

From: Weich, Ron (SMO)
To: 'Davis, Kolan (Judiciary-Rep)'
CC: 'Abegg, John (McConnell)'
Sent: 6/17/2011 3:35:30 PM
Subject: law enforcement sensitive documents --
Attachments: 6 15 11 - HOGF Fast and Furious Transcript.pdf

Kolan - John (cc'd) asked me what I could say in response to your concern that many of the documents made available to Chairman Issa are treated as law enforcement sensitive. I told John, as I told you, that we can give Sen. Grassley the same commitment I gave Chairman Issa at the hearing on Wed, namely DOJ's willingness to meet and work in good faith to address the concern. The relevant except of the hearing is below, and the full transcript is attached.

REP. ISSA:

.....
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 --

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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.

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