



Department of Justice

STATEMENT OF

THE U.S. DEPARTMENT OF JUSTICE

BEFORE THE

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES**

AT A HEARING ENTITLED

**“OBSTRUCTION OF JUSTICE: DOES THE JUSTICE DEPARTMENT HAVE TO RESPOND
TO A LAWFULLY ISSUED AND VALID CONGRESSIONAL SUBPOENA?”**

PRESENTED

JUNE 13, 2011

**STATEMENT FOR THE RECORD OF
THE U.S. DEPARTMENT OF JUSTICE
BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES
AT A HEARING ENTITLED
“OBSTRUCTION OF JUSTICE: DOES THE JUSTICE DEPARTMENT HAVE TO
RESPOND TO A LAWFULLY ISSUED AND VALID CONGRESSIONAL SUBPOENA?”
PRESENTED
JUNE 13, 2011**

The Department of Justice is fully committed to working in good faith with the Committee to accommodate the Committee’s legitimate oversight interests in this matter. The Department has already accommodated some requests for information - including providing documents, briefing committee staff, and facilitating interviews with Department employees - and will continue to do so with regard to this matter, though much of it relates to ongoing criminal investigations of drugs and weapons traffickers, as well as the murder of a federal law enforcement officer. The Department has to ensure it preserves the independence and integrity of its law enforcement efforts and its ability to hold criminals accountable.

The Constitution envisions, as the United States Court of Appeals for the District of Columbia Circuit has recognized in the seminal oversight case of *United States v. AT&T Co.*, 567 F.2d 121 (D.C. Cir. 1977), that the Legislative and Executive Branches will engage in a process of accommodation whereby each branch makes a principled effort to acknowledge, and if possible to meet, the legitimate needs of the other branch. It is the policy of the Executive Branch to comply with congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch. Going back to the beginning of the 20th century - under both Democratic and Republican administrations - the Department’s policy has been to protect non-public and sensitive information regarding ongoing criminal investigations from release to preserve fairness and impartiality in the criminal justice process. As the Department’s Office of Legal Counsel under President Reagan explained in 1986, “the policy of the Executive Branch throughout our Nation’s history has generally been to decline to provide committees of Congress with access to, or copies of, open law enforcement files except in extraordinary circumstances.” *Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act*, 10 Op. O.L.C. 68, 76 (1986). This policy is essential to fulfilling the Department’s constitutional and statutory obligations to preserve the independence, integrity, and effectiveness of open law enforcement investigations and the criminal justice process more generally. Attached to this statement is a letter from Attorney General Reno to Senator Hatch, then-Chairman of the Senate Judiciary Committee, which provides a fuller statement of the rationale for our policy, as well as its lengthy and non-partisan history.

The Department anticipates that the witnesses at today’s hearing will testify that Congress has a legitimate oversight interest over the Department, including its ongoing investigations, and that the Department has on certain occasions provided Congress with law enforcement materials.

Although the Department acknowledges as a general matter that Congress's oversight authority with respect to the Department extends to open matters, exercises of that oversight authority must also account for -- and in some cases yield to -- the legitimate confidentiality interests of the Department and the criminal justice system, especially in circumstances in which oversight is sought of open criminal investigations. As for the historical precedents, we do not believe they have ever involved a similar effort by Congress to review an active, ongoing criminal investigation in the manner sought by the Committee's subpoena. *See generally* Todd David Peterson, *Congressional Oversight of Open Criminal Investigations*, 77 Notre Dame L. Rev. 1373, 1388-1410 (2002) (discussing the limited utility of the precedents relied upon by in Congressional Research Service reports).

The Department recognizes the legitimate oversight responsibility of Congress and will continue to work in good faith with the Committee on its requests for information while balancing the need to protect the integrity and effectiveness of the criminal investigations, ensure the safety of cooperating witnesses and law enforcement officers, preserve the Department's ability to hold criminals accountable, and keep investigations and law enforcement efforts free from undue political interference, perceived or otherwise.