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REPRESENTATIVE DARRELL ISSA (R-CA): (Sounds gavel.) Hearing will now come back to order. We will now recognize our third panel. Mr. Ronald Welch (sic) is assistant attorney general, U.S. Department of Justice. Pursuant to the rules, would you please rise to take the oath?

(Witness is sworn in.)

REP. ISSA: Let the record indicate that the witness answered in the affirmative. I've noticed -- note that you sat patiently through all of the previous testimony. So not only do you understand the red light/green light, but you'll be the final witness, and I appreciate your patience and your being here to hear everything that came before.

You're now recognized.

RONALD WEICH: Thank you very much, Mr. Chairman. And I would ask that my full statement be included in the record.

REP. ISSA: Without objection, so ordered.

MR. WEICH: Mr. Chairman, Ranking Member Cummings, members of the committee, I'm very pleased to be here today to discuss the Justice Department's continuing efforts to respond to the committee's subpoena concerning ongoing criminal investigations on the southwest border and pending indictments in the U.S. District Court for the District of Arizona.

I want to say at the outset that the department is fully committed to working with you in good faith to accommodate the committee's legitimate oversight interests. We hope the committee will similarly engage in good faith with the department in a manner that recognizes the important confidentiality interests presented when congressional oversight involves open criminal investigations. It's difficult when the interests of principle -- principled exercise of the prerogatives of the legislative and executive branches come into potential conflict. The Constitution envisions that the branches will engage in a process of cooperation and accommodation to avoid such conflicts. And we look forward to engaging in that process with you.

As the committee is aware, many of the subpoenaed documents concern an open criminal investigation conducted by the Bureau of Alcohol, Tobacco and Firearms, known as Operation Fast and Furious.

Other subpoenaed documents concern the open investigation and pending prosecution regarding the shooting death of Agent Brian Terry. Let me just say here that the death of Agent Terry was a tragic loss, and the Justice Department extends its deepest sympathies to his family, who testified courageously here a moment ago.

We were very pleased to hear on Monday of the committee's commitment not to compromise the investigation into Agent Terry's murder or the broader gun-trafficking investigation. And we are fully committed to bringing to justice those who are responsible for Agent Terry's death.

The department recognizes the important role of congressional oversight, including oversight of the department's activities. It's the policy of the executive branch, at the instruction of the president, to comply with congressional requests for information to the fullest extent, consistent with the constitutional and statutory obligations of the executive branch. At the same time, attempts to conduct congressional oversight of ongoing criminal investigations are highly unusual and present serious issues. 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.

The policy is designed to fulfill the department's obligations to preserve the independence, integrity and effectiveness of law-enforcement investigations in the criminal-justice process generally. And I want to say this policy is completely nonpartisan. It has been relied on by administrations of both parties for decades.

So in response to your subpoena, this department has been striving to reconcile the two principles by accommodating the committee's oversight interests while protecting our confidentiality interests. Striking this balance can take time and effort.

It is not the case that the department is refusing to comply with the department subpoena. In fact, we are working diligently to satisfy the committee's core oversight interest without compromising the important purposes underlying the department's policy that I

have described.

The starting point for our approach is an agreement by the department that this committee has a legitimate oversight interest in information, shedding light on the genesis and strategy of the Fast and Furious operation. We have focused on identifying documents and responses to those needs.

We have already made a good deal of information available. In total, the department has physically produced more than 675 pages of documents to the committee, made available more than 900 additional pages for review. In addition, we've made one ATF official available for an interview with the committee staff, and we hope we will be able to schedule more interviews in the upcoming weeks. The committee has requested briefings on specific topics, and we have agreed to provide those.

The department has taken the extraordinary step of retaining an outside consultant, a contractor, at substantial cost, to assist us in building a database of the emails of the 19 individuals at ATF whom the committee has indicated primary interest in. We have engaged in a search of great magnitude to ensure that we get the documents that you have asked for, to the best of our ability.

The individuals -- there are 19 selected user accounts that you have focused on. They contain over 724,000 emails and attachments. In addition, the department has collected thousands of documents flagged to us by ATF as potentially responsive. Over two dozen lawyers at ATF and the department are reviewing those documents, and we have been able to provide documents to the committee each of the last three working days -- yesterday, Monday, and the Friday before.

The department will not be able to make available all of the documents encompassed by the subpoena because of the law-enforcement confidentiality interest that I have already identified. We cannot provide certain core investigative and prosecutorial documents, but we will work with the committee to identify and make available documents responsive to your core requests.

Let me conclude by emphasizing that the department recognizes that congressional oversight is an important part of our system of government. At the same time, congressional oversight that implicates ongoing congressional investigations presents -- (inaudible) -- not raised in ordinary cases.

Despite the unique challenges posed by oversight of open criminal matters, we remain optimistic that the department will be able to satisfy the committee's core oversight interests while safeguarding the integrity, independence and effectiveness of the department's ongoing criminal investigations.

Thank you for inviting me to testify, and I'll be pleased to answer your questions.

REP. ISSA: I certainly hope so.

I recognize myself.

Sir, if you're going to count pages like this as discovery, you should be ashamed of yourself. The only thing that this says is "Internal Use Only: Not For Dissemination Outside the ATF." That's not discovery. That is saying that nothing within the document requested, under any circumstances, are we going to be shown. It doesn't take so long if you don't spend your life redacting.

The pages go on like this forever. You've given us black paper instead of white paper. You might as well have given us a ream still in its original binder. How dare you make an opening statement -- how dare you make an opening statement of cooperation. We've had to subpoena again and again. Your representatives of this -- of your organization, of the executive branch, have discouraged witnesses from coming forward. It has only been the courage of whistleblowers like the ones you saw here today that have caused us to have more documents on this case than you have ever suggested turning over. And how dare you talk about 900 pages, all of which were available on the Internet. Your first discovery that you ever turned over, you gave us already available on Google search documents only.

So, sir, what executive privilege are you claiming? Sensitivity is not envisioned. On Monday, we held a hearing here. And I hope you had plenty of people watching it. And if you didn't, get it on YouTube. Not one witness, not on direct or on cross, talked in terms of the kind of unique sensitivity. Instead they gave us case law and cases involving Justice that say just the opposite of what you're saying.

Sir, you heard from the family and you heard from the whistleblowers. They have concerns about whether you're charging everybody in Brian Terry's murder. And, yes, I'm deeply concerned. And we've promised to get to the bottom of it. And if somebody wants to call that political interference, so be it. You should be held to a standard of why everybody, including the people who lie, buy and lie those weapons, why they're not being charged if there's any chance they can be properly linked to his murder.

But let's move on. Understand, that's for the family. For this committee, we're investigating you, your organization. The executive branch above the Phoenix office is who we're investigating. We want to know what felony-stupid, bad judgment led to allowing this program at the highest levels.

When you've got the head of Alcohol, Tobacco and Fire on basically his computer screen watching these things, don't tell me you didn't know what it was doing. It appears to us on this side of the aisle, and I believe on the other side, that you thought this was a good idea.

Today are you prepared to tell us that this program was, in fact, necessary and a good idea? And are you prepared to tell us who authorized it? Who was the greatest, highest-ranking person who authorized any part of it?

MR. WEICH: Mr. Chairman, you've raised a number of issues. Let me try to --

REP. ISSA: Do the last ones first. Who authorized this program that was so felony-stupid that it got people killed?

MR. WEICH: The attorney general has said that he wants to get to the bottom of this. He has directed the Office of the Inspector General at the Justice Department to review this matter in order to answer questions like the ones you have. REP. ISSA: And if that's the case, then why are we any burden at all? Isn't every one of our requests consistent with what the inspector general and the attorney general should be looking at in this case?

MR. WEICH: I don't know for a fact that everything you've asked for is what they're looking at --

REP. ISSA: I hope you came here to answer questions like that. We're asking for things related to the above-the-field level almost exclusively. Our questions are about who authorized this. Why did it happen? Why did it continue? Our question to you today is the president said he didn't authorize it. He said the attorney general didn't authorize it. He didn't say he didn't know about it. He said he didn't authorize it. Who at Justice authorized this program?

MR. WEICH: As I said, Mr. Chairman, at the Office of the Inspector General --

REP. ISSA: Who at Justice -- if you know, I ask you to answer -- who do you know was involved in the authorization of this, today? Do you know? Do you know?

MR. WEICH: Well, Mr. Chairman, if you'll permit me to answer the question, we sent a letter to Chairman Smith, who asked a question like that. And we pointed out that this operation, as with other law-enforcement operations, originated in ATF's Phoenix office.

REP. ISSA: That's not authorization. Who authorized it at the highest level?

MR. WEICH: Again, Mr. Chairman, please, if you'll permit me --

REP. ISSA: Do you know who authorized it at the highest level? And don't answer Phoenix or Tucson or any part of Arizona, if you please.

MR. WEICH: Mr. Chairman, it's difficult to answer your questions if you won't permit me to answer them.

REP. ISSA: I want the answer to my question, which was who here in Washington authorized it. We know who looked at it on video. We know who authorized it effectively, at least by acquiescence. Who authorized this at Justice?

MR. WEICH: Mr. Chairman, I do not know the answer to that question, and the inspector general is reviewing the matter.

REP. ISSA: Then we will have somebody back who does.

The ranking member is recognized. REP. CUMMINGS: Mr. Weich, let me apologize for that. You don't deserve that. Perhaps somebody else in the department does. What is your role? What's your job?

MR. WEICH: I'm the assistant attorney general for the Office of Legislative Affairs, Congressman.

REP. CUMMINGS: And these are not the decisions that you make, are they, the questions that he was just asking you about, the chairman was asking you about?

MR. WEICH: That's correct.

REP. CUMMINGS: And as I've said many times, there's a certain level of integrity that we must maintain in this committee. I see this committee as just lower than a court. And I know, and I've said it to the chairman, and I'll say it over and over again, you've got to go home to your family. You've got colleagues who are watching this. And for you to be hollered at and treated that way, I just think it's unfair. And so, on behalf of the committee, I apologize.

REP. ISSA: Would the gentleman yield?

REP. CUMMINGS: No, I will not yield. I'm trying to talk to the witness. I didn't interrupt you.

REP. ISSA: No, and you didn't -- I didn't say things --

REP. CUMMINGS: I'll yield as long as I get the time.

REP. ISSA: Hold the time.

Will the gentleman please note, you may apologize on behalf of something you say. I am not apologetic --

REP. CUMMINGS: Fine.

REP. ISSA: -- and you may not apologize on behalf of the committee.

REP. CUMMINGS: Thank you.

REP. ISSA: The gentleman may resume.

REP. CUMMINGS: Let me say this. I apologize, because we're better than that. We're better than that. And I do hope that we bring the appropriate people who can answer those questions. And even when they come, they should not be treated that way. On April 13th, you wrote to the committee to explain the extreme sensitivity of some of the documents covered by your committee's subpoena of open law-enforcement files. You explained that the subpoena, quote, "encompasses records that would identify individuals who are assisting in the investigation and sources and investigative techniques that have not yet been disclosed."

But this is not all of the records, right? And I assume that it is just a small subset of subpoenaed documents and that you can redact such sensitive information. Isn't that correct?

MR. WEICH: That's correct, Congressman. And that's what we're trying to do.

REP. CUMMINGS: Now, I can understand the chairman being upset, because I'd be upset, but I wouldn't treat you like that, about somebody submitting to me some black pages. Can you explain that to me?

MR. WEICH: Well, one thing I want to make clear, Congressman, is that the number of pages that I cited in my testimony as having been produced or made available does not include such pages. Where those pages are redacted, it's part of a document showing where there was law-enforcement-sensitive information that we were unable to provide, but that is not included in the total.

REP. CUMMINGS: And what were the total pages that you submitted?

MR. WEICH: We'll get the exact numbers.

REP. CUMMINGS: Well, while your staff is assisting you on that, let me get going.

MR. WEICH: I have it.

REP. CUMMINGS: OK.

MR. WEICH: It was -- we have physically produced more than 675 pages of documents and made available more than 900 additional pages for review. And I should say, this production is ongoing. We have made documents available and physically produced documents in each of the last three business days. And I expect the document production to continue.

REP. CUMMINGS: The purpose of our investigation is to understand what occurred and who was responsible. Do you think that you'll be able to provide sufficient documents to answer those core questions without disclosing highly sensitive records?

MR. WEICH: I'm sorry, Congressman. Could you -- REP. CUMMINGS: In other words, you said that there are some confidentiality issues. And I'm trying to get to -- you said that this spans -- certain policy spans over various administrations. It wasn't just Democratic administrations, Republican administrations.

I'm just asking you, is there a way that we can get -- what I've often said, and I said it before the hearing that the chairman referred to the other day, I said there's -- we need to do two things. We've got two things going on here. We're trying to look to see how far this thing went up, but at the same time, we've got these criminal prosecutions. And I'm saying is there a way that we can resolve those issues? Is that within your purview?

MR. WEICH: Yes, it is. And I believe that we can do so. We are doing that by providing documents, by briefing the committee, by making documents available, and by facilitating witness interviews. We share the committee's goal in getting to the bottom of these questions, and we are assisting the committee at the same time that the department itself has a review by the Office of the Inspector General.

REP. CUMMINGS: Now, you further explained that it is the public release of this information that presents the most risk to ongoing criminal investigations and prosecutions. You stated, and I quote, "Disclosure of these types of information may present risks to individual safety in the violent environment of firearms trafficking activities. Disclosure may also prematurely inform subjects and targets about our investigation in a manner that permits them to evade and obstruct our prosecutorial efforts."

Even if we're not so upset about -- and I am always concerned about prosecutions -- the fact that somebody's life might be in danger gives me great concern, because I see it, living where I live, almost every day. So what is the -- tell me something. What is the -- can you give me a response to that?

MR. WEICH: Yes, Congressman. Some of these documents identify cooperating witnesses. They identify confidential informants. They describe a strategy as to specific cases, ongoing cases. And revealing that strategy could inform potential targets of the investigation of law-enforcement activities. And it seems unwise -- you yourself, Ranking Member Cummings, highlighted a number of ways in which the committee investigation has already inadvertently overstepped the line and, for example, made public a sealed

document.

We're concerned about this. We really think that if we work cooperatively, we can help the committee avoid such missteps, help satisfy the committee's oversight interests, and get to the bottom of these questions.

REP. CUMMINGS: Thank you very much.

REP. ISSA: The gentleman's time has expired. The gentleman from Oklahoma is recognized. Would you yield to me for 30 seconds?

REPRESENTATIVE JAMES LANKFORD (R-OK): Absolutely.

REP. ISSA: Did you provide those documents you say were released that were sealed? The documents you're saying were prematurely released, were they provided by you under any kind of request?

MR. WEICH: You know, I'm not certain. If you'll permit me to consult with my staff, I'll be able to --

REP. ISSA: OK, off the clock. Go ahead.

MR. WEICH: I got the answer, Mr. Chairman, and the answer is no. Those were not documents we provided. Those were documents that your investigators obtained and then made public, in spite of the court order that they not be made public.

REP. ISSA: So you're saying that if we get documents that we have no idea, because you're not providing documents, that we're responsible?

MR. WEICH: Yes, Mr. Chairman. It seems to me that you should ask the Justice Department whether sensitive documents should be made public. That particular document related to a wiretap, which is always a sensitive law-enforcement step. And if the committee would consult with us, we would help the committee avoid --

REP. ISSA: If you had given us those documents with appropriate guidance, that obviously wouldn't have happened. You didn't do it, and you had plenty of time to do it.

I yield back to the gentleman.

REP. LANKFORD: Thank you.

As I try to follow up this whole day and try to process what's been going on, February the 4th there was a letter that Senator Grassley went back and forth with you, saying, "The allegation that ATF sanctioned or otherwise knowingly allowed the sale of assault weapons to straw purchasers who transported them to Mexico is false."

May the 2nd, you wrote again to Senator Grassley reiterating, "It remains our understanding that ATF's Operation Fast and Furious did not knowingly permit straw buyers to take guns into Mexico." Yet I just asked some agents about that, and their statement was they think about 1,500 weapons are still out there, and probably two to one of those are in Mexico. Would you like to change your statement at all on that or have anything that you would want to shift on your previous statements from February or May?

MR. WEICH: Thank you, Congressman. The statements that you refer to are -- let me say this. Every time the Justice Department sends a letter to Congress, it is true to the best of our knowledge at the time that we send it.

Those particular statements remain true for the technical reason that the committee's report issued last night described. The straw purchasers don't take guns to Mexico. And in any event, ATF doesn't sanction or approve of the transfer of weapons to Mexico. That's obviously --

REP. LANKFORD: But ATF did permit those knowingly understanding they're headed towards the border. And that was well known, apparently, among the Phoenix office, and as we can tell going up the food chain, that these purchases were not being purchased by someone out, as was stated, bear hunting. These were straw purchasers buying in large quantities and headed towards Mexico. So how can we make a statement, "We're not sanctioning that, but we're also not interdicting; we're not trying to stop it either"?

MR. WEICH: Right. No, obviously allegations from the ATF agents you've heard from today and from others have given rise to serious questions about how ATF conducted this operation. And that's why the attorney general instituted an investigation and it's why we're cooperating in this committee's investigation.

REP. LANKFORD: Was there any communication with leadership in Mexico so that if these weapons showed up in Mexico, we were actually doing a law-enforcement process here to make sure they were both aware that these guns might be headed that way or that we had a working relationship, when arrests were made, we would cooperate with them dealing with these arrests?

MR. WEICH: Congressman, I can't -- from my position in the Office of Legislative Affairs, I don't have personal knowledge of the kind of communication. My understanding is that, in general, there are close ties between U.S. law enforcement and Mexican law enforcement, including on gun investigations. As a general matter, the answer to your question is yes. As to specific cases, I'm not in a position to say.

REP. LANKFORD: So we're not -- are you saying they were aware that this Fast and Furious was going on and that guns were headed their direction and they were involved in that process, or there's just "We know their phone numbers and we occasionally call each other"? This specific program is what I'm talking about. MR. WEICH: Congressman, I'm not in a position to answer that question with specificity.

REP. LANKFORD: Do you know who might be a good person that we could contact to get that kind of specific information?

MR. WEICH: The committee has already interviewed one ATF agent. And as I said, we're prepared to make other agents available. And these include high-ranking ATF officials. I would think that those individuals can speak with specificity to the question that you're asking.

REP. LANKFORD: Terrific. What other office besides the Phoenix office was doing this type of program?

MR. WEICH: Congressman, I'm not in a position to answer. I don't know the answer to that question.

REP. LANKFORD: OK. Do you know how many offices that DOJ has a relationship with that were informed about this operation as it was ongoing that might be engaged, at least have a -- not necessarily approval, but at least acknowledgement? "This is going on. Just be aware. The Phoenix office is tracking straw poll -- tracking straw buyers, and they are out there. There may be as many as 1,500 guns. Just be aware of that."

Do we know how many other offices or agencies were aware of that?

MR. WEICH: Are you saying offices or agencies of the Justice Department?

REP. LANKFORD: Agencies within Justice, yeah, that it has a relationship with.

MR. WEICH: I don't know. There is close communication among the various U.S. attorney's offices and the law-enforcement components. There are, you know, cross-cutting meetings and task forces and so forth, including OCDETF. But I can't speak with specificity as to this operation.

REP. LANKFORD: OK, thank you.

I yield back.

REP. ISSA: I thank the gentleman.

The gentleman from Missouri, Mr. Clay.

REPRESENTATIVE WILLIAM LACY CLAY (D-MO): Thank you, Mr. Chairman. Mr. Weich, from what I can see, the Department of Justice has worked hard to comply with the committee's very large document request. Not only have you gone to considerable lengths and cost; you have worked with the majority committee staff to prioritize documents of great interest. You have briefed the committee, not only on your ongoing processing of documents, but on the case itself. On top of delivering many documents, you have made the most sensitive documents available for review by committee staff in ways that protect the documents' integrity.

It seems to me that the department is cooperating with the committee's extraordinary requests. And I say extraordinary because not only is the scope of the request very large, but because of its timing, during ongoing criminal investigations, as well as an ongoing IG investigation.

Flashing back to when the committee was investigating Blackwater during the previous administration, a member of this committee, now in the majority, said that, quote, "We are supposed to allow the administration to do its investigation, and then we do oversight," end of quote.

Now, I believe we have a legitimate interest in conducting oversight of the administration, but we should not jeopardize ongoing criminal cases or IG investigations just because a different party now holds the White House.

Mr. Weich, in your statement you explained that the department has made certain documents available to committee staff for their review, but without providing copies. This is because the documents contain sensitive law-enforcement material and the department needs to prevent their public disclosure.

MR. WEICH: That's absolutely right, Congressman.

REP. CLAY: Is this a common practice?

MR. WEICH: Yes, it's a very common practice, as I detail in my written statement. For many years the department has used this process of making documents available in order to maximize the number of documents that a committee can have access to. Chairmen for many years have accepted this practice. And we do it because the rules of the House do not easily permit a committee to keep documents confidential. And indeed, this committee has declined to provide any such assurances.

So this is what we do. We make documents publicly -- make documents available physically that we are prepared to see be made public. And those that are not, we make available to the committee investigators.

REP. LACY: And it's obvious that it's very disturbing to you and the department that the -- to the fact that, despite your procedures and clear warnings, the majority and Senator Grassley has inappropriately released sensitive documents. MR. WEICH: Let me say this, Congressman. What I -- as the chairman noted, I've been here all morning, and I listened to Senator Grassley, as well as to the Terry family and to the ATF agents who testified.

The common view of all the witnesses and the members of the committee is that it is vital that these prosecutions, most notably the prosecution of Agent Terry's alleged killers, be successful, that we not do anything to harm those prosecutions. Our effort to preserve confidentiality of certain law-enforcement-sensitive documents is in furtherance of that goal.

REP. LACY: And you wrote on Monday that you heard, during the hearing on Monday, that the committee is committed to not compromising the murder investigation or the broader gun-trafficking investigation through its oversight activities, given what we found out about improper disclosure and improper contact with witnesses. And the way that these hearings have been structured and conducted, I'm not sure I agree with your assessment.

I think that the majority's actions have come very close to compromising the investigations and prosecution, if they already have not done so. Do you still believe in the majority's commitment to not compromise these investigations?

MR. WEICH: Congressman Clay, we want to work with the committee. We have an ongoing relationship with the committee staff. I think it's important for us to flag these warnings and maintain appropriate boundaries. But we share the committee's interest in getting to the bottom of these allegations, and so we will work with the committee.

REP. LACY: I thank the witness.

REP. ISSA: I thank the gentleman.

We now recognize the gentleman from Utah, Mr. Chaffetz.

REPRESENTATIVE JASON CHAFFETZ (R-UT): When did you first talk to Attorney General Holder about this issue?

MR. WEICH: As best as I can recall, it came up in preparation for his oversight hearings in May. He was asked about it, I think, by Chairman Issa on --

REP. CHAFFETZ: Do you still hold tight to the -- so you're suggesting that the letters that you sent on February 4th, 2011 to Senator Grassley, and again another letter on May 2nd, 2011 to Senator Grassley, that the content of those two letters is complete and accurate, as best you know?

MR. WEICH: Congressman, I've said --

REP. CHAFFETZ: That's a yes-or-no question. Is it complete and accurate? MR. WEICH: Congressman --

REP. CHAFFETZ: Yes or no?

MR. WEICH: Well, respectfully, that's not susceptible to a yes- no answer.

REP. CHAFFETZ: Go ahead.

MR. WEICH: Thank you. As the committee's report pointed out, there is a technical explanation for why the allegation that ATF sanctioned the sale of guns to straw purchasers, who then transported them to Mexico, is not an accurate statement. And so we said that that was false.

However, serious allegations have come to light, including the testimony of the agents today, that cause Attorney General Holder to want there to be an independent review of this matter, and he's initiated that review. So we're not clinging to the statements in those letters. We're saying --

REP. CHAFFETZ: So if I said that I think somebody knowingly and willfully actually misled and lied to Congress, would I be off base?

MR. WEICH: Respectfully, Congressman, you would be in that we make every effort to provide truthful information to Congress. I know that's something that I --

REP. CHAFFETZ: I would like to highlight --

MR. WEICH: -- take very seriously in my role.

REP. CHAFFETZ: -- January 8th. Remember, these letters came on February 4th and May 2nd. But on January 8th -- and I will quote from this internal document here from the Phoenix field division that indicated on page four, quote, "Currently our strategy is to

allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and allow for the identification of co-conspirators who would continue to operate and illegally traffic firearms to Mexican drug trafficking organizations." And it goes on there.

The administration knew in January, before these letters came out, that it was on purpose. It "would continue to operate and illegally traffic firearms to Mexico." How can that stand? And how can you and the Department of Justice and people who take responsibility for this allow the lies to continue to come to Congress? Why did this Obama administration purposely allow the illegal transfer of more than 2,000 weapons that they knew, according to this memo, were going to go to Mexico? MR. WEICH: Congressman, you've asked questions that the office of the inspector general is looking at, that this committee is looking at, and we --

REP. CHAFFETZ: I want answers from you. That's why you're here. You have this document. You know that this is true. This memo goes on to continue to say, and again in January, to date there have been five notable seizure events connected with the group, approximately 53 firearms originally purchased by this group, have been recovered. Three of these seizures have been in the country of Mexico. We knew that these were going south.

And yet, in your letter, that you state, quote, "It remains the understanding, our understanding that ATF Operation Fast and Furious did not knowingly permit straw purchase buyers to take guns into Mexico.

" That is patently and totally false. How do you do that? How do you do, when this comes out in January and again in May, you write, and you tell this Congress that they did not knowingly permit straw purchasers to take guns into Mexico, in total contradiction of the memo of January 8. How does that happen?

MR. WEICH: Congressman, I've explained to you that we do our best to provide the information to Congress as we know it. As allegations have come to light, we've initiated an investigation, and cooperating with this committee's investigation.

REP. CHAFFETZ: Is Fast and Furious still ongoing?

MR. WEICH: I don't believe so, Congressman. I'm --

REP. CHAFFETZ: At what point did the attorney general, did he order it that it be taken down, did we stop doing it? At what point did they actually, all right, enough is enough?

MR. WEICH: The attorney general made very clear, as this matter came to light, that guns should never be walked to Mexico --

REP. CHAFFETZ: I want to know when the attorney general actually got engaged in this. Why didn't he know about it? When did he know about it? Or was he just oblivious to it?

MR. WEICH: No, Congressman, he answered Chairman Issa's question on the House Judiciary Committee, the question was --

REP. CHAFFETZ: But I questioned him also on the House Judiciary Committee. If you remember, you were sitting in the row right behind him --

MR. WEICH: Very close.

REP. CHAFFETZ: And he said he didn't know when he first knew about it. So I'm trying to figure out when did he know about it, and then, what did he do about it?

MR. WEICH: He told Congressman Issa that he first learned about it several weeks before the hearing in connection with the press release. REP. CHAFFETZ: And what I don't understand is, when you go back and look at the record, President Obama knew about it back in March. If the president knew about it, why didn't the attorney general know about it, and why are you issuing a memo in May when the President of the United States, in an interview with, I believe, Univision, is saying, we know there were some mistakes made. How did that happen? The president makes this comment, and then still, months later, you have the gall to issue a memo to this Congress saying, that's just false. It's not true. That does not add up, and that's what this investigation is going to continue to pursue.

Yield back.

REP. ISSA: I thank the gentleman.

If I may grant myself a time for a colloquy, because the gentleman does seem to be rather upset, I've read the statement and if you were to parse words and determine the meaning of "is," then you probably could say that, because the straw purchasers, the original buyers, did not take them to Mexico, but rather transferred them to intermediaries, that in fact, they did not knowingly take them into Mexico. I would not call it the whole truth, but I certainly understand why, if someone's trying to deceive and mislead, that they could, in fact, write a letter like that and think that they technically didn't lie, and they would be correct.

With that, we recognize next the gentleman -- oh, you haven't done yours?

We recognize the gentleman from South Carolina, Mr. Gowdy.

REPRESENTATIVE TREY GOWDY (R-SC): Thank you, Mr. Chairman.



Sir, I know that you were here this morning while the members of the committee were -- and I will say this with all the civility that I can muster -- I think it is bitterly ironic that you would refer to committee missteps before you referred to ATF or DOJ missteps. In response to questioning from Mr. Issa, you used the phrase "committee missteps." I think the purpose of this hearing is not so much our missteps -- real or perceived -- but the missteps of ATF and DOJ. So let me start by asking, when did anyone at DOJ know that firearms, in connection with this investigation, were going to Mexico?

MR. WEICH: Congressman, that's not a question that I'm equipped to answer. As I said, the inspector general is looking at it, and we're cooperating in this committee's investigation.

REP. GOWDY: Well --

MR. WEICH: And let me reiterate, Congressman, I didn't start out my testimony by talking about committee missteps. I didn't talk about it in my opening statement -- REP. GOWDY: No, sir, you did not. But it is bitterly ironic that the first criticism you would have, and the first use of the word overstep would be of this committee, and not of ATF, and not of the United States attorney's office in Arizona. And I frankly am shocked at the relationship between ATF and that particular United States attorney's office.

It is untenable and unworkable, and I would hope that someone at DOJ would ask some questions of the U.S. attorney's office in Arizona. I cannot imagine that kind of working relationship where proffers are not allowed, and subpoenas take six weeks to be approved. And I would be hopeful that you would ask that. So you do not know when DOJ knew that firearms were in New Mexico?

MR. WEICH: No, sir. I personally do not.

REP. GOWDY: All right. What is DOJ's policy on guns walking?

MR. WEICH: The attorney general has made very clear that guns cannot walk to Mexico. That is to say, guns, it is, per se, a violation of law for guns to be transported across the border to Mexico.

REP. GOWDY: What is your definition of walking?

MR. WEICH: That, as the committee's report made clear, is the subject of much discussion within ATF and --

REP. GOWDY: I'm asking about DOJ.

MR. WEICH: I'm afraid I'm not in a position to answer that question. I will say that it is --

REP. GOWDY: But you would agree that saying, that me physically handing someone who's a prohibitive person, a gun, that cannot be the only definition of walking. Having knowledge that a gun is leaving your area of surveillance or jurisdiction, is walking. Correct?

MR. WEICH: I can't define walking. What I can say, Congressman, is that it is -- this is a challenging enforcement environment, as I think you know, as a former federal prosecutor.

REP. GOWDY: I do, but I've also got to tell you, as a former federal prosecutor. This is unprecedented. I've never heard -- would you ever allow or sanction controlled substances -- if it were controlled substances and not firearms, would you have ever allowed or sanctioned or permitted them to walk?

MR. WEICH: First of all, there's a big difference. Drugs are, per se, illegal, and guns are not. The sale of a firearm or multiple firearms to an individual who is not a prohibitive person is not illegal, of course. REP. GOWDY: I'm aware of that. Would you have allowed controlled substances to skip surveillance and go to Mexico?

MR. WEICH: That's a question that's well beyond my area of responsibility or expertise. I will note that, of course, there are controlled buys in narcotics cases, in order to pursue a drug conspiracy and pursue the highest levels of a drug conspiracy. I know that from my personal experience as a prosecutor. REP. GOWDY: Well, who can we ask, who can we invite before this committee, that can tell us definitively when the Department of Justice knew that guns were going into Mexico? Who would you invite us to invite?

MR. WEICH: I think you're pursuing the right track, if I can be so presumptuous. You're obtaining documents, you're interviewing witnesses. You interviewed Agent Newell, who was one of the individuals mentioned in the testimony today as having been very involved in this. There are other agents and ATF officials who we are ready to provide for interviews. We --

REP. GOWDY: What about the United States attorney in Arizona? When did the U.S. attorney know that guns were a part of -- this was an OSADEF investigation, so it's impossible to argue the United States Attorney's office wasn't part and parcel to it. When did the United States attorney in Arizona know that firearms were leaving the United States and going to Mexico?

MR. WEICH: I don't know the answer to that question, Congressman Gowdy. But could I just say, I know Dennis Burke, the U.S. attorney there. He is a very hard-working, dedicated public servant, and what obviously happened here is there was a serious, profound disagreement about strategy. But the common goal of the United States attorney's office and all of the ATF agents is to interdict guns, to stop the gun trafficking to Mexico. So Mr. Burke, I'm sure, was dedicated to that purpose.

REP. GOWDY: Sir, with respect, given the fact that you know, Mr. Burke and I do not, would you share with him what was said this morning about the dissatisfaction with federal law enforcement in Arizona and the relationship that they have with the United States attorney's office?

MR. WEICH: Yes.

REP. GOWDY: Because that has not been my experience, certainly not in South Carolina, and not in other jurisdictions. The level of animosity and the fighting between law enforcement and federal prosecutors over something as simple as a proffer -- are you aware of any United States attorney's office that doesn't engage or allow the use of proffers?

MR. WEICH: It's obviously a common technique.

REP. GOWDY: Of course, it is. There's no way to build a historical case without proffers. And since you know Mr. Burke and I do not, would you ask him to do what he can to repair his relationship with law enforcement? Because it appears to be fractured, from this vantage point.

MR. WEICH: I'd be happy to talk to him, but I'm sure he's monitoring this hearing closely.

REP. GOWDY: Thank you.

REP. ISSA: I thank the gentleman.

We recognize the gentleman from Massachusetts, Mr. Lynch, for five minutes.

REPRESENTATIVE STEPHEN LYNCH (D-MA): Thank you, Mr. Chairman.

Just briefly, following up on that point, it would seem that the approach of at least the deputy or assistance U.S. attorney down there was to acquire corpus delicti, the body of the crime, to actually have the guns in order to proceed with the prosecution. Then, that will, if that's the case, I believe it's an improper application of the law, and since this committee is involved in overseeing that our laws, once passed by Congress, are indeed enforced, it would serve us all, I think, if we review that, the application of the law, if that indeed is the approach of the office down there.

MR. WEICH: Congressman Lynch, if I may, one thing that's been brought to my attention is that the United States attorney's office has brought cases involving large numbers of guns for purchases, individuals alleged to have trafficked guns without a license, and that those prosecutions have sometimes resulted in hung juries or directed verdicts of acquittal because of the high stage of proof, especially in the Ninth Circuit. So there may be something for Congress to look at in its legislative arena as well.

REP. LYNCH: OK. With that, I will yield the balance of my time to the gentleman from Maryland, Mr. Cummings.

REPRESENTATIVE ELIJAH CUMMINGS (D-MD): Thank you very much.

Mr. Chairman, I want to submit our letter for the record, requesting the minority day of the hearings. It's dated June 15, today.

REP. ISSA: Thank you. I'm in receipt of your request. REP. CUMMINGS: Well, I'm asking that it be admitted into the record, Mr. Chairman, signed by members of the --

REP. ISSA: Certainly. Without objection. So ordered.

REP. CUMMINGS: Thank you very much.

I want to say this to you, Mr. Weich. I'm sitting here and I'm listening to all of this, and I want you to take a message back. In some kind of way, we've got to establish, you know, the majority has some concerns, and I think many of them probably quite legitimate. And there has to be a balance here. I'm always concerned about people possibly dying as a result of something we might do in this committee. I'm concerned about murderers getting off. I spent a phenomenal amount of time trying to protect witnesses.

I've submitted legislation that has been held up in the Senate side, by the other side, trying to protect witnesses. I believe in ultimate cooperation between law enforcement and the public. I have a record of it for years. You know why? Because I go to the funerals, I see the deaths, I hear the cries and I experience the pain. In some kind of way, we've got to make sure that we strike the balance that I was just talking about. And I'm not sure, I'm just not sure, whether that balance has been struck the way it ought to be.

This committee has a job to do. The Justice Department has a job to do. In some kind of way, we've got to find a way, as the adults in all of this, to make that happen, and make it work. And I'm really serious about that. You've got to, you know, life is short, and I tell my staff that every day I look in the mirror and I face my own mortality. And the question is, is how can I be most effective and efficient. And while we go through this ring around the rosy stuff, what happens is that none of us are affected.

And you heard me make a commitment to that lady, Ms. Terry. I shall not rest until everybody involved in this process -- and I mean that, I shall not rest -- until all of that is addressed. Now, the chairman said something that was very interesting. He, a moment ago, spoke about all this transparency and we need to read the whole document, and I appreciate that. But the one thing he did not say about his memo on January 5, he didn't read this piece. You remember, Mr. Chaffetz mentioned this memo, he said read a piece of the

memo, but he didn't read all of it.

And let me just read this line so that the record will be clear. It says investigative, talks about this, on January 5, 2010, investigation and prosecution, and I quote, "investigative and prosecution strategies were discussed, and a determination was made that there was minimal evidence at this time to support any type of prosecution." I just wanted to finish that because I think it's important, particularly in the light of the chairman saying that we need to have the whole statement. And with that, I yield back.

REP. ISSA: I thank the gentleman.

We now go to the gentlelady from New York, Ms. Buerkle.

REPRESENTATIVE ANN MARIE BUERKLE (R-NY): Thank you, Mr. Chairman.

And thank you, Mr. Weich, for being here today. I have a couple of questions. You keep alluding to the inquiry and the investigation that IG is going to conduct at the request of --

MR. WEICH: That office is currently conducting that investigation.

REP. BUERKLE: OK. All right.

So are you concerned that their investigation is going to conflict or interfere with DOJ's investigation?

MR. WEICH: That, oh you mean the criminal investigation?

REP. BUERKLE: Yes, that's the --

MR. WEICH: The inspector general has a good deal of experience in avoiding those kinds of conflicts, and of course, their work is strictly confidential. Any report that they would issue publicly would be carefully vetted to avoid those kinds of concerns.

REP. BUERKLE: And so, you're not concerned that they will interfere with the DOJ's investigation, just to be clear?

MR. WEICH: We are not concerned.

REP. BUERKLE: OK. Then why are you concerned that congressional, that this investigation, that's continually what we hear, while there's an ongoing investigation, and so we feel we're not getting the answers we need because you're concerned about compromising a federal investigation. I'd like you to differentiate for this committee.

MR. WEICH: Sure. Well, first of all, Congresswoman, we're not saying that this committee should not investigate. To the contrary. We recognize the legitimate oversight interests, and we are cooperating with the committee as it pursues this. So we're not, in any way, saying don't do this. We're --

REP. BUERKLE: But if I would interrupt for a minute, there's a de facto, if you don't provide what's being asked, or you provide what we see here, all those redactive sheets. Whether or not you agree we have legitimate oversight, the fact that you're not complying with our request is a de facto, well, you're not going to comply.

MR. WEICH: We have provided almost 2,000 documents in different forms. The redacted documents that the chairman showed is a little bit of a red herring, I say with respect, because those were multi subject documents, I'm informed, and where the subject wasn't, the subject, you know, that portion of the memo wasn't responsive to the subpoena, it was blacked out because we're obviously not producing non-responsive material. We're not redacting heavily the material that the committee is seeking, and that is within its core oversight arena.

REP. BUERKLE: All right. With all due respect, I think this committee would disagree with your assessment, that we have been, we feel like we've been stonewalled, and we've not gotten the information that we've requested for DOJ. But I don't want to take up all my time on that line of questioning. You sat here this morning during the hearing, the second panel with the three special agents. Did you hear them say that this was the first time and perhaps the only time they had seen such an operation as this one exist?

MR. WEICH: I did hear them say that.

REP. BUERKLE: And is that of any concern to you, that, out of nowhere, there's this Fast and Furious Program that results in the death of Brian Terry?

MR. WEICH: No. It is obviously the, some of the testimony that was provided today is of great concern to the Justice Department, and that is why we are investigating it, through the office of the inspector general, and cooperating with this committee's investigation.

REP. BUERKLE: Is this the first time you've heard any of that testimony?

MR. WEICH: I've been generally aware of it in my role as the head of the office of Legislative Affairs, have obviously been aware of this for a number of months.

REP. BUERKLE: And what, when you say you're generally aware, what does that mean?

MR. WEICH: I've been involved in producing responses to letters. I've been in discussions about how to comply with the committee's subpoena, so I've been aware. I must say, I was very pleased to be here today to hear personally all of the testimony that was provided.

REP. BUERKLE: And before I get onto my last question, did you hear the issue they raised regarding retaliation?

MR. WEICH: I did. And I thank you, Congresswoman. I want to assure the committee -- I think a number of members raised this -- that the Department of Justice will not, would never retaliate against whistleblowers.

REP. BUERKLE: Lastly, my question, and I asked the family of Brian Terry, what, if they had the ability to ask a question, what they would like to know, so I'm going to read the question that Mr. Heyer gave us to ask you. And I'd like, to the best of your ability, to answer this question. I think that we would want to know if the dragnet that is set to find everyone involved in Brian's murder will be set deep enough and wide enough to encompass anyone involved in Operation Fast and Furious.

MR. WEICH: The answer to that question is unequivocally yes. There is a firm commitment in the Department of Justice to bring everyone responsible for Agent Terry's death to justice.

REP. BUERKLE: And the second part of his question -- if the guns used in Brian's murder were a part of this operation, then we'd want to know, will everyone in the operation that had to deal with those specific weapons, be brought up on charges of facilitating the murder of Brian Terry?

MR. WEICH: Obviously, the whole purpose of the investigations that are ongoing, both in the office of the inspector general and here, is to ensure that there is accountability for the decisions that have been made, and most importantly, to improve and strengthen our law enforcement efforts. If there are flawed strategies, if there is insufficient surveillance of weapons, obviously, that's something that the Justice Department wants to rectify.

REP. BUERKLE: Thank you.

I yield back, Mr. Chairman.

REP. ISSA: I thank the gentlelady.

We now recognize the gentleman from Texas, Mr. Farenthold, for five minutes.

REPRESENTATIVE BLAKE FARENTHOLD (R-TX): Thank you, Mr. Chairman.

I assume you all are investigating various crimes that were associated with these guns. Aside from the tragic murder of Agent Terry, are there any other American law enforcement officers or citizens who've died as a result of this program?

MR. WEICH: Congressman, I can't accept the premise of the question. I don't know that any particular murder can be attributed to this program. I think that assumes a lot of fact, and I'm just not equipped to deal with that. So I can't answer the question, because I can't accept the premise.

REP. FARENTHOLD: All right. Let's, let's talk about, you heard in the testimony this morning of the agents saying that there was some sort of strategy that we would allow these guns to move up the chain of command with the rather nebulous goal of snaring a drug cartel. Are you aware, is this the strategy, and if so, can you tell me in any rational basis how the means that we used justify the ends, when we quit following the guns as soon as they changed hands the first time? There was no cooperation with the Mexican authorities, and it just seems like once they did the first top, we just went away. MR. WEICH: Congressman, one thing I heard loud and clear from the ATF testimony today, from those agents, was that the people with whom they disagreed on the strategic questions, told them and believed that they were engaged in a strategy to topple a significant transnational gun trafficking operation. If the strategy was flawed, then individuals should be held to account, and the strategies should be improved. But I did hear that everybody had the goal of stopping illegal gun trafficking to Mexico. REP. FARENTHOLD: To me, it just doesn't seem, it seems like the next step is you follow the guns all the way. The actions that appear to have been taken don't seem to make any relationship to the strategy at all. But I've got a couple of other questions, so we're going to leave that on. You've been reluctant to provide information and answer questions, continually citing ongoing criminal investigations, and not wanting criminals to go free or jeopardize these investigations. But my understanding -- I'm a lawyer -- my understanding of our justice system is that the defendant is entitled to all exculpatory evidence. So if we've got something that will help the defense, we're obliged to turn it over. So it seems like that, you ought to go ahead and turn it over to us so we can finish our investigation and meet your legal obligation to any defendants in this case for full disclosure.

MR. WEICH: Well, Congressman, we certainly need to meet our constitutional obligations to the defendants. I would note that when the committee interviews potential trial witnesses, you're creating material that wouldn't otherwise exist, that may be used to impeach witnesses at trial.

REP. FARENTHOLD: I mean, we're after the truth, and regardless of whether it comes out in front of this committee or comes out in front of a trial shouldn't matter. Let me go on. You also say that there's some concerns with releasing information to us that would jeopardize other investigations in other strategies and programs. Is that correct?

MR. WEICH: Yes.

REP. FARENTHOLD: Would you be willing to provide a briefing to all or some of this committee in a classified basis about those? I think you sensed a lot of anger, I'd go so far as to say anger from this committee that our government is engaged in what we perceive to be a reckless operation. Even if in a classified manner you could assure us you guys aren't so far off the reservation that there's a problem, I think it would go a long way to stemming some of the, for lack of a better word, adversarial conversations that are going on here. MR. WEICH: I hear you, Congressman. First of all, we'd be pleased to brief the committee. We have briefed the committee and will continue to do. It should not be adversarial. I want to emphasize this. We share the committee's concern about the matters that you heard about this morning. We are not adversarial to you in this. We are trying to get to the bottom of this ourselves.

REP. FARENTHOLD: And I'll yield my remaining 30 seconds to the chair.

REP. ISSA: I thank the gentleman.

You made a statement in that letter that you signed on the fourth that said ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico. Who prepared that line in your letter?

MR. WEICH: Chairman Issa, the --

REP. ISSA: You signed it. Who prepared it? Was it you?

MR. WEICH: These letters are the product of the Justice Department --

REP. ISSA: So your signature on that letter doesn't mean that you know it to be true. Is that correct?

MR. WEICH: I take ultimate responsibility --

REP. ISSA: OK. Isn't that statement false now with what you know?

MR. WEICH: Obviously, there have been allegations that call into serious question that particular ---

REP. ISSA: Weren't there documents that now have been provided and made public that let you know that that statement was false?

MR. WEICH: And that's why you're investigating, and that's why we're investigating.

REP. ISSA: I'll just take your agreement that those documents indicate that that statement that you signed, that someone prepared for your signature, were false.

MR. WEICH: Congressman, I'm not prepared to say that at this time. Everything that we say is true to the best of our knowledge at the time we say it. As more facts come out, obviously, our understanding of the situation is enhanced.

REP. ISSA: Just for the record, we will be posting online the 20-some pages that were made available. Since, out of the 20-some pages, the only thing that's not redacted other than internal use only statements is, Kevin Simpson, Acting Division Operations Officer, U.S. Department of Justice, ATF, 201 East Washington Street, Suite 940, Phoenix, Arizona, and the zip. The phone numbers are redacted. That's 100 percent of what you call discovery.

Would the ranking member like a second round?

REP. CUMMINGS: I just have one question.

REP. ISSA: The gentleman's recognized.

REP. CUMMINGS: This is following up on what you just were talking about.

Let me ask you this, Mr. Weich, again. I want to go back to trying to be effective and efficient. Again, we, I'm tired of, when we're put in a position where we're wasting time. You know, we may be dead next week, so I'm just being very frank with you. I'm tired. I don't want to waste time. Life is short.

This is the question. If you got assurances, the department got assurances that we would not be disclosing documents that are extremely sensitive, and agrees to, you know, to try to make sure that, well, we would commit to working out accommodations where we could go through -- I mean, you submit the documents, we got through them, making sure that, and we go through them together, come up with some type, would you want to come up with some kind of schedule whereby we can get what we want, you can be assured that we're not doing something that interferes with the kinds of things that you just talked about?

MR. WEICH: We will work with you, Congressman. We strongly favor that kind of cooperative accommodation process. It's traditional, and in this instance, where we recognize the committee's legitimate oversight needs, we want to reenter that process and do as much as we can to provide information to the committee.

REP. CUMMINGS: Well, would you all be willing to submit to a schedule, a document production schedule? See this is what I'm getting to. We can do this all day. And a new Congress will be in. And that's why I'm talking the way I'm talking. I'm, we've got to get stuff done. And I can't, we cannot keep our commitment to Ms. Terry by doing this back and forth thing. It's a waste of time. It's a waste of effort. And life is short.

MR. WEICH: I hear you, Congressman.

REP. CUMMINGS: So, I'm trying to get you to, I'm trying to help you help us --

MR. WEICH: I understand.

REP. CUMMINGS: And hopefully, help yourself at the same time. So, I mean, if we can work something out, can we move faster?  
MR. WEICH: Yeah. We --

REP. CUMMINGS: Because obviously, the majority feels like we're not moving fast enough, and I can understand that.

MR. WEICH: Yeah.

REP. CUMMINGS: That you're not moving fast enough.

I know you've got all kinds of -- I think you said it's something like 700,000 pages, or something like that. What would you suggest? Let me put it another way. How, what kind of arrangements would you suggest that, so that we don't keep running into this wall?

MR. WEICH: I don't think we've hit a wall. I don't think we're at an impasse. I think we are now on track. Obviously, it may have been a bumpy start. But we have produced documents in each of the last three working days, we made a witness available for an interview and we have a list of others we are ready to facilitate interviews of.

We are doing what I think you're asking, Congressman, which is trying to accommodate the committee's needs, consistent with our confidentiality interests.

REP. CUMMINGS: Well, would you after this try to sit down with us and try to see if we can't -- I mean, it's up to the chairman; he's the chairman of the committee -- but see if we can work out something where we can get documents and set up a schedule so we can get these documents passed? The last few days is wonderful, but I think we need to try to see if we can move the process along a little bit.

MR. WEICH: I'd be pleased to do that; I would welcome that. One thing I would say is we've devoted substantial resources -- attorneys full time -- to review these documents. We've hired a contractor to help us put these in a form that they can be efficiently reviewed. So we're rolling here.

REP. CUMMINGS: You know, one of the things -- one of the problems here is something that I talk about a lot and I recommend this book to you. It's called, "The Speed of Trust" by Covey. And he just talks about when people don't trust each other, it slows down everything. When they trust each other it speeds it up.

And I think maybe we need to -- I know you all are worried about documents being released. It seems like we're worried about not getting all the documents timely. Sometimes it's like -- well, we've got to break through that so that we can do the work of the American people.

And with that, I yield back. REP. ISSA: I thank the gentleman.

And I'll close more patiently than I opened.

Would you agree to voluntarily provide a list of DOJ and/or other personnel that prepared or participated in the preparing of the February 4th letter that we've had so much discussion about?

MR. WEICH: Congressman, I'm not prepared to make that commitment at this time. These letters are the product of substantial deliberation with the executive branch.

As I said --

REP. ISSA: Would you agree to make available a list of personnel who worked on and may have in some way been responsible specifically for the misstatement in the letter that says ATF makes every effort to interdict weapons that have been purchased illegally and prevent the transportation to Mexico?

MR. WEICH: I'm not prepared to make that commitment at this time.

What I am committed to -- what I am prepared to commit to is an ongoing effort to help the committee get to the underlying questions here about ATF's law enforcement activities.

REP. ISSA: Now, just for the record: Your job, the reason you're paid and basically have the title you have, is to answer Congress's questions.

MR. WEICH: That's a big part of my job.

REP. ISSA: Roughly five months ago Senator Grassley was told by your office in writing that he wasn't going to get answers, because he wasn't a chairman. You're aware of that, right?

MR. WEICH: I am. That's not an accurate statement. If I may --

REP. ISSA: Or more specifically that --

MR. WEICH: It's not that he won't get an answer --

REP. ISSA: -- that Chairman Leahy would have to request them.

MR. WEICH: We have answered Senator Grassley's letters. We have great respect for Senator Grassley, with whom the department has worked on many projects over the years quite productively.

As to oversight, it is the long-time position of the executive branch through administrations of both parties that the Congress -- each house of Congress -- speaks through its committees as to oversight. And so you are exercising the power of the House. No Senate chairman has made a parallel request. REP. ISSA: And I'm well aware that for two years of this administration there were no Republicans able to make those requests and have them granted and the requests generally were not made at all. That is in fact the position of the majority here is that there wasn't valid oversight for those two years.

It's my personal position -- and I'll go on the record today, since people were kind of enough to read things from the past -- that we need to have legitimate minority rights. And that at some future time in Congress -- and each time the rules are produced -- I'm going to try to have a party of the opposite party of the president, even if they're a minority, have rights. Because I think it's wrong that in fact, the majority ultimately often finds itself asked and encouraged to protect the administration.

I was here for the Bush administration. I was more junior, but I certainly saw people in your position constantly cajoling us to protect the president. I don't approve it; I now appreciate just how wrong that was.

Having said that, I will on behalf of the committee suggest something that you may take back to DOJ: If you're willing to do in-camera review 100 percent unredacted -- I repeat, 100 percent unredacted, and please don't say it's unacceptable, because it's obviously above your pay grade -- you prepare, we come over -- we being the staff. They look at the unredacted material. To the extent that we can agree on mutual redactions and the materials are sent over, to the extent that we disagree, then we can talk in terms of documents that have been seen that are not available, are not releasable, do not fall within your concerns, because I share your concerns that our rules are such that once something comes over here -- with the exception of the select intelligence committee -- it becomes much more problematic as far as review or release.

I want to get around that. I want to work with Justice on it. I cannot from this side of the dais accept any responsibility for documents that are leaked by third parties who get them. And I cannot enter into a negotiation where you tell us you're going to redact what we got around you, while you don't even let us see unredacted versions in-camera.

There's never been a time in which I was more animated than when my staff came back from that breakthrough meeting to find out that they had mostly black pages as your response in-camera.

So please take back, on behalf of this member and I hope the minority, that we should be trusted to send over career-professional staff to look at unredacted documents, understanding we're not taking them with us until or unless there is an agreement to how they would be appropriately redacted. That is an extension I'm putting on the record. Until that occurs, we will continue to expect discovery and we will continue to object to getting virtually all-black pages. And with that, I think the ranking member has a question.

REP. CUMMINGS: Will the gentleman yield for just a second?

REP. ISSA: Of course.

REP. CUMMINGS: I'm assuming that the message that you're sending to higher ups that would include both sides -- they're from both sides --

REP. ISSA: That's exactly the intention --

REP. CUMMINGS: Simultaneously.

REP. ISSA: It's a simultaneous -- our policies -- for those who may want to be aware of it -- our policies are that in fact anything that is received as a document production is received to both sides.

As you know, Mr. Weich, normally we ask you to send copies to both sides simultaneously. In the case of an in-camera, we would expect that staff would be detailed from both sides to go over and review it.

But we will only come back for in-camera review if in fact -- and we'll send cleared personnel, you know, pre-agreed to you from both sides if that becomes an issue -- but we have to look at the source material if an in-camera review will be appropriate.

No judge is going to look at redacted material as in-camera. Certainly you wouldn't expect us to see a part of a document that does us very little good and then say, well, yes, we had production.

MR. WEICH: Well, Mr. Chairman, I appreciate your recognition that I can't sort of negotiate this kind of thing at the witness table. But I can assure you that we will work with you on these kind of process concerns. That's the mode that we're in trying to help the committee address its oversight needs.

REP. ISSA: We look forward to that. This has been difficult. I will go again, last on the record, that we believe that there has been some breakthrough in the last week or so. We're thankful for the breakthrough. It's been awhile in coming, but hopefully it's the last time that we'll have the logjam with that.

And with that, this hearing stands adjourned. (Sounds gavel.)

END.