, "Doesn't look good if it looks like</p> <p>6 we checked to see what side of the aisle an org is</p> <p>7 on."</p> <p>8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q What does that statement mean?</p> <p>11 A The IRS doesn't keep track of whether</p> <p>12 organizations are liberal or conservative and it</p> <p>13 would be improper if we did, so it's -- doesn't look</p> <p>14 good to say that in a response to a "Washington</p> <p>15 Post" article.</p> <p>16 Q And why would it be improper?</p> <p>17 A Because we're supposed to treat all</p> <p>18 taxpayers alike regardless of race, creed, national</p> <p>19 origin, political affiliation.</p> <p>20 Q Could you now turn -- you asked about a</p> <p>21 series of documents at the end, and so I just want</p> <p>22 to run through them really quick. If you could turn</p> <p>Page 377</p>

1 to Exhibit 60. Yes. This one is an e-mail -- is
2 that 60?
3 A No, that's 61.
4 Q Oh.
5 A Did you want 60?
6 Q I just want to see whether -- oh, I'm
7 sorry.
8 This was to [REDACTED],
9 correct?
10 A Yes.
11 Q Okay. What was [REDACTED] connection
12 to the IRS at the time of this e-mail?
13 A [REDACTED] worked there.
14 Q Okay. So is this a personal e-mail?
15 A It is a personal e-mail.
16 Q Okay. If you could look at Exhibit 61.
17 And I believe this was [REDACTED]?
18 A Yes.
19 Q And I'll be very careful, because I
20 believe [REDACTED]
21 [REDACTED], but at the time of this e-mail, what was
22 [REDACTED] at the IRS?

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1 A [REDACTED] had none.
2 Q So is this a personal opinion?
3 A It is a personal e-mail.
4 Q Okay. Now, you were also shown Exhibit
5 53, 62, and 63, and I won't -- I don't think I have
6 to -- I won't -- you don't have to look at them, but
7 I'll represent to you they were the e-mails to [REDACTED]
8 [REDACTED].
9 A Correct.
10 Q Who is [REDACTED]?
11 A [REDACTED]
12 [REDACTED].
13 Q And what was [REDACTED] relationship to the IRS?
14 A [REDACTED] has none.
15 Q Okay. And so is this -- were those
16 e-mails containing personal viewpoints?
17 A They were personal.
18 Q Okay. So now during your time as the
19 director of EO, did you ever allow your personal
20 viewpoints to interfere with your job?
21 A No.
22 MR. GREIM: Objection. Calls for opinion.

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1 BY MR. SERGI:
2 Q You can answer the question.
3 A No, I did not.
4 Q Okay. During your time as director of EO,
5 did you ever take an official action with respect to
6 a taxpayer because of bias towards that entity?
7 MR. GREIM: Objection. Calls for an
8 opinion.
9 THE WITNESS: No, I did not.
10 BY MR. SERGI:
11 Q Did you ever direct any other employees to
12 take official action with respect to a taxpayer
13 entity because of bias?
14 MR. GREIM: Same objection.
15 THE WITNESS: No, I did not.
16 BY MR. SERGI:
17 Q If you personally disagreed with a
18 political position espoused by a taxpayer entity,
19 did that affect the way you as director of EO
20 treated that taxpayer entity?
21 MR. GREIM: Same objection.
22 THE WITNESS: Absolutely not.

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1 BY MR. SERGI:
2 Q Did the fact that you -- if you disagreed
3 with a political position espoused by a taxpayer
4 entity ever affect the way that you as director of
5 EO instructed other IRS employees to treat that
6 taxpayer entity?
7 MR. GREIM: Same objection.
8 THE WITNESS: No, I did not.
9 BY MR. SERGI:
10 Q Now, where I started. So you previously
11 saw Exhibit 15.
12 MS. BENITEZ: Do you need one of these?
13 MR. SERGI: I need one. I'm sorry.
14 THE WITNESS: And they need them.
15 MS. BENITEZ: Yeah, I know, but I'm just
16 making sure.
17 BY MR. SERGI:
18 Q And so if you could turn back --
19 A He wants to get back where we were.
20 Q Yes. If you could turn back to Exhibit
21 15. And let me know when you're there.
22 A I am.

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<p>1 Q Okay. So Exhibit 15 was the document, I 2 don't recall, you were -- you were saying, well, I 3 would need to see the Significant Case Report. 4 Do you recall that, the attachment? 5 MR. GREIM: Objection. Mischaracterizes 6 the witness' earlier testimony. 7 BY MR. SERGI: 8 Q I'm sorry. Let me refresh -- let me 9 rephrase it. 10 You asked several times for Mr. Greim to 11 provide you the attachment, to which he refused, 12 correct? 13 MR. GREIM: Also mischaracterizes what 14 happened. 15 BY MR. SERGI: 16 Q I have produced the attachment to this 17 document, which is what we have marked as 15A. 18 Do you see where it's making the reference 19 on line 1 to the American Junto and Albuquerque Tea 20 Party, Inc.; do you see that? 21 A I do. 22 Q Does this refresh your recollection as to</p> <p style="text-align: right;">Page 382</p>	<p>1 recollection as to what the "Tea Party matter" 2 meant, what does that term mean in this e-mail? 3 A It means what I thought it meant. It 4 refers to number one, on the open SCRs, which is a 5 particular case versus Tea Party organizations in 6 general. 7 Q And what did you mean in this document 8 where you said "Tea Party matter very dangerous." 9 What did you mean by that now that you've had the 10 benefit of the attachment? 11 A Meant the same thing that I said before, 12 that the case needed to be handled correctly because 13 it was very likely to go to court if it were denied, 14 and even if it were approved, we needed to make sure 15 that we were applying the law correctly. So we 16 needed to dot all of our I's and cross our T's and 17 make sure that we had Counsel onboard with it. 18 Q So -- so my question is, dotting the I's 19 and crossing the T's, you meant in general 20 regardless of what the result was? 21 A Yes. Doing the case correctly is what I 22 meant.</p> <p style="text-align: right;">Page 384</p>
<p>1 what you meant by "Tea Party" or "Tea Party matter"? 2 A Yes, it does. 3 Q You also testified that it was important 4 to dot all your I's and cross all your T's when you 5 talked about this document. 6 Did you do that with a particular outcome 7 in mind? 8 MR. GREIM: Objection. Vague. 9 BY MR. SERGI: 10 Q What did you mean by that statement? 11 A I'm a little bit confused about your 12 question, because you're talking about when I talked 13 about this document. Which document are you talking 14 about? 15 Q Oh, I'm sorry. When you talked about 15 16 and you were shown to -- Exhibit 15. 17 A "The Tea Party matter was very dangerous?" 18 Q Right. You say in that e-mail -- oh, you 19 know what, I didn't follow up with a follow-up 20 question because I knew the answer in my head. I'm 21 sorry. Let me take a step back. 22 When I asked if it refreshed your</p> <p style="text-align: right;">Page 383</p>	<p>1 Q Okay. Thank you. And when you mentioned 2 the vehicle to go to court, was that with a 3 particular result from the Court in mind? 4 MR. GREIM: Objection. Vague. 5 THE WITNESS: No. Whenever we're going to 6 court on a case, we want to make sure that we have 7 done everything we can to have the best case 8 possible because if you don't have a good record, 9 the results can often be -- put you in a more 10 difficult position or the Court can't make the 11 appropriate determination because the record isn't 12 very well -- what's the word -- laid out. 13 BY MR. SERGI: 14 Q If you could take a look at Exhibit 43. 15 And if you could turn to the second page of this 16 exhibit, and do you see where you're telling Troy -- 17 or conveying to Troy Patterson that you're not 18 onboard with saying the IRS was politically 19 motivated? 20 A The second page of the -- 21 Q I'm sorry, it's the third page. I 22 apologize.</p> <p style="text-align: right;">Page 385</p>

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<p>1 A Yes.</p> <p>2 Q Okay. And you're saying you're not</p> <p>3 onboard with saying the IRS was politically</p> <p>4 motivated in its action.</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q Okay. Why were you not onboard with that</p> <p>8 conclusion?</p> <p>9 A Because I don't think the IRS was</p> <p>10 politically motivated in its actions on the (c)(4)</p> <p>11 cases.</p> <p>12 Q And what do you base that conclusion on?</p> <p>13 MR. GREIM: Objection. Lack of</p> <p>14 foundation. Calls for an opinion.</p> <p>15 BY MR. SERGI:</p> <p>16 Q You may answer.</p> <p>17 A I forgot the question. I'm sorry.</p> <p>18 Q What did you base your conclusion on?</p> <p>19 MR. GREIM: Same objections.</p> <p>20 THE WITNESS: I had been involved in the</p> <p>21 development of these cases, in the delay of the</p> <p>22 cases, in the development of the guide sheet. I</p> <p style="text-align: right;">Page 386</p>	<p>1 -- did you receive -- sorry -- while you were at the</p> <p>2 Service. I'm hoping you don't still have 6103</p> <p>3 training.</p> <p>4 A No. Well, I was given a sort of general</p> <p>5 overview when I first got there, and then, as I</p> <p>6 said, on a yearly basis, we have computerized</p> <p>7 training that we are required to complete.</p> <p>8 Q Okay. Now, on your direct -- let me just</p> <p>9 clarify something. You mentioned you may have</p> <p>10 examined one or two applications, but then in the</p> <p>11 follow-up questions it appeared that the</p> <p>12 conversation changed to the term "application"</p> <p>13 files.</p> <p>14 And so I just wanted to clarify, you think</p> <p>15 you may have seen one or two applications or one or</p> <p>16 two application files?</p> <p>17 A I don't believe I saw any application,</p> <p>18 full files. I think I just saw pieces of</p> <p>19 applications.</p> <p>20 Q So at the time you reviewed that</p> <p>21 information, do you believe it was okay for you to</p> <p>22 look at it?</p> <p style="text-align: right;">Page 388</p>
<p>1 knew what the areas were that had delayed the cases</p> <p>2 and they had nothing to do with political bias or</p> <p>3 political motivation.</p> <p>4 BY MR. SERGI:</p> <p>5 Q And related to that, during your direct</p> <p>6 you told Mr. Greim that it didn't concern you</p> <p>7 whether the applicants were Tea Parties or not.</p> <p>8 What did you mean by that?</p> <p>9 A Whoever the applicants are is not of my</p> <p>10 concern. The concern is that my staff were</p> <p>11 correctly analyzing and processing cases. That was</p> <p>12 my job.</p> <p>13 Q Let me just make sure before I do one last</p> <p>14 topic that I didn't miss anything. I just have one</p> <p>15 more quick topic and that is, are you familiar with</p> <p>16 Section 6103?</p> <p>17 A Yes.</p> <p>18 Q How are you familiar with it?</p> <p>19 A Everyone in the IRS is trained on 6103 on</p> <p>20 a yearly basis and there are signs everywhere and</p> <p>21 we're very well aware of 6103 rules.</p> <p>22 Q And what kind of training do you receive</p> <p style="text-align: right;">Page 387</p>	<p>1 MR. GREIM: Objection. Calls for opinion</p> <p>2 and a legal conclusion.</p> <p>3 BY MR. SERGI:</p> <p>4 Q You can answer.</p> <p>5 A Yes, I believe it was appropriate for me</p> <p>6 to look at it.</p> <p>7 Q And why is that?</p> <p>8 MR. GREIM: Same objection.</p> <p>9 THE WITNESS: Because under 6103, you</p> <p>10 cannot look at things that you have no need to look</p> <p>11 at. I was the director. I was making determination</p> <p>12 -- excuse me, that's a bad word. I was making</p> <p>13 decisions and providing advice on my -- to my staff</p> <p>14 on how to proceed, and so I did have a need to know</p> <p>15 what was going on.</p> <p>16 BY MR. SERGI:</p> <p>17 Q Okay. And I realize I lied. I have one</p> <p>18 more question. Page 64 -- I mean, Exhibit 64. Oh,</p> <p>19 I'm sorry. Why -- I should clarify that just</p> <p>20 because I realize -- you said "determinations" is a</p> <p>21 bad word. Why did you say that?</p> <p>22 A Because I didn't want it to get confused</p> <p style="text-align: right;">Page 389</p>

1 with the decision of whether an organization's
2 application would be approved. That is called the
3 determinations process, so I was trying to clarify
4 that's not what I meant.

5 **Q Okay. So you were avoiding ambiguity?**

6 A Yes.

7 **Q So Exhibit 64, do you recall this? It**
8 **says, "Maybe I can get a DC office job."**

9 A Yes.

10 **Q And you said that's a joke?**

11 A Yeah, it's a joke.

12 **Q Can you explain that joke.**

13 A Well, first of all, the reason I was
14 asking questions about whether we had an
15 application, because when we looked at the -- the
16 articles, it did not appear to any of us that this
17 organization would probably qualify and be approved.

18 **Q Okay. Let me just confirm. I should**
19 **probably ask, you mentioned every year there was**
20 **6103 training in general?**

21 A Yes.

22 **Q Did you take that training?**

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1 **Q -- earlier today. And these were the two**
2 **test cases, correct?**

3 A Correct. Well, I don't know. I don't
4 know. I take that back. I don't know if those were
5 the test cases.

6 **Q Did you know at that time?**

7 A No, I don't think I did.

8 **Q All right. You'll see then under "Status**
9 **and Next action," it says, "Coordinating with Cincy**
10 **as to helping to develop their cases," doesn't it?**

11 A Yes.

12 **Q That's in the same row as number one,**
13 **American Junto and Albuquerque Tea Party, Inc.,**
14 **correct?**

15 A Correct.

16 **Q And Albuquerque Tea Party and American**
17 **Junto are the cases that were being developed for**
18 **purposes of coming up with guidance for the Cincy**
19 **cases, correct?**

20 MS. BENITEZ: Objection. Asked and
21 answered.

22 THE WITNESS: If you recall, there were

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1 A Yes. You were required to, and believe
2 me, they kept track and they were hounding you and
3 hounding you if you hadn't done it. So yes, I did.

4 **Q Well in that case, I -- well, I guess I**
5 **don't pass the witness. Thank you for your time.**

6 **FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFFS**

7 BY MR. GREIM:

8 **Q I've got a redirect on one question. On**
9 **Exhibit -- this is 15A we called it.**

10 MR. SERGI: 15A.

11 BY MR. GREIM:

12 **Q I can ask you to take a look at 15A, Ms.**
13 **Lerner.**

14 A Yes.

15 **Q And so you'll see in the upper left-hand**
16 **corner, "American Junto" and "Albuquerque Tea Party,**
17 **Inc."?**

18 A Yes.

19 **Q Those are the same two groups we saw in**
20 **some of the other SCRs around this same time period**

21 --

22 A Possibly, yes.

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1 more than two cases that were developed. There were
2 some that were developed and then dropped and others
3 that took their places, and I don't know where this
4 fell into.

5 BY MR. GREIM:

6 **Q American Junto took the place of Prescott**
7 **Tea Party, didn't it?**

8 A I don't know.

9 **Q Did you know at the time?**

10 A No.

11 **Q How do you know you didn't know?**

12 A Because I don't --

13 MS. BENITEZ: Objection. Vague.

14 THE WITNESS: I don't think I knew the
15 names of the cases.

16 BY MR. GREIM:

17 **Q Well, you just testified that when you**
18 **said "matter" you meant these two cases, correct?**

19 A May I see Exhibit 15, please.

20 MS. BENITEZ: Answer the question.

21 THE WITNESS: I'm looking for something
22 totally different. I'm sorry. What was the

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<p>1 question? When I said what?</p> <p>2 BY MR. GREIM:</p> <p>3 Q Well, let me -- let me just ask you. If</p> <p>4 you go back to Exhibit 15, Roman Numeral -- or</p> <p>5 letter -- number one in your response lines up with</p> <p>6 letter one in the SCR report, correct?</p> <p>7 MS. BENITEZ: Objection. Vague.</p> <p>8 THE WITNESS: Can you say that in a</p> <p>9 different way, please.</p> <p>10 BY MR. GREIM:</p> <p>11 Q Okay. On the SCR report, the Tea Party</p> <p>12 groups are listed as number one, correct?</p> <p>13 A Correct.</p> <p>14 Q And in your e-mail, the Tea Party groups</p> <p>15 are listed as number one, correct?</p> <p>16 A Correct.</p> <p>17 Q And in number one in your e-mail, you say</p> <p>18 "Tea Party matter very dangerous," and then you go</p> <p>19 on to talk about "Cincy should probably not have</p> <p>20 these cases," correct?</p> <p>21 A Yes.</p> <p>22 Q And then if you look at the SCR, under</p> <p style="text-align: right;">Page 394</p>	<p>1 videotaped deposition of Lois Lerner. This is disk</p> <p>2 four of four. Going off the record. The time is</p> <p>3 now 6:42 p.m.</p> <p>4 (Whereupon, at 6:42 p.m., the deposition</p> <p>5 was adjourned.)</p> <p>6 (Signature not waived.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 396</p>
<p>1 number one it mentions American Junto and</p> <p>2 Albuquerque Tea Party, and under "Status" --</p> <p>3 "Status/Next" -- "Next Action," it says</p> <p>4 "coordinating with Cincy as to helping to develop</p> <p>5 their cases," correct?</p> <p>6 A Yes.</p> <p>7 Q No more questions.</p> <p>8 MS. BENITEZ: And I'd like to put on the</p> <p>9 record that we designate this entire transcript, per</p> <p>10 the Court's order, as confidential and attorney's</p> <p>11 eyes only, and the witness will read and sign.</p> <p>12 Thank you.</p> <p>13 MR. SERGI: And please send the transcript</p> <p>14 to Ms. Benitez.</p> <p>15 MR. GREIM: And I'll just --</p> <p>16 THE COURT REPORTER: I'm sorry?</p> <p>17 MR. SERGI: Can you send the transcript to</p> <p>18 her as opposed to us.</p> <p>19 MR. GREIM: I'll just note our continuing</p> <p>20 objection to the confidential designation of this</p> <p>21 transcript.</p> <p>22 THE VIDEOGRAPHER: This concludes today's</p> <p style="text-align: right;">Page 395</p>	<p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, JENNIFER M. O'CONNOR, the officer before</p> <p>3 whom the foregoing deposition was taken, do hereby</p> <p>4 certify that the foregoing witness whose testimony</p> <p>5 appears in the foregoing deposition was duly sworn</p> <p>6 by me; that the testimony of said witness was</p> <p>7 recorded by me and thereafter reduced to typewriting</p> <p>8 by me; that said transcript is a true record of the</p> <p>9 testimony given by said witness; that I am neither</p> <p>10 Counsel for, related to, nor employed by any of the</p> <p>11 parties to the action in which this proceeding was</p> <p>12 called; and, furthermore, that I am not a relative</p> <p>13 or employee of any attorney or Counsel employed by</p> <p>14 the parties hereto, nor financially or otherwise</p> <p>15 interested in the outcome of this action.</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 Jennifer M. O'Connor</p> <p>20 Notary Public in and for the</p> <p>21 District of Columbia</p> <p>22 My Commission Expires on February 14, 2020</p> <p>(Review and signature of the transcript was requested.)</p> <p style="text-align: right;">Page 397</p>