



Obama's Chaos Strategy: The Case of the IRS IED

D Hawthorne

April 15, 2017

As Lois Lerner attempts to garner the public's sympathy and a sealing of her testimony in a federal case looking into the targeting of political opponents during the Obama Administration, new reports now suggest that the House of Representatives will recommend the Department of Justice (DOJ) file criminal charges against her. Lerner is the former IRS Exempt Organizations Director and, as such, she is the central player in the pending explosion of the Obama era IRS scandal.

The IRS targeting scandal of profiling and harassing conservative political groups began in March 2010, shortly after the January 2010 Citizens United case was decided by the Supreme Court. No Tea Party applications were approved for the next 27 months, while numerous liberal groups were routinely cleared.

The True the Vote case began in July 2010 and was a particularly egregious one, focusing on a local Texas Tea Party group and its founder, Catherine Englebrecht. In this case the initial IRS investigation triggered additional visits from the FBI, Occupational Safety and Health Administration, and Alcohol Tobacco and Firearms.

Ominously, the DOJ was directly involved at a high level in the IRS scandal starting as early as October 2010 when the head of Justice's Election Crimes Branch, Richard Pilger, met with Lois Lerner. Pilger subsequently told House investigators that the meeting was requested by Jack Smith, the director of DOJ's Public Integrity Section. It took a Judicial Watch lawsuit to make this information public in December 2014. Further DOJ conflicts-of-interest concerns arose in related IRS scandal issues.

Lerner's hard drive crashed in June 2011 and was destroyed by the IRS. The IRS did not look for her subpoenaed emails in five other areas—her Blackberry, the email server, the backup email server, the loaner laptop, and the backup tapes, causing 24,000 emails to be lost. Her Blackberry was destroyed about one year later, after a Congressional inquiry was underway and without the IRS making any attempt to recover any of those emails. Eight months after Congress requested all Lerner emails and one month after the IRS told Congress they were missing some emails, the IRS “accidentally” erased 422 backup tapes that may have contained those emails. Emails of up to 20 other related IRS officials suffered similar crashes around that time.

The staff of Democratic Ranking Member Elijah Cummings of the House Oversight Committee engaged in email communications with the IRS between August 2012 and January 2013 about True the Vote, without disclosing any of this to the majority members or staff. Both the IRS and Cummings asked for similar information from True the Vote, suggesting coordination and inappropriate sharing of confidential tax information. Cummings denied this contact in spite of email evidence to the contrary.

(An anecdote: After initially applying in July 2011 under the name “Media Trackers” and still having no clearance from the IRS’s Cincinnati office as of September 2012, an applicant filed under a new, more liberal sounding name “Greenhouse Solutions,” in December 2012 and was approved in 3 weeks.)

The Treasury Department Inspector General’s (IG) May 14, 2013 report found that the “IRS used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based upon their names or policy positions instead of indications of potential political campaign intervention.” Ineffective management was discovered to have been guilty of three things:

1. “allow[ing] inappropriate criteria to be developed and stay in place for more than 18 months,”
2. thereby causing “substantial delays in processing certain applications, and”
3. “allow[ing] unnecessary information requests to be issued.”

The IG report also stated these efforts began only weeks after the Citizens United court decision.

The highly invasive, Stasi-like questions asked by the IRS in the application process for targeted groups can be found here.

Lerner acknowledged publicly the targeting for the first time in response to a planted question on May 10, 2013, four days before the IG report was issued.

Lois Lerner received bonuses totaling \$129,000 for 2010-2012. Her bosses, who awarded them, submitted their retirement notices within 48 hours of the IG report in May 2013 while Lerner retired with a full pension in September 2013.

The DOJ attorney assigned in January 2014 to investigate the IRS targeting scandal was an Obama and Democratic National Committee (DNC) donor, creating a conflict-of-interest from the very beginning. Given the conflict, Judicial Watch sought information, via an FOIA request, on how many hours the attorney spent on the case but was stonewalled.

Around the same time, Obama said in December 2013 that the IRS scandal was only due to a “bureaucratic...list” drawn up in “an office in Cincinnati” and said, in February 2014, that the IRS targeting scandal had “not even a smidgen of corruption.”

Even in the wake of the raised eyebrows from the 2012 election, the Treasury Department and IRS introduced a new rule around Thanksgiving 2013 that would re-categorize as “political” a

whole host of activities previously categorized as “educational”—going all-in for a time to keep it in place through omnibus negotiations. At the time, Kimberly Strassel reported that Treasury, “appears to have reverse-engineered the carefully tailored rule—combing through the list of previously targeted tea party groups, compiling a list of their main activities and then restricting those functions.” This rule was so important to House Democrats that they even declined to negotiate it out in exchange for increased International Monetary Fund (IMF) funding. As Strassel noted at the time, this seemed like a rather big sacrifice for them to make for what they claimed was a mere bureaucratic procedural “rule.”

Federal prosecutors, who report to the same DOJ that met with Lois Lerner back in October 2010, decided in April 2015 not to prosecute her for contempt of Congress, setting a bad precedent.

House Oversight and Government Reform Committee Chair Jason Chaffetz’s July 27, 2015 letter to President Obama is a lengthy indictment of the corruption that has pervaded the IRS targeting scandal, starting at the top. More specifically, the letter states that IRS Commissioner John Koskinen failed to comply with Congressional subpoenas; testify truthfully; preserve records; and to stop the IRS targeting campaign of political opponents. These failures ultimately led to him being censured by the House Committee on Oversight and Government Reform; all after his predecessor visited the White House 157 times, far more than any other Cabinet member.

In June 2016, over three years after the IRS admitted to targeting tea party groups, the IRS released a list of organization subjected to greater scrutiny. The number—426—was much larger than the 298 previously identified in the May 2013 IG report.

Fast forward to 2015 – 2017, five to seven years from the beginning of this scandal to see how the IRS continues to obstruct and resist:

- July 2015: Five years later, a Judge threatens to hold the IRS Commissioner and IRS attorneys incontempt for failure to release 1,800 uncovered Lerner emails.
- July 2015: Five years later, the GAO reports that the IRS may still be targeting conservative non-profits.
- March 2016: Six years later, the U.S. Court of Appeals for the 6th District issued an opinion with blistering words, including these –

Yet in this lawsuit the IRS has only compounded the conduct that gave rise to it. The plaintiffs seek damages on behalf of themselves and other groups whose applications the IRS treated in the manner described by the Inspector General. The lawsuit has progressed as slowly as the underlying applications themselves: at every turn the IRS has resisted the plaintiffs’ requests for information regarding the IRS’s treatment of the plaintiff class, eventually to the open frustration of the district court. At issue here are IRS “Be On the Lookout” lists of organizations allegedly targeted for unfavorable treatment because of their political beliefs. Those organizations in turn make up the plaintiff class. The district court ordered production of those lists, and did so again over an IRS motion to reconsider. Yet, almost a year later, the IRS still has not complied with the court’s orders. Instead the IRS now seeks from this court a writ of mandamus, an extraordinary

remedy reserved to correct only the clearest abuses of power by a district court. We deny the petition.

- August 2016: Over six years later, the U.S. Court of Appeals for the 2nd District issued an opinion that Walter Olson, senior fellow at the Cato Institute Center for Constitutional Studies described as:

...a blistering rebuke to the IRS and its defenders...It takes on squarely the defense the IRS had raised in this case which is, 'Whatever happened, we promise not to do it again'....The court goes through and systematically takes that apart in a way that's very damaging to the IRS's overall defense.

The Court stated: "it is absurd to suggest that the effect of the IRS's unlawful conduct...has been eradicated" when the two conservative groups in question still had their delayed applications pending before the IRS.

- November 2016: Over six years later, another federal judge granted a preliminary injunction against the IRS based on "strong evidence of viewpoint discrimination by the agency." In response The Wall Street Journal editorialized,

According to the Treasury report, the IRS's use of targeting criteria stopped in May [2012]. [Yet] In September 2016, when the litigation had already begun, the IRS sent a three-page questionnaire asking the group to provide extensive documentation on expenses like "salaries, administrative, overhead, fundraising and . . . volunteer as well as employee hours," not to mention minutiae on its voter drives and voter guides. If the group hosts a speaker, the IRS asks whether it extends "an equal opportunity to participate to speakers on behalf of other political candidates seeking the same office.

- March 2017: Seven years later, a study showed that the IRS rule which allowed targeting in the first place remains in the IRS handbook.
- March/April 2017: Seven years later, the IRS reported it had discovered 6,924 newly identified documents in response to a 2015 Judicial Watch FOIA lawsuit that presumably were not turned over to Congress during earlier investigations. One month later, the first 695 pages were made public.

The difference between Obama and Nixon on political enemies? Nixon's IRS commissioner refused to target political enemies.

Still think the 2010-2012 IRS targeting scandal and the doubling down in 2013-2014 was a series of random events, devoid of malicious intent? That there is not something structurally wrong at the IRS when years of public scrutiny by Congress and the courts still do not alter many practices? Do you think that swapping out a few political appointees will alter existing incentives and stop this kind of behavior when surprises are still coming out seven years later?

The IRS targeting was an intentional chaos strategy in action. Chaos creates uncertainty, uncertainty creates a vacuum, and a vacuum creates opportunities for bad people to grab political power.

As Investor's Business Daily argued in one of their editorials, "IRS officials now know they can go after any political opponent they want, ruin them any way they wish, swing an election—as occurred with Lerner's actions—and get away with it."