

June 17, 2014

John Fund introduces today focus; Lois Lerner's missing emails.

Who knew that the Obama administration had a penchant for black humor? Earlier this year, in February, President Obama told Bill O'Reilly during an interview on Fox News that there was "not even a smidgen of corruption" in the IRS scandal involving the targeting of conservative nonprofit groups. In July 2103, Treasury Secretary Jack Lew foreshadowed his boss's nonchalance by insisting that there was "no evidence" that any political appointee had been involved in the scandal.

Now we may know why. After months of delay in responding to congressional inquiries, the IRS now claims that, for the period of January 2009 to April 2011, all e-mails between Lois Lerner — the IRS official at the center of the scandal — and anyone outside the IRS were wiped out by a "computer crash." As House Ways and Means chairman Dave Camp wrote in a statement, this loss means that "we are conveniently left to believe that Lois Lerner acted alone." After all, there isn't a "smidgen" of e-mail evidence to suggest otherwise.

A growing number of computer professionals are stepping forward to say that none of this makes sense. Norman Cillo, a former program manager at Microsoft, told The Blaze: "I don't know of any e-mail administrator [who] doesn't have at least three ways of getting that mail back. It's either on the disks or it's on a TAPE backup someplace on an archive server." Bruce Webster, an IT expert with 30 years of experience consulting with dozens of private companies, seconds this opinion: "It would take a catastrophic mechanical failure for Lerner's drive to suffer actual physical damage, but in any case, the FBI should be able to recover something. And the FBI and the Justice Department know it." ...

Noted liberal **Ron Fournier** calls for a special prosecutor.

A sloppy mistake, the government calls it, but you couldn't blame a person for suspecting a cover-up -- the loss of an untold number of emails to and from the central figure in the IRS tea party controversy. And, because the public's trust is a fragile gift that the White House has frittered away in a series of second-term missteps, President Obama needs to act.

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Sharyl Attkisson has some questions for the IRS.

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In light of the disclosure, these are some of the logical requests that should be made of the IRS:

- *Please provide a timeline of the crash and documentation covering when it was first discovered and by whom; when, how and by whom it was learned that materials were lost; the official documentation reporting the crash and federal data loss; documentation reflecting all attempts to recover the materials; and the remediation records documenting*

the fix. This material should include the names of all officials and technicians involved, as well as all internal communications about the matter.

- *Please provide all documents and emails that refer to the crash from the time that it happened through the IRS' disclosure to Congress Friday that it had occurred. ...*

A **Power Line** reader who is a DOJ lawyer says this is BS.

A reader writes from inside the Department of Justice to comment on the two-year gap in Lois Lerner's intra-government email messages:

I'm a DOJ lawyer, so you obviously cannot use my name or any identifying information. But the idea that a "hard drive crash" somehow destroyed all of Ms. Lerner's intra-government email correspondence during the period in question [2009-2011] is laughable. Government email servers are backed up every night. So if she actually had a hard drive fail, her emails would be recoverable from the backup. If the backup was somehow also compromised, then we are talking about a conspiracy.

Keep up the good work.

He reiterates in a postscript:

I'm serious about your keeping any identifying information out of the media. Things are very, very bad.

There has to be more to the story and the hearings should start next week.

John Steele Gordon also doubts the emails are lost.

... there are very good reasons to doubt the idea that these emails are irretrievably lost due to a simple crash of a personal computer's hard drive. For one thing, downloading an email from an email server does not cause the email to be deleted from the server itself. And a lawyer in the Department of Justice, who understandably wishes to be anonymous, reports that government email servers are automatically backed up every night. So both Lerner's computer and the email server would have had to crash for these emails to have been lost. That would be some coincidence.

John Hinderaker at Power Line has a great deal of experience in accessing emails in the course of legal discovery. He's blunt: "The Obama administration is lying, and lying in a remarkably transparent way." He points out that even if the email server were erased after a period of time, the IRS has elaborate protocols for the permanent storage of all electronic communications. Hinderaker also notes that even if a hard drive crashes, the information stored on it can usually be recovered. He politely offers to help: ...

Bart Hinkle traces how the IRS scandal implicates Dems.

The U.S. has a long and sordid history of presidents trying to sic the IRS on their political foes; that was even one of the charges of impeachment against Richard Nixon.

In this case, however, the GOP's Obama Derangement Syndrome might be pointing it in the wrong direction. Granted, the administration did laughably appoint an Obama campaign donor to investigate whether Obama critics had been treated fairly. But much of the impetus for the IRS' abuse of conservative groups seems to have come from Congress.

That becomes apparent from a complaint filed this month with the Senate's ethics committee by the Center for Competitive Politics. The complaint asks the committee to investigate Sens. Carl Levin, Dick Durbin, Chuck Schumer, Al Franken, and several others for improperly trying to sway IRS deliberations and obtain confidential taxpayer information.

Admittedly, asking the Democrat-controlled committee to investigate Democrats for targeting Republican-leaning groups is a Quixotic pursuit. But Quixotic is not the same as meritless. And the complaint contains mountains of merit. ...

National

[The Dog Ate My E-Mails, for Two Years](#)

IT experts and the IRS's own manual note that backups of Lerner's e-mails must exist.

by John Fund

Who knew that the Obama administration had a penchant for black humor? Earlier this year, in February, President Obama told Bill O'Reilly during an interview on Fox News that there was "not even a smidgen of corruption" in the IRS scandal involving the targeting of conservative nonprofit groups. In July 2103, Treasury Secretary Jack Lew foreshadowed his boss's nonchalance by insisting that there was "no evidence" that any political appointee had been involved in the scandal.

Now we may know why. After months of delay in responding to congressional inquiries, the IRS now claims that, for the period of January 2009 to April 2011, all e-mails between Lois Lerner — the IRS official at the center of the scandal — and anyone outside the IRS were wiped out by a "computer crash." As House Ways and Means chairman Dave Camp wrote in a statement, this loss means that "we are conveniently left to believe that Lois Lerner acted alone." After all, there isn't a "smidgen" of e-mail evidence to suggest otherwise.

A growing number of computer professionals are stepping forward to say that none of this makes sense. Norman Cillo, a former program manager at Microsoft, told *The Blaze*: "I don't know of any e-mail administrator [who] doesn't have at least three ways of getting that mail back. It's either on the disks or it's on a TAPE backup someplace on an archive server." Bruce Webster, an IT expert with 30 years of experience consulting with dozens of private companies, seconds this opinion: "It would take a catastrophic mechanical failure for Lerner's drive to suffer actual physical damage, but in any case, the FBI should be able to recover something. And the FBI and the Justice Department know it."

In March of this year, John Koskinen, the new IRS commissioner, testified before Congress that all the e-mails of IRS employees are "stored in servers." The agency's own manual specifies that it "provides for backup and recovery of records to protect against information loss or corruption." The reason is simple. It is well known in legal and IT circles that failure to preserve e-mails can lead to

a court ruling of “spoliation of evidence.” That means a judge or jury is then instructed to treat deletions as if they were deliberate destruction of incriminating evidence.

Why is the loss of the Lerner e-mails particularly important? Last year’s report by the IRS inspector general set out a timeline of the IRS’s targeting of conservative groups. A full 16 of the 26 non-redacted events in the inspector general’s timeline took place during the period for which all of Lerner’s e-mails were “lost,” and these 16 instances refer to “e-mail” as the source for information on that event. As tax expert Alan Joel points out, much of the context about how the IRS scandal developed and who may have known about it is now “lost” in the black hole the Lerner e-mails are supposed to have been sucked into.

Since the IG report, we have learned that Lerner was engaged in highly suspect activity. As the *Wall Street Journal* editorial page noted on Saturday:

She shipped a database of 12,000 nonprofit tax returns to the FBI, the investigating agency for Justice’s Criminal Division. The IRS, in other words, was inviting Justice to engage in a fishing expedition, and inviting people not even licensed to fish in that pond. The Criminal Division (rather than the Tax Division) investigates and prosecutes under the Internal Revenue Code only when the crimes involve IRS personnel.

If there is an ongoing cover-up of the IRS scandal, it’s obvious why some folks would be desperate to continue it. Last year, *Time* magazine’s liberal columnist Joe Klein wrote that the IRS scandal placed President Obama “on the same page as Richard Nixon.” Article II of the Articles of Impeachment by the House Judiciary Committee in 1974 included a charge that Nixon had caused, “in violation of the constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner.” The Judiciary Committee was also deeply disturbed by the Nixon administration’s apparent efforts to conceal evidence. When investigators found a crucial “18-and-a-half-minute gap” from a Watergate break-in conversation involving Nixon and his aides, the administration implausibly claimed that Rose Mary Woods, Nixon’s longtime secretary, had accidentally erased that portion of the tape. Later, Woods herself said she could have been responsible for no more than five minutes of the gap.

Now we have the “IRS server ate the e-mails” excuse. “Barack Obama has brought us Jimmy Carter’s economy and Richard Nixon’s excuses,” Steve Stockman (R., Texas) waggishly observed Friday. At a minimum, the House committees investigating the IRS scandal should demand that everyone involved in the search for the Lerner e-mails appear before them and testify under oath. I strongly suspect that if anything is amiss, one or more employees will not want to commit perjury to protect political higher-ups.

Normally, an independent prosecutor would be appointed to get to the bottom of all this. But don’t expect such a move from Attorney General Eric Holder. When he was the No. 2 official at Justice during President Clinton’s second term, he was instrumental in blocking the appointment of any new special prosecutors for various Clinton scandals. Holder himself has mastered the art of withholding documents from Congress. In 2012, the House of Representatives (including 17 Democrats) voted to hold Eric Holder in contempt for ignoring a subpoena for documents in the Fast and Furious gun-running scandal.

As yet more evidence of this administration’s seeming tendency toward black humor, the current Justice Department investigation of the IRS scandal is being headed by Barbara Bosserman, a trial attorney who was a large donor to both of Barack Obama’s presidential campaigns, with her first donation dating all the way back to the primary season in 2008. But, of course, Justice says there’s no conflict of interest. Not even a smidgen.

National Journal

Did The IRS Really Lose Lois Lerner's Emails? Let a Special Prosecutor Find Them

Obama needs to address this 'phony scandal' and the public trust with real transparency.

by Ron Fournier

A sloppy mistake, the government calls it, but you couldn't blame a person for suspecting a cover-up -- the loss of an untold number of emails to and from the central figure in the IRS tea party controversy. And, because the public's trust is a fragile gift that the White House has frittered away in a series of second-term missteps, President Obama needs to act.

If the IRS can't find the emails, maybe a special prosecutor can.

The announcement came late Friday, a too-cute-by-half cliché of a PR strategy to mitigate backlash. "The IRS told Congress it cannot locate many of Lois Lerner's emails prior to 2011 because her computer crashed during the summer of that year," [The Associated Press reported](#).

Lerner headed the IRS division that processed applications for tax-exempt status. The IRS acknowledged last year that agents had improperly scrutinized applications for tax-exempt status by tea party and other conservative groups.

At issue is whether the IRS probes were politically motivated and directed by the White House. Congressional investigators were hoping for answers in Lerner's emails.

The IRS also screened liberal groups, which Democrats claim as proof that there was no abuse of power. That's wishful thinking. The fact that liberal groups were screened is mitigating, not dispositive.

Republicans lawmakers are prone not to trust any explanation from the White House. Their most conservative voters assumed from the start that the White House was targeting right-leaning groups for intimidation.

"The fact that I am just learning about this, over a year into the investigation, is completely unacceptable and now calls into question the credibility of the IRS' response to congressional inquiries," said Rep. Dave Camp, R-Mich., chairman of the House Ways and Means Committee. "There needs to be an immediate investigation and forensic audit by Department of Justice as well as the inspector general."

Obama has adamantly rejected the suggestion that the IRS was used for political purposes. "That's not what happened," [he told Fox News in February](#). Rather, he said, IRS officials were confused about how to implement the law governing those kinds of tax-exempt groups. "Not even a smidgen of corruption" occurred, he said. His allies dubbed it a "phony scandal."

Six weeks after the scandal broke, I chastised House Republicans for cherry-picking evidence and jumping to conclusions. [In the same column](#), I urged the president to be transparent: pave way for investigators to question witnesses under oath and subpoena the White House and his own re-election campaign for related emails and other documents.

If forced to guess, I would say that the IRS and its White House masters are guilty of gross incompetence, but not corruption. I based that only on my personal knowledge of – and respect for – Obama and his team. But I shouldn't have to guess. More importantly, most Americans don't

have a professional relationship with Obama and his team. Many don't respect or trust government. They deserve what Obama promised nearly six weeks ago – accountability. They need a thorough investigation conducted by somebody other than demagogic Republicans and White House allies.

Somebody like a *special prosecutor*. Those words are hard for me to type two decades after an innocent land deal I covered in Arkansas turned into the runaway Whitewater investigation.

Nothing has changed. The White House is stonewalling the IRS investigation. The most benign explanation is that Obama's team is politically expedient and arrogant, which makes them desperate to change the subject, and convinced of their institutional innocence. That's bad enough. But without a fiercely independent investigation, we shouldn't assume the explanation is benign.

Sharyl Attkisson's Blog

[Lois Lerner's Lost Emails: Questions for the IRS](#)

The news came late in the day on Friday the 13th.

According to the House Ways and Means Committee, the IRS reports having “lost” former IRS manager Lois Lerner’s emails to and from other IRS employees sent between January of 2009 and April of 2011 due to a ‘computer crash.’

In light of the disclosure, these are some of the logical requests that should be made of the IRS:

- Please provide a timeline of the crash and documentation covering when it was first discovered and by whom; when, how and by whom it was learned that materials were lost; the official documentation reporting the crash and federal data loss; documentation reflecting all attempts to recover the materials; and the remediation records documenting the fix. This material should include the names of all officials and technicians involved, as well as all internal communications about the matter.
- Please provide all documents and emails that refer to the crash from the time that it happened through the IRS’ disclosure to Congress Friday that it had occurred.
- Please provide the documents that show the computer crash and lost data were appropriately reported to the required entities including any contractor servicing the IRS. If the incident was not reported, please explain why.
- Please provide a list summarizing what other data was irretrievably lost in the computer crash. If the loss involved any personal data, was the loss disclosed to those impacted? If not, why?
- Please provide documentation reflecting any security analyses done to assess the impact of the crash and lost materials. If such analyses were not performed, why not?
- Please provide documentation showing the steps taken to recover the material, and the names of all technicians who attempted the recovery.
- Please explain why redundancies required for federal systems were either not used or were not effective in restoring the lost materials, and provide documentation showing how this shortfall has been remediated.
- Please provide any documents reflecting an investigation into how the crash resulted in the irretrievable loss of federal data and what factors were found to be responsible for the existence of this situation.
- I would also ask for those who discovered and reported the crash to testify under oath, as well as any officials who reported the materials as having been irretrievably lost.

The Committee had requested the Lerner emails as part of its investigation into the targeting of conservative non-profits by the IRS. The Obama administration has denied any corruption or intentional wrongdoing. Lerner took the Fifth when asked to testify to Congress. The House of Representatives subsequently held her in contempt. The lost materials are said to include any communications that may have occurred between Lerner and outside agencies or groups such as the White House, the Treasury Department, the Department of Justice, the Federal Elections Commission and the offices of Democrats.

House and Ways Committee Chairman Dave Camp (R-Mich.) says that along with providing news of the emails that have been lost, the IRS suggested in the same letter to Congress that it end its investigation.

The late disclosure of the lost emails may be reason to disregard the suggestion

Power Line

[Lois Lerner's "lost" emails](#)

by Scott Johnson

A reader writes from inside the Department of Justice to comment on the [two-year gap](#) in Lois Lerner's intra-government email messages:

I'm a DOJ lawyer, so you obviously cannot use my name or any identifying information. But the idea that a "hard drive crash" somehow destroyed all of Ms. Lerner's intra-government email correspondence during the period in question [2009-2011] is laughable. Government email servers are backed up every night. So if she actually had a hard drive fail, her emails would be recoverable from the backup. If the backup was somehow also compromised, then we are talking about a conspiracy.

Keep up the good work.

He reiterates in a postscript:

I'm serious about your keeping any identifying information out of the media. Things are very, very bad.

There has to be [more to the story](#) and the hearings should start next week.

Contentions

[Are Lois Lerner's Emails Really Lost?](#)

by John Steele Gordon

I [wrote on Friday](#) how the IRS, after a full year of stonewalling, sent a letter to Dave Camp, chairman of the House Ways and Means Committee, saying that a vast trove of emails between Lois Lerner and government agencies outside the IRS, including the White House, had been lost thanks to a hard drive crash on her computer. Friday afternoons, of course, are when people who want something to go unnoticed make a public announcement about it.

This did not go unnoticed, however. As you can see from the [TaxProfBlog](#), which has been covering the unfolding IRS scandal like a glove, all the major news outlets ran stories on it, even such liberal bastions as ABC News and the Huffington Post. Its similarity to the event that radically shifted public opinion about Watergate—the conveniently missing 18 1/2 minutes of tape—was just too strong. However, the *New York Times*, ever increasingly the public-relations arm of the Obama administration, has run nothing whatever in the print editions and, indeed, the only mention of it whatsoever was on a [blog](#) on the *Times* website that quotes what other op-ed pages are saying, a one-paragraph overview of the conservative Washington *Examiner's* editorial. The *Washington Post* did not do a story of its own, settling for AP coverage about a potentially huge story taking place in its own backyard. Both of these legendary American newspapers are going to be severely embarrassed if this turns into a major scandal, as it well may.

The reason it may be is because there are very good reasons to doubt the idea that these emails are irretrievably lost due to a simple crash of a personal computer's hard drive. For one thing, downloading an email from an email server does not cause the email to be deleted from the server itself. And a lawyer in the Department of Justice, who understandably wishes to be anonymous, [reports](#) that government email servers are automatically backed up every night. So both Lerner's computer and the email server would have had to crash for these emails to have been lost. That would be some coincidence.

John Hinderaker at [Power Line](#) has a great deal of experience in accessing emails in the course of legal discovery. He's blunt: "The Obama administration is lying, and lying in a remarkably transparent way." He points out that even if the email server were erased after a period of time, the IRS has elaborate protocols for the permanent storage of all electronic communications. Hinderaker also notes that even if a hard drive crashes, the information stored on it can usually be recovered. He politely offers to help:

One more thing: if it were true that the only copies of many thousands of emails existed on Lois Lerner's desktop computer—which is certainly not true—and that computer's hard drive crashed in 2011, the emails would in all probability be recoverable. Even if Lerner threw her computer into a lake, which has been known to happen. One of the world's most famous data recovery firms is located here in the Twin Cities, and I would be happy to send Barack Obama the name and phone number of a person who, in all likelihood, could recover Lerner's "lost" emails from her supposedly crashed hard drive. Even if the computer has been lying at the bottom of a lake since 2011.

Fox and Friends this morning reported that in addition to nightly email backups and permanent storage on another medium, IRS regulations require individuals to make paper backups of anything that falls under the rubric of a "federal record."

The administration is desperately hoping that by making this public on a summer Friday afternoon, it will all have blown over by Monday morning, especially with the onrush of other news stories, such as the gathering debacle in Iraq, and the latter-day children's crusade on our southern border. I doubt that will happen. I think enough elements of the media smell blood. If the Obama administration is caught in a bald-faced lie here, its political support might well collapse, just as Nixon's did in the fall of 1973. That would sell a lot of newspapers.

Richmond Times-Dispatch [IRS scandal implicates Democrats](#)

by A. Barton Hinkle

“Special interests are planning and running millions of dollars” in ads, warns President Barack Obama. But despite their “benign-sounding names,” adds Democratic operative David Axelrod, some of them are “front groups for foreign-controlled companies.” Together, they are trying to sway the outcome of elections all across America.

Want examples? No problem.

In 2012 alone, Toyota spent \$2 billion in the hope that Americans would elect to buy Toyotas rather than Fords, Chevrolets or Hondas. Samsung, a South Korean multinational conglomerate, spent \$881 million. Walmart spent huge sums to sell you on buying goods made in China.

Hoping more Americans will elect to use renewable energy, environmental groups have been cranking out sunny brochures and op/ed columns pitching its merits. Among those who stand to benefit the most: Chinese solar-cell makers and German wind-turbine manufacturers.

Obviously, these aren't the interests Obama and Axelrod had in mind when they made those comments four years ago, after the Supreme Court's *Citizens United* decision. They meant groups like Crossroads GPS, Americans for Prosperity and other “outside groups.” In that, they spoke for many liberal Democrats — and even some Republicans, like Sen. John McCain — who don't like such groups speaking out on politics.

Little wonder, then, that since the IRS scandal broke Republicans and their conservative supporters have been looking for the smoking gun that would prove Obama ordered the agency to seek and destroy conservative social-welfare groups. The U.S. has a long and sordid history of presidents trying to sic the IRS on their political foes; that was even one of the charges of impeachment against Richard Nixon.

In this case, however, the GOP's Obama Derangement Syndrome might be pointing it in the wrong direction. Granted, the administration did laughably appoint an Obama campaign donor to investigate whether Obama critics had been treated fairly. But much of the impetus for the IRS' abuse of conservative groups seems to have come from Congress.

That becomes apparent from a complaint filed this month with the Senate's ethics committee by the Center for Competitive Politics. The complaint asks the committee to investigate Sens. Carl Levin, Dick Durbin, Chuck Schumer, Al Franken, and several others for improperly trying to sway IRS deliberations and obtain confidential taxpayer information.

Admittedly, asking the Democrat-controlled committee to investigate Democrats for targeting Republican-leaning groups is a Quixotic pursuit. But Quixotic is not the same as meritless. And the complaint contains mountains of merit.

The complaint details several letters Levin wrote to the IRS in which he insisted that “a message needs to be sent” to social-welfare groups “on an urgent basis,” and that the message should make it “crystal clear” they needed to restrict their political activities. Just so the IRS would not misunderstand, he drew attention to two TV advertisements — one by Crossroads GPS and another by Patriot Majority USA.

Unsatisfied by the IRS response, Levin continued to press the agency to give such groups — which are organized under Section 501(c)(4) of the tax code — “a choice: either lose their exempt status (and pay taxes) or eliminate the partisan political activity.” He followed that up with a demand to see confidential information about Crossroads GOP, Priorities USA, Americans for Prosperity, and Patriot Majority USA. Informed that “the IRS cannot legally disclose” what he wanted, he tried again — and again. As the ethics complaint notes, “IRS Acting Commissioner Steven Miller acknowledged in an interview that Senator Levin’s effort did, in fact, have an effect on the IRS’ internal proceedings.”

Durbin not only demanded that the IRS investigate groups he didn’t care for — he boasted about it in news releases that drew the attention of the media. No wonder: Durbin made the demand a month before the fall congressional elections. Subtle!

Schumer, Franken and Co. also wrote to the IRS, wondering — purely out of idle curiosity, you understand — whether the agency “is investigating or intends to investigate” whether certain groups might be engaging in — gasp! — “campaign activity.” Which groups? Oh, “Elections operations such as Mr. (Karl) Rove’s.” They followed that up a month later with a request that the IRS change the rules governing social-welfare nonprofits.

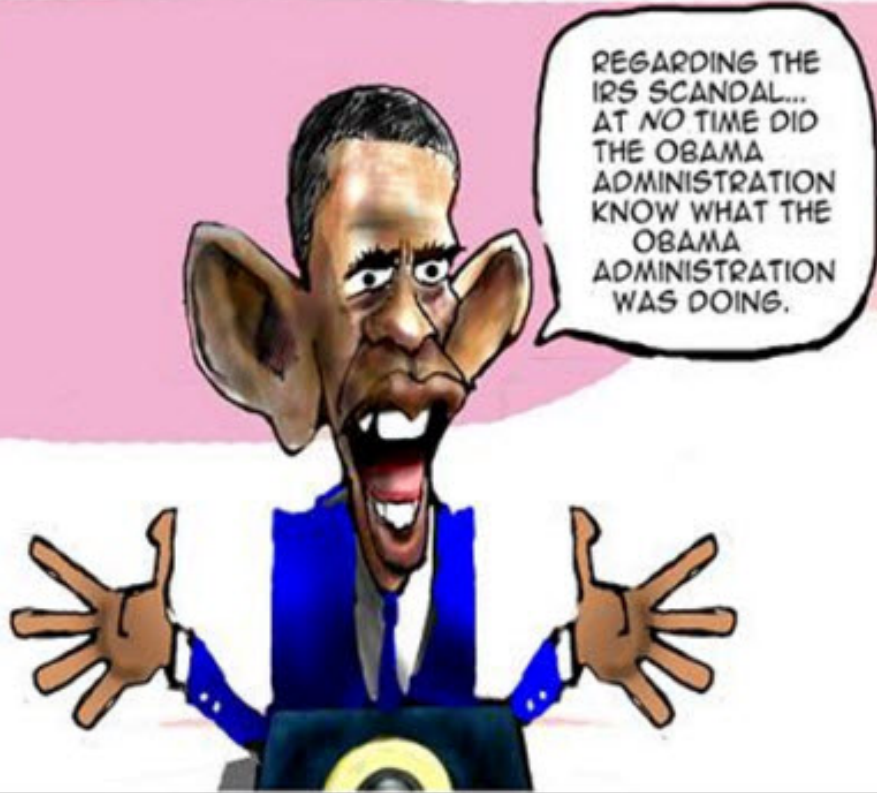
This past January, Schumer gave a speech denouncing “the great advantage the tea party has,” namely “the huge holes in our campaign-finance system” that allowed 501(c)(4) groups to spend “millions in undisclosed dollars” on “ads that distort the truth and attack government.” To whom did he give this speech? The Center for American Progress Action Fund, a 501(c)(4) organization. Now that’s chutzpah.

But sometimes chutzpah pays off. As everyone now knows, the IRS did launch a pogrom against conservative groups — not just the big ones, like Rove’s, but many much smaller ones as well. For months it harassed them with intrusive questionnaires demanding everything from Facebook posts to the contents of prayers said at meetings.

And remember what terrible offense those groups were committing: They were supporting or opposing candidates for public office, often by buying TV ad time. But a political advertisement cannot make you vote for or against a political candidate any more than a commercial advertisement can make you buy a Toyota instead of a Ford. What Levin, Durbin, Schumer, et al. find outrageous is the fact that some Americans have been speaking about political candidates without those candidates’ authorization.

Indeed, some Democratic congressmen find that so outrageous they would like to amend the Constitution. News stories have referred to the amendment as the “Democrats’ answer to the Koch Brothers.” But the amendment would not apply only to the Kochs. It would allow politicians to ration political speech by everyone. That would be like letting Ford decide which companies get to advertise cars on TV. How many ads for Toyotas would you see in that case? Take a wild guess.

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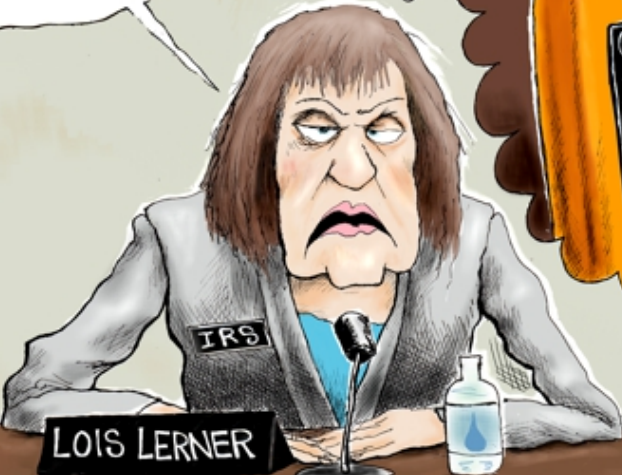


IRS CRIMINALS WHO BELONG IN PRISON



UNDER the INFLUENCE

I PLEAD
THE FIFTH



H. Payne

"I've done nothing wrong. I take the Fifth."