



Written by [Bob Adelman](#) on October 26, 2015

Justice Department Declares Lois Lerner Innocent in IRS Targeting Scandal

On Friday, [in a letter](#) to the chairman and the ranking member of the House Committee on the Judiciary, Peter Kadzik, the assistant attorney general of the Justice Department, let Lois Lerner (shown) off the hook:



We took special care to evaluate whether Ms. Lerner had criminal culpability.

The need for scrutiny of Ms. Lerner in particular was heightened by the discovery and publication of emails from her official IRS account that expressed her personal political views and, in one case, hostility towards conservative radio personalities.

We therefore specifically considered whether Ms. Lerner's personal political views influenced her decisions, leadership, action, or failure to take action with respect to tax-exempt applications, or any other matter.

We found no such evidence.

Lerner, and others, were guilty of all manner of malfeasance, delays, obfuscation, stalling, dithering, and borderline obstruction, according to Kadzik, but nothing his department can prosecute her for. There were "mistakes" and "ill-advised selection criteria" used in targeting specific conservative groups seeking tax exemption, along with "delays" and "oversight and leadership lapses by senior managers and senior executive officials in Washington, D.C." There was "substantial evidence of mismanagement, poor judgment and institutional inertia," but nothing, according to Kadzik, warranting criminal prosecution. After all, wrote Kadzik, "poor management is not a crime."

Invoking claims of plausible deniability, Kadzik blamed the targeting on "IRS employees' failure to give adequate attention to the applications at issue ... caused by competing demands on their time and an unwillingness to be held accountable for difficult decisions over sensitive matters," adding: "We did not uncover any evidence that any of these employees were motivated by intentional viewpoint discrimination."

This is called the "Washington two-step" — a whitewash of the first order — which adroitly sidestepped issues such as Lerner's claim of innocence before the investigating committee and then pleading the Fifth Amendment for all those alleged charges she claimed she was innocent of. Little was mentioned of the convenient crash of her computer server, and less of the backup tapes that were destroyed before they could come to light under a subpoena from the committee.

The Justice Department spent two and a half years in its investigation, it said, interviewing more than



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100 IRS employees and reading more than one million pages of documents. And yet it could not provide a scintilla of evidence showing a deliberate vendetta by the IRS against conservative groups springing up following attacks on precious freedoms by the Obama administration. Representative Paul Ryan (R-Wis.), poised to become speaker of the house, called the conclusion by the DOJ “deeply disappointing,” saying that “the American people deserve better than this” and adding that “the Ways and Means Committee will continue to find answers and hold the IRS accountable for its actions.”

Mark Meckler, a Tea Party leader and president of Citizens for Self-Governance, which sued the IRS over the delays, called the conclusion “a whitewash and miscarriage of justice at the highest levels of law enforcement.”

Nothing was said in Kadzik’s letter about Lerner’s participation in the Washington two-step: her deliberately planting a question at a meeting of the American Bar Association in May 2013, giving her a chance to apologize for the mounting rage over targeting, and blaming the festering incident on “front line people” in the IRS’s Cincinnati office. Evidence surfaced later, however, that Lerner knew about the targeting as far back as June 2011.

Nothing was said about her being placed on administrative leave in June 2013, nor her hasty retirement from the IRS in September. Nor was anything said about her Contempt of Congress citation in May 2014, following her Fifth Amendment pleading.

Nothing was said about the “BOLO” list — the “Be On the Look Out” list — of conservative groups to be targeted for special scrutiny, referencing such words as “Tea Party,” “Patriots,” and “9/12 Project” to draw attention to, and delay of, applications from these groups for tax exempt status.

Nothing was said about the highly intrusive questions the IRS demanded of conservative groups, some of which were impossible to answer, and others of which were highly offensive. Documentation demands included “any contracts or training material” the groups might have exchanged with the Koch foundations, what books its members were reading, what they had posted on social networking websites, names of donors and how much contributed, and whether or not they were considering running for public office.

The Coalition for Life of Iowa, for example, was asked to “explain how all of your activities, including the prayer meetings outside of Planned Parenthood offices, are considered educational.... Please explain in detail the activities at these prayer meetings.... Please provide the percentage of time your group spends on prayer groups as compared with other activities of [your] organization.”

Nothing was said by Kadzik about the report from the inspector general released in May 2013, which concluded:

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: 1) allowed inappropriate criteria to be developed and stay in place for more than 18 months, 2) resulted in substantial delays in processing certain applications, and 3) allowed unnecessary information requests to be issued.

Nor was anything said about the arrogance of IRS employees, their defiance of their supervisors, and their insensitivity to the impropriety of their behaviors uncovered by the inspector general.

Questions abound. When Speaker of the House John Boehner learned of the IG’s report, he said: “My



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question isn't about who's going to resign. My question is who's going to jail over this scandal?" Senator Claire McCaskill (D-Mo.) said: "We should not only fire the head of the IRS ... but we've got to go down the line and find every single person who had anything to do with this and make sure that they are removed from the IRS and the word goes out that this is unacceptable."

Only a few answers have trickled in. Aside from Lerner's retirement, Steven Miller, acting commissioner of the IRS, resigned in May 2013, while Joseph Grant, commissioner of the Tax Exempt and Government Entities Division, retired in June 2013. No one has been fired, and now, thanks to the extensive whitewash by the Justice Department, no one will be charged with criminal misconduct.

Other questions remain, such as how well does the system designed by the Founders to pit one interest group against another — the system of checks and balances — work when each competing branch of government has been taken over by groups and interests that are inimical to freedom?

It's safe to say that, based upon Kadzik's letter, future targeting of dissident groups can now be engaged in without concern about or worry over sanctions, discipline, or jail time. The Department of Justice has now, with its letter, given carte blanche to any government agency, including the IRS, to "go after" any group perceived to threaten the establishment, without fear of reprisal. They've been given a green light.

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