

June 24, 2014

Slate's John Dickerson says the GOP is right to feel outrage at the IRS.

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Daniel Henninger says the IRS scandal is not Watergate; it's worse than Watergate.

On Jan. 27, 2010, Mr. Obama used his State of the Union speech to explicitly criticize the justices of the U.S. Supreme Court, seated in front of him, for their campaign-finance ruling in Citizens United v. FEC.

The forces Mr. Obama put in motion with this attack were described in a seminal piece for this newspaper by former FEC Chairman Bradley Smith—"Connecting the Dots in the IRS Scandal." Through 2012, a succession of Democratic senators urged the IRS to investigate 501(c)(4) nonprofit political groups. Mr. Obama himself in a March 2010 radio address spoke of "shadowy groups with harmless sounding names" that threaten "our democracy."

Here's a partial list of the American place names where the "tea party" groups audited by the IRS were organized: Franklin, Tenn.; Livonia, Mich.; Lucas, Texas; Middletown, Del.; Fishersville, Va.; Jackson, N.J.; Redding, Calif.; Chandler, Ariz.; Laurens, S.C.; Woodstown, N.J.; Wetumpka, Ala.; Kahului, Hawaii; Sidney, Ohio; Newalla, Okla.

He's right, these people do live most of their lives in the shadow of daily American life, out of the public eye. Still, they considered themselves to be very much inside "our democracy." Then the IRS asked them for the names of their donors, what they talked about, political affiliations.

The IRS tea-party audit story isn't Watergate; it's worse than Watergate.

Just for reminders, we go back five years to something **Glenn Reynolds** wrote about the president joking about having the IRS audit his enemies. More corrupt than Nixon. Barack Obama owes his presidency in no small part to the power of rhetoric. It's too bad he doesn't appreciate the damage that loose talk can do to America's tax system, even as exploding federal deficits make revenues more important than ever.

At his Arizona State University commencement speech last Wednesday, Mr. Obama noted that ASU had refused to grant him an honorary degree, citing his lack of experience, and the controversy this had caused. He then demonstrated ASU's point by remarking, "I really thought this was much ado about nothing, but I do think we all learned an important lesson. I learned never again to pick another team over the Sun Devils in my NCAA brackets. . . . President [Michael] Crowe and the Board of Regents will soon learn all about being audited by the IRS."

Just a joke about the power of the presidency. Made by Jay Leno it might have been funny. But as told by Mr. Obama, the actual president of the United States, it's hard to see the humor. Surely he's aware that other presidents, most notably Richard Nixon, have abused the power of the Internal Revenue Service to harass their political opponents. But that abuse generated a powerful backlash and with good reason. Should the IRS come to be seen as just a bunch of enforcers for whoever is in political power, the result would be an enormous loss of legitimacy for the tax system. ...

Kimberley Strassel shows the connections between Lois Lerner and Dems.

... But the alleged disappearance of Ms. Lerner's hard drive—and the fact that the missing conversations are those the former IRS director had with people outside the IRS—has suddenly resurrected, with force, the explosive possibility that she was chatting with Democrats who mattered.

There's plenty of reason to believe she was. Just last week Congress discovered (via a subpoena to the Justice Department) emails showing that Ms. Lerner had conversations with Justice prosecutors about investigating conservative nonprofits. Who else in the Obama administration was Ms. Lerner talking to?

Or consider the extraordinary interaction between congressional Democrats and the IRS. Some of it was in a recent complaint filed to the Senate Ethics Committee by the Center for Competitive Politics against nine Democratic senators. It details their many letters and statements (that we know of) demanding the IRS shut down specific organizations that posed a threat to their Democratic House and Senate majority in the 2010 election.

Sen. Carl Levin, the head of the Permanent Subcommittee on Investigations, exchanged at least 12 letters (that we know about) with the IRS in 2012 alone. IRS officials, including Ms. Lerner, met with Sen. Levin's staff in 2013. And former IRS Acting Commissioner [Stephen Miller](#) testified that the IRS acted in part because Sen. Levin was "complaining bitterly" to the agency. In what forums? Were email conversations also taking place, behind the scenes, between the Levin office and Ms. Lerner and other IRS officials? ...

The Redskins get a defense from **Jonathan Turley**.

... Even water has become a vehicle for federal agency overreach. Recently, the Obama administration took punitive agency action against Washington state and Colorado for legalizing marijuana possession and sales. While the administration said it would not enforce criminal drug laws against marijuana growers — gaining points among the increasing number of citizens who support legalization and the right of states to pass such laws — it used a little-known agency, the U.S. Bureau of Reclamation, to cut off water to those farms. The Bureau of Reclamation was

created as a neutral supplier of water and a manager of water projects out West, not an agency that would open or close a valve to punish noncompliant states.

When agencies engage in content-based speech regulation, it's more than the usual issue of "mission creep." As I've written before [in these pages](#), agencies now represent something like a fourth branch in our government — an array of departments and offices that exercise responsibilities once dedicated exclusively to the judicial and legislative branches. Insulated from participatory politics and accountability, these agencies can shape political and social decision-making. To paraphrase Clausewitz, water, taxes and even trademarks appear to have become the continuation of politics by other means.

What is needed is a new law returning these agencies to their core regulatory responsibilities and requiring speech neutrality in enforcement. We do not need faceless federal officials to become arbiters of our social controversies. There are valid objections to the Redskins name, but it is a public controversy that demands a public resolution, not a bureaucratic one.

Slate

[Paul Ryan Just Hammered the IRS](#)

Almost everyone thinks the agency deserves it.

by John Dickerson



Internal Revenue Service Commissioner John Koskinen testifies during a hearing before the House Ways and Means Committee on June 20, 2014.

Anyone who has ever kicked a trash can across a room after trying to get the Internal Revenue Service to explain a tax rule, or been through one of its exfoliating audits, gained a champion in Rep. Paul Ryan on Friday. At a Ways and Means Committee hearing investigating how the IRS [lost thousands of emails sought by congressional investigators](#), the Wisconsin congressman lost it. He [emptied his frustration and anger](#) over IRS Commissioner John Koskinen like he was flushing a radiator.

“You are the Internal Revenue Service. You can reach into the lives of hard-working taxpayers and with a phone call, an email, or a letter you can turn their lives upside-down. You ask taxpayers to hang on to seven years of their personal tax information in case they are ever audited, and you can’t keep six months’ worth of employee emails?”

It’s the IRS’ business to be in our business—so Ryan is giving them the business. It’s hard to think of a federal agency that is less forgiving about record keeping. If you are audited, the IRS wants you to move fast. Not only do you have to keep your records for years, as Ryan says, but the IRS wants you to move quick like a bunny. And the entire process has one subliminal message to it: “I don’t believe you.”

That is exactly what Ryan said to the IRS commissioner, who took umbrage. Now he knows how it feels. It’s not Commissioner Koskinen who lost the emails, he’s just on the wrong side of a bad policy that doesn’t require the IRS to be as records-conscious as the citizens it polices. But in the traditional IRS power relationship, it’s usually the subjects of its audits who feel the unfocused and overly harsh attention of a system that assumes they are guilty.

One of the big complaints I hear from voters, particularly conservative voters, is that the government exempts itself from the burdens it puts on everyday people. So members of Congress are treated differently under the Affordable Care Act than regular citizens, President Obama can decide which laws he wants to follow and which ones he doesn’t, and the IRS doesn’t have to be as circumspect as the rest of us. Sometimes there are good explanations, [like the congressional “exemption” from the ACA](#), but since the IRS is stingy with its benefit-of-the-doubt powers, it has a high bar with the public.

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WSJ

[The High Price of Obama Fatigue](#)

The IRS isn't Watergate; it's worse than Watergate.

by Daniel Henninger

With 2½ years left in the Obama presidency, it is at least an open question what will be left of it by December 2016. Or us.

In this week's Wall Street Journal-NBC poll, conducted as the disintegration of Iraq began, Mr. Obama's approval rating has fallen to 41% and his handling of foreign policy to 37%.

Respondents to this poll know what is going on in the world—Ukraine destabilized, Iraq disintegrating, their economy eternally recovering.

Mr. Obama's world this week consisted of flying to the University of California-Irvine to give a speech about a) himself (check the [text](#) if you doubt it) and b) climate change. On Wednesday he was in New York City for a midtown fundraiser, an LGBT fundraiser and a third, \$32,000 per person fundraiser at the home of Vogue editor Anna Wintour.

The Hill newspaper ran a piece earlier this week wondering if Mr. Obama is "done with Washington." Jamal Simmons, a Democratic strategist, says, "He's never really made it a secret he's not a fan of this place." Or Syria. Or Ukraine. Or Iraq.

The defenders of the Obama presidency—which increasingly is becoming a project separate from the person—argue that GOP obstruction thwarted the president's agenda. If the Republicans were the rank partisans of Democratic myth, Eric Cantor would still be Majority Leader and Mississippi's Sen. Thad Cochran would be waltzing to his seventh term.

As to the American people now pushing his approval below 40%, Barack Obama entered office with more good will than any president since John F. Kennedy. If the Obama presidency has run out of aerobic capacity 2½ years from the finish line, it is because of Mr. Obama's own decisions. He did this to himself.

If there's one Obama foreign-policy decision that sticks in anyone's mind it is the "red line" in Syria. It was Mr. Obama's decision last September, at Vladimir Putin's invitation, to step back from his own criteria for punishing Syria's Bashar Assad if he used chemical weapons against his own people. The voters now tanking Mr. Obama's foreign affairs number don't think it's just random bad luck that Russian tanks ended up in Ukraine and some al Qaeda group they've never heard of took over half of Iraq in two days. The world is slipping beyond President Obama's control, or interest. From here on out, it—and we—are in God's hands.

Meanwhile, the Obama domestic presidency is entering its Lois Lerner phase. The Internal Revenue Service says it lost Ms. Lerner's hard drive with emails relevant to its audits of numerous conservative citizen groups. Actually, the IRS says Lois herself lost them because the emails were on her own PC.

Then Tuesday, House Oversight Chairman Darrell Issa said the IRS also lost similarly relevant emails from six other IRS employees. At a hearing Friday, he will ask IRS Commissioner John Koskinen to explain the AWOL emails.

Barack Obama created Darrell Issa.

On Jan. 27, 2010, Mr. Obama used his State of the Union speech to explicitly criticize the justices of the U.S. Supreme Court, seated in front of him, for their campaign-finance ruling in *Citizens United v. FEC*.

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The Watergate break-in was the professionals of the party in power going after the party professionals of the party out of power. The IRS scandal is the party in power going after the most average Americans imaginable.

They didn't need to do this. The Obama campaign machine was a wonder, perfecting the uses of social media in 2008 and 2012. But the Democrats were so crazed in 2010 by *Citizens United*, so convinced that anyone's new political money might bust their hold on power, that they sicced the most feared agency in government on people who disagreed with them.

Barack Obama wanted this job. He didn't want it to come with Ukraine, the Islamic State of Iraq and Syria or Darrell Issa. But it does.

WSJ - May 18, 2009

Tax Audits Are No Laughing Matter

A president shouldn't even joke about abusing IRS power.

by Glenn Harlan Reynolds

Barack Obama owes his presidency in no small part to the power of rhetoric. It's too bad he doesn't appreciate the damage that loose talk can do to America's tax system, even as exploding federal deficits make revenues more important than ever.

At his Arizona State University commencement speech last Wednesday, Mr. Obama noted that ASU had refused to grant him an honorary degree, citing his lack of experience, and the controversy this had caused. He then demonstrated ASU's point by remarking, "I really thought this was much ado about nothing, but I do think we all learned an important lesson. I learned never again to pick another team over the Sun Devils in my NCAA brackets. . . . President [Michael] Crowe and the Board of Regents will soon learn all about being audited by the IRS."

Just a joke about the power of the presidency. Made by Jay Leno it might have been funny. But as told by Mr. Obama, the actual president of the United States, it's hard to see the humor. Surely he's aware that other presidents, most notably Richard Nixon, have abused the power of the Internal Revenue Service to harass their political opponents. But that abuse generated a powerful backlash and with good reason. Should the IRS come to be seen as just a bunch of enforcers for whoever is in political power, the result would be an enormous loss of legitimacy for the tax system.

Our income-tax system is based on voluntary compliance and honest reporting by citizens. It couldn't possibly function if most people decided to cheat. Sure, the system is backed up by the dreaded IRS audit. But the threat is, while not exactly hollow, limited: The IRS can't audit more than a tiny fraction of taxpayers. If Americans started acting like Italians, who famously see tax evasion as a national pastime, the system would collapse.

One reason why Americans don't act like Italians is that they see the income-tax system as basically fair in execution. A tax audit or a tax-fraud prosecution is still seen, usually, as evidence that someone has done something wrong. If it comes instead to be seen as "just politics" then the moral component of the system will be gone. For the system to work, people have to believe that it is fundamentally fair.

This is why the IRS is so strict with its own employees. Paul Caron, a professor at the University of Cincinnati who writes the TaxProf blog, noted in response to Mr. Obama's remarks that the law calls for the termination of IRS employees who make audit threats for illegitimate reasons. He suggested that Mr. Obama's "joke" might be grounds for firing if he were an IRS employee.

He's not, of course, but as the president his words carry much more weight and he should be much more careful. That's particularly true given that people still haven't forgotten about the Obama administration's other tax issues -- the appointment of Tim Geithner as Treasury secretary despite an inexcusable failure to pay \$34,000 in Social Security and Medicare taxes while working for the International Monetary Fund, and the scandals involving Tom Daschle and others whose appointments failed. (When the Geithner issue came up, news reports indicated that IRS employees were very upset. They can be fired over a simple late filing or a failure to report a mere \$500 in income, making Mr. Geithner's "pass" on much more serious questions quite demoralizing.)

The notion that people who are audited are probably just "enemies of the regime," coupled with the idea that big shots get a pass -- that, as Leona Helmsley is reputed to have said, "taxes are for the little people" -- is a recipe for widespread tax evasion. That's how things work in Italy, and in many other countries around the world. But do we want things to work that way here?

Mr. Obama has been accused of not appreciating the importance of financial capital to the proper functioning of the economy. But ill-chosen remarks like his ASU audit threat suggest that he also doesn't appreciate the role of moral capital. That, too, is essential to the proper functioning of a modern economy. As he looks for ways to pay for the spending campaign he's already embarked upon, he'd be well-advised to avoid comments that undercut the very tax system he'll be depending on.

Mr. Reynolds, professor of law at the University of Tennessee, covers politics for PJTV.com.

WSJ

About Those Missing Emails

The fact that they are "lost" at all suggests Congress is looking in the right direction.

by Kimberley Strassel

Lois Lerner's emails are lost, and they need finding. In the meantime, their very disappearance tells us that Congress is sniffing down the right trail.

A year into congressional investigations of IRS targeting, we know two things beyond a doubt. We know from the public record that starting in 2010 the most powerful leaders of the Democratic Party—President Obama, Senate chairmen, House Democrats—ran a ceaseless campaign pressuring the IRS to silence conservative groups. We also know from internal IRS emails that Ms. Lerner, the former head of exempt organizations, was at the epicenter of an agency effort to silence those very groups, in the precise same time frame.



Lois Lerner before Congress, May 22, 2013.

What we don't know is the interaction between the two. The IRS's deliberate withholding for a year of Lerner emails allowed the press and liberals to crow that there was no "there" there—zero evidence of Lerner collusion with anybody in the Democratic Party. At the very worst, went the explanation, Ms. Lerner and her IRS pals were zealous bureaucrats, primed to crack down on campaign money, and therefore eager to interpret the Democratic campaign as an order to act.

But the alleged disappearance of Ms. Lerner's hard drive—and the fact that the missing conversations are those the former IRS director had with people outside the IRS—has suddenly resurrected, with force, the explosive possibility that she was chatting with Democrats who mattered.

There's plenty of reason to believe she was. Just last week Congress discovered (via a subpoena to the Justice Department) emails showing that Ms. Lerner had conversations with Justice prosecutors about investigating conservative nonprofits. Who else in the Obama administration was Ms. Lerner talking to?

Or consider the extraordinary interaction between congressional Democrats and the IRS. Some of it was in a recent complaint filed to the Senate Ethics Committee by the Center for Competitive Politics against nine Democratic senators. It details their many letters and statements (that we know of) demanding the IRS shut down specific organizations that posed a threat to their Democratic House and Senate majority in the 2010 election.

Sen. Carl Levin, the head of the Permanent Subcommittee on Investigations, exchanged at least 12 letters (that we know about) with the IRS in 2012 alone. IRS officials, including Ms. Lerner, met with Sen. Levin's staff in 2013. And former IRS Acting Commissioner [Stephen Miller](#) testified that the IRS acted in part because Sen. Levin was "complaining bitterly" to the agency. In what forums? Were email conversations also taking place, behind the scenes, between the Levin office and Ms. Lerner and other IRS officials?

We do know that email conversations were common. A new and comprehensive House Oversight Committee report this week—about how politics drove the IRS affair—reveals fascinating details about just how chummy Democratic staff was with the IRS.

Here we find a staffer for Illinois Sen. Dick Durbin in October 2010 emailing no less than the IRS chief of staff, Jonathan Davis (who he addresses in familiar terms), with a heads up about a Durbin letter to the IRS commissioner demanding an investigation of Crossroads GPS, a conservative group. "We're not the first to ask, of course," the staffer acknowledges in the email. A few months later, Ms. Lerner asked her staff why it hadn't taken action against Crossroads.

Here we also find staff from Sen. Chuck Schumer in March 2012 tipping off an IRS employee to a coming New York Times article about nonprofits, a tip that was passed to Ms. Lerner. This is the same Sen. Schumer who has been open in public speeches about the need for Democrats to use the IRS to crack down on the "extraordinary influence" of Tea Party groups (as he was quoted as saying in January 2014). When did he first start looking to use the IRS this way, and who did he talk to there?

We have emails suggesting that IRS staff aided Sen. Levin in putting together his letters of complaint to the IRS. We have staff for House Democrat Elijah Cummings asking the IRS for information to use in Mr. Cummings's campaign against a specific conservative organization, True the Vote. Ms. Lerner got involved in that one—querying her staff as to whether they'd helped Mr. Cummings.

As to Ms. Lerner's behavior, consider that House Ways & Means Chairman Dave Camp first sent a letter asking if the IRS was engaged in targeting in June, 2011. Ms. Lerner denied it. She engineered a plant in an audience at a tax conference in May 2013 to drop the bombshell news about targeting (maybe hoping nobody would notice?). She has subsequently asserted a Fifth Amendment right to silence in front of the only people actually investigating the affair, Congress. Now we learn that her hard drive supposedly defied modernity and suffered total annihilation about 10 days after the Camp letter arrived.

Is there something in those lost emails? The fact that they are "lost" at all probably answers that question.

Washington Post

[The patent office goes out of bounds in Redskins trademark case](#)

by Jonathan Turley

The decision this past week by the U.S. Patent and Trademark Office to rescind [federal trademark protections for the Redskins](#) may ultimately tip the balance in the controversy over the 80-year-old name of Washington's football team. If so, that would be a shame. Not because there's insufficient

reason to consider the name “disparaging to Native Americans,” as the patent office determined. Many of us recoil at the reference to skin color as a team identity. The problem is that the Redskins case is just the latest example of a federal agency going beyond its brief to inappropriately insert itself in social or political debates.

Few people would have expected the future of the Redskins to be determined by an obscure panel in a relatively small government agency. Yet the Trademark Trial and Appeal Board showed little restraint in launching itself into this heated argument — issuing an opinion that supports calls for change from powerful politicians, including [President Obama](#) and Senate Majority Leader [Harry Reid](#) (D-Nev.). The board had at its disposal a ridiculously ambiguous standard that allows the denial of a trademark if it “may disparage” a “substantial composite” of a group at the time the trademark is registered.

This standard isn’t concerned with how widely offensive a trademark may be now, or with how the general population or even a majority of the group in question views it. It didn’t matter to the patent office that polls show substantial majorities of the public and the Native American community do not find the name offensive. A 2004 Annenberg Public Policy Center [poll](#) found that 90 percent of Native Americans said the name didn’t bother them. Instead, the board focused on a 1993 resolution adopted by the National Congress of American Indians denouncing the name. The board simply extrapolated that, since the National Congress represented about 30 percent of Native Americans, one out of every three Native Americans found it offensive. “Thirty percent is without doubt a substantial composite,” the board wrote.

Politicians rejoiced in the government intervention, which had an immediate symbolic impact. As Sen. Maria Cantwell (D-Wash.) said Wednesday: “You want to ignore millions of Native Americans? Well, it’s pretty hard to say the federal government doesn’t know what they’re talking about when they say it’s disparaging.”

For the Washington Redskins, there may be years of appeals, and pending a final decision, the trademarks will remain enforceable. But if the ruling stands, it will threaten billions of dollars in merchandizing and sponsorship profits for NFL teams, which share revenue. Redskins owner Dan Snyder would have to yield or slowly succumb to death by a thousand infringement paper cuts.

The patent office opinion also seems to leave the future of trademarks largely dependent on whether groups file challenges. Currently trademarked slogans such as “Uppity Negro” and “You Can’t Make A Housewife Out Of A Whore” could lose their protections, despite the social and political meaning they hold for their creators. We could see organizations struggle to recast themselves so they are less likely to attract the ire of litigious groups — the way Carthage College changed its sports teams’ nickname [from Redmen to Red Men](#) and the California State University at Stanislaus Warriors dropped their Native American mascot and logo in favor of the Roman warrior Titus. It appears Fighting Romans are not offensive, but Fighting Sioux are.

As federal agencies have grown in size and scope, they have increasingly viewed their regulatory functions as powers to reward or punish citizens and groups. The Internal Revenue Service offers another good example. Like the patent office, it was created for a relatively narrow function: tax collection. Yet the agency also determines which groups don’t have to pay taxes. Historically, the IRS adopted a neutral rule that avoided not-for-profit determinations based on the content of organizations’ beliefs and practices. Then, in 1970, came the Bob Jones University case. The IRS withdrew the tax-exempt status from the religious institution because of its rule against interracial dating on campus. The Supreme Court affirmed in 1983 that the IRS could yank tax exemption whenever it decided that an organization is behaving “contrary to established public policy” —

whatever that public policy may be. Bob Jones had to choose between financial ruin and conforming its religious practices. It did the latter.

There is an obvious problem when the sanctioning of free exercise of religion or speech becomes a matter of discretionary agency action. And it goes beyond trademarks and taxes. Consider the Federal Election Commission's claim of authority to sit in judgment of whether a film is a prohibited "electioneering communication." While the anti-George W. Bush film "Fahrenheit 9/11" was not treated as such in 2004, the anti-Clinton "Hillary: The Movie" was barred by the FEC in 2008. The agency appeared Caesar-like in its approval and disapproval — authority that was curtailed in 2010 by the Supreme Court's decision in *Citizens United*.

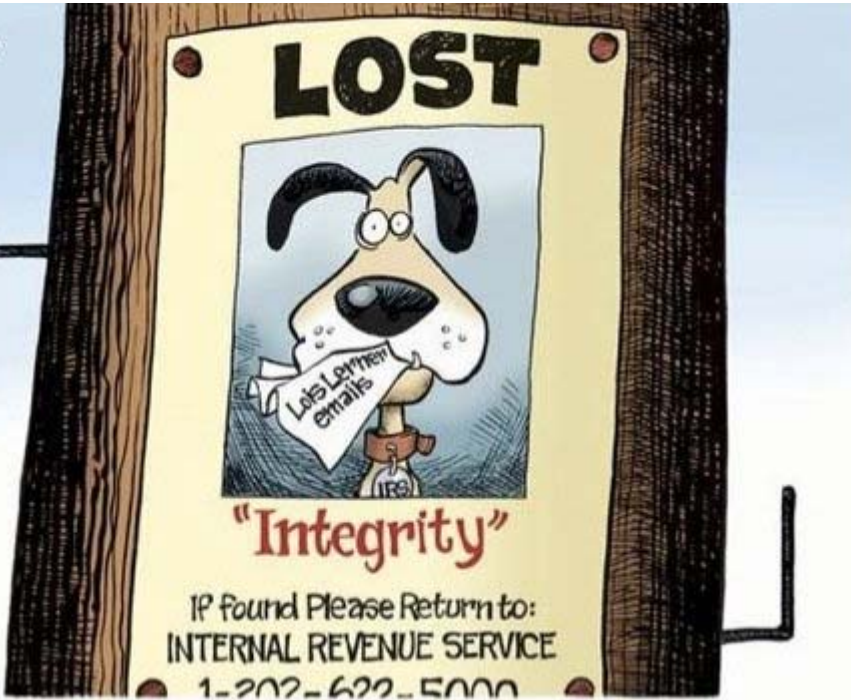
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Jonathan Turley is the Shapiro professor of public interest law at George Washington University and has testified in Congress about the shift of power in the federal system to federal agencies.

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The E-MAIL MAN



"SEEMS THERE'S AN 18 1/2 MINUTE GAP IN LOIS LERNER'S EMAILS."

**HOLY CRAP
I'M BATMAN!**

