

House Judiciary Committee Holds Hearing on Oversight of the Justice Department

LIST OF PANEL MEMBERS AND WITNESSES

SMITH:

The Judiciary Committee will come to order.

Without objection, the chair is authorized to declare recesses of the committee at any time. I'm going to recognize myself for an opening statement, then the ranking member, the gentleman from Michigan, then the gentleman from California, Mr. Issa, then the gentleman from Virginia, Mr. Scott. Then we will proceed to hearing from the attorney general.

Attorney General Eric Holder appeared before the House Judiciary Committee last May, and we appreciate his willingness to appear today to address many issues, including questions about his previous testimony.

While I am pleased to welcome back Attorney General Holder, I am disappointed in the department's repeated refusal to cooperate with this committee's oversight request.

This lack of cooperation is evident in the department's handling of inquiries related to the Bureau of Alcohol, Tobacco, Firearms and Explosives' Operation Fast and Furious and the death of Border Patrol Agent Brian Terry in December 2010. And inconsistent statements from department officials about who knew what and when have only raised more concerns.

I'm also disappointed in how the department has responded to my oversight request regarding Justice Kagan's involvement in health care legislation or related litigation while she served as United States solicitor general. Despite claims from Obama administration officials that then Solicitor General Kagan was walled off from discussions regarding the president's health care law, recently released e-mails indicate there may be more to the story.

On March 21st, 2010, an e-mail from the deputy solicitor general forwarded to Solicitor General Kagan contained information about a meeting at the White House on the health care law and asked, "I think you should go. No, I will regardless, but feel this is litigation of singular importance." Solicitor General Kagan responded by asking him for his phone number.

We also know from the e-mails that she personally supported the legislation's passage. In a March 21st, 2010, exchange with a Justice Department colleague discussing the health care legislation, Ms. Kagan exclaims, "I hear they have the votes, Larry. Simply amazing."

SMITH:

These e-mails reveal inconsistencies with the administration's claims that the Solicitor General Kagan was walled off from the issue.

To help clear up any confusion, I wrote the Justice Department to get additional documents and conduct staff interviews. It took nearly four months before the department sent a one-page response that denied my request.

The department did not assert any legal privilege over the requested information but simply refused to comply with the request. That is not a sufficient answer.

Health care legislation was passed by the Senate on December 24th, 2009. On January 8, 2010, Ms. Kagan told a deputy solicitor general that she definitely would like the Office of the Solicitor General to be involved in preparations to defend against challenges to the pending health care proposals. Ms. Kagan found out she was being considered for a potential Supreme Court vacancy on March 5th, 2010.

So the issue is how involved was she in health care discussions between January 8 and March 5. Just as President Nixon had an 18 and an half minute gap, does Ms. Kagan have a two-month gap?

The Office of the Solicitor General is responsible for defending the positions of the federal government in litigation before the Supreme Court. So it was the duty of then Solicitor General Kagan to participate in meetings and discussions regarding the legal defense strategy for the president's health care proposal. It would have been a surprising departure from her responsibilities for Solicitor General Kagan not to advise the administration on the health care bill.

The law clearly states that justices must recuse themselves if they participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case while they worked in a government capacity.

The public has a right to know the extent of Justice Kagan's involvement with the legislation as well as any previously stated legal opinions about the legislation while she served as solicitor general. The NFL would not allow a team to officiate its own game. If Justice Kagan was part of the administration's team that put the health care mandate into play, she should not officiate when it comes before the Supreme Court.

If the department has nothing to hide, why not provide Congress with the requested information? The continued refusal to cooperate with legitimate oversight inquiries only heightens concerns that she may, in fact, have a conflict of interest.

President Obama has promised an open and transparent government. Unfortunately, we often see a closed and secretive Justice Department.

I know all members of the committee look forward to asking questions on these and other issues. And I'll now recognize the gentleman from Michigan, the ranking member of the Judiciary Committee, Mr. Conyers.

CONYERS:

Thank you, Chairman Smith.

And a hearty welcome to not only the attorney general of the United States, Eric Holder, but as well to a -- well, this is the most numerous number of police chiefs and Department of Justice officials that I've seen in this room at one time in quite a while. All of them, but particularly to the Detroit police chief, Ralph Godbee, who is here, I send a special welcome.

Now, Chairman Smith, would it be appropriate that our colleague, a former member of the committee, Adam Schiff of California, sit on the dais with us?

SMITH:

Mr. Conyers, we normally don't do that, but in this case be very pleased to have the gentleman from California, Mr. Schiff, sit up at the dais with us.

We do -- we do have a policy that non-members of the committee will not be able to ask questions. But we certainly welcome his presence up here.

CONYERS:

I thank you for that courtesy.

Adam, come on up.

SMITH:

If he can find room.

CONYERS:

There are two parts to my comments this morning, members of the committee. The first deals with, what are the problems underlying the reason for the hearing? And the second deal more specifically with the career and contributions of the attorney general of the United States.

And I have the privilege of putting these solutions that I'd like you to consider in my opening statement. We can go over the details ad nauseum if you like, but I'd refer everyone to the November 8th, 2011, hearings in the United States Senate Committee on the Judiciary in which Chairman Pat Leahy, with more than a dozen senators on that committee, have plowed through this. And I've been going over and over it for the last couple days. But I think -- I think you want to have that as a basis for anybody that's particularly interested.

Now, the problem of gun trafficking in the Southwest is a serious problem and I think -- and I recommend to my Judiciary Committee colleagues with whom this whole subject matter is the

jurisdiction of this committee that we commit to maintaining the new rule requiring the reporting of multiple sales of semiautomatic weapons and shotguns, rifles, by individuals in the Southwest border states.

There have been a number of programs that have dealt with this subject, but I think that that's probably number one on my recommended list.

Secondly, we must help -- we must see to it that we confirm a director of Alcohol, Tobacco and Firearms. It's been operating under acting directors for the last five and one-half years. The Senate has failed to act on the nominations not only of the current president, but of President Bush as well.

So if we're going to criticize ATF, I think we -- we must work to revitalize it, not to tear it down, because it's too important a source of protection and ending -- a way of ending violence in this important part of our country.

And last, we must enact some legislation to prohibit gun trafficking. The multiple -- the transfer of multiple guns when we know they will be transferred to those who are legally prohibited from carrying a gun or people who intend to use guns illegally must be further prohibited by legislative and congressional action.

I commend our New York colleague Carolyn Maloney, who's sponsored a very good idea in this regard.

And so I conclude, Mr. Chairman and members, by telling you, I have never encountered an attorney general more dedicated and more professionally effective than the current occupant of that chair, Eric Holder, who has -- who has achieved impressive results across the full range of his mission, especially what has happened in the Civil Rights Division.

CONYERS:

And I think that the questions today here are appropriate. I think the hearing is fair. I think we have a chairman that will make sure we proceed in a manner that will make us all proud that we attended and participated in this hearing today.

But we also know that letting guns roam around this country is something that all of us have a great responsibility to make sure that that is diminished or comes to an end as soon as possible.

And I thank you, Mr. Chairman, for this opportunity.

SMITH:

And thank you, Mr. Conyers, for those comments.

The gentleman of -- from California, the chairman of the Oversight and Government Reform Committee is recognized for an opening statement.

ISSA:

Thank you, Mr. Chairman.

And I'd first like to ask unanimous consent that the following document be placed in the record: December 7th, article by Sharyl Attkisson entitled, "Documents: ATF Used 'Fast and Furious' to Make Case For Gun Regulations."

SMITH:

Without objection they'll be made a part of the record.

ISSA:

I thank you, Mr. Chairman.

I thank you for holding this hearing. It is deja vu all over again. We are beginning the process of getting to the bottom, to the truth of Fast and Furious.

I take exception to my colleague on the other side of the aisle, Mr. Conyers. What is too important is the Second Amendment, the idea that regulations without any approval of Congress have been added to create databases in the southern -- southwestern states, including California, Arizona, Mexico -- New Mexico -- Texas and New Mexico clearly shows that in fact this administration is more interested in building databases, more interested in talking about gun control than actually controlling the drugs -- drugs and guns that they had control over, whether it's money laundering or in fact it is the flow of guns knowingly.

Just one individual was allowed to buy under the auspices of the Justice Department 700 weapons knowing exactly who they were going to before they ever went.

Our discovery, with the help of Senator Grassley, has shown that this was not an accident and that this project was failed and flawed from the beginning.

It is not just ATF. It is not just DEA. In fact, it includes the Department of Homeland Security in a -- in a task force that obviously did not respect the safeguards of the American people.

Brian Terry is dead today, in my opinion, because of this failed program.

But even today we will not hear Justice taking responsibility. They will instead talk about the two guns that were recovered -- yes, they were from Fast and Furious, but ballistics are inconclusive. And, yet, this Justice Department is not looking for a third weapon. They are not looking for who killed Brian Terry while they try to have the plausible deniability that Fast and Furious may not have been responsible.

That's reprehensible to the family suffering under Brian Terry's needless murder.

Mr. Chairman, Fast and Furious began in November 2009. It was a new operation building on a failed operation under the previous administration. The difference in the previous administration is there was coordination with the Mexican government. They made a real effort under Wide Receiver to pass off a small amount of weapons and track them.

This program, just the opposite. Even knowing the drug cartels that were going to receive them, they simply allowed them to go to the stash house.

And Mr. Attorney General, today I hope you will not point fingers and say that somehow this is not organic. There is nothing more organic than law enforcement officer being gunned down because of a failure to protect within the Department of Justice. There is nothing more organic in Congress' responsibility than in fact following up on Congress being lied to.

My committee just next door was systemically lied to by your own representatives. There is a high likelihood individual was deliberately duped, but he was duped by people who still work for you today -- still work for you today.

The president has said he has full confidence in this attorney general. I have no confidence in a president who has full confidence in an attorney general who has in fact not terminated or dealt with the individuals, including key lieutenants who from the very beginning had some knowledge and long before Brian Terry was gunned down knew enough to stop this program.

There has been recrimination, there has been an attempt to find scapegoats. Many of the people who have been pointed to do share in the blame. But Mr. Attorney General, the blame must go to your desk and you must today take the real responsibility. Why haven't you terminated the many people involved? Why is it that we're still hearing about inconsistencies that don't even take the correct responsibility for Border Patrol Agent Brian Terry's death? Those are the things we want to hear today.

And Mr. Attorney General, I respect the fact that you said in the Senate that you gave truthful testimony. But I would like to hear when a few days becomes a few weeks or a few weeks becomes a few months, are we to have the confidence that the president says he has in you and the many people up and down the chain of command at Justice who saw this program, this operation, and let it happen; and the many people who called your legislative affairs representative, who's sitting right behind you -- caused him to bring false testimony to the committee.

It is unheard of for testimony -- or for letters or testimony to be taken back. They've had to be taken back because of people who still work for Justice.

Mr. Chairman, I thank you for your indulgence, and I appreciate the opportunity to speak here. And would ask that Blake Farenthold, a member of my committee who has been intimately involved in the investigation, also be allowed to sit on the dais under the same terms of Mr. Schiff?

CONYERS (?):

Is he a member of Congress?

ISSA:

He is a member of Congress.

SMITH:

Mr. Issa, thank you for your...

ISSA:

He's a freshman from Texas. He's impacted by these gun control regulations. He is an attorney.

SMITH:

I understand there is no room right now, but we'll consider that request in just a minute.

As much as I would like to have a Texas colleague up at the podium...

(CROSSTALK)

ISSA:

You've got a few, but he's a good one.

SMITH:

... he is not a former member of the Judiciary Committee, though. We certainly appreciate his expertise on the subject.

So let's wait until we have room, and we'll take it up at that point.

ISSA:

I thank the gentleman.

SMITH:

The gentleman from Virginia, Mr. Scott, the ranking member of the Crime Subcommittee, is recognized for an opening statement.

SCOTT:

Thank you, Mr. Chairman.

And I join my colleagues in welcoming the attorney general this morning.

I understand that the invitation to the attorney general to appear this morning specifically referenced gun trafficking in the southwest border, so today we have an opportunity to discuss with him the positive steps we must take to protect our citizens from illegal firearms.

I'm heartened that this attorney general recognizes that the smartest and most effective way to protect ourselves from crime is to prevent it from occurring in the first place.

With respect to preventing firearm violence, there are steps that we can take to reduce the toll of the injured and murdered, and there are steps that we must take in order to enhance the ability of law enforcement to effectively investigate gun crimes that have already occurred.

I'd note, as it's often said around here, that the best strategy to use when you're in a hole is to stop digging. Unfortunately, this committee approved and the House passed a dangerous bill that would override the laws of almost every state by requiring each state to accept concealed handgun carry permits -- concealed handgun carry permits from other states even if the permit holder would not be allowed to carry or even possess a handgun in his home state or the state where he is traveling.

Actions like this make the hole deeper and do not make us safer.

We in Congress can best take the steps to help law enforcement prevent and investigate gun violence. Specifically, with reference to the problem of gun trafficking in the southwest border, we know that the rule that went into effect in August requiring the reporting of multiple sales of certain assault weapons is an important tool to help law enforcement fight the straw purchasing that fuels gun trafficking.

Unfortunately, while that rule was under consideration, 21 members of this committee voted last February to prevent funds from being used to implement this important reporting requirement.

If that measure had been included in the final version, the -- the prohibition against that reporting

requirement had been included in the final version of the bill, the ATF would not be receiving these reports today, and they would be denied information which is helping them investigate suspected straw purchasing.

The ATF has an important role in protecting us from the dangers of illegal use and trafficking of firearms, the illegal use and storing of explosives and acts of arson and bombing.

We must make sure this agency is capable of fulfilling its important mission and it needs strong leadership. In that light we need to encourage our Senate colleagues to confirm the president's nominee to be director of the ATF.

Finally, when we -- we have learned that we need to give prosecutors a critical additional tool to fight gun trafficking. For example, we need a statute that specifically prohibits the transfer of multiple firearms (inaudible) the hands of those legally ineligible to possess them and to those who intend to use them to commit crimes.

SCOTT:

I hope this committee will take action on legislation in this area in the near future.

These are things we need to do to address the real problem. And those who want to focus on Operation Fast and Furious and gun-walking tactics that it employed, I would just note that these tactics originated in the ATF investigations under the Bush administration. And a November 16th, 2007 memo refers to the fact that so-called "gun-walking" was already occurring in the Bush administration.

In contrast, there's no evidence that Attorney General Holder knew of these tactics while they were being used and he should be praised for consistently saying that they were unacceptable and referring this matter to the inspector general soon after he learned about them.

So I thank the attorney general for appearing here today and I look forward to his testimony.

I yield back.

SMITH:

Thank you, Mr. Scott.

We are pleased to welcome today's witness, United States Attorney General Eric H. Holder, Jr. On February 3rd, 2009, Attorney General Holder was sworn in as the 82nd attorney general of the United States. Attorney General Holder has enjoyed a long and distinguished career in public service. First joining the department through the attorney general's honors program in 1976, he became one of the department's first attorneys to serve in the newly formed Public Integrity Section.

He went on to serve as a judge of the superior court of the District of Columbia and the U.S. attorney for the District of Columbia. In 1997, Mr. Holder was named by President Clinton to be the deputy attorney general.

Prior to becoming attorney general, Mr. Holder was a litigation partner at Covington and Burling, LLP, in Washington, D.C.

Mr. Holder, a native of New York City, is a graduate of Columbia University and Columbia Law School.

Again, we welcome you and look forward to your testimony.

ISSA:

Mr. Chairman? Mr. Chairman, I would move that the witness be sworn.

SMITH:

I am going to ask that the gentleman withdraw that for two reasons. First of all, the attorney general did receive a letter from the committee reminding him of the need and in effect that he is testifying under oath; and two, we don't need to go through that necessarily because that is assumed by anybody who does testify before the committee.

ISSA:

Point of inquiry, Mr. Chairman? Isn't it true that a false statement to Congress bears a different criminal violation than a sworn statement?

SMITH:

I believe that answer to that is yes.

ISSA:

The I would once again ask, since this committee has at times sworn witnesses, as have all the committees, that in light of factual...

(CROSSTALK)

SMITH:

If the gentleman would yield, I misunderstood the question, and the answer was no. So it is deemed as if he is under oath right now, any witness.

ISSA:

So he is exactly the same as if he swears under our rules?

SMITH:

That is correct.

ISSA:

Then I withdraw.

SMITH:

OK. I thank the gentleman

If the attorney general would proceed.

HOLDER:

Thank you, Mr. Chairman.

Chairman Smith, Ranking Member Conyers and members of the committee, I appreciate the opportunity to appear before you today to describe the decisive action that we have taken to ensure that the flawed tactics used in Operation Fast and Furious and in earlier operations under the prior administration are never repeated.

Now, for nearly three years I've been privileged to work with this committee to strengthen national security and to strengthen law enforcement, and I'm extremely proud of our record of achievement. In offices around the world, the department's 117,000 employees have made historic progress in protecting the American people from a range of unprecedented threats, from global terrorism and violent crime to financial fraud, human trafficking, and more. We have disrupted numerous potentially devastating terrorist plots and successfully prosecuted scores of dangerous terrorists.

The department's efforts on behalf of the most vulnerable among us, including victims of civil rights abuses and hate crimes, have never been more effective. And the partnerships -- partnerships that we have built with state, local and tribal law enforcement officials have never been stronger.

Today, it's a privilege to be joined by several of our key public safety partners. These five police executives -- Chief Fred Bealefeld of Baltimore, Commissioner Ed Davis of Boston, Chief Rodney Monroe of Charlotte, Chief Ralph Godbee of Detroit, and Commissioner Charles Ramsey of Philadelphia -- have been leaders in developing and implementing innovative and effective crime prevention strategies.

They have also worked closely with the department in advancing critical efforts to reverse the alarming rise in law enforcement fatalities in recent years. The work that we do along the southwest border is influenced by the efforts that they have undertaken in their own cities. In the cities that they serve and in communities across the country, this work is a priority.

And in our ongoing efforts to protect the American people and our brave law enforcement personnel, a critical area of focus will continue to be our battle against gun violence on the southwest border. Now, in recent years the department has devoted significant resources to this fight, and specifically to addressing the unacceptable rate of illegal firearms trafficking from the United States to Mexico.

Unfortunately, in the pursuit of that laudable goal, unacceptable tactics were adopted as part of Operation Fast and Furious. Now, as I have repeatedly stated, allowing guns to walk, whether in

this administration or the prior one, is wholly unacceptable. The use of this misguided tactic is inexcusable and it must never happen again.

Soon after learning after the allegations raised by ATF agents involved with Fast and Furious, I took action designed to ensure accountability. In February, I asked the department's acting inspector general to investigate the matter. And in early March, I ordered that a directive be sent to law enforcement agents and prosecutors prohibiting such tactics.

More recently, the new acting director of ATF, Todd Jones, implemented reforms to prevent these tactics from being used in the future, including training and stricter oversight procedures for all significant investigations.

Now, although the department has taken steps to ensure that such tactics are never used again, it is an unfortunate reality that we will continue to feel the effects of this flawed operation for years to come. Guns lost during this operation will continue to show up at crime scenes on both sides of the border.

As we work to identify where errors occurred and to ensure that these mistakes never happen again, we must not lose sight of the critical challenge that this flawed operation has highlighted, and that is the battle to stop the flow of guns to Mexico. Of the nearly 94,000 guns that have been recovered and traced in Mexico in the last five years, more than 64,000 were sourced to the United States. During this time, the trafficking of firearms across our southwest border has contributed to approximately 40,000 deaths in Mexico.

Now, the reforms that we have undertaken do not make any of the losses of life more bearable for grieving families. These tragedies do, however, portray in very stark terms the exceptionally difficult challenges that law enforcement agencies confront every day in working to disrupt illegal firearms transfers.

Operation Fast and Furious appears to have been a deeply flawed effort to respond to these very challenges. As we work to avoid future losses and further mistakes, it is unfortunate that some have used inflammatory and inappropriate rhetoric about one particular tragedy that occurred near the southwest border in an effort to score political points.

Nearly one year ago, while working to protect his fellow citizens, U.S. Customs and Border Protection Agent Brian Terry was violently murdered in Arizona. We all should feel outrage about his death, and as I have communicated directly to Agent Terry's family, we are dedicated to pursuing justice on his behalf.

The department is also working to answer questions that the Terry family has raised, including whether and how firearms connected to Fast and Furious end up with Mexican drug cartels. In her independent review, I expect the department's acting inspector general to answer these questions.

I understand that Congress also wants answers. Justice Department employees have been working tirelessly to identify, to locate and to provide relevant information to this committee and to the two other committees that are investigating Fast and Furious, all while preserving the integrity of our ongoing criminal investigations and prosecutions.

The department has been fully cooperative and responsive in its dealing with Congress. I have answered questions in the House and the Senate on four occasions concerning this matter. To date, we have provided almost 5,000 pages of documents for congressional investigators to review. We have scheduled numerous witness interviews and testified and public hearings. And just last week, we provided an unprecedented access to internal deliberative documents to explain how inaccurate information was initially conveyed to Congress.

These documents demonstrate that Justice Department personnel relied on information provided by supervisors from the components in the best position to know the relevant facts. We now know that some information provided by those supervisors was inaccurate. Now, I understand that in subsequent interviews with congressional investigators, these supervisors have stated that they did not know at the time that information provided in a letter to congressional leaders earlier this year was inaccurate.

HOLDER:

The documents produced to date also belie the remarkable notion that this operation was conceived by department leaders, as some have claimed. It is my understanding that department leaders were not informed about the inappropriate tactics employed in this operation until those tactics were made public, and, as is customary, turned to those with supervisory responsibility over the operation in an effort to learn facts.

But what is clear is that disrupting the dangerous flow of firearms along the Southwest border and putting an end to the violence that has claimed far too many lives -- lives -- is and will continue to be a top priority for this Department of Justice.

This year alone we have led successful investigation into the murders of United States citizens in Mexico, created new cartel targeting prosecutorial units and secured the extradition of more than 100 defendants wanted by United States law enforcement, including the former head of the Tijuana cartel.

We've also built crime-fighting capacity on both sides of the border by developing new procedures for using evidence gathered in Mexico to prosecute gun traffickers in U.S. courts, by training thousands of Mexican prosecutors and investigators, by successfully fighting to enhancing sentencing guidelines for convicting traffickers and straw purchasers, and by pursuing coordinated multi-district investigations of gun trafficking rings.

Now, despite this progress, we have more to do. Each of us has a duty to act and to rise above partisan divisions and politically motivated gotcha games. The American people deserve better. It is time for a new dialogue about these important issues, one that is respectful, responsible and factual.

This will require us to apply the lessons that we've learned from law enforcement officers, like the ones who sit behind me today, who protect public safety and our national security every day.

In that regard, not only did ATF agents bring the inappropriate and misguided tactics of Operation Fast and Furious to light, they also sounded the alarm for more effective laws to combat gun trafficking and improve public safety.

ATF agents who testified before the House Committee on Oversight and Government Reform this summer explained that the agency's ability to stem the flow of guns from the United States into Mexico suffers from a lack of effective enforcement tools. One critical first step should be for Congress to provide ATF with the tools and the authorities that it needs.

Now, unfortunately, earlier this year the majority of House members voted to keep law enforcement in the dark when individuals purchase multiple semiautomatic rifles, shotguns and long guns, like AK-47s in gun shops in four Southwest border states.

Going forward, I hope that we can work to -- work together to provide law enforcement agents with the tools that they desperately need to protect the country and to ensure their own safety. And for their sake, we cannot afford to allow the tragic mistakes of Operation Fast and Furious to become a political sideshow or a series of media opportunities. Instead, we must move forward and recommit ourselves to our shared public safety obligations. I am willing to work with you in this effort.

I look forward to your questions.

SMITH:

Thank you, Mr. Attorney General. Other members are going to ask you about Fast and Furious, so I'm going to pick a different subject and ask you about the extent of Justice Kagan's involvement with the health care legislation.

My first question is this: To your knowledge, did then Solicitor General Kagan ever give advice or express an opinion on legal or constitutional issues involving the health care legislation?

HOLDER:

I do not believe so. In fact, as I testified in the Senate last month, I guess, we took steps to physically exclude...

SMITH:

Right.

HOLDER:

... or have her removed when conversations occurred.

SMITH:

What -- what month did that take place? When did you start excluding her from those types of meetings?

HOLDER:

I'm not sure when that started, but my memory is that whenever we had conversations about the health care bill, then Solicitor General Kagan was not present.

SMITH:

And -- and the reason for excluding her is because of her possible consideration for the Supreme Court?

HOLDER:

Yeah, I think that's right.

SMITH:

OK.

HOLDER:

We understood that that was a possibility.

SMITH:

Now, she testified that she first became aware of that possibility that she might be considered in early March. So you would not have excluded her prior to early March?

HOLDER:

Well, I, again, I don't know exactly when these events occurred, but I do feel comfortable in saying that in terms of the conversations that occurred in my conference room about the health care legislation...

(CROSSTALK)

SMITH:

Right. Right. But would you have had any reason to exclude her, any reason to wall her off, in the words that you were told by a deputy, prior to the time that she was considered for the Supreme Court?

HOLDER:

Well, I can tell you that with regard to, as I said, the conversations that occurred in my conference room about the health care bill, I do not remember her being present for any of them.

SMITH:

OK. Would you be able to check your records to find out what the date would have been when you started telling her that she should either excuse or recuse herself from those discussions?

HOLDER:

We'll attempt to do that. I'm not sure that that information exists any place.

SMITH:

OK.

HOLDER:

But to the extent that it does, I'll provide it to you.

SMITH:

OK. And would you have a record of any meetings, because of your schedule, that she attended?

HOLDER:

Would I have a record?

SMITH:

Right. Of any meetings that she attended because -- if you went back and looked at your schedule, I assume that that would be on your schedule.

HOLDER:

Yeah, the schedule for what is our 9:15 meeting lists the people who are expected to...

SMITH:

Right.

HOLDER:

... expected to be there.

SMITH:

OK.

(CROSSTALK)

HOLDER:

... sure we put -- actually keep track of who actually does come.

SMITH:

OK. If you'll give me the dates when you started telling her that. Again, I don't believe you would have any reason to exclude her before she was being considered for the Supreme Court vacancy. And as I mentioned in my opening statement, she would actually have a duty to be involved in conversations regarding the health care bill.

Let me go to another question. This goes to some of the correspondence that I have written you asking for documents and to be allowed to interview both present and former staff members. But is the department asserting a legal privilege in refusing to comply with my request for those documents and those interviews about then Solicitor General Kagan's involvement with the health care legislation?

HOLDER:

Well...

SMITH:

You know your letter to me did not assert any legal privilege.

HOLDER:

Yeah, the department has released documents under FOIA relating to this matter and those documents are certainly available to members of the committee. The documents that we have released are consistent with...

SMITH:

I'm not asking about the documents. Are you asserting a legal privilege? Is that why you are refusing to give me those documents?

HOLDER:

Well, it is our view that in terms of trying to determine the answers to the questions that you have, that with regard to recusal questions, those are questions best brought by those who were involved in the context of the litigation.

SMITH:

Right. So you are not asserting any legal privilege?

HOLDER:

Well, there are, it seems to me, separation of powers concerns given the fact that members of Congress are amici -- amicus or amici in the ongoing legislation. And so I would have concerns there with regard to separation of powers.

SMITH:

OK. What's -- what would be the legal privilege you're asserting if you assert one then?

HOLDER:

Well, all I'm saying is that with regard to the information that is requested it has been...

(CROSSTALK)

SMITH:

OK. So, again, you're not asserting a legal privilege. Is there any reason therefore I should not

get the documents or be able to interview the individuals that I requested to interview?

HOLDER:

Well, as I have said, that the federal law provides for the resolution of these recusal questions and each justice has to make those kinds of...

SMITH:

Right. I'm not talking recusal questions or what a Supreme Court justice might or might not do. I'm talking about my request for documents. I can't imagine any good reason why you would withhold them unless you were to assert a legal privilege, and then we could discuss a legal privilege. But I haven't heard you say you are asserting any legal privilege.

HOLDER:

Well, the documents I think that you have request have essentially been released under a FOIA that has been filed and those documents are available.

SMITH:

No, the documents that I requested may or may not have been released. That's what we're trying to find out, is what other documents might exist.

We've also requested to interview two individuals and you have not agreed to let us interview those individuals.

But if you're not asserting a legal privilege, then I'll move forward with scheduling those interviews and look forward to the documents.

HOLDER:

Well, we have not expressed, I guess, at this point a legal privilege. We have expressed, as I indicated before, constitutional concerns about the nature of the request...

(CROSSTALK)

SMITH:

Yeah, I know, but concerns don't rise to the level of a legal privilege. We all have concerns about a lot of subjects. I've expressed some of my concerns today.

But if you're not going to assert a legal privilege, then I don't see any reason why I shouldn't get those documents and conduct those interviews. Thank you for that.

The gentleman from Michigan, Mr. Conyers, is recognized for his questions.

CONYERS:

Thank you, Mr. Chairman.

You've got here Chief Ralph Godbee, lots of other police chiefs and law enforcement people behind you. Would you tell us how you partner with them to fight violent crime, and particularly gun running, with state and local police officers who are on the front lines, sir?

HOLDER:

Well, the gentlemen who sit behind me and the people who they represent are essential partners in our fight against violent crime generally and against gun violence in particular.

The federal government relies on our state and local partners who are obviously in the front lines in this fight. We try to support them in ways that we can. We try to come up with programs that protect their lives.

But the reality is that in coming up with -- and that's why I think these five gentlemen are so good to have here today. They are the ones who have come up with really innovative programs that we have tried to support and then tried to expand across the nation.

HOLDER:

They are first and foremost great partners in this fight, and what they are doing in their cities are things that we're trying to replicate, not only in other cities, but in the work that we're doing along the southwest border as well.

CONYERS:

Thank you.

Tell me, where is the Mexican government in all of this gun running and violence and drug epidemics that goes on that -- that usually starts in Mexico but eventually gets to the U.S. in the southwest area.

What's -- what's the Mexican government's role and attitude? How do you work with them?

HOLDER:

They have also been good partners. President Calderon has, I think, very courageously committed his government to fight the cartels. He has done so in a way that has done, I think at great political cost. It has certainly cost the lives of many Mexican law enforcement officials who have been a part of this battle; 40,000 people in Mexico have lost their lives over the course of the last five years in connection with this -- with this fight.

The Mexican government is committed to eradicating the cartels. We have worked with them unprecedented ways in terms of extraditing people to the United States, in cooperation, in sharing intelligence, and working with vetted units in Mexico.

We have moved resources to the southwest border and have linked up with task forces with our Mexican partners.

So our interaction with the Mexican government in dealing with these cartels is really kind of unprecedented.

CONYERS:

Well, I mentioned several things that we really ought to do in terms of getting on top of not just the drug -- the gun smuggling and gun walking, but the drug problem as well.

And you're our chief law enforcement officer in the nation. I know you're relying on state and local law enforcement as well. But what are the -- what are the big issues? What's the big picture in terms of what it is we might want to consider in the Congress to help get on top of this and to help you and the Department of Justice get on top of not only the drugs but the guns as well?

HOLDER:

Well, I think there are certain things that would be very helpful. There is no gun trafficking statute now or even an expressed prohibition on straw purchasing.

If Congress would consider legislation in that regard I think that would be -- that would be good. We have to rely now on paperwork violations to try to get at gun traffickers, and the sentences that are typically given for those kinds of technical violations are far too low for the serious nature of the crimes.

It is far too easy for criminals to get their hands on weapons. Congressional support for the regulation that we put in place along those -- in those four border states to deal with the long guns -- the long guns that can be purchased there.

A regulation that is consistent with what we already do with regard to hand guns is something that congressional support would be -- would be important for.

So the possibility of having ways in which we could have a good dialogue about effective measures that would reduce the flow of guns to Mexico, make this nation more safe, protect the lives of people in law enforcement in this country and respect the Second Amendment at the same time is something that I think a meaningful, good dialogue with members of Congress would be very productive.

CONYERS:

Well, I'm glad you mentioned the Second Amendment so that my friend and colleague Darrell Issa won't be nervous about the other strategies that you'll be using.

ISSA:

I'll still be nervous.

(LAUGHTER)

CONYERS:

I thank you very much, General Holder, and I return the balance of my time.

SMITH:

Thank you.

Thank you, Mr. Conyers.

The gentleman from Wisconsin, Mr. Sensenbrenner, is recognized for his questions.

SENSENBRENNER:

Thank you very much, Mr. Chairman.

Mr. Holder, I -- I deeply appreciate your coming here to talk largely about Fast and Furious. And the way this has been handled within the Justice Department, I think, has put the Justice Department as an institution under a cloud that has not been exceeded since the infamous COINTELPRO scandal of the 1970s.

And you're at the top of the Justice Department. Do you think the buck stops with you?

HOLDER:

I'm ultimately responsible for all of the actions that occur within the department. But I think as you look at what happened with regard to Fast and Furious and try to decide what kind of performance I have done in this regard, I think you have to look at what happened, what I did once I learned of these matters.

SENSENBRENNER:

Well, that's -- that's, you know, a question of when you learned it. Because there have been inconsistent submissions to Congress. You know, you yourself testified that you'd only heard about it a few weeks earlier and then in November you said that probably was a few months.

As late as October 7th, in response to the allegations that you lied on May 3rd, you wrote to Congress, your statements on Fast and Furious have been quote, "truthful and consistent." And then your underlings on February 4th, Assistant AG Ronald White responded to Senator Grassley denying that the ATF had walked guns, and that letter ended up being withdrawn.

As Mr. Issa has said, lying to Congress is a federal felony. You know, I don't want to say that you have committed a felony, Mr. Attorney General, but obviously there have been statements so misleading that a letter had to be withdrawn.

I think that some heads should roll. And I do agree with Senator Grassley that assistant attorney general for the division Lanny Breuer should be fired.

And I know that that decision is not yours, but it is the president's. But I think that merely getting the head of the ATF director at the time is not sufficient since it's obvious that there was knowledge within the Justice Department.

What are you going to do to clean up this mess?

HOLDER:

Well, first, let me make something very clear -- and in response to an assertion that you made, or hinted at: Nobody in the Justice Department has lied.

(CROSSTALK)

SENSENBRENNER:

Why was the letter withdrawn?

HOLDER:

The letter was withdrawn because the information in there that was inaccurate, the Justice Department letter of February 4th...

SENSENBRENNER:

OK, tell me what's the difference between lying and misleading Congress in this context?

HOLDER:

Well, if you want to have this legal conversation, it all has to do with your state of mind and

whether or not you had the requisite intent to come up with something that can be considered perjury or a lie.

The information that was provided in that February 4th letter was gleaned by the people who drafted the letter after they interacted with people who they thought were in the best position to have the information.

(CROSSTALK)

SENSENBRENNER:

OK, now -- now the wagons down the street are in a pretty tight circle, you know, Mr. Attorney General. The American people need the truth. They haven't gotten the truth from what has been coming out of the Justice Department in the last year, and they were relying on Congress to get the truth.

Now, you're here today -- and again I appreciate your being here today as a way to get the truth. But the answers that you have given so far are basically saying, "Well, gee, somebody else did it and, you know, there -- there is really no responsibility within the Justice Department."

You know, the thing is, is that if we don't get to the bottom of this -- and that requires your assistance on that -- there is only one alternative that Congress has, and it's called impeachment, where our subpoena powers are plenary and there can't be any type of a legal immunity or privilege that can be asserted on that.

Now, you know, I've done more impeachments than anybody else in the history of the country. It is an expensive and messy affair. And I don't want to go this far. But if we keep on getting pushed down the road and the can keeps on getting kicked and we don't get closure to this, what is Congress to do so that we don't spend all of our time in court arguing privilege, which is not a way to get at the truth?

HOLDER:

Well, the Justice Department has released facts. And I think that's what we need to focus on, facts.

(inaudible) of the February 4th letter, I made the determination that we would release things that a Justice Department has never, ever released before, deliberative -- core deliberative material about how that letter was put together, information that clearly could have been withheld and has always been withheld by my predecessors and I expect by my successors, as well.

Getting to the bottom of this is something that we all want to do. The inspector general, pursuant to my request, is conducting an investigation of this matter, and I suspect we'll have a great many more answers than we presently do.

I don't have the ability to do a top-to-bottom investigation at this point, out of deference to the investigation that is being done by the inspector general. That does not, however, preclude me from taking action that I think appropriate based on information that comes to my attention in spite of the fact that the inspector general has an ongoing investigation.

SENSENBRENNER:

Well, you won't have an independent counsel and we end up having the Justice Department investigating itself in the absence of an independent counsel. And, you know, having gone through interminable hearings on COINTELPRO, with all due respect, Mr. Attorney General, you've got to get this done much more quickly than plugging the holes that COINTELPRO ended up showing existed in the department at that time.

And I yield back.

JACKSON LEE:

Chairman, I have a parliamentary inquiry.

SMITH:

Thank you, Mr. Sensenbrenner.

JACKSON LEE:

A parliamentary inquiry.

SMITH:

For what reason does the gentlewoman from Texas seek to be...

JACKSON LEE:

I seek clarification. The gentleman in his questioning indicated impeachment. I was not sure which official or which person he was speaking of in terms of impeachment?

SMITH:

The gentleman from Wisconsin was referring to the fact that while he was chairman of this committee he oversaw the impeachment process.

JACKSON LEE:

His words were...

SMITH:

The gentleman from...

JACKSON LEE:

(inaudible) continuing my inquiry...

SMITH:

Gentleman...

JACKSON LEE:

... the statement that the only one alternative is impeachment, I'm trying to determine.

SMITH:

That is not a parliamentary inquiry.

The gentleman from California, Mr. Berman, is recognized...

(CROSSTALK)

BERMAN:

Thank you, Mr. Chairman. And...

(CROSSTALK)

JACKSON LEE:

... clarification.

BERMAN:

Thank you, Mr. Chairman. I would like to yield a little time to the ranking member on this issue.

CONYERS:

Thank you, Howard Berman.

I merely wanted to clear the record with Jim Sensenbrenner. I've had far more impeachment experience than he has.

(LAUGHTER)

SENSENBRENNER:

Will the gentleman yield? I've been a manager...

(CROSSTALK)

BERMAN:

The answer is -- is -- is only if the chairman allows my time to be extended?

SMITH:

The gentleman from California is recognized for a full five minutes, that's correct.

BERMAN:

Then, thank you, Mr. Chairman. We've heard a lot, some of it quite unbelievably overblown. I'd like to give you some of the truth as I see it.

You are on record as admitting that the Fast and Furious program was a fundamentally flawed program. Fast and Furious is only one program in many undertaken by the U.S. law enforcement authorities, not only to limit the harm of illegal gun trafficking, but also, most important, to achieve the broader goal of protecting U.S. and Mexican citizens. There got to be a little perspective on what's going on in the U.S.-Mexico relationship on this issue.

Once President Calderon made the historic decision to take the fight directly to the drug cartels, law enforcement, both in Mexico and the United States, became more complicated and more dangerous.

And the fact is, and I see it from a Foreign Affairs Committee perspective as well as from this perspective, that U.S.-Mexico law enforcement cooperation and general cooperation is wider and deeper today than it has ever been in the history of our two nations.

The Department of Justice has apprehended and extradited an unprecedented number of criminals, including some of the most dangerous cartel leaders. They have successfully investigated violent crimes committed against American nationals in Mexico and along the border. They have trained hundreds of Mexican prosecutors and police officers, many of whom work side by side with U.S. counterparts on these shared goals.

The level of intelligence sharing and cooperation is unprecedented at this particular time.

We also have to acknowledge the negative impact caused by the significant stream of guns going into Mexico from the United States. Every day thousands of guns are smuggled across the United States border into Mexico, making citizens of Mexico and the United States less safe.

The U.S. southwhere (ph) border states -- southwest border states -- Texas, New Mexico, Arizona and California -- are the top four source locations for firearms received and traced in Mexico back to the United States.

General Holder, I'm wondering if you could develop -- you -- I think you got into this a little bit with Ranking Member Conyers -- what could the Congress be doing in terms of funding, in terms of passing laws to help make this a successful endeavor? I would like you to just expand on some of those specific issues. Are we giving you the resources you need to make this cooperation produce the goal that both countries' governments share?

HOLDER:

Well, frankly, no. We have sought additional legislative enhancements to our abilities to deal with the gun trafficking problem, as I indicated to the ranking member. We've also sought funds to increase the number of ATF agents who operate in these teams along the southwest border. I think we requested funds so that we would have 14 of these teams. That number was reduced based on the funding level that we got to about seven or eight, I believe, which decreased our ability to act -- or interact effectively or as effectively as we might with our Mexican counterparts.

So there are funding issues. There are issues with regard to the confirmation of an ATF director, a permanent ATF director. There are legislative statutory tools that we could use from Congress and that we have proposed. All of these things would help us in our fight against the gun trafficking problem that you have I think so rightfully identified.

BERMAN:

The only thing, I guess I would just close with the simple statement that as we pursue responsibly our oversight responsibilities on a program that you have stated was fundamentally flawed, that we keep in mind our obligations as a Congress to help something that I think there is a broad consensus must continue, must expand and must achieve the goals that our two governments are committed to and to have some perspective on what's going on. That perspective seems to have been lost in some of the rhetoric that has come in recent months.

ISSA:

Would the gentleman yield?

BERMAN:

I yield back.

ISSA:

Which the gentleman yield?

BERMAN:

Do I have time to yield?

ISSA:

You do.

SMITH:

The gentleman has five seconds left.

BERMAN:

I yield.

ISSA:

I would -- I would just make the point that Fast and Furious is not a program. We've been repeatedly told it's less than a program, it's just an operation, just an operation.

SMITH:

The gentleman is recognized for an additional 30 seconds.

BERMAN:

I -- I take your point. I just don't quite understand it.

ISSA:

Well, just that -- that -- that when we try to -- when we...

SMITH:

Just -- the gentleman from California has the time.

ISSA:

Would the gentleman continue to yield?

(CROSSTALK)

ISSA:

I thank the gentleman.

The -- the point that I'm making is, is that there is a wide question of a lot of things that go on at Justice. And I agree with the gentleman that we need to look at the overall management of Justice. But this small operation and the refusal to give us the truth early on has caused it to be a bigger...

BERMAN:

I appreciate the time. I also would love to hear about Congress' agenda to make this cooperation truly as effective as it could be, funding the legislation regarding the -- the paper trail on guns and all the other things that the general mentioned that we should be doing.

SMITH:

Thank you, Mr. Berman.

The Judiciary Committee will stand in recess until immediately after the series of four votes. I do not expect to take a lunch break. So when we return, we will proceed until the next series of votes about 1:15.

We stand in recess until after these votes.

(RECESS)

SMITH:

The Judiciary Committee will come to order. And the gentleman from North Carolina, Mr. Coble, is recognized for his questions.

COBLE:

Thank you, Mr. Chairman.

Good morning, General.

HOLDER:

Good morning.

COBLE:

General, the FBI, as you know, operates under attorney general guidelines for most or all of their investigative activities. The objective of these guidelines is the full utilization of all authorities in investigative matters consistent with the Constitution and the laws of the United States.

And it furthermore ensures that activities must be lawful and reasonable and respect liberty and privacy and avoid unnecessary intrusion into the lives of law-abiding citizens.

They enable the FBI to perform its duties with effectiveness, certainty and confidence.

The purpose of these guidelines, it appears apparent, is to establish consistent policy in such matters.

General, does the ATF and/or other than Department of Justice law enforcement components operate under these guidelines?

HOLDER:

There are general guidelines that exist within the department and that control the activities of the various investigative agencies that are part of the department -- the Marshall Service, the DEA, the ATF and the FBI.

There might be some that apply specifically to the FBI given its unique mission with regard to counterterrorism and intelligence that might not apply to the other components.

COBLE:

I think you may have already answered this one, but are they identical guidelines for identical investigative activity or may one agency do something that another cannot do under similar circumstances? And if they differ, how do they differ from the guidelines that the FBI -- under which the FBI operates?

HOLDER:

There are general guidelines that handle or control the way in which investigations are to occur. And, for instance, if we're looking at Fast and Furious, those were outside the guidelines certainly that apply to ATF, but they would also be outside the guidelines that would apply to the Drug Enforcement Administration, to the FBI as well.

And one of the things that we have tried to do in this reform of ATF and under the leadership of Todd Jones is come up with a whole set of new policy changes and rules with regard to how ATF itself can handle and conduct certain investigations.

COBLE:

General, if I had two words to describe Fast and Furious, it would be reckless at best and a disaster at worst. But firearms, I'm told, sold under the Fast and Furious program were included in ATF statistics on the retail sale of firearms and related regulations.

Now that we know that the ATF apparently skewed the statistics, particularly about long gun sales, will these statistics be scrapped or abandoned?

HOLDER:

I don't know if that, in fact, is true, but the 2000 weapons or so that were involved in Fast and Furious should not be counted as part of that overall number. And to the extent that that is true, we would pull them. I don't know if that's true or not.

COBLE:

Well, General, have you implemented any policy to end programs such as Fast and Furious? (inaudible) these changes, are they permanent or temporary?

HOLDER:

Well, as I said, in addition to the things that Todd Jones has put in place that deals with certainly the problems that are I think most egregious about ATF, he talks about the way in which surveillance has to occur when you are monitoring trafficking, gun trafficking operations.

I released in March of this year a field directive through the deputy attorney general that indicated that gun walking, as we've come to call that practice, is a -- is prohibited and made sure that every agent in the Justice Department, every prosecutor in the Justice Department understands that.

So it is clear that gun walking is -- is not acceptable, was never acceptable, but is certainly not acceptable after my policy pronouncement in March of this year.

COBLE:

Well, General Holder, earlier this year, August, I believe, you named Todd Jones as the new director of ATF. This appears as irregular because he continues to serve as U.S. attorney for the -- that area in Minnesota, while at the same time -- he's wearing two hats, in other words. Is -- am I missing the mark or is this irregular?

HOLDER:

Yeah, it is irregular. I mean, we have a nominee, a very qualified person who could be the head of ATF. I thought a management change was necessary at ATF and in the absence of a confirmed head, I had to go with who I thought was best for the organization.

Todd's a very experienced prosecutor, he's a great U.S. attorney, but you're right, he is in fact wearing two hats, he's working extremely hard. But I think he's made meaningful changes at ATF. He has lifted morale. He has put in place a set of regulations that would prevent the mistakes from the flawed Fast and Furious operation, I think, from ever occurring again.

But you're right, it is irregular. And given my druthers, I would rather have a confirmed permanent head at ATF.

COBLE:

(inaudible) Mr. Chairman, I see my red light has illuminated, so I will yield back.

SMITH:

Thank you, Mr. Coble.

Another gentleman from North Carolina, Mr. Watt, is recognized for his questions.

WATT:

Thank you, Mr. Chairman. And, Mr. Chairman, I had hoped the way my colleague from North Carolina started his questioning that we were going to treat this as a general oversight hearing, which is the way my memo said it was going to be, rather than a -- an inquiry into one single subject. So I want to spend my time asking about some other things, unrelated to Fast and Furious, because there are a number of other important things going on in life. And some of these things the attorney general and his staff have made tremendously good decisions about.

One of those is to have all these police chiefs sitting behind you today, one of whom is from my hometown of Charlotte, North Carolina. And for the members on the Democratic side, at least, they will certainly get to know Chief Rodney Monroe when they come to Charlotte for the Democratic National Convention. So I want to applaud the work that he is doing to prepare us for that significant national event.

Perhaps the police chief from Tampa is behind you also. I don't know him. He'll be doing that counterpart work for the Republicans at the Republican National Convention.

But that is a massive, massive undertaking, and I know that the attorney general's office, the Department of Justice, Secret Service, all of the federal authorities are working well, based on everything I have heard, to prepare for those big security events. And I want to say publicly how much I applaud that.

WATT:

Second, there are a number of things going on, on an issue that we are dealing with or trying to deal with in this committee, dealing with online piracy. And we have some proposed legislation.

I won't ask you to comment on that.

But I would ask you to comment briefly on the extent of the problem, and briefly on -- on what the Department of Justice is doing to try to combat online privacy (sic) until we can get the bill passed. And I say "comment briefly," because I've got one other subject that I want to get to related to redistricting and voter suppression and the pre-clearance process under the Voting Rights Act.

Perhaps those issues, voter suppression in particular, may not be as important to some of my colleagues on this committee as Fast and Furious and guns, but for a number of people in this country who would like to have the opportunity to vote, they are very serious issues.

So why don't I just ask you to comment on what's happening in -- in both of those areas -- online piracy and the voter suppression, redistricting and pre-clearance process.

HOLDER:

OK. We have been I think very aggressive with regard to our law enforcement efforts concerning intellectual property concerns. In February, 2010, I established the department's task force on intellectual property. I traveled to China I guess sometime last year; was at the White House I think two weeks or so ago to announce a program where I cut some radio spots, in addition to television spots that were done by others, to talk about the whole question of piracy.

And I think we have to understand the significance of it. It is a moral and legal problem there, but it's also a job-killer. When things like intellectual property are stolen by other countries, by people in this country inappropriately, it costs jobs. It inhibits creativity.

And so we have looked at it in a variety of ways. I worked with Victoria Espinel, who heads up the White House effort in this regard, and this is a -- a priority item -- item for us. I'd certainly like to work with you with regard to the bill that you mentioned and see if we can come up with a way in which we put more teeth into our enforcement efforts.

With regard to the whole question of voter -- voter suppression and challenges, we have filed a number of lawsuits with regard to changes under covered districts -- covered by the Voting Rights Act. I actually will be giving a speech at the LBJ Library on Monday and talking about this in a more fulsome way.

The Justice Department has a responsibility under the Voting Rights Act to look at proposed changes in voting -- voting schemes that are in areas covered by the Voting Rights Act. And there's only so much I can say there because we are -- we have to act in a -- in a neutral -- a neutral way, or almost act as judges in that regard.

I can tell you, though, that I am concerned about some of the things that I have seen, without getting into specifics about any one. I was a prosecutor in the Public Integrity Section and I actually investigated and prosecuted voter fraud cases when I was a -- a young prosecutor. And I'm concerned that some of these changes go far beyond that which exists in terms of vote fraud.

I think we have to have some kind of notion of proportionality. And the arc that we have seen over the course of this country has always been to increase the number of people who have the ability to vote, whether it's, you know, after the Civil War, the enfranchisement of women. We have always tried to make it easier. And I'm concerned that these recent efforts are going to have a negative impact.

And I think ultimately that's not good for our democracy. We want as many people as we can to have their voices heard in the most important way, and that's by casting votes.

WATT:

Thank you, Mr. Chairman. I yield back.

SMITH:

Thank you, Mr. Watt.

The gentleman from California, Mr. Gallegly, is recognized.

GALLEGLY:

Thank you very much, Mr. Chairman.

Good morning, General Holder.

You know, General, I continue to hear from ICE agents, many ICE agents that they are frustrated that they've had significant difficulty with U.S. attorneys prosecuting worksite enforcement cases. Can you give us specific -- and I want to emphasize the word "specific" -- data regarding the number of prosecutions DOJ have accepted and how many they've declined?

HOLDER:

Well, if you'll allow me to respond to that after the hearing in -- in a written fashion, I'm sure I can

come up with some -- some numbers, but I don't have those numbers.

GALLEGLY:

I -- I can completely understand that, but I would, for the sake of the record of this hearing, appreciate that -- that information as soon as you can get it to us.

As everyone clearly understands, welfare fraud is playing a major role in our ability to continue providing service -- the level of services necessary in Medicare, and the -- the fact that fraud is playing a significant threat as it relates to the solvency of that fund. There have been several estimates that exceed well in excess of \$60 billion annually in fraud, and I'm sure you're aware of that.

There is also evidence that organized crime, including gangs from Russia and other eastern European countries and other places as well, that they're finding that filing fraudulent claims is a fast and quick way to make a lot of money. And most of that money is going offshore.

Can you give us any detail as to what DOJ is doing in prosecuting these offenders and working with local law enforcement? I've met with my local people in the Los Angeles area. They're very frustrated. How much effort is really put into it and what success are you having with dealing with the issue of Medicare fraud?

HOLDER:

Well, Congressman, you're right to point that out as an issue that is of great concern. It is one that we have tried to focus our attention on. We work with our partners at HHS. Secretary -- Secretary of HHS Sebelius and I have been to a number of places to raise the consciousness of local officials, work with our federal partners to deal with this problem.

It is a multi-billion dollar issue, and the -- given the problems that we have with the solvency of those programs, this is a problem that we have to get a handle on. We have put together what we call these HEAT task forces around the country. I think we're in about 13 cities now. I think that's about right. And that is the way in which we identify the places where we see the greatest amount of fraud. We then deploy these task forces to those places.

Interestingly, they prove to be pretty effective, but the problem is the fraudsters tend to move from that site and go to another city. But the concern you raise is a very real one and it is something that we have to pay attention to and for which I hope we will receive adequate funding both at HHS and DOJ.

GALLEGLY:

Well, I appreciate the -- the assessment that many of these are moving on to other cities, but I'm sure it won't come as any news flash that that isn't necessarily the case in areas like Los Angeles. They may move, but it may be across the street or into another pigeonhole where millions and millions of prescriptions are filled that are never filled, and storefronts that have maybe 150 square feet in them that is providing so-called Medicare benefit or Medicare recipients in the thousands.

So how would you describe the level of success you feel that your having with resolutions to these folks that you're after? How many are you really -- how many -- for instance in Los Angeles, how many major rings have you been able to shut down and put in jail?

HOLDER:

Again, I'd have to maybe provide you with some specific information after the hearing with regard to how successful we have been in Los Angeles. But I think the way in which you have described the issue, and -- and as these intra-city moves -- moving from one place in Los Angeles to another place, this notion of storefronts -- exactly describes the problem where people come in for -- allegedly come in for services that aren't rendered and the government is billed for them, everything from blood transfusions to the use of prosthetics.

There are a whole variety of scams that are -- are used. And the way in which you have described it, especially with regard to storefronts and these strip malls -- I mean, those are the kinds of things that we are trying to confront. I will get you the information about our...

GALLEGLY:

If you'd be kind enough to get us information, I'd like some specificity as it relates to durables, prescriptions and -- and things such as mammograms to people that have repeatedly received as many as three and four mammograms in one week.

Thank you. I see my time is expired. I yield back.

HOLDER:

I would just say that you've identified something that really has to be a priority for the Justice Department, and I hope that Congress will support our funding request and HHS's funding request. The money that we spend in these enforcement efforts, we save huge amounts of money down the road by just investing relatively small amounts of money in prevention and enforcement. It makes the programs that much more financially stable.

GALLEGLY:

I -- I -- I look forward to seeing the data, and I yield back, Mr. Chairman.

SMITH:

Thank you, Mr. Gallegly.

ISSA:

Mr. Chairman?

SMITH:

For what purpose does the gentleman from California...

ISSA (?):

Thank you, Mr. Chairman.

SMITH:

... seek recognition?

(CROSSTALK)

ISSA:

I'd like to renew my request that Mr. Farenthold be able to sit on the dais. Apparently Mr. Schiff has -- Mr. Schiff is there, but we have a number of seats that are -- that are vacant on this side. And since he won't be asking any questions any position would normally be...

(CROSSTALK)

SMITH:

And Mr. Issa, I talked to the gentleman from Texas -- and actually I was just getting ready to recognize him -- and he has requested -- and I want to recognize the gentleman from Texas, my colleague, Blake Farenthold, who's an active member of the Oversight and Government Reform Committee. And he is sitting on the front row.

Blake, give us a wave.

And appreciate his being here. And he is, I think, happy to observe the committee from where he is sitting.

ISSA:

He looks better on the dais, though, Mr. Chairman.

(LAUGHTER)

I -- I thank the gentleman.

SMITH:

OK.

The gentlewoman from Texas, Ms. Jackson Lee, is recognized for her questions.

JACKSON LEE:

Thank you, Mr. Chairman, and to the ranking member for the opportunity.

Mr. Attorney General, let me first of all thank you for your service, and thank those who are sitting so prominently behind you.

I work with chiefs of police, as a former judge, in my community. I think my former mayor, Mayor Lee P. Brown, was a drug czar, but he was also the head of the Major Chiefs Association.

He had the uncanny ability of being mayor and chiefs of police in New York, Houston and Atlanta.

And I notice our good friend that was formerly the police chief here in the city of -- the District of Columbia has now moved on to Philadelphia.

But I was looking at the timeline -- and this will not be my lineage -- total lineage of questioning. But I was looking at the timeline of Operation Fast and Furious. Could you tell me when you were sworn in as the attorney general of the United States of the America?

HOLDER:

In February of 2009.

JACKSON LEE:

And I noticed that the ATF launched Project Gun Runner in 2005. Were you in the Justice Department in 2005?

I don't recollect that you were.

HOLDER:

No, I wasn't.

JACKSON LEE:

So this is an ongoing program that started, in essence, under the Bush administration.

HOLDER:

Well, Gun Runner started under the Bush administration and Wide Receiver started under the Bush administration; Fast and Furious started during the Obama administration.

JACKSON LEE:

And then there was some morphing -- sort of a continuity of sorts, because I think they had sort of the same intent, if I'm not mistaken.

HOLDER:

Right. I mean, with -- operations with the same aim, which was designed to stop the flow of guns from the United States to Mexico.

JACKSON LEE:

I am looking at some news articles, and I am reading some numbers that are absolutely overwhelming. And one number says that nearly 40,000 have been killed in gang land drugs warfare. Is that a crisis, from your perspective?

HOLDER:

It is a crisis of immense proportions. It is -- these are 40,000 people killed in Mexico over the last five years. But it is a national security concern for the United States of America.

JACKSON LEE:

And I think you made it very clear that the horrific infractions, failings of Fast and Furious, you are doggedly, along with the I.G., on the process, doggedly pointing and looking to investigate what the flaws may have been?

HOLDER:

That is correct. I have described it as a flawed investigation, flawed in concept, flawed in execution...

JACKSON LEE:

You made the record very clear.

HOLDER:

It is something that -- where mistakes were made, and (inaudible) we have to find out where those mistakes were made and then I'm going to hold people accountable in that record.

JACKSON LEE:

And likewise, we've offered our sympathy to any fallen officer, but in particular to our fallen

officer that was murdered in Arizona.

HOLDER:

Officer Terry.

JACKSON LEE:

And I offer -- as well as we did when we lost an officer that suffered in the Customs and Border -
- in the incident in Mexico that happened as well that was an issue that we confronted on
Homeland Security Committee.

I just want to make sure that I offer into the record -- you mentioned what we could do in terms
of no national gun trafficking law, and I would ask the chairman that our committee begin
hearings on that. Because we need to be a partner with you.

But I'd like to put into the record that we recently passed, Mr. Secretary (sic), H.R.-82, which
allows anyone to carry a gun into another state where they have a permit.

I see uniformed officers behind you. My argument was that this might jeopardize our uniformed
officers, and also violate states rights.

I have here a list of opponents that include 56 major chiefs of police police. This bill was passed
on the floor of the House.

I'd ask the chairman to allow me to put this list again in the record regarding opposing H.R.-822.

SMITH:

And without objection, the document will be made a part of the record.

JACKSON LEE:

Let me ask you how that compounds, potentially, the idea -- it hasn't gone to the other body --
potentially the -- the damage and the devastation that may impact local chiefs and law
departments who are on the streets every day.

HOLDER:

Well, the concern that we certainly have with regard to officer safety, something that we have
focused on a lot at the Justice Department in the last couple years. We have seen historic drops
in the crime rate over the last two years, however, we have seen, unfortunately, a tragic rise in
the number of officers who have been killed in the line of duty and we have seen a spike in that
rise over the course of the -- over the course of this year.

JACKSON LEE:

And I'm not going to cut you off. My time is short. I just want to put this comment to my good
friend from Wisconsin who compared this -- the most major, devastating incident in the
Department of Justice since COINTELPRO.

I happen to be a person that was on the Select Committee on Assassinations for King and
Kennedy as a staffer, and I know full well what COINTELPRO was, and -- and also dealing with
the incident in terms of gun running in the Reagan administration.

But the point I want to make is, when an attorney general covers up a torture memo, I believe
that we should not so lightly point to an incident happening in your department where you are
fully investigating it.

I questioned secretary -- excuse me, Attorney General Gonzalez with great respect for him, over
and over again about the happenings in the hospital with then-Attorney General Ashcroft -- and
this was when Gonzalez became attorney general -- regarding the torture memo, which was an
enormous international, if you will, incident, and I could never get the truth on that particular set
of circumstances.

So let us not compare the full investigation that you're engaged in with something worse than we
could have ever expected.

And I still don't understand who the gentleman was trying to impeach, for this has no basis in the
law for any impeachment proceedings -- whether he's intending to speak to you or to the
president of the United States.

And I just wanted to be very clear that we are not in the grandstanding position today. We're in

the getting the truth position today, Mr. Chairman.

SMITH:

Thank you, Ms. Jackson Lee.

JACKSON LEE:

And Mr. Attorney General, you are in the business of getting the truth.

SMITH:

The gentleman from Virginia...

JACKSON LEE:

Thank you very much.

HOLDER:

Thank you.

SMITH:

The gentleman from Virginia, Mr. Goodlatte, is recognized for questions.

GOODLATTE:

Thank you, Mr. Chairman.

General Holder, before turning to Fast and Furious, I'd like to ask you a question regarding an investigation that's taking place in another committee, the Energy and Commerce Committee, and that relates to the Solyndra Corporation and their default and bankruptcy, and the investigation related to that.

The law that set up the incentives for innovative technologies provides for the secretary of energy to notify the attorney general when there is a default on an obligation. This is 22 USC Section 16512 (ph), Subsection 4(a) (ph): "If the borrower defaults on an obligation the secretary shall notify the attorney general of the default."

Did -- did Secretary Chu ever notify you of that default prior to this becoming the public furor that it has become?

HOLDER:

I -- I don't know if something like that has been transmitted to the Justice Department or not.

GOODLATTE:

It requires it be transmitted to you. Are you familiar with such a transmission being relayed to you?

HOLDER:

This is not something that I have seen. It doesn't mean, however, that it might not exist someplace in the department. I -- I just don't know.

GOODLATTE:

The reason it's important is that the next section, Subsection B (ph), says that: "On notification, the attorney general shall take such action as is appropriate to recover the unpaid principal and interest due from one such assets of the defaulting borrower as are associated with the obligation or to any other security pledged to secure the obligation."

Obviously, if you're not notified, you're not able to take that action.

In addition, that same public law provides in another section that the obligation shall be the subject to condition that the obligation is not subordinate to any other -- to other financing.

GOODLATTE:

Obviously, the fact has been determined that Solyndra did subordinate its obligation to the U.S. to other private financiers. And I'm wondering if, given the fact that it appears the law was violated in that regard, if the attorney general's office is going to investigate what happened there, how it was the Department of Energy allowed the subordination to take place, since it required their approval, and if that investigation of who was responsible for that is taking place.

HOLDER:

Well, I guess on September the 8th of this year, agents from the FBI and from the Department of Energy's inspector general's office executed search warrants on Solyndra's offices. There is an ongoing investigation which kind of precludes my ability to speak too -- too much about this matter other than to say that this is something that we have under active investigation.

GOODLATTE:

OK. Let me just follow up on my first question. Would you take a look and determine whether that notification from Secretary Chu was sent to the attorney general's office, and if so, when that took place? And would you let the committee know the answer to that question?

HOLDER:

Yes, I can get you that answer, Congressman.

GOODLATTE:

Thank you very much.

Now, with regard to the Fast and Furious investigation, although the department has taken steps to ensure that these tactics are never used again, it's certainly an unfortunate reality that we will continue to feel the effects of this flawed operation for years to come, because thousands of firearms were transferred as a part of this program.

The guns lost during this operation will continue to show up at crime scenes on both sides of the border. What are you doing to track them down?

HOLDER:

Well, I agree with you, and that's what I said in my opening statement and what I said before the Senate last month, that we are going to be feeling the repercussions of those mistakes and the flawed operation for years to come. And you're right that we will be seeing these weapons in the United States, I fear, certainly in Mexico, as well.

We are in the process of trying to determine, you know, to the extent we can, where they are, trying to use the tools that we have to seize these weapons.

GOODLATTE:

You know who purchased them, you know when and where they were purchased. And are you aggressively following those leads? Even -- even if approximate some of those people may have been informants and so on, are you attempting to recover through those individuals these weapons?

HOLDER:

We're certainly trying to follow those leads. But one of the flaws in the program...

GOODLATTE:

How many have you recovered?

HOLDER:

Of the 2,000 guns, some several hundred have been -- have been recovered. I don't -- I don't know what the number is now precisely. That's another number that we can get you.

But one of these thing -- one of the problems is that once these guns are purchased and they get into the -- the stream of commerce, they become difficult to follow. And one of the problems with the operation is that we don't have all of the information -- all of the information that you'd want to have.

But we are trying. I think several hundred weapons have been recovered. I don't know how many are still out there. But your observation is a correct one and one that I agree with, this is an issue that's going to be with us for many years to come.

GOODLATTE:

And begs the question, if they are difficult to follow, why were they ever allowed to get into this pipeline in the first place?

HOLDER:

Well, that's the flaw of Operation Fast and Furious. There's no question about that.

GOODLATTE:

Thank you, Mr. Chairman.

SMITH:

Thank you, Mr. Goodlatte.

The gentlewoman from California, Ms. Waters, is recognized.

WATERS:

Thank you very much, Mr. Chairman.

Mr. Holder, Attorney General Holder, I am trying to sort out some contradictions that are very obvious in this whole discussion about walking guns. And I'm concerned about U.S. Congressman Dan Boren of Oklahoma and Denny Rehberg of Montana who amended H.R. 1, the fiscal year continuing appropriations act of funding your 2011, to prohibit the use of federal funds for a new regulation currently being proposed by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

From what I can understand, the AFT (sic) proposal would require federal, licensed firearm dealers to file reports with ATF on all sales of two or more semiautomatic rifles within five consecutive business days if the rifles are larger than .22 caliber and use detachable magazines.

I don't know whether or not this would apply to all of the states or whether or not this would apply to California, Arizona, New Mexico and Texas.

But my real question is, given all of your actions and your opposition to gun walking that started in the previous administration, and the way in which you're trying to make sure that this doesn't happen again, all the actions that you have taken, why would anyone propose that your hands be tied and that you not be able to have a proposal that would certainly make all of us safer?

I live in California and we're constantly bombarded with the reports of drug lords and the killings that go on there, on the border, and the creeping into San Diego and other parts of California. So I'm very supportive of what you have identified by way of containing guns being easily accessible to these drug lords and not allowing gun walking to ever happen again.

And so can you discuss with me why your proposal should be adopted by AFT (sic) and what would happen if, in fact, this amendment is -- this Boren of Oklahoma and Denny Rehberg of Montana, if their amendment would successfully get, you know, passed and to the president's desk, how would this hamper your efforts?

HOLDER:

Well, I share your concern, and it's one of the things I talked about in my opening statement. It applies only -- it's a -- it's a very reasonable, I think, and limited measure. It only applies to the four states that border Mexico. It would provide the ATF with real-time lead information. And it is consistent with what -- the rules that now exist with regard to the purchase of handguns.

Just to give a dramatic example, if somebody walked into one of these licensed dealers in one of those four states without this -- without this provision and wanted to buy 100 AK-47s, that information would not be reported to the ATF. The ATF, if that information was reported to them, would have the ability to start making initial determinations as to whether or not there is something we need to be concerned about.

But in the absence of that provision, somebody can walk in and over the course of five days, whatever number of days, buy as many of these dangerous weapons, so many of which have been used...

WATERS:

Excuse me, Mr. Attorney General, that was a dramatic statement that you just made. Someone could legally purchase 100 weapons of the sort that you just described and it wouldn't have to be reported?

HOLDER:

Not -- if this provision were in place, that would -- information would have to be reported...

WATERS:

Yes.

(CROSSTALK)

HOLDER:

... the dealer to the ATF.

WATERS:

Yes.

HOLDER:

But in the absence of that, in those four states, that would not -- that would not occur. As long as there was not -- as long as the guns were not -- no, they would not have to do that.

WATERS:

And you're talking about AK-47s, for example?

HOLDER:

Yeah. I'm using a dramatic example, but that would be accurate.

WATERS:

Well, that's alarming. Are you sure that you have made Mr. Boren and Mr. Rehberg aware of how they could potentially hamper the ability to get that kind of information that would be so important to ATF?

HOLDER:

I mean, it is something that we have certainly tried to share information with members of Congress about. We are in litigation now here in the district court in Washington, people who are opposed to the implementation of this I think very reasonable regulation. It is something that we are prepared to fight for.

WATERS:

Well, thank you very much. And I'm hopeful that there's some way that you could make this absolutely clear to all of the members of Congress, because I suspect there are many members who do not understand what would happen with the Boren amendment. And I think it's important that at least we have the facts that -- as you have described them.

I thank you.

And I yield back the balance of my time.

SMITH:

Thank you, Ms. Waters.

The gentleman from California, Mr. Lungren, is recognized.

LUNGREN:

Thank you very much.

Thank you for being here, Mr. Attorney General.

Mr. Attorney General, just for some facts on the table, with respect to the previous, quote/unquote, "gun runner programs," including Wide Receiver, in those programs are you aware of whether or not the agents involved were instructed to break off surveillance once the weapons were delivered?

HOLDER:

No, they were not.

LUNGREN:

Isn't that one of the...

HOLDER:

But the programs were different in terms of the instructions that were given. The reality is, the guns, nevertheless, made their way in Wide Receiver to Mexico.

(CROSSTALK)

LUNGREN:

I understand that. I understand that. I'm not talking about that. But since -- were you aware of that, the Wide Receiver program, were you aware of the failure of the Wide Receiver program before you were aware of the Fast and Furious?

HOLDER:

No, I became aware of Wide Receiver, I guess, during the course of our examination of Fast and Furious.

LUNGREN:

Anybody under your -- your overall supervision aware of the failure of Wide Receiver, either prior to the time that Fast and Furious started or during its operation?

HOLDER:

Well, we now know that people in the criminal division of the Justice Department were aware of Wide Receiver, the problems that were associated with Wide Receiver.

LUNGREN:

Could you give me any reason why anybody would believe that a program like this would be contemplated with the idea that the agents would be instructed to break off surveillance once the weapons were delivered? Isn't that asking for disaster?

HOLDER:

Yeah. I mean, and again, I don't disagree with you that that is a flawed concept. And exactly who did it, why they did it, is something that the inspector general, I hope, will help...

LUNGREN:

I understand you've got the inspector general. But you're running a department. And, frankly, if you passed everything off to the inspector general before making management decisions about whether people who were responsible for previous decisions should remain in power, frankly, you'd be giving the inspector general the job to do.

HOLDER:

No, I understand that I have...

LUNGREN:

No, but here's the only reason that I bring this up. You're the one who brought up the question of the previous administration. And, OK, you want to do that. But let's talk about the distinction between those programs. That was not gun-walking in the terminology that most people think.

When you talk about a controlled delivery, even though you go to the dictionary and say "controlled delivery" means you just control it to delivery. The parlance of controlled delivery in previous programs meant that you followed it afterwards.

Now, they screwed up, because they found that those indicators that they had that were supposed to let them know where the weapons were, the bad guys figured that out.

But I would hope that -- I mean, here -- here's my problem. I mean, when I became congressman this time around, people said what's the difference between being attorney general of California and being a Congressman?

I said, well, after I finish a meeting, I don't have to go out and face reporters who ask me about something one of my 5,000 employees has done that I don't know anything about. And I know you have more than 5,000 employees. But that was my -- my internal thought. The fact of the matter is, I'm responsible. I was responsible for what they did. And you're responsible for what these folks did.

And the -- the frustration I have is this. And maybe it's unfair, so maybe you can help me with this. After all this time, we still don't know -- because the inspector general is looking at it, we still don't know who knew what, when and who made the decisions.

And that doesn't give much confidence to the American people, particularly when CBS reports that there is a -- a memo from AFT (sic) field operations assistant director Mark Chait e-mailed Bill Newell -- I guess Newell -- with this: quote, "Bill, can you see if these guns were all purchased from the same licensed gun dealer and at one time. We're looking at anecdotal cases to support a demand letter on long-gun municipal sales. Thanks."

I've got to deal with people in my district who are law-abiding citizens who believe in the second amendment who say to me, look, the Feds are overreaching all over the place and here you've got a situation where they screwed up; they're the ones responsible for hundreds if not thousands of weapons going to Mexico; people are dying, including some of our law enforcement agents, and yet they're using that as an excuse to extend their reach in the law.

Now, either this memo -- are you aware of this memo, July 14th, 2010, from Mark Chait to Bill Newell?

HOLDER:

No, I'm not aware of it.

LUNGREN:

Would -- would you think that would be appropriate?

HOLDER:

Well, I think what you -- you're taking the memo and taking it, I think, out of context.

LUNGREN:

Sir -- sir...

HOLDER:

The operation...

LUNGREN:

... I'll give you a chance to answer. But I'll tell you why I don't think I'm taking it out of context. This is in direct reference to the guns that were involved in Fast and Furious. And then you have someone under your direction -- I'm not saying you directed them to do it, but someone who's under your authority, saying, "Let's use this stuff; maybe it's going to help us; I don't know if it's going to help us at a hearing, but it's going to help us try and get our -- our new policy through."

And then I'm trying to respond to law-abiding citizens who believe in the second amendment who say, "You've got the federal government who screws up 7,000 weapons south; they're using that as an excuse why they should put more restrictions on us."

So how do I respond to that in a way that is fair, based on the facts, when so far I've heard "I'm sorry, Mr. Congressman, I can't tell you, because the inspector general is looking at it"?

HOLDER:

Well, let me deal with both of those things, first, that the inspector general has a responsibility that I've asked her to assume, and that is to do an independent investigation of that.

That will take time. That does not, however, lessen the responsibility that I have as the head manager of the Justice Department to take steps where that is appropriate. And I have taken steps. I have made personnel decisions. I am prepared -- those were initial determinations that I have made. And I am prepared to take other steps before the inspector general reports back.

I think that will be -- her conclusions, her findings will be useful for me in trying to make ultimate determinations. But I don't need the inspector general to make certain determinations that I will make.

With regard to the question of this whole -- that memo and the long-gun rule, the ATF reached out to the field to obtain examples of cases or operations where that kind of a rule would have been helpful.

Now, the operation known as Fast and Furious was one of seven cases that were already under way, already under way, that ATF later cited as an example to illustrate the potential benefit of collecting information about the multiple sales of certain types of rifles. So this was already under way when that...

LUNGREN:

I understand. But you would see how some people might reasonably come to the conclusion that's, sort of, self-dealing. The department creates a situation in which weapons go south across the border in the hundreds, if not the thousands, and then uses evidence of the fact that that occurred to support their effort to try and extend the reach of the law. That's -- that's my question.

HOLDER:

Congressman, but with all due respect, I mean, take...

SMITH:

The gentleman from California is recognized for an additional 30 seconds so the attorney general can answer the last question.

SMITH:

And I say this with all due respect. Take a step back and think about the implications of what you're saying, is that the Justice Department came up with a flawed program in order to justify a regulation.

And given all that has flown -- that comes from...

LUNGREN:

You talk about after the fact, after the fact. You screwed up. You ought to admit you screwed up, but you ought not to use your screw-up as a -- as a basis for trying to extend your authority. That's my point.

I'm not trying to talk about a conspiracy. I'm talking about a responsible action after the fact. When you screw up, you ought to say you screw up. The people who are involved ought to say they screwed up. And then don't allow your screw-up to be the basis for trying to extend your legislative agenda. That's all I'm saying.

HOLDER:

And all I'm saying is that the -- as I said, the -- there were seven cases. These things were already under way when that -- that information was sought.

SMITH:

Thank you, Mr. Lungren. The gentleman from Georgia, Mr. Johnson, is recognized.

JOHNSON:

Thank you, Mr. Chairman.

Thank you, Attorney General Holder, for being here today.

There is a hole in our gun control laws that is so large that you could drive or fly a space shuttle through it. And it's called the gun show loophole. And what that gun show loophole enables unlicensed firearms sellers to do is to sell an unlimited amount of firearms per year or per gun show to anybody, without having to perform a background check as a licensed gun dealer must.

And so we've got gun shows, thousands of gun shows per year being held throughout America. And we've got untold numbers of licensed gun dealers who are selling their wares at those gun shows. And you have untold thousands of unlicensed private weapons dealers who are selling firearms, including automatic assault rifles of the type that walked away in Operation Fast and Furious.

How many -- how many automatic assault rifles walked away during Fast and Furious?

HOLDER:

I think the number that has generally been reported is about 2,000.

JOHNSON:

It's about 2,000? Now, how many firearms are sold to Al Qaida terrorists, to other convicted felons, to domestic violence perpetrators, to convicted felons, to white supremacists?

How many unlicensed gun dealers -- or let's say how many weapons, how many assault rifles, let's just say, in a given year are sold to such individuals by unlicensed gun dealers at these gun shows that are unregulated? And how many of those end up walking away to Mexico? Can you give us a number on that?

HOLDER:

I don't have a number on that. I can certainly...

JOHNSON:

Would it be more than a couple-hundred?

HOLDER:

Sir, I'm pretty certain it would be more than 2,000, but in terms of getting those numbers for you, I can try to do that and provide you with those numbers after the hearing.

JOHNSON:

Do you -- it would seem to me that with the thousands of gun shows and unknown numbers of private gun owners selling an unknown number of weapons, including assault rifles, to unknown people, it would seem to me that there's a fair possibility that a whole lot more than 2,000 weapons would walk out of the gun show and find their way into the hands of a Mexican drug cartel.

Would you agree with me on that?

HOLDER:

Again, without -- without knowing the numbers, I wouldn't want to guess. But I think that one of the things we need to focus is to know who actually is buying weapons; who is...

JOHNSON:

And we don't have that ability right now with that gun show loophole. Correct?

HOLDER:

We don't have it across the board.

JOHNSON:

OK. And now let me ask you this question. Over the last five-and-a-half years, we've had five acting directors of the ATF. How does the Senate's failure and refusal to confirm a nominee for that important agency -- what effect does that have on the ability of that agency to be guided in a way so as to avoid the kind of situations like Fast and Furious?

HOLDER:

I think that's actually a very good point. You have -- when you have a confirmed head, there's a certain prestige that goes with that -- that demarcation. But beyond that, it allows a person to have a longer term; to have a certain consistency; to put in place programs; to put in place controls that did not exist and that allowed Fast and Furious to happen.

What Todd Jones has done as the acting head of ATF in a relatively short period of time, I think, is fairly remarkable. It would be a better thing if we had somebody in his place who had a confirmed -- was a confirmed person and who'd extend the time that he would spend -- which he would spend running the organization. Todd is still the head of the U.S. attorney's office in Minnesota, and I can't expect him to devote, you know, four years, for instance, as somebody might if they were a confirmed head and served a full term -- full presidential term -- to do the same thing.

And that consistency, that presence for an extended period of time has, I think, a huge positive impact on an organization.

JOHNSON:

Do you think the NRA and other Second Amendment rights radicals have -- have confidence that the U.S. will not have a competent ATF head if the Senate continues to deny a leader for that organization, thus rendering it rudderless? Is that -- is politics causing that, do you think?

HOLDER:

I mean, it certainly has a negative impact on the organization. There are certain groups that I think have actively opposed nominees, both put up by President Bush as well as President Obama, who I think were amply qualified to lead the organization, and for whatever reason were not confirmed.

SMITH:

Thank you, Mr. Johnson.

The gentleman from California, Mr. Issa, is recognized.

ISSA:

Thank you, Mr. Chairman.

And I'd be remiss if I didn't take exception to calling the NRA members, the millions of them, "radicals." I think that's an offensive statement beneath contempt in this committee.

Mr. Attorney General, will you agree to come before the Oversight Committee without the need for a subpoena in the January timeframe?

HOLDER:

I will not.

ISSA:

Mr. Attorney General, will you agree to come before the committee I chair, the Oversight Committee, the one you've produced these documents to, in the January timeframe without the need for a subpoena?

HOLDER:

I will consider it, but I will note I've testified on four occasions with regard to this matter. I've appeared before you at least on two occasions.

ISSA:

You've appeared before this committee. Your organization pushed back on the request for a joint hearing here today. Not "will you consider it," but do I need to serve a subpoena on yourself and Lanny Breuer and the other people under direct investigation in my committee? Or will you agree to come voluntarily in the January timeframe before the committee?

HOLDER:

I will consider any request that you make.

ISSA:

I thank you, Mr. Attorney General.

I now would go to the questions of e-mails. This is the document you refer to. Most of these documents, 5,000 or so, are in fact e-mails.

Mr. Attorney General, I have a question for you. Not one of these e-mails in fact is yours. Aren't you a prolific e-mailer?

HOLDER:

No.

ISSA:

Don't you e-mail?

HOLDER:

Yes.

ISSA:

Do you have a personal e-mail account, and as well as an attorney general's e-mail account?

HOLDER:

I have an e-mail account at the Justice Department, yes.

ISSA:

Do you have a personal e-mail?

HOLDER:

Yes.

ISSA:

Do you regularly e-mail to Lanny Breuer, your former partner and your number -- your head of Criminal Division?

HOLDER:

I wouldn't say regularly. There are only a limited number of people who know my e-mail address in the Justice Department.

ISSA:

Well, let's -- let me cut to the chase. Don't you think it's a little conspicuous in his absence -- that there's not one e-mail to or from you related to Fast and Furious in any way, shape or form?

HOLDER:

There are a variety of reasons why the e-mail -- the e-mails that we have shared with you are there. We have shared in an unprecedented way e-mail information that no Justice Department, no attorney general has ever authorized before. You have deliberative information contained, I guess...

ISSA:

But isn't it true that executive privilege does not flow to the attorney general; only to the Office of the President? So "deliberative process" within your department, running law enforcement, in fact doesn't -- doesn't serve executive privilege? As the chairman said going on, you haven't cited any reason that these would not have been delivered.

HOLDER:

In making production determinations, we have followed what attorneys general in the past have always used as applicable standards, and these are Republican as well as Democratic attorneys general. And the information that we have provided to you has been responsive; has been I think fulsome, and also unprecedented.

ISSA:

OK. Well, "unprecedented" would be an attorney general who knew nothing about something where his own DAG, now his chief -- present chief-of-staff, was intimately familiar.

Gary Grindler was well aware, according to documents provided, of Fast and Furious on March 12th, 2010. Are you aware of that -- that he was aware of Fast and Furious and what its procedures were on March of 2010?

HOLDER:

It was certainly brought to his attention as part of a regular briefing that he got from ATF, but he did not hear during that briefing anything about the tactics.

ISSA:

Really? Is that why in his own handwriting when he talked about going to stash houses, he clearly understood in a document you've delivered -- he clearly understood in his own handwriting what the tactic was. This is...

HOLDER:

No.

ISSA:

I'm sorry, but I'm going to ask you a different question, because he understood.

(CROSSTALK)

ISSA:

No, no. Look...

HOLDER:

Can I answer that question?

ISSA:

You've answered it less than truthfully.

JACKSON LEE:

Mr. Chairman, could the questioner allow the witness to answer the question.

ISSA:

Madam, this is my time. I am not yielding.

JACKSON LEE:

I'm not asking you to yield...

(CROSSTALK)

SMITH:

The gentleman from California, Mr. Issa, has the time.

JACKSON LEE:

I'd appreciate it if you would allow the witness to answer the question.

SMITH:

The gentleman from California, Mr. Issa, has the time.

JACKSON LEE:

I understand that.

(CROSSTALK)

SMITH:

The gentlewoman from Texas has not been recognized.

JACKSON LEE:

I'd appreciate it if the witness could be allowed to answer the question, Mr. Chairman.

SMITH:

The gentlewoman from Texas has not been recognized. The gentleman from California has the...

(CROSSTALK)

JACKSON LEE:

I ask for a sense of protocol here.

SMITH:

The gentleman from California has the time.

ISSA:

Mr. Attorney General, as I was saying, Mr. Grindler, you can't answer on his behalf and so it makes no sense to. This is evidence that was delivered.

Do you regularly talk to your chief-of-staff? And do you regularly receive oral briefings from Mr. Grindler? And in fact, when you made the decision to have him be the DAG and then the chief-of-staff, wouldn't it be reasonable to assume that if he knew on March 10th, as this document indicates, that you would also know -- March 10th, March of 2010, March 12th of 2010?

HOLDER:

Well, first, he was not intimately -- made intimately familiar with the program as a result of that briefing. The briefing that he received from then-Acting Director Melson did not go into the tactics. Melson indicated...

ISSA:

Of course, it didn't -- it didn't go into the tactics.

Mr. Chairman, I'd ask that I have the time restored that I lost with the lady's interruption.

SMITH:

The gentleman is recognized for an additional minute, and also to give the opportunity to the attorney general to respond to the question.

ISSA:

I certainly look forward to that.

Mr. Attorney General...

HOLDER:

I was in the middle of an answer, I think.

ISSA:

You know, you're in the middle of -- of -- of filibustering. So I'll let you answer. I have two more things to quickly go over, and then you can have all of the time the chairman will give you.

Does it surprise you that these boxes -- five boxes -- represent just what one gun dealer gave us voluntarily? Well, in fact, this seems to be all the information you have responsive to our subpoena. Does it cause you to think that, in fact, we believe you were withholding documents, we believe that, in fact, there is more production?

So my final question, and then you can answer all of them for as long as the chairman wants, is do you today have documents responsive to the lawful request of the Oversight Committee that have not yet been granted?

HOLDER:

All right. Well, let me go back to my first answer that I was not...

ISSA:

Well, mine's pretty easy. Mine's a yes or no, and then the others you're going to go on for a while.

HOLDER:

I will get to that. The...

ISSA:

Would you please get to it first?

HOLDER:

With regard to Gary Grindler, he was not provided with a detailed analysis of Fast and Furious. He was given information about the...

ISSA:

Mr. Chairman? Mr. Chairman? This -- this -- I asked earlier that the attorney general be placed under oath. I was denied that. But what I will make the point is, that it is not productive for anyone to come before this committee and tell us what somebody else didn't know.

That is exactly how the legislative liaison behind the attorney general, Mr. Weich, came and gave false testimony to my committee, false because people who are still working for the attorney general knowingly gave him misleading information, in addition to the U.S. attorney, and no action has been taken.

And I might -- and I might...

(CROSSTALK)

JACKSON LEE:

Is the gentleman's time extended? Or is there regular order?

ISSA:

I'm speaking to the chairman. I might note for the record that the I.G. deliberately...

(CROSSTALK)

JACKSON LEE:

I have a parliamentary inquiry, Mr. Chairman.

SMITH:

The gentleman from California -- the gentleman from California continues to be recognized.

And let me make a point in the record that he is not over time near as much as the gentlewoman from Texas was a few minutes ago. So let's give him equal respect.

JACKSON LEE:

I thank you for your courtesy, but I would like to understand whether the gentleman has

extended time.

SMITH:

And he was recognized for that purpose, as the attorney general will be recognized for the purpose of responding...

JACKSON LEE:

And will he allow the attorney general to answer the question?

ISSA:

I look forward to it.

JACKSON LEE:

Thank you. Thank you very much, my colleague.

ISSA:

Mr. Chairman, I'll use only five more seconds.

The fact is, the inspector general has released information that was secret to the object of our investigation with the knowledge of the Justice Department. She is not currently, in our opinion, qualified to investigate and, in fact, has overstepped the line by delivering secret tapes to the object of our investigation while the Justice Department was slow-rolling that discovery. And this is the ATF agent that was intimately involved with this.

So I want you to understand I have treated this attorney general as a hostile witness because ultimately, while he comes before us saying he's going to clean house, no house has been cleaned. I'd love to hear his answers.

SMITH:

The gentleman's time has expired. And the attorney general will be given the opportunity to respond.

HOLDER:

I'll try again. Gary Grindler was not provided with information, as you've described, intimate information about Operation Fast and Furious. He was not told about the tactics that were used there. The person who did the briefing was the acting head of ATF, and he has, I understand, testified before your committee that he did not, in fact, share that tactical information with Mr. Grindler.

I note that Mr. Melson also briefed you, Congressman, about a month or so later, or before, I forget which, and he said at that time he did not share with you information about those -- those tactics.

So the notion or your contention that Gary Grindler was familiar with this or intimately familiar with this is inconsistent with what I think the facts are.

And you take me to task for trying to assume what I know Grindler to have said. You have not interviewed him, as well, and nevertheless you feel comfortable doing the same thing.

With regard to the documents that you talked about, we have not withheld any documents that are responsive to the matters that you have -- that you have asked us about. We have withheld information that pertains to ongoing investigations. That is the thing that might have limited our document production.

But, again, what we produced on February the 4th is unlike anything that any committee in any part of this Congress, Senate or House, has ever seen before.

And I want to make clear, as we said in that letter, that is not precedential, not holding, and I don't think any future attorney general should be expected to do that. But given the nature of what we did in withdrawing that February 4th letter, it seemed to me to make sense to make an exception to what has been a long-recognized rule.

ISSA:

Mr. Chairman, could -- could -- could the A.G. be allowed to fully answer, since it was pursuant to a subpoena, whether or not his answer about did he provide...

SMITH:

The gentleman's time has expired.

ISSA:

... means he was withholding or not withholding? He didn't answer...

(CROSSTALK)

SMITH:

Does the attorney general wish to add anything to his -- to his answer?

WATERS:

Mr. Chairman, that would require unanimous consent. I withhold (ph).

SMITH:

The gentleman -- the gentlewoman has not been recognized.

I was asking the attorney general a question. Does the attorney general wish to respond any further to the questions?

HOLDER:

I'm fine.

SMITH:

OK. The gentleman from Virginia, Mr. Scott, is recognized for his question.

SCOTT:

Thank you, Mr. Chairman.

General Holder, a lot has been made about the letter written by your assistant attorney general, Mr. Ron Weich. Nobody expected him or believes that he has any personal knowledge of the information, but expected him to get the information and relay it. The information has I think been subsequently determined to be false. Do you know where he got the false information?

HOLDER:

The information that was contained in that letter, the incorrect information that was contained in that letter was derived from people in the field who had the operational responsibility for Operation Fast and Furious, both from the ATF in Phoenix, as well as the U.S. attorney's office in Phoenix.

That information I think logically was presumed to be accurate. That information was transmitted to people in Washington who put the letter together.

And if you look at the February 4th document production that we made, you can see how this went back and forth, and how the letter was actually put together. It turned out that the people in Phoenix had information that was not, in fact, accurate, and that is the stuff that found itself into the February the 4th letter.

SCOTT:

Now, what did you do when you found out that the information was not accurate?

HOLDER:

I couldn't hear you.

SCOTT:

What did you do when you found out that the information was not accurate?

HOLDER:

One of the things that I did early on was to ask the inspector general to look into this. I was -- I was hearing from inside the Justice Department one set of facts. I was hearing from members of Congress and members of the media something else. And it seemed to me that given this disparate information that I was receiving that an investigation needed to be had, and on February the 28th I asked the inspector general to begin an investigation.

SCOTT:

An article in USA Today says, quote, "The program," referring to Fast and Furious, "was

fundamental" -- "which Holder has finally acknowledged was fundamentally flawed, occurred with the knowledge and approval of Justice." Do you want to respond to that statement?

HOLDER:

That is not true. I mean, the notion that people in the -- in Washington, the leadership of the department approved the use of those tactics in Fast and Furious is simply incorrect. This was not a top-to-bottom operation. This was a regional operation that was controlled by ATF and by the U.S. attorney's office in Phoenix.

SCOTT:

There's a memo dated November 16th, 2007, about a meeting of the attorney general in 2007 with the Mexican attorney general that says, "Of particular importance, ATF has recently worked jointly with Mexico on the first-ever attempt to have a controlled delivery" -- "controlled delivery of weapons being smuggled into Mexico by a major arms trafficker. While the first attempts at this controlled delivery have not been successful, the investigation is ongoing."

Does that suggest to you that guns were so-called walking in 2007?

HOLDER:

Well, certainly not walking in the same way that they were allowed to walk in Fast and Furious. But the reality was, guns did find their way into Mexico in an inappropriate way.

And one thing that I want people to understand is that I don't know what attorneys general did back then in -- and how they reacted to it, but I can tell you what this attorney general did. I asked for an inspector general investigation. I sent out a directive to the field that this kind of activity was inappropriate. I made personnel changes. And I am overseeing, with the help of Todd Jones, substantial reforms at ATF.

I was very active in dealing with this issue. You can look at what other attorneys general did.

SCOTT:

Thank you.

Switching subjects, the last administration was cited for political hiring within the Civil Rights Division. Have you continued that political hiring in violation of the law?

HOLDER:

We hire people within the Civil Rights Division on the basis of their experience, their commitment to that which the Civil Rights Division has historically stood for, people who are going to be good litigators, people who are going to work hard. We don't hire people on the bases of political or ideological affiliations.

SCOTT:

Thank you, Mr. Chairman.

I have a number of other questions that I'll be...

(CROSSTALK)

JACKSON LEE:

Would the gentleman yield for a moment -- gentleman yield?

SCOTT:

For the record -- and I'll yield the balance of the time.

JACKSON LEE:

Thank -- thank you, Bert (ph).

Very quickly, Mr. Chairman, I would like to put into the record The Examiner, "Mexico Losing Its War on Drug Cartels" and the Los Angeles Times that says, "How Many Have Died in Mexico's Drug Law (sic)".

Mr. Chairman?

SMITH:

I'm sorry.

(CROSSTALK)

JACKSON LEE:

I asked unanimous consent to...

SMITH:

Without objection.

SCOTT:

I yield back.

(CROSSTALK)

SMITH:

The gentleman yields back his time.

The gentleman from Iowa, Mr. King, is recognized.

KING:

Thank you, Mr. Chairman.

And thank you, Attorney General Holder, for coming here to testify.

A number of questions that come to mind as I listen to their responses that are here. And they soar (ph) down to this: As near as I can determine, have you identified the weapon that actually killed Agent Terry?

HOLDER:

That would go into a ballistics report determination, and I'm not prepared to talk about that given that is a pending...

(CROSSTALK)

KING:

Still under investigation, but there's some data there that is being examined by Justice?

HOLDER:

There are -- as I said, there is an ongoing investigation. There's a case that has been indicted, and obviously a part of that trial will be the ballistics report.

KING:

Have you identified a suspect or a person of interest?

HOLDER:

Somebody has been indicted in connection with that case.

KING:

Somebody has been. And that's not information that you can speak to today?

HOLDER:

OK, this is -- there are some rules there that don't allow me -- apparently this is a matter that is under seal.

KING:

So that's -- but there has been -- there has been an indictment?

HOLDER:

Yes, there has been an indictment.

KING:

Thank you.

And if you were to tell us who that was, you couldn't do so in this setting?

HOLDER:

That's correct.

KING:

If we were in an executive session, could you do that?

HOLDER:

I don't think so. I think it is a court-ordered seal.

KING:

OK, that's satisfactory to me.

HOLDER:

We have to seek leave of the court in order to do that.

KING:

That's satisfactory. Thank you.

Do you have a -- do you have a sense or an estimate or data on the numbers of Mexicans that have been killed or homicides that investigations that have brought about deaths where there have been weapons used that are from Fast and Furious in Mexico?

We lost Agent Terry. How many Mexicans do you estimate have been -- have been -- died because of the weapons that has been sent to Mexico?

HOLDER:

I don't know that figure, Congressman King, but I fear that the number of people on the Mexican side of the border -- frankly, as well as on the United States of the border -- who will be negatively impacted by the mistakes of Fast and Furious are -- they're going to be people who are going to be harmed. I don't have any numbers, but I fear that that is what is going to happen, has probably already happened, and is likely to happen in the future.

KING:

Do you have, though, reports or data that would give you some sense of that? Is it -- is it a report that's delivered to you in your briefing that when we know all about agent -- we know about Agent Terry, but I'm thinking about this from a public relations standpoint. I'm thinking that if this happened in the United States -- and I'm going to guess that there are multiple deaths in Mexico -- if there's anything proportional to the distribution of the weapons, are there any reports that give you a sense of this happening?

Is the communication going back and forth across the border and identifying Fast and Furious weapons that may have been used in crimes and homicides in Mexico so that you have a sense of that number?

HOLDER:

I don't have a sense of that as yet. I mean, we certainly work with our Mexican partners to try to trace guns that are seized in connection with crimes. That's why I said, you know, we've traced 64,000 of those guns over the last five years.

My guess will be that we will trace some guns over the coming years and months back to Fast and Furious, and then we'll be able to connect those traced weapons to crimes that have occurred in -- in Mexico.

But to date, I have not received information...

(CROSSTALK)

KING:

Well, thank you.

I'd like to just shift a little bit. I know the last time you were before this committee, May 3rd of this year, as I recall, we had a discussion about the Pigford Farms issue. And I submitted a series of questions to -- about that and you've answered most of those questions in writing, as of -- as of the date -- I think it was October of this year.

And so I'd like to narrow in on that a little bit. Because the Pigford Farms issue you cite as the authority for Justice and presumably USDA to negotiate with black farmers, the authority that's in the Farm Bill, commonly known as the Farm Bill, and you cite the sections of the bill.

And I will just tell you in this committee that I had a conversation with the then-chairman of the Ag Committee, Collin Peterson, on the way over to the floor to vote on this Farm Bill. And I said to him, the authorization that you've granted in the Farm Bill, which you cite in your response, will open up the door to \$1.3 billion in additional Pigford claims.

And his response to me was, "No, that \$100 million caps the spending on settling all outstanding Pigford claims. You will be satisfied with the results of that." That was our disagreement.

And I've had the secretary of agriculture cite the same section that you have cited. I have this section before me, and I'll ask unanimous consent to introduce it into the record at the conclusion.

But it says here that, "shall not exceed \$100 million, and it shall be construed to effectuate its remedial purpose of giving a full determination on the merits of each Pigford claim previously denied that determination," which is the language that opened up Pigford II.

So I'll submit that that authority only exists to resolve all outstanding Pigford claims and cap them within \$100 million. And we got a claim coming back to Congress for an additional \$1.15 billion. And I have -- you know, I have no information in my letter that tells me how many claims you have from Pigford and I don't have any information that tells me what was spent on attorney fees in the settlements with Pigford I.

So I'd appreciate it if you could respond to that.

HOLDER:

Sure. We'll get you that information.

KING:

And -- and including the value, the cost of attorney fees in Pigford I, and anything that's current.

HOLDER:

Sure. Whatever information we have with regard to the questions you've asked, I'll make sure that (inaudible) get passed on to you.

KING:

And I would just ask then in a follow-up...

(CROSSTALK)

SMITH:

The gentleman's time has expired.

KING:

I'd ask unanimous consent to complete my question?

SMITH:

The gentleman continues to be recognized for a final question and then the A.G. to respond.

KING:

Thank you, Mr. Chairman.

I would just ask that -- we know that there were negotiations, according to your letter, that took place between the Department of Justice, USDA and representatives of the black farmers, which sounds to me in their response to be multiple organizations, multiple entities.

So I would ask you if you personally had a conversation with Secretary Vilsack with regard to Pigford and who are those entities that were negotiated with to come to this settlement that I contend goes beyond the \$100 million cap that was authorized?

HOLDER:

I have certainly talked about this matter with Secretary Vilsack, the person who's primarily responsible for the settlement of the case. On the Justice Department side as the Associate

Attorney General Tom Perrelli.

There were a variety of organizations, entities, individuals who were engaged in this. I mean, we were trying to work out a settlement short of litigation, so people who were potential plaintiffs were part of these conversations to reach this -- this agreement.

SMITH:

Thank you, Mr. King.

KING:

Thank you.

(CROSSTALK)

SMITH:

The gentleman from Tennessee, Mr. Cohen, is recognized.

COHEN:

Thank you, Mr. Chairman.

General Holder, I -- understanding this issue some -- but it's a great tragedy this agent was killed. And it'll be a year next week, as I understand it. And it was a Fast and Furious weapon that he was killed by, as I understand it.

Is there any great difficulty in -- in Mexico for folks who are part of these drug cartels or, you know, folks to get guns? Are guns rather plentiful in Mexico in general?

HOLDER:

I think that -- I think we can safely say that they are readily available and the -- part of the problem with their ready availability is the fact that so many guns flow from the United States to Mexico.

As I've said over the last five years, at least 64,000 weapons traced to the United States that were found in Mexico -- and those were only the ones that were traced. There are undoubtedly additional guns in Mexico that have not been traced back to the United States.

COHEN:

So while it's a supposition, I would presume that if Fast and Furious didn't occur, that the individuals that committed this act, this violent act and (inaudible) resulted in the death of the agent, they would have probably had weapons anyway.

HOLDER:

You know, we can never -- you can never suppose -- I mean -- but-fors are always hard to -- hard to determine. But I don't -- I don't think that's an illogical conclusion that the people who were involved in that senseless, tragic, awful murder probably could have had access to other weapons.

COHEN:

I kind of remember the president of Mexico saying something about most of the guns that come there come from the United States. And I think he also said something about most of the market he has for marijuana comes from the United States, too. So we supply him with guns and a market.

We could certainly dry the market up, but that's the job of the Judiciary Committee, I realize.

What are we doing to try to stop guns from going into Mexico? Are there efforts at the border to stop guns from traveling from this country there?

HOLDER:

Well, we have moved people to the border. We work with our partners -- the Justice Department works with our partners at DHS to try to come up with ways in which we inspect cars that are going from the United States to Mexico. We have teams of agents that work together to try to determine ways in which we can stop the flow of guns. We use a variety of intelligence methods that I can't really get into, to try to determine if cartels are trying to bring into Mexico huge stashes of guns.

But we also need to use things on this side of the border, and that's one of the reasons why that long-gun rule, I think, is so important. If we see substantial numbers of these long guns being purchased, it gives the ATF real-time leads that they can follow up to see if, in fact, these are legitimate purchases or they are purchases by people intending to have those guns shipped to Mexico.

COHEN:

Coming home, which is where I think the real issues are, not to say that they're not important about the border and all, but in our cities, we've got a lot of youth violence and gangs. And I want to commend you for having a national forum on youth violence prevention, and it included Memphis in the forum.

Can you give the committee some information about what you've done to help inner cities fight youth violence and gang activities?

HOLDER:

Well, one of the things I want to say is that the five police chiefs behind me from Charlotte, Detroit, Philadelphia, Baltimore and Boston, have all embraced, and we've learned from them, the way in which we deal with this issue of youth violence, that it is not simply a question of doing what is traditional law enforcement, that we have to come up with ways in which we deal with the underlying problems that involve our young people in these antisocial behaviors.

Congressman Scott has been, I think, very forward-leaning in this regard with legislation that he has proposed and that we support. We've tried to deal with these underlying causes. And it's been particularly useful to have our partners in law enforcement identify with and be participants in these preventive activities, in addition to all the great things that they do on the -- on the enforcement side.

And the thing that you've talked about, what we're doing in Memphis, is an example of the kinds of things that we are trying to do in the Obama administration.

COHEN:

I would like to, Mr. Chairman, comment that the gentleman from Philadelphia, I believe the chief there -- I recognized you and I kept thinking where do I know you from? And where I knew you from was when you testified before this committee on the bill to allow folks who had gun permits to travel from state to state based on federal edict rather than state cooperative agreements.

And at the time, I was a sponsor of the bill that ended up passing, but because of your testimony and law enforcement's objections, as well as my belief in state's rights, I changed my position, came off as a sponsor and voted against the bill.

Your testimony was effective, and it's nice to see you again. And I thank you for that.

(LAUGHTER)

I'd yield back the remainder of my time...

(LAUGHTER)

... Mr. Chairman.

SMITH:

Thank you, Mr. Cohen. The gentleman from Texas, Mr. Gohmert, is recognized.

GOHMERT:

Thank you, Mr. Chairman.

And thank you, Attorney General, for being here. We do appreciate the law enforcement being here. We've had multiple of our Democratic friends point out their presence, and we do appreciate the job you do.

I'd thought -- and everybody needs friends, and I'm glad you're supporting the attorney general. I'd thought about inviting the law enforcement that's furious over Fast and Furious, but there's just not room in this room or the building, so I didn't do so.

Let me ask, Attorney General, you -- have you read the opinion from the 5th Circuit Court of Appeals on the Holy Land Foundation trial that came out yesterday?

HOLDER:

I have not seen that.

GOHMERT:

All right. Well, we know from prior documentation that there's been a relationship with CAIR and the Justice Department. Is there any ongoing relationship, any reach-out at this time, still, to CAIR?

HOLDER:

Well, we certainly reach out to a variety of Muslim groups as we try to...

GOHMERT:

Well, I'm talking specifically about CAIR.

HOLDER:

I was getting there. But I don't think that we have any particular outreach efforts at this point with CAIR.

GOHMERT:

You know there was a partnership between the FBI and CAIR, and in '09, it was temporarily suspended. I didn't know if there were still informal outreach to CAIR, because we do know from this opinion yesterday; we know from the prior 5th Circuit opinion, when CAIR and ISNA and others tried to have their names struck as named co-conspirators, that it was unsuccessful, that this circuit basically saying there's a case there to prove. And then, as we know, you decided not to pursue those, or your department did, as we've talked about before.

In the decision yesterday, the -- the court said that the Palestine committee created not only the Holy Land Foundation but a number of Islamist entities in the U.S. Leaders of one of those entities, the Islamic Association for Palestine, subsequently created CAIR, Council on American-Islamic Relations, which was cited as an unindicted co-conspirator.

So it does create some concerns. We know there was massive documents, a massive number of documents being furnished to the defendants in that case, a lot of production of documents.

But I would like to ask that we get copies of the documents that were provided to the five defendants who are now convicted and affirmed by the 5th Circuit. Would the Justice Department make those documents available?

HOLDER:

I'm not sure I know what documents you're talking about. If they were provided in litigation...

GOHMERT:

Correct.

HOLDER:

... and if we can provide them, I'm sure that we would. I don't know if there are documents that have been provided in discovery that we don't have the ability to provide. I just -- I just don't know the answer to that.

(CROSSTALK)

GOHMERT:

Well, they have been furnished by your department to the defendants in the case. Those defendants have now been found guilty of providing support to terrorism.

There's no question in my mind that those documents are now in the possession of terrorists. And so we have had trouble getting production of all the documents that we have desired and requested, and I didn't think that there should be any problem with privilege or anything of that nature since the defendants who are convicted of supporting terrorism have them; the terrorists have them, and I just felt like it would be a good idea for Congress to have them. These are...

HOLDER:

I will certainly take that request under advisement. And to the extent that we can provide documents...

GOHMERT:

Well, I hope that we will have as good a standing as the terrorist supporters that have been convicted.

I'm familiar, as a judge handling massive litigation, been an MDL with a document dump. About 100 of these are just Grassley's letters. But I want to ask you, since you had said before, in your statement, that you asked the department inspector general to investigate this Fast and Furious matter.

In March, you ordered a directive be sent to a law enforcement prosecutor prohibiting such tactics, and in this entire stack is not an e-mail, not a letter, not a transcript of the speech, nothing from you.

I would ask where they are. If you did those things in February or March, where are they? And not only that, you testified May 3rd in here, as we've recalled, that you had just learned about Fast and Furious a few weeks before. And now you say, actually, in February or March, you made these orders. When was the first time after May the 3rd you began to suspect that you may have actually taken actions in this case?

HOLDER:

Well, I actually took actions well before May the 3rd, on February the 28th.

GOHMERT:

Well, unless you were intentionally misrepresenting the facts on May 3rd, which I'm not contending at all...

HOLDER:

No.

GOHMERT:

... then at some point, you began to wonder, gee, I believe I issued some orders in this matter. We haven't seen the orders. All we have is the transcript here. We know you're capable of mistakes, as you've verified. Where are the e-mails, letters, orders? Where are they, from February and March?

HOLDER:

All right, well, there are a couple of things going on here. I mean, I didn't play any role in the drafting of the February 4th letter. With regard to the notion of...

GOHMERT:

So, you were not the one that ordered the inspector...

SMITH:

The gentleman's time has expired. The A.G. will be allowed to answer that last question.

HOLDER:

With regard to the question of what I said on May the 3rd about a few weeks, I mean, I said a few weeks that -- about when I first learned about Fast and Furious.

I learned about Fast and Furious when this became a matter of controversy, I think some time at the beginning of the year, and my guess is probably at the middle of February, which would have been about 10 or 12 weeks before I said a few weeks.

Now, I could have said, you know, a couple of months. Maybe I should have been more precise, but a few weeks, from my perspective, was accurate then and it still seems to be accurate now when I say a few weeks, 10 or 12 weeks, would, I think, encompass -- be encompassed in that -- that description.

GOHMERT:

Mr. Chairman, I would ask that he be allowed to actually answer the question of whether or not he's the one that actually ordered the inspector general to investigate that, and if so, where are the documentation of it. That was my question.

SMITH:

Has the A.G. answered or responded?

HOLDER:

I'll -- I'll answer that. I was, in fact, the person who requested, ordered the inspector general to begin this investigation.

I don't think I did that in any written form. I think that was transmitted from me either through my chief-of-staff, through the deputy attorney general, to the I.G. There might be a writing that exists in that regard, but I don't think that I signed off on anything actually.

I have a good relationship with the inspector general. The inspector general's office had looked at this whole question of -- of gun trafficking before and it seemed logical to ask them to expand their inquiry and look into Fast and Furious.

As I said, (inaudible) any writing from me, but I can check, but I don't think there's any writing from me that exists with regard to...

GOHMERT:

Well, we'd sure ask for a copy if any such exists.

Thank you, Mr. Chairman.

SMITH:

Thank you, Mr. Gohmert.

The gentlewoman from California, Ms. Lofgren, is recognized.

LOFGREN:

Thank you, Mr. Chairman.

And there's been a lot of discussion on a lot of topics today. I noted that the chairman took the opportunity to discuss health care. And since we don't get you in front of us that often, I'm going to raise an issue that's not Fast and Furious. That's the Second Amendment. There's an amendment that comes before that, and that's the First Amendment, and that's the subject of my inquiry.

As you know, for over a year, ICE in the Department of Justice have been seizing domain names of hundreds of websites on allegations of criminal copyright and trademark infringement. One particular domain name was seized a year ago, November 2010. It's the JazzOne.com, a very popular blog that was dedicated to hip-hop music.

Just today, the news is that, with the details, that the seizure, which I thought raised troubling questions at the time about the government's -- government's conduct in the case, and really raises questions about constitutional rights of due process and free speech as they apply to websites.

After the government seized the domain name, its owner filed a request for the government to return it to them. And under the law, the government has 90 days to initiate a full forfeiture proceeding against the domain, or else has to return the property. However, in this case the deadline passed with no action, and when the website's lawyer asked with your department's lawyers, he was told the government had filed an extension with the court entirely under seal and without notice to him.

They had no notice. They had no opportunity to respond. And when the lawyer -- of course, this is according to the news reports -- asked for any sort of proof that the extension had actually existed, your department's lawyers reportedly said he would just have to trust them.

The government then claimed to have received two additional extensions under the same process, without notice and without a hearing, and they refused to release the court order, according to the press reports. And then as of today, the last extension was filed and the government finally admitted that it did not have probable cause for the forfeiture. And the domain name was returned to the website owners today.

In short, a blog site, which is identical in terms of First Amendment protections to a newspaper or a magazine, has the same First Amendment rights, was shut down for an entire year by the government, by our government, with no due process, no contested hearings, no written orders.

I just think this -- I mean, if these reports are true, that's just an outrageous violation of the First Amendment. So my question is, I assume that you believe that the First Amendment doesn't allow the government to go in and shut down the press for a year, prior restraint on speech, without any kind of due process. I don't -- I guess this is a question. Do you think that's consistent with the First, Fourth and Fifth Amendments to the Constitution?

And if the facts -- I'll give you the article that I just read today -- if the facts are as reported in this article, what will you do to make sure that the wrongdoers in your department are -- are no longer in your department? I mean, this is -- there has to be a sanction for someone to do such a thing. If we did this to a magazine -- if we went and locked the doors and put a sign and said "closed" and refused to deal with them for a year, people would be outraged.

But since it's a blog -- and since it's hip-hop artists, I mean, you know, it seems to me the hip-hop artists have every much right to due process and to the First Amendment as any other American.

So could you comment on that, Attorney General?

HOLDER:

Yeah, I'm not familiar with the reason why that domain name was seized or the facts of this case. I will certainly look into that and we'll get back to you with whatever information we can.

I mean, you're right. I mean, what the subject matter is of a particular blog, you know, is obviously entitled to First Amendment protection. There may be other reasons why this was seized. I just don't know. I can tell you that my daughters are watching this hearing, having heard about this hip-hop issue now. I will hear about this from them at home.

LOFGREN:

Very good.

HOLDER:

And if nothing else, that will make -- I will make sure that I stay in touch with these folks to get you an answer. My daughters will be on me about this.

LOFGREN:

Well, I wonder if you could give a commitment that if the facts are as we've outlined, that you will take appropriate action within your department to make sure that those who violated the law in the DOJ are dealt with, and that this, you know, becomes a well-known, a sanctionable type of activity in your department.

HOLDER:

We'll certainly look at it. My hope would be that there is a reason -- an acceptable reason why these actions have occurred, if they have been accurately described. And -- but to the extent that somebody has acted inappropriately in the department, I'll make sure they are held accountable.

LOFGREN:

Thank you, Mr. Chairman.

SMITH:

Thank you, Ms. Lofgren.

The gentleman from Arizona, Mr. Franks, is recognized.

FRANKS:

Well, thank you, Mr. Chairman.

Thank you, General, for being here.

I guess just to lay the groundwork here, you understand that perhaps the reason that this issue has gotten so much attention is that in the -- the simplicity of the overall project here, it appears that the American government, the American Justice Department -- Department of Justice through their department and subsidiaries, have orchestrated a program to get American gun dealers to sell guns to straw buyers, to then run those guns to Mexico and give them to drug cartels; around 2,000 high-powered weapons, with the understanding that that takes grave risk for innocent human life.

I mean, at this point we know that at least one of our own agents was killed, and probably 150 or more Mexican citizens were killed.

Now, that's a pretty scary scenario by itself. But I think the thing that would really concern the American people is why this was all done. Now, on the one hand if it was just something that

was, you know, a sincere effort that went wrong or was just gross incompetence, that's one thing.

But Mr. Issa mentioned some internal e-mails that I think were pretty significant, because if the American people learn that the motivations for all of this was somehow to make a case to deprive them of their Second Amendment rights or to make a case to further the department's ability to further regulate gun rights within the United States, that would make them very angry, General.

And so let me just read a couple of the e-mails again. I know that Mr. Issa has already done this, but I just want to be clear on this so that you understand why some of us are so concerned.

On July 14th, 2010, the ATF headquarters received an update on Fast and Furious. And the assistant director, Mark Chait, e-mailed Bill Newell, the head of the ATF's Phoenix office, quote, "Bill, can you see if these guns were all purchased from the same licensed gun dealer and at one time? We're looking at anecdotal (ph) cases to support a demand letter on long-gun multiple sales. Thanks."

In other words, they were trying to use this tragedy to build a case for these demand letters. "Well done yesterday, Bill. In light of our request for demand letter three, this case could be a strong supporting factor if we determine how many multiple sales of long guns occurred during the course of this case."

And it appears that the ATF was trying to rely on walked guns orchestrated by the department to justify its new long run reporting requirement known as demand letter three. People would be very upset if that's true.

Now, you've already testified that you didn't -- hadn't read these e-mails. Is that correct?

HOLDER:

I'm sorry. That I haven't read...

FRANKS:

You already told Mr. Issa that you hadn't actually read these e-mails.

HOLDER:

Right. That's correct.

FRANKS:

Well, you know, the thing that is difficult for me, General, is that you then told him that it was out of context. And how would you have known that it was out of context if you hadn't read them? I mean, what would give you the first indication that they were out of context?

HOLDER:

Because he read part of the e-mail to me and I was able to listen to that, and understanding what he said or what he read from the e-mail and knowing what happened here, as I...

FRANKS:

All right. I'll -- I'll accept that. But the -- do you read -- I know you said that you don't oftentimes read letters from your own staff. Do you read major letters from oversight chairmen like Mr. Issa and Mr. Grassley that come to your office? Do you personally read those -- these letters?

HOLDER:

I can certainly say that over the last few months, everything that Mr. Issa has sent -- that Senator Grassley has sent, I have read.

FRANKS:

Well, let me -- let me just say then to you, on July 12th, 2011, which was a letter that they both sent to you, the e-mails I just read to you were attached to the letter.

HOLDER:

Well, I might not have read the attachments then. You know, I mean, understand something. I mean, these things come in, I read these things from Mr. Issa, from Congressman Issa, from Senator Grassley, because I take seriously the...

FRANKS:

Just -- it's hard for me to -- but anyway, let me -- let me skip one more -- ask you one more question here.

Mr. Issa also asked if you had given all the pertinent e-mails here and that -- he noted that none of them had your name on them, none of them. And you've said that, you know, this is -- I mean, this obviously is probably one of the more significant scandals facing your tenure over with the Justice Department, and not one e-mail, General, was from you or -- not one of them?

HOLDER:

Well, we have produced a really substantial amount of stuff around the February 4th letter, but I just -- let me just be very clear that with regard to documents that go beyond that, from February the 5th on, materials have not been produced and it is not our intention to produce them following that...

FRANKS:

So, the answer to his question would have been no, that you haven't given him all of the -- the pertinent e-mails? And I guess I'll just -- it just is very simple in my mind that either -- if there are no e-mails from you that have been given to Mr. Issa, if there are none regarding this committee, then we're left with three options here. Either this is not that big a deal to you, and I know that it is, or somehow you, for particular reasons, don't write e-mails so there can't be any record, or that you haven't given us those e-mails. Now, that's the only three things I can come up with. There may be other possibilities. I'm open to hear it.

HOLDER:

Well, I made an exception to the way in which the Justice Department has always conducted itself with the provision of these materials around that February 4th letter and acted in a way, with regard to all other e-mail material, in the way that all other attorneys general before me have. And on that basis, there are e-mails, materials that we have not and will not produce.

FRANKS:

I understand.

(CROSSTALK)

FRANKS:

Mr. Chairman, my time is up.

But I understand, Mr. General, and I appreciate, but that answers the question. And I appreciate that, because without insulting you, that's one of the first clear answers I've gotten today, is that you've agreed that you haven't given the chairmen all of the pertinent e-mails, and you -- you're saying you're not going to. So, at least that's a clear answer for all of us.

And with that, I yield back.

SMITH:

Thank you, Mr. Franks.

The gentleman from Illinois, Mr. Quigley, is recognized.

QUIGLEY:

Thank you, Mr. Chairman.

For those of you keeping score at home, one side is using this horrible screw-up to justify a policy. The other side is using this horrible screw-up to justify not funding ATF, not giving the ATF a leader, continuing to make tracing difficult of guns, continuing to make releasing statistics difficult, and for allowing continued extraordinarily lax policies for the violators and the purchasers of straw weapons that will be used long, long after this hearing today to purchase weapons to endanger Mexicans and Americans and our DEA agents, penalties that were described in hearings before this Congress as nothing more than a moving violation.

So, Mr. Attorney General, now that I've got the scorecard up to date, let me just congratulate you. I can't forget that I am from Chicago. And yet again, yesterday there was a sentencing of an Illinois governor. So, we will have two in jail at the same time, four of the last eight governors. Two of my last four predecessors in this office went to jail or are going to jail. So, I want to commend your office for its work. I just wish we didn't give you so much work to do.

But toward that end, Mr. Sensenbrenner and I did manage to get a bill out of this committee dealing with repairing (ph) and honest services, and I'd like your reaction to where we need to

go on that.

As you know, the Supreme Court struck down that act, many provisions of it, and they are a necessary tool. So, given where we are in Chicago and across the country, where, in your mind, do we need to go to deal with official corruption?

HOLDER:

Well, I think that -- thank you for the compliment. It's not something that I should be complimented for, but the men and women in the U.S. attorney's office in Chicago deserve all the credit. Pat Fitzgerald's a great U.S. attorney. He's a friend. He's done a wonderful job over a great number of years there and he's got a great staff.

And I also appreciate the efforts that you and Congressman Sensenbrenner have -- the efforts that you have made in trying to help us deal with that Supreme Court decision.

The honest services portion -- the honest services provision in Title 18 is a vital tool for us to have as we try to fight official corruption cases. A number of cases over the years have been made on the basis of the -- on the basis of the use of that provision. And to the extent that we can work with Congress to have that provision formed in a way that it can withstand constitutional muster, that will help us, it will give us another tool in our arsenal against official corruption, which is a priority for this administration.

QUIGLEY:

And obviously the bill has not passed the full House or -- and/or the Senate. To the extent that your agency can or will participate in making sure that we do this right, as we'd like this one to stand up for some time, we'd certainly appreciate your help in that manner.

HOLDER:

We would be glad to work with you in that regard.

QUIGLEY:

Thank you, Mr. Chairman, and I yield back.

ISSA:

The gentleman yields back.

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

POE:

Thank you, Mr. Chairman.

Mr. General, the way I see the Fast and Furious operation, based on all of the information that I've received, is that the United States government, Justice Department, ATF, were aware of a situation where guns could be bought in the United States, serious weapons, automatic, semiautomatic, sniper rifles, bought by straw purchasers, and were observed by federal authorities. Wanted to watch the guns go to Mexico, go to the drug cartels and see where they ended up.

Here's how it ended up: 2,000 weapons, based upon the information that we've received from your department, 600 of those weapons are accounted for, the vast majority are not accounted for. We don't know what country they're in and who's got 'em.

But this operation is serious to me because people died with this ill-founded decision. We talk about the two Americans, the two agents, one, Brian Terry, Jaime Zapata in Mexico, the two agents, but at least 200 Mexican nationals died, too, because of the United States watching these weapons, knowing where they were going and lose -- and lose those weapons. Mexican government that hasn't said a whole lot about this other than at least 200 Mexican nationals.

Those Mexican nationals that were murdered because of our watching this illegal conduct are just as important as the two Americans that were murdered as well. And that's why this is a serious discussion.

You're the attorney general. You're a lawyer, former judge, prosecutor, you're the head guy in the United States when it comes to the Justice Department and law enforcement. My understanding is you didn't really know about the operation, the memos, you might have gotten the memo, didn't read the memo or didn't read all of the memo, not sure about that.

But you're the person in charge of this. And believing that you were unaware of Operation Fast

and Furious requires, to coin a phrase, a willing suspension of disbelief. It's hard for me to believe that you were unaware of this operation that went to Mexico.

Now, my question is very simple. Who is the person in the United States government that made the decision of an Operation Fast and Furious to facilitate the guns going to Mexico? Who is that one person?

HOLDER:

We don't know yet. The...

POE:

So you don't know who was responsible for the conduct of these thousands of guns going to Mexico? We don't know who that is?

HOLDER:

We know that the case was opened in the ATF office in Phoenix a month or so before it was opened in the U.S. attorney's office in Phoenix. We know that it was given OCDETF status some time after that. But we do not know as yet who the particular people -- person was, to the extent it is a person, in either of those offices that said this is the way in which this operation, this flawed operation should be conducted.

POE:

So we don't know the person that signed off. I mean, and I know how the federal government works, everybody's got to sign off on something, especially something like this. But we don't know who that person is yet, is that what you're telling me?

HOLDER:

With all due respect, I'd be surprised if we're going to see a document that somebody signed off on that said, "You can let guns walk." I'd be surprised if we see something like that.

POE:

Would you agree that...

HOLDER:

But I don't know. I don't know.

POE:

We don't know. We don't know who was in charge of making that final, it's time to send the guns to the enemy of Mexico, the drug dealers, which is phenomenal to me.

It's a violation, I understand, of international law to allow gun trafficking to go between two countries. Do you agree with that?

HOLDER:

Well, I -- it would depend. I mean, if you look at...

(CROSSTALK)

POE:

People in one country are smuggling guns to another country, isn't that a violation of international law?

HOLDER:

Well, I don't know (inaudible). I was going to say, if you look at Operation Wide Receiver, if the governments agree that, you know, weapons can go from one country to another I would not think that violates international law.

POE:

If they agree...

HOLDER:

If they agree.

POE:

... that's the key.

HOLDER:

Right.

POE:

Did the Mexican government agree to Operation Fast and Furious?

HOLDER:

Not the way -- not the way in which it was -- not the way it was actually carried out.

POE:

The way it turned out.

HOLDER:

(inaudible)

POE:

But would you agree this operation was reckless (inaudible) a reckless operation on the part of the United States?

HOLDER:

I mean, I think the way it was carried out -- you know, I would certainly say it was flawed. Reckless, yeah, I'd probably agree with that. I mean, it was -- it was done inappropriately and has had tragic consequences and is going to -- as I said in my opening statement, it's going to continue to have tragic consequences.

POE:

More people are going to die, probably.

HOLDER:

Unfortunately, I think that's probably true.

POE:

A person recklessly causes the death of another person, under many state law, including Texas, which one of -- some of these guns were bought, it's manslaughter, it's a crime.

And it's my belief that if the United States government helped facilitate reckless homicide, reckless killing of other people, this is a serious matter. And there may be people in our government -- Justice Department, the ATF -- that if they helped facilitate reckless conduct that caused the death of an individual in the United States or in Mexico by sending these guns down there, they should be held criminally responsible for that conduct.

Are you going as far as the attorney general to make sure that if criminal violations were committed by anyone in our government, that you're going to prosecute those people?

HOLDER:

Sure. If we find that there were criminal violations connected to the conduct of Fast and Furious, I will commit that those -- that we will take -- take those findings seriously and that people will be prosecuted.

Now, when I said "reckless" before, I was talking about the way in which the operation itself was conducted. I don't want to cast too wide a net here and say that on the basis of what we know now that there is a basis to conclude that people connected to Fast and Furious, either at the ATF in Phoenix -- or the U.S. Attorney's Office in Phoenix, would necessarily have the requisite state of mind or done things that would bring them under the...

(CROSSTALK)

(UNKNOWN)

Reclaiming my time.

I know that's not what you're saying.

POE:

That's what I was saying. I was saying...

SMITH:

The gentleman's time has expired.

POE:

And I request unanimous consent to submit further questions to the attorney general and have answers in writing.

SMITH:

Without objection.

Thank you, Mr. Poe.

The gentlewoman from California, Ms. Chu, is recognized.

CHU:

Mr. Attorney General, before I begin with my questions, I'd like to thank you for the anti-crime accomplishments in my district of Los Angeles.

Earlier this year, the department took down in one day more than 100 members and associates of transnational organized crime groups that were involved in widespread criminal conduct in Los Angeles, Miami and Denver. These were violent and fraud-related crimes, including kidnapping and drug distribution.

And also in recent years the department has gone after a San Gabriel Valley-based organization linked to a major ecstasy ring, leading to the seizure of over 1.1 million ecstasy tablets.

Your office is also engaged in a massive takedown of major methamphetamine and cocaine suppliers to some of the most violent street gangs in Los Angeles and La Puente.

So I thank you for all of those efforts. It has truly helped our area.

And I'd also like to commend you for the work your department's done with regard to voter rights. Your office has handled 27 new cases this year and opened up 172 investigations in this area. We all know there's been a large number of unprecedented legislation suppressing voter rights, and I'm happy to hear that your office is vigilant about not letting that happen.

Can you provide some examples of what the department is doing to ensure that newly enacted state legislative efforts on voter identification are implemented in accordance with the voter -- the Voting Rights Act?

HOLDER:

Well, we have a -- a special role to play under the Voting Rights Act, our Civil Rights Division, which is ably led by Tom Perez -- has been very active in this regard.

And to the extent that changes are made in covered jurisdictions, we review those -- those proposed changes. And where we think something runs afoul of a Voting Rights Act we note that and do not pass on them. Where we think that they are consistent with the Voting Rights Act, we approve them.

We have taken in a number -- in a number of places lodged objections to proposals that have been made with regard to changes in voting schemes.

CHU:

And what steps are being taken to ensure that jurisdictions and their public are aware of what is permissible and not permissible with these types of laws?

HOLDER:

Well, you know, we've tried to -- Assistant Attorney General Perez in particular has spent a lot of time on the road trying to educate people, especially in those areas covered by the Voting Rights Act about -- and we've interacted with state officials, as well, to let them know about ways in which things can be changed consistent with the Voting Rights Act, warned jurisdictions about ways in which changes might be made that might run afoul of the Voting Rights Act.

And then, more generally, to talk to members of the public, as I have tried to do when I've been out there, to talk about the Voting Rights Act.

As I said, I'm going to be talking about in a speech at the LBJ Library next week, I think on Monday or Tuesday.

CHU:

Very good.

Well, I want to also thank you for something else, which is that there is an issue about offensive materials about Muslims that was used in some FBI training.

And I know that in the Senate Judiciary meeting last month you acknowledged that this has stopped. It was when the FBI was conducting counterterrorism training using materials that included inflammatory statements about Islamic beliefs and offensive stereotypes about Muslims.

So at that Senate Judiciary meeting you acknowledged that had stopped. And I would like to know what the status is of the situation and the steps that have been taken or any investigation that's been opened up about the use of these biased trainers and materials.

HOLDER:

Well, the person who was responsible for the use -- for, I guess, using that material is no longer going to be used by the FBI. We've also enhanced our efforts to make sure that we review all the materials that are used in the training of agents, lawyers, personnel within the Department of Justice to make sure that that kind of mistake doesn't happen again.

This is something that the FBI director, the heads of the other law enforcement agencies within the department, as well as I and the leadership in the department are committed to making sure does not happen again.

I mean, that was totally inappropriate, and it's a mistake that we will not allow to happen again.

CHU:

Thank you.

I yield back.

SMITH:

Thank you, Ms. Chu.

The gentleman from Utah, Mr. Chaffetz, is recognized.

CHAFFETZ:

Thank you.

And thank you, Mr. Attorney General, for being here.

Have you spoken to Secretary Napolitano about Fast and Furious?

HOLDER:

No.

CHAFFETZ:

Have you spoken with Secretary Clinton about Fast and Furious?

HOLDER:

No.

CHAFFETZ:

Have you spoken to President Obama about Fast and Furious?

HOLDER:

I don't think that I have. I see the president...

CHAFFETZ:

That's OK. If you haven't, you haven't.

Have you spoken to the president of Mexico about Fast and Furious?

HOLDER:

No.

CHAFFETZ:

Have you spoken to the attorney general of Mexico about Fast and Furious?

HOLDER:

I don't believe so.

CHAFFETZ:

You have routinely argued that you've been oblivious and disengaged in this operation, and I -- and I buy that to a large extent...

HOLDER:

I'm not sure I would characterize...

CHAFFETZ:

But we have -- we have a dead Border Patrol agent in Agent Terry. We have 2,000 missing guns. We have 200 deaths in Mexico. We had dead government officials in Mexico. We have a Mexican helicopter with troops in it that's shot, three of which are wounded, back in May of this year. We have 50-plus members of Congress calling for your resignation over this. And you've never spoken to any one of these people about this operation?

HOLDER:

Well, first off, the notion that I am somehow oblivious to this matter is totally belied by these inconvenient things called the facts.

CHAFFETZ:

You have -- you took five days to go to the Caribbean. You didn't have 15 minutes to call Secretary Clinton, Napolitano, talk to the president or your counterparts in Mexico?

HOLDER:

Understand something, with regard to Secretary Napolitano, we -- our agencies have been in constant touch with each other about this issue because we are engaged, both of us, in the prosecution of the killer of...

(CROSSTALK)

CHAFFETZ:

So if you were intimately involved and engaged in this -- remember, Agent Terry was killed in December, mid-December, and then we had Jaime Zapata who was killed in Mexico, two officers shot in -- in -- February 15th.

On February 16th, you and Secretary Napolitano issued a press release. It's titled "Secretary Napolitano and Attorney General Holder form a joint task force to assist Mexico's investigation into yesterday's shooting of two ICE agents in Mexico."

CHAFFETZ:

At the very beginning of this press release, Secretary of Homeland Security Janet Napolitano and Attorney General Eric Holder today met to discuss this issue.

And how is it that you and Secretary Napolitano said you never even talked or discussed, even brought up or had any discussion about Fast and Furious?

HOLDER:

The press release that you talk about is not a Fast and Furious matter...

CHAFFETZ:

But...

HOLDER:

So the -- and understand -- you have to understand something about the way Washington works here, OK?

The reality is that, when it comes to matters that are under investigation...

CHAFFETZ:

But the death of Jaime Zapata was highly likely -- it was highly likely that that came from Fast and Furious. In fact, from testimony that we took from Agent Forcelli -- and I'm going to read from this. It's from January 8th of 2011. Quote, "And there was this sense like every other time, even with Ms. Giffords' shooting, there was a state of panic, like, oh, my God, let's hope that this is not a weapon from that case. And the shooting of Mr. Zapata down in Mexico, I know that, again, that state of panic that they had, like, please, let this not come back."

So the agents on the ground were so concerned that this is going to happen. You and Secretary Napolitano have a discussion and there's no discussion about even the possibility of Fast and Furious?

HOLDER:

There is -- the meaningful conversations that happen between DHS and DOJ happen at lower levels, between investigators.

CHAFFETZ:

But when you and Secretary -- what did you and Secretary Napolitano talk about, if you didn't talk about Fast and Furious, and it's the day after Jaime Zapata -- and you were very quick to issue press releases?

HOLDER:

Well, you're making an assumption that that, in fact, is a Fast and Furious case. I'm not sure that that...

CHAFFETZ:

We didn't know at the time. You didn't know at the time. I didn't know. Nobody knew at the time.

Isn't it a reasonable assumption to suggest that it may have been guns from Fast and Furious that happened, that caused that death?

HOLDER:

Given the fact that there are, over the course of the last five years, 64,000 weapons that have gone from the United States to Mexico...

CHAFFETZ:

I have a hard time believing, Mr. Attorney General -- with all due respect, my time is short. Twice, the president of the United States has gone before the American people and said that you had nothing to do with this; you weren't involved, that you weren't engaged in it, yet you say you've never spoken to the president.

How is it that he would know that you haven't been -- you weren't involved in this, and he could make such a claim, if you've never even spoken to him about it?

HOLDER:

Well, the president gets information from the Justice Department in a variety of ways. We interact with the White House counsel's office very frequently. I don't know exactly what the flow of information is within the White House, but he can find out about my state of involvement in matters connected to the Justice Department without speaking directly to me.

CHAFFETZ:

Let me move on to -- you have access to obviously the e-mails of Dennis Burke. On Wednesday, November 24th, 2010, he sent an e-mail that said, quote, "Some of the weapons bought by these clowns in Arizona have been directly traced to murders of elected officials in Mexico by the cartels. So Katie bar the door when we unveil this baby," end quote.

How is it that you've never had a discussion with your counterpart in Mexico about this?

In fact, in a Los Angeles Times article dated September 19th of this year, quote, "At no time did we know or were we made aware that there might have been arms trafficking permitted. In no way would we have allowed it because it is an attack on the safety of Mexicans."

It goes on in the article -- actually the paragraph before, "And to this date, she said, U.S. officials have not briefed her on the operation gone awry, nor have they apologized."

What is unacceptable is that you and everybody in your organization, according to the higher-ups, know about this investigation; you don't have 15 minutes to pick up the phone, and we have still never talked to these people in order to solve this problem, because, as you say, it's going to go on for some time.

HOLDER:

We have taken steps -- I have taken steps to solve this problem in that I've ordered an examination of this to determine exactly what happened. I have issued directives that this should never happen again. We have put in place measures at ATF so that this kind of thing won't happen again. What Todd Jones has done with regard to the reforms that he has put in place, I think, are going to be extremely effective. And I've made personnel changes with regard to...

CHAFFETZ:

You haven't fired anybody. Nobody's been fired.

SMITH:

The -- the gentleman's time has expired. Does the gentleman want to respond to the last question?

HOLDER:

I just was trying to say that I have made personnel changes with regard to the agencies that have been involved, and these are initial determinations that I have made. It is not all that I am possibly going to do.

There is an impatience here, and in some ways I understand it. But the reality is that you have to do these things on the basis of evidence, on the basis of findings that are factually grounded. And when I am in that position, I will take the appropriate action. But I want to assure you and the American people that people will be held accountable for the mistakes that were made in Fast and Furious.

SMITH:

OK. Thank you.

ISSA:

Mr. Chairman, point of inquiry?

SMITH:

Thank you, Mr. Chaffetz. We recognize the gentleman from California.

ISSA:

A point of inquiry. Do political appointees of the presidents and the attorney general serve at the pleasure of the president or the attorney general, or do they need to have -- have to be fired for cause?

SMITH:

That is not actually a parliamentary inquiry, though it...

ISSA:

Well, I'm sure inquiring.

SMITH:

... though it may be a legitimate question.

(LAUGHTER)

ISSA:

Thank you, Mr. Chairman.

SMITH:

The Judiciary Committee will recess until immediately after this series of votes. We expect that to be about 2:30.

(RECESS)

SMITH:

The Judiciary Committee will come to order.

Before we resume our questioning, I'd like to welcome the newest member of the committee, Jared Polis, from the 2nd district of Colorado.

Congressman Polis was just appointed yesterday to fill a vacancy on the committee. And we are happy to welcome him back. He was on the committee for several years and is back on now.

He also serves on the Rules Committee and the House Democratic Steering and Policy Committee. And at our next meeting we'll even go into more details about Mr. Polis, but we welcome him today.

And we'll be recognizing you immediately for questioning.

POLIS:

Thank you so much, Mr. Chairman.

I'd like to draw your attention, Mr. Attorney General, to the issue surrounding the regulation of medical marijuana. I wanted to first clarify, there's a memo dated October 19th, 2009, from David Ogden -- I'm sure you're familiar with that memo -- the contents of that memo as advisory to the states is still in force. Is that correct, that is still a current memo?

HOLDER:

Yes.

POLIS:

OK. Thank you. And one of the issues that was later clarified in a memo by James Cole is what we're talking about when we're talking about caregivers, who your memo instructs should not be an enforcement priority. The Colorado constitution, in Article 14, happens to have a definition of caregiver. It's further refined in our Colorado statutes.

And I wanted to see whether I can get your assurance that our definition of caregiver in our state's constitution will be given some deference by the U.S. attorney general's office.

HOLDER:

I'm not familiar with the provision, but what we said in the memo we still intend, which is that, given the limited resources that we have, and if there are states that are -- that have medical marijuana provisions, and if you take into account the Cole memo, if in fact people are not using the policy decision that we have made to use marijuana in a way that's not consistent with the state statute, we will not use our limited resources in that way.

And so...

POLIS:

Sure.

HOLDER:

... I don't know -- I assume that -- I just don't know about that provision.

POLIS:

And, again, yeah, in the case of Colorado, we do have definitions of some of the terms in your documents in our -- in our constitution, and I would hope that the U.S. attorney general for the state would look at that.

Now, as you know, the Department of Justice recently announced a crackdown in California. Now, part of the issue there, it's my understanding, they did not have a functional state level regulatory authority.

Colorado does have an extensive state regulatory and licensing system for medical marijuana, and I'd like to ask whether our state regulation, our thoughtful state regulation, passed with strong bipartisan majorities in both chambers of our legislature, provide any additional protection to Colorado from federal intervention.

HOLDER:

Well, again, I'd have to -- I'm not familiar with it, but I'd have to look at it. But, again, our thought was that where a state has taken a position, has passed a law, and people are acting in

conformity with a law, not abusing the law but acting in conformity with it, and, again, given our limited resources, that would not be an enforcement priority for the Justice Department.

POLIS:

Thank you. I'm grateful for that clarification.

One of the issues that many of the legal regulated medical marijuana shops and dispensaries in Colorado have brought to my attention is their inability to open bank accounts at most FDIC institutions. That makes the industry harder for the state to track, to tax, to regulate, and in fact makes it prone to robberies because it becomes a cash business as well.

Is there any intention of the Department of the Justice to prosecute bankers for doing business with licensed and regulated medical marijuana providers in the states?

HOLDER:

Again, I think that, consistent with the notion that how we use our limited resources, again, if the bankers, the people seeking to make the deposits are acting in conformity with state law, that would not, again, be an enforcement policy for -- for the Justice Department.

POLIS:

Thank you.

Moving on to another issue, with regards to Internet piracy, as you know, the Judiciary Committee recently held hearings on SOPA, Stop Online Piracy Act. I had many concerns with this bill, including a overly broad definition of infringement.

As you know, there is a lot of content on the Internet. In fact, as an example, on YouTube alone there's 100 hours of video that's uploaded every minute. Many of this -- many of the videos that have been uploaded contain some type of rights infringement with no intent for commercial gain.

I ask, with the substantial new powers that would be granted to the attorney general's office under SOPA, what type of resources would the Department of Justice need to handle the hundreds of millions of prosecutions that would be necessary and indicated under SOPA?

HOLDER:

Well, I think that you have to look at what the -- what powers we would be granted, and then how we would use our resources. Not every matter, though it might be a technical violation of a statute, is something that we are going to use our resources going against. I mean, if there's a YouTube upload of something that is not intended for commercial use and we don't think there is any great harm, that's not the kind of things that we're going to be going after.

POLIS:

So it's fair to say, given otherwise the absence of tens or hundreds of billions of dollars of resources to go after anybody, there would be selective enforcement of the Stop Online Piracy Act from the attorney general's office?

HOLDER:

Well, selective enforcement always -- you know, a prosecutor, get a little -- a little nervous saying that phrase. But it would be an appropriate use of our resources, taking into account what the harm is and always with the thought that we're trying to do is to protect the abuse of copyrighted material.

POLIS:

Thank the gentleman. And just note that, with regard to the selective enforcement, there is not currently criteria in the bill, so that would be at the discretion of your office to decide what type of selective enforcement of that law and the new powers would be given to the attorney general under that would entail, and I'll yield back the balance of my time.

SMITH:

OK. Thank you, Mr. Polis.

The gentlemen with South Carolina, Mr. Gowdy.

GOWDY:

Thank you, Mr. Chairman.

Mr. Holder, Assistant Attorney General Ronald Weich wrote a letter to a member of Congress

February 2011, a letter which was demonstrably false. Your department withdrew that letter 10 months later. When did you learn that that letter was false?

HOLDER:

Well, I would not characterize the letter as false. I'd say it contained inaccuracies.

GOWDY:

Well, Mr. Attorney general, it contained material, demonstrably false statements. Agreed?

HOLDER:

No.

GOWDY:

You don't think they're demonstrably false when you represent that AFT makes an effort to interdict all weapons going to Mexico? You don't think that's demonstrably false?

HOLDER:

Not in the way you use the word. You said...

GOWDY:

Well, how do you know what way I used the word?

HOLDER:

I'm listening to you.

GOWDY:

Is it false? Can I demonstrate that it's false?

HOLDER:

Well, you're said materially false. Now, you're using legal terms here. You're a lawyer and so you're -- now, we're in that -- we're in that realm. And you said materially false. And that's a fundamentally different thing from...

GOWDY:

All right. Do you think it was demonstrably false?

HOLDER:

I would say that it was inaccurate.

GOWDY:

All right. When did you learn that it was inaccurate, demonstrably false?

HOLDER:

You know, I'm not sure, but I had concerns about it early enough that, in spite of the expression on February 4th, I ordered that investigation on February the 28th and as -- it was an evolving process. As time went on, more and more information became available and it became more and more clear that that letter contained inaccurate information.

GOWDY:

Well, it strikes me that if a statement that false were made to a judge you would have withdrawn that statement, that brief, that memo, that filing the moment that you learned that it was false.

HOLDER:

Well...

(CROSSTALK)

GOWDY:

And I'm just curious why there's not the same regard for this branch of government that there would be for the judicial branch of government.

HOLDER:

Well, if you look at what happened over the course of months between the time of the letter until it was formally withdrawn, there were a number of instances where we indicated that we had

concerns about what was in the letter.

And in testimony that Mr. Weich gave, at one point I believe he says we are not -- I don't remember exact expression that he used, but he indicated there that we had concerns. In a letter that I sent, I guess, in October, I indicated there were problems with Fast and Furious, which was inconsistent with what the letter said.

There were a number of things that happened between February 4th and, I guess, December, November, whenever it is that we...

(CROSSTALK)

GOWDY:

Well, let's go back to February 4th, 'cause there are at least four senior DOJ officials who knew or should have known that letter was false at the time it was delivered.

Your chief of staff, Gary Grindler, saw a map of Mexico where guns were being recovered, he was debriefed on Fast and Furious, he knew that cash was being paid for the weapons in Arizona.

Lanny Breuer, you will concede, knew for a fact that gun walking was taking place in February of 2011. Agreed?

HOLDER:

No.

GOWDY:

You -- you disagree that Lanny Breuer, despite the fact that he's admitted it, knew that gun walking was taking place by ATF? Mr. Attorney General, there are e-mails where he admitted it in October 2010.

HOLDER:

Congressman, you have to be careful here. He said that he knew about gun walking in Operation Wide Receiver.

GOWDY:

Right. Which is why it's very important Mr. Weich...

HOLDER:

Not Fast and Furious.

GOWDY:

... didn't say Fast and Furious in his letter to Senator Grassley. I see where you're going with that. He didn't make a distinction on Fast and Furious.

HOLDER:

No, I'm just -- I'm just trying to be careful here.

GOWDY:

And I want to be careful too.

HOLDER:

We don't want to -- don't want to conflate things.

GOWDY:

I'm not conflating.

HOLDER:

OK.

GOWDY:

Did Lanny Breuer know that ATF engaged in gun walking in February of 2011?

HOLDER He knew that they had engaged in gun walking in the Wide Receiver operation.

GOWDY:

So the answer to that question would be, yes, Lanny Breuer knew that any statement that ATF makes every effort to interdict guns and not allow them to go to Mexico, he knew that statement would have been false?

HOLDER:

He has said that he made a mistake in not connecting that which he knew about Wide Receiver and didn't apply that knowledge to what happened in...

(CROSSTALK)

GOWDY:

What about Jason Weinstein and James Trusty? This is their e-mail exchange: "It's a tricky case given the number of guns that have walked." That's October 2010.

Trusty responds: "It's not going to be any surprise that a bunch of U.S. guns are being used in Mexico, so I'm not sure how much grief we get for gun walking."

These aren't AUSAs in Arizona. These aren't rouge ATF agents. These are senior DOJ officials. And I cannot believe that -- that they just learned recently that a demonstrably false letter had been mailed to a member of Congress.

Why -- why not correct it the moment you realized that it was wrong?

HOLDER:

Well, they admit that they made mistakes with regard to what their level of knowledge was and what they should have done in the preparation of the letter. They relied on people who they thought had the best knowledge in Arizona and did not bring into their calculation information that they had previously had about the gun walking that had occurred in that prior operation.

GOWDY:

Mr. Attorney General, you brought several law enforcement officials with you today, and I salute their service.

It just strikes me -- and I'm quite confident, I'll get this question when I go back home -- when law enforcement officers lie to lawyers, they go to jail. When lawyers lie to Congress, they seem to get promoted.

There's a Border Patrol agent who is on his way to federal prison right now on a 1,001 (ph) conviction. What consequences can we expect because of false statements made to Congress?

SMITH:

The gentleman's time has expired, and if the attorney general will respond to the question.

HOLDER:

As I said, there is an inspector general investigation that is under way. I'll look at the results of that investigation. But I'll also be looking to see what happened with regard to the creation of that letter, if there's any more information that I can glean on my own before making determinations as to how people will be held accountable for the mistakes that -- that they make.

And taking into account in making that determination what roles have they played in the department, what good things have they done? I mean, one cannot look at these mistakes, I think, in isolation. One has to look at the totality of the person's service to the department and then on that basis make a determination as to what the appropriate sanction will be. And that's what I'll do.

GOWDY:

Mr. Chairman, I would ask unanimous consent for 15 seconds just so I can follow up on one point?

SMITH:

And the gentleman continues to be recognized for 15 seconds.

GOWDY:

Mr. Attorney General, it just seems to me that -- that the policy is now going to be, let's get the least knowledgeable person that we can to write the letter.

I found the exchange between you and Chairman Sensenbrenner to be interesting on mens rea. The defense is that Mr. Weich (ph) didn't know what he didn't know, so we're going to get the least knowledgeable person at the Department of Justice to write the letters so members of Congress.

Is that what we can expect from now on?

HOLDER:

No. What you could expect from this Department of Justice, as long as I'm the attorney general, is that we will do our best to get you accurate information as quickly as we can.

And I actually think that one of the problems with regard to the Fast and Furious response is that we were rushed; that people -- although -- if you look at, you know, that e-mail -- all those e-mails that we sent (inaudible) you see that people are really interacting with one another, trying to find information.

But I think there was a time pressure there that, frankly, they should not have allowed in the process. They should've taken more time, set a placeholder response or something like that, and if it took two weeks to get a response back to Congress, that would have been better than, I think, the four or five days that it took.

I think that is -- it's certainly one of the problems.

And that was a lesson learned.

GOWDY:

Thank you, Mr. Chairman.

SMITH:

Thank you, Mr. Gowdy.

The gentleman from Florida, Mr. Deutch, is recognized.

DEUTCH:

Thank you, Mr. Chairman.

General Holder, welcome. And thank you for spending the day with us. Thank you for your candid responses.

I -- I would note that sometimes facts get in the way of political theatrics, and I -- I appreciate your willingness to share facts with us today.

I'd like to just revisit this discussion by taking a step back for a minute, General. Can you -- since we've -- we've delved into the weeds, can we back up for a second? When did you -- when did you learn about Operation Fast and Furious?

HOLDER:

Some time at the beginning of the year. It was -- it would have been, I think, after I got those letters from Senator Grassley on January the 31st, and at some point after that, I think some time in February, I first heard about it, Operation Fast and Furious.

DEUTCH:

And -- and what -- what did you tell the U.S. Attorneys Offices? What -- what notice did you send them when you learned of this?

HOLDER:

After I ordered the inspector general investigation in March, I sent a directive to all of the U.S. Attorneys Offices that gun walking was not -- not an acceptable technique or tactic; that it was contrary to DOJ policy -- and I had the deputy attorney generals send that out to all of the U.S. attorneys.

DEUTCH:

And that was after you ordered the investigation. And -- and tell me about the investigation that you're ordering.

HOLDER:

The order for the investigation was on February the 28th. I thought that I was getting conflicting information from people within the Department of Justice and what I was reading in the media and, frankly, what Congress was bringing to my attention, and it just seemed to me that I needed to have a -- find a mechanism to finally resolve what these conflicting positions. And as a result I ordered the -- I asked the inspector general to engage in this investigation.

DEUTCH:

And what's -- what's the time frame of that investigation?

HOLDER:

I'm not sure. They are -- I know they're feverishly working on it. When it will actually be completed, I don't know.

DEUTCH:

I appreciate that.

There were 64,000 guns in -- in Mexico, is the number that I understand -- 95 percent of the weapons recovered from murders in Mexico, 95 percent were traced to the United States. Tens and thousands of weapons were traced to the United States.

It is -- this discussion is -- is vitally important, but I think it's equally important for us to broaden the discussion to -- to, one, of how to address the fact that there are still tens of thousands of weapons that are winding up in Mexico from our border.

Can you speak, General, to the actions that Congress can take in order to help stem that -- that flow of guns?

HOLDER:

Well, I think certainly if Congress were supportive of our funding requests to help ATF with these -- these teams that we would like to send to the border -- we tried to send 14 at one point, and I think we only sent seven or eight because of funding problems.

These ATF teams that have an ability to monitor the trafficking of -- of weapons into Mexico, that would be helpful. There is a trafficking statute if Congress would pass that -- consider and pass that I think that could help us, as well.

Support for that regulation that we put in place that deals with long guns and the sale of them over the course of, you know, a five- day period.

All of these things, I think, would be -- would be helpful. And a more protracted dialogue about what the nature of the problem is, which is a national security threat to the United States -- you know, is not only the executive branch that has ideas that I think could be useful. I'm sure they're great ideas in Congress, as well. And to the extent that we can identify them, work on them, and do so in a way that's respectful of and consistent with the Second Amendment, I think that would be very useful.

DEUTCH:

I agree.

I also would suggest, General, that it's worth broadening this debate to -- to -- within our own borders, as well. I think it is worth noting that 100,000 people a year in America are involved -- are shot in gun violence; 32,000 died from gun violence last year; 20,000 American children and teens are shot every year, involved in gun violence.

Every day in America, 270 people in America, 47 of them children and teens, are shot, and every day, 87 people die from gun violence in this country.

We -- this is a very important hearing and this is an important discussion about this -- this operation, the investigation that you've started.

I think, unfortunately, the debate that we're not having often enough here is one about gun violence in this country. As one that acknowledges the fact that law enforcement officers in our country now need to carry assault weapons themselves in order to match the firepower of the criminals who carry assault weapons.

There was a survey done of -- of about two dozen police departments by the International Association of Chiefs of Police that -- since 2004, all of the agencies have either added assault weapons to patrol units or replaced existing weapons with military-style assault rifles.

Military-style assault weapons are now necessary. They're needed by our police officers because assault weapons are flowing freely within our own borders.

And while this discussion is important, we live in a country where the assault weapon ban has expired and we see assault weapons now flowing through the streets, causing our law enforcement to have to carry assault weapons.

The (inaudible) loophole continues to exist. And it is about time -- and I say this only rhetorically, I don't ask for your response, General, but it is about time that we focus as a Congress on the steps that we need to take to -- to decrease gun violence in this country and to get these assault weapons that are created for the sole purpose of killing people off of our streets once and for all.

I very much appreciate your being here. And I appreciate this exchange, General. Thanks so much for coming.

HOLDER:

Thank you.

SMITH:

Thank you, Mr. Deutch. The gentleman from Florida, Mr. Ross, is recognized.

ROSS:

Thank you, Mr. Chairman.

And, Mr. Attorney General, I thank you for being here. I know it's been a rather long day for all of us. I just want to clarify your understanding of your being here today because there was some confusion, I think, at the beginning.

Is it your understanding that you're here under oath, that you're under penalties of perjury as to your testimony?

HOLDER:

I'm here to tell the truth. Sure.

ROSS:

OK.

So you are -- you believe that you're here under oath? Is that your understanding?

HOLDER:

I'm not sure I'm technically under oath, but I have an obligation to tell the truth.

(CROSSTALK)

HOLDER:

I'm here to tell the...

ROSS:

Thank you. I hope so.

Thank you. Now...

HOLDER:

I'm not sure what you -- I'm going to tell the truth.

ROSS:

I want you to tell the truth.

(LAUGHTER)

Because I want to ask you a little bit about your management style.

HOLDER:

All right.

ROSS:

You know, it looks as though that you have not really been reading any of the memos that you get on Fast and Furious. In fact, I think that your chief of staff, Ken Ohlson, has testified before the Senate Judiciary Committee that he also did not read the memos sent to his -- to your attention regarding Fast and Furious.

And I'm just curious, why would that be?

You learned about this operation some time after the first of the year, this year, and yet it's been going on for a year. You're the number one law enforcement officer in this country and you don't know what's going on. That would make me upset if I was in your position. Does it not you?

HOLDER:

Well, you've got to understand, these memos that you're talking about are weekly reports that come to the office of the attorney general and the office of the deputy attorney general. And they are statements by the various components of what's going on in them.

If you look at the very things that we have submitted to Congress that show what actually dealt with Fast and Furious in those weekly reports, they don't indicate anything about these bad tactics. It talks only about Fast and Furious as...

(CROSSTALK)

ROSS:

But somewhere in the line -- somewhere in the line of authority -- you've been -- you're not new to this. You were in the office of public integrity, what, for 12 years?

HOLDER:

Public integrity section.

ROSS:

Yeah, public integrity section for 12 years. You were deputy attorney general for three years. None of this structure is new to you, and yet there's somebody below you, and not your chief of staff, because he didn't read the memos, but there's somebody who's reading these memos. Why are they not reporting to you?

HOLDER:

Because if you read the memos -- read them -- if you read the memos, you will see -- and they're not memos. They're these excerpts. If you read these excerpts about Fast and Furious, all it says is that Fast and Furious essentially is going fine. We're recovering...

ROSS:

But did you know what Fast and Furious was at that time? Did you know that it was akin to Wide Receiver but not the same?

HOLDER:

No.

ROSS:

Did you know what Fast and Furious was at all at that time?

HOLDER:

No, I didn't know about Fast and Furious until about February of this year.

ROSS:

But shouldn't you have been known -- shouldn't you have known?

HOLDER:

No. Because Fast and Furious is an operation, a regional operation. There are all kinds of operations going on right now in the Justice Department about which I know nothing because of the way in which the Department of Justice is structured. They are...

ROSS:

Who specifically would have been reading those memos? Do you know, by name, who specifically would have been reading...

HOLDER:

One of my staff.

ROSS:

Who are their names?

HOLDER:

The people who -- whoever had the portfolio for ATF, with regard to their weekly memos, NDIC, with regard to their weekly memos. Those are the people on my staff who would have had that responsibility, making the initial determination as to whether or not there was information contained in those reports that should be brought to my attention.

ROSS:

Would you agree that one of the most fundamental principles of leadership is that you can delegate authority but you cannot delegate responsibility?

HOLDER:

OK. That sounds about right.

ROSS:

And would you be willing, then, to say that you are responsible for Fast and Furious operation?

HOLDER:

As I said, I am ultimately responsible for everything that happens in the Justice Department.

ROSS:

Do you have any remorse for what happened with Agent Terry?

HOLDER:

Of course I do, and...

ROSS:

Have you -- have you spoken to their family? Have you apologized to their family?

HOLDER:

I have had contact with the family, but I'm not going to go into -- the nature of my interaction with them is between me and them, and I will leave to them how they want to -- if they want to reveal that.

People on my staff, in addition to me, are in constant touch with the Terry family.

ROSS:

But you have not apologized to them, as I understand it?

HOLDER:

I will say that I have expressed my feelings to them and I -- I'm going to leave...

ROSS:

You're the number one law enforcement officer in this country, and a law enforcement officer has died as a result of a botched operation. Don't you feel some sense of remorse that you ought to apology to the family?

HOLDER:

I feel great remorse, great regret, and I have expressed this to the Terry family. I am not going to reveal to you in this setting the nature...

ROSS:

Just real briefly...

HOLDER:

... the nature of the interaction that I've had with the Terry family.

ROSS:

Then let me just ask you to...

(CROSSTALK)

HOLDER:

I'm not going to do this in front of the media. I'm not going to do it in front of a congressional...

ROSS:

But you haven't apologized. That's all I wanted to establish.

Now, you also testified in your opening statement that, as you state here, that using -- "used inflammatory and inappropriate rhetoric about one particular tragedy that occurred near the Southwest border in an effort to score political points." Do you feel that somebody is trying to score political points with this incident?

HOLDER:

With the Fast and Furious incident?

ROSS:

Yes.

(LAUGHTER)

HOLDER:

Well, let's just say that some people have not let facts get in the way of...

ROSS:

And you're here with clean hands to say that, correct?

HOLDER:

Excuse me?

ROSS:

You're here with clean hands to say that?

Because, in your opening statement, you also allege, or you assert that, for example, earlier this year, "the majority of House members voted to keep law enforcement in the dark when individuals purchase multiple semiautomatic rifles and shotguns."

Mr. Attorney General, it seems to me that you're trying to score as many political points as you're asserting that somebody else has done in this operation, and I find that rather offensive.

HOLDER:

What I've said there is factually accurate. I don't have any problem with people, you know, criticizing me or the department as long as what you say is factually based. That's fine. I mean, I understand that. I'm a big guy. I've been in Washington for a long time. The concern I have is where things are thrown at the department generally, at me personally, that are not factually based. That's where I draw the distinction.

ROSS:

I see my time is up. I yield back.

SMITH:

Thank you, Mr. Ross.

The gentleman from Puerto Rico, Mr. Pierluisi, is recognized.

PIERLUISI:

Thank you, Mr. Chairman.

Thank you, General. I'm sorry I haven't been able to be here as long as I wished. I had a parallel hearing I couldn't excuse myself from.

But the first thing that comes to my mind is that I should commend you because the little time I have been here, I've been watching you, and I -- I keep seeing that you keep saying, "as I have

said," "as I have said," "as I have said." And that leads me to believe that you have been asked so many questions, similar questions, and you've had the candor, the demeanor, the patience to deal with them. And that's what we should be expecting and we expect from the attorney general, and so that's why I thank you and I commend you.

HOLDER:

Thank you.

PIERLUISI:

Stay like that, though, because this hasn't finished.

(LAUGHTER)

But I have a couple of questions, a couple of comments. First, I am personally concerned about the gun shows and obviously the straw purchasers. And putting aside this Fast and Furious operation, which you have already denounced and you put a stop to it as soon as you learned of it, what else are you doing to deal with these straw purchasers, purchases, and the gun shows that seem to be, you know, like, totally unregulated and -- and so on?

HOLDER:

Well, we have tried to make a priority the fight against gun violence. And we try to approach it in a variety of ways by being aggressive in going after those who traffic in firearms, to go after those people, convicted felons, for instance, who should not have access to weapons, to try to come up with ways in which we keep guns out of the hands of felons.

And that's really important because, if you look at the number of police officers who have been shot and unfortunately died over the last couple of years, the vast majority of them have been shot by people who were felons and who should not have had access to weapons. And so we do a whole variety of things to try to keep guns out of the hands of people who should not have them.

PIERLUISI:

That's good. One thing that bugs me is that, for five and a half years, we haven't had a permanent director at ATF, yet I see lots of vacancies there. I see them Puerto Rico, my district, my place; 45 percent of the slots are vacant, even though we have a huge crime issue and illegal gun issue.

Is that affecting the level of resources that ATF has? I mean, is this lack of a permanent director affecting its mission, its ability to meet its mission?

HOLDER:

Yeah, I do think so. I think that, internally, an organization runs better when a person who is seen as the permanent head, the Senate-confirmed head, is in charge. I think people respond better, although I think Todd Jones is doing a great job as the acting personnel.

But beyond that, a person who is Senate-confirmed has the ability in the budget process to lobby for his or her organization in a way that a person who is doing it in an acting capacity cannot.

You just have more heft within the administration, in dealing with Congress, if you are the confirmed head. And I think because ATF has been so long without a confirmed head, it has not had the ability to argue as forcefully, as effectively as maybe some of the other components within the department for resources.

PIERLUISI:

Going back a bit to this Operation Fast and Furious, I'm the first one who recognizes that Congress has every right to do oversight on this issue and investigate and so on, and I know you do, too.

But one thing that comes to my mind is that the moment you learned of it and you did not get the right answers from your troops, that's when you said, "I'm referring this to inspector general." And as far as I know, the inspector general doesn't report to you, has wide discretion, his -- her objectivity hasn't been questioned. So this is in the proper hands.

And is there an investigation ongoing at the moment? And what's -- and another question I have is, isn't that your modus operandi? When you see any potential irregularity in your department, isn't the inspector general the place you go to, to try to correct it and then, if there's going to be referrals, administrative actions, then they happen?

HOLDER:

Yeah. I think that was -- I thought that was the appropriate thing to do. I continue to think it is the appropriate thing to do, to have an independent inspector general look at this situation, this flawed operation, and share with me and with the rest of the world what her conclusions will be.

The inspector general in the Justice Department has, I think, a deserved reputation for independence. There were a lot of investigations that were done by the I.G. during the Bush administration that generated, I think, a lot of attention and I think were indicative of the kind of independence that the I.G. is capable of doing when it was making determinations about the Justice Department, in which the office sits. And I'm confident that with regard to this matter, the I.G. will be able to independently review this, as I described, flawed operation and come up with some facts upon which I can take further action.

PIERLUISI:

Thank you.

Mr. Chairman, I ask unanimous consent for 15 more seconds.

(CROSSTALK)

SMITH:

The gentleman is recognized for another 15 seconds.

PIERLUISI:

Before I stop, my time has expired, I want to mention to you, Attorney General, that I have requested that ONDCP director Gil Kerlikowske, the drug czar, craft a -- what I call a Caribbean Border Initiative. Something similar to the Southwestern Border Initiative. And the reason is straightforward. We are in a crisis in the Caribbean. Homicides at the worst possible level. More than half of the homicides in Puerto Rico are drug-related.

The situation merits particular attention, a similar initiative to the one you have in the Southwest. I hope, I will count on your support.

HOLDER:

The point you make is a very good one. The administration has what's called the Caribbean Basin Security Initiative that is in place to deal with the island nations in the Caribbean and the problems that they're facing.

I was in the Caribbean for four days, I guess two or three weeks ago, where I met with four heads of state, a variety of attorneys general and interior ministers to talk about -- I was in the Dominican Republic, I was in Barbados and I was in Trinidad, and I met with, as I said, those groups of people to deal with the situation that they are talking about.

And as Mexico is becoming more successful, drugs are now starting to flow through the Caribbean nations, both to the United States and then to Africa and to Europe.

PIERLUISI:

And there are two American territories, Puerto Rico and the Virgin Islands.

HOLDER:

That's very true.

PIERLUISI:

Right here.

HOLDER:

And the problem is one that we have to confront. It is -- there's -- this is a national security issue that we have to -- have to confront.

SMITH:

OK. Thank you, Mr. Pierluisi.

The gentlewoman from Florida, Ms. Adams, is recognized.

ADAMS:

Thank you, Mr. Chairman.

Mr. Holder, I'm going to ask you some questions and I think they're pretty easy yes-or-no questions. Let's see if we can go that route.

Are you aware of a 1994 implementation DOJ was responsible...

HOLDER:

I'm sorry, I can't hear you too well.

ADAMS:

'94 there was an implementation, DOJ was responsible for the implementation of CALEA standards for law enforcement. Are you aware of that?

HOLDER:

I'm not sure of the year, but I certainly remember CALEA, yeah.

ADAMS:

Does your agency operate under CALEA standards or do you just implement them for law enforcement agencies across the state -- country?

HOLDER:

I'm not sure. Do we operate under them?

ADAMS:

Yes. I mean, do you have that type of -- are you accredited? I mean, you accredit other agencies. Are you following the same type of accreditation guidelines as agencies throughout our nation?

HOLDER:

I assume that we do, yes.

ADAMS:

You assume. So then you would agree that supervisor personnel are accountable for those people and the performance of the people underneath them, correct?

HOLDER:

Yeah, as a general rule, sure, yes.

ADAMS:

You know, I listened intently because I'm one of those law enforcement officers, I'm not a lawyer or anything else. And I also have a husband on the wall over in Judiciary Square. I have a lot of friends on that wall. So I'm going to come at it a different area.

I take issue with you saying that we're trying to make political points with Officer Terry's death. To me, it's personal. OK? It's not political.

One of our officers were killed with weapons that were allowed to walk. That should never have happened. I have worked in undercover. We never would allow weapons to walk.

Now, I've heard you say, if we get this provision that -- the long guns then -- it would -- it would help. The problem is, under Fast and Furious, it wouldn't have helped, would it? Those weapons still would have walked, wouldn't they? Under Fast and Furious, would they have walked or not?

HOLDER:

Yeah. One -- but one does not...

ADAMS:

Yes. OK. Let's move on.

(CROSSTALK)

ADAMS:

No, because...

(CROSSTALK)

HOLDER:

... one does not necessarily preclude the other. I mean, the fact is that under Fast and Furious, a flawed operation, and about which I have not tried to defend the conduct...

(CROSSTALK)

ADAMS:

Correct. I understand that.

HOLDER:

That is one thing.

ADAMS:

But under that system, would they not have walked?

HOLDER:

But I think if (inaudible) look at the larger picture, there's no question that the implementation of that long gun rule will decrease the possibility that will we have tragedies.

ADAMS:

Mr. Attorney General, what my question was, under Fast and Furious those weapons still would have walked, would they not?

HOLDER:

The weapons...

ADAMS:

Yes or not?

HOLDER:

You don't dictate. The weapons went into the flow of commerce because of mistaken decisions that were made by people in the Justice Department.

ADAMS:

OK, Let's talk about those decisions. Let's talk about those decisions. Here we have an operation you get memos on, but no one, not you, nor your chief of staff is reading those memos. Somewhere along the lines somebody has to know something because this is an operation that's not just within our borders, it's crossing international borders.

So what rises to the level that the attorney general of our United States needs to know what, is it that you need to know about that rises to that level that you have an operation crossing international borders? You now say that you didn't find out about it until after the fact and after inquiries happened, after Mr. Terry, Officer Terry's death. What is it that would rise to the level that you would have to sign off on since going across international borders isn't one of them? Could you tell me what would be?

HOLDER:

Well, first off, you are referring to these as memos. They were weekly reports.

ADAMS:

Well, any operation. Is there an operation that would rise to the level that would need your signoff?

HOLDER:

Oh, sure, there are things that I have to sign...

ADAMS:

But not this one, the one that crossed international borders?

HOLDER:

No.

ISSA:

Would the gentlelady yield briefly?

HOLDER:

Could I ask the question first?

The -- what one has to understand is -- and I would urge you, if you have not done this, to look at these weekly reports and to look at exactly what...

(CROSSTALK)

ADAMS:

Mr. Holder, I understand you had weekly reports. And I'm not -- I've got a couple more questions, I want to make sure I get them in.

But I'm asking you, and I ask you, what would rise to the level for you to have to sign off on it? Because this apparently did not. You say you had weekly reports that you didn't review and your chief didn't review.

So here is -- that's the question I asked, and you said there is, so I'm waiting to hear. But while I wait for that answer, let me ask you another question, because one of my colleagues asked you about your e-mails and you went straight to your work e-mail. Hardly anybody has that. I'm going to ask you a very direct question. You have a personal e-mail account. Did you at any time -- at any time -- e-mail on your personal account with Larry Breuer -- or Lanny Breuer and Gary Grindler in regards to Fast and Furious ever?

HOLDER:

Ever?

ADAMS:

Yes...

(CROSSTALK)

SMITH:

The gentlewoman is recognized for an additional minute so the attorney general can respond to her questions.

HOLDER:

I don't know. I can tell you that I didn't know...

(CROSSTALK)

ADAMS:

Would you check and get back with us? If you need some help, I'm sure that your agency personnel can get into those computers.

HOLDER:

Well, with regard to provision of e-mails, I thought I've made it clear that after February the 4th it is not our intention to provide e-mail information consistent with the way in which the Justice Department has always conducted itself. The exception that I made, that I made in the hope that the Justice Department would be seen as transparent was to go against that tradition and to make available deliberative material around the February 4th letter.

(CROSSTALK)

ADAMS:

So, again, as in when you were here before and I asked you about a totally different issue, you were saying that you refused to provide that information, is that correct?

HOLDER:

I didn't hear the -- you were talking the same time I was talking.

And, please, she can have more time. I don't -- I don't want to cut off your time. I'm -- I just didn't hear the question.

ADAMS:

Previously, in another committee, when you were here earlier I asked you another question, you said you would not answer that question. Now you're saying that you won't provide those e-mails because that's not consistent with whatever policy was previous.

I'm asking you, if there is clean hands here, will you provide those e-mails to this committee...

HOLDER:

As I said...

ADAMS:

... yes or no?

HOLDER:

... I'm going to act in a way that's consistent with all attorneys general before me.

ADAMS:

That's not my question, Attorney General.

(CROSSTALK)

I -- you know, with due respect, that was not my question. I asked you, with clean hands, would you supply those e-mails, whether it's work-related or personal e-mails, as they apply to anything that had to do with Fast and Furious to this committee, yes or no?

HOLDER:

And as I said -- as I said, with regard to the Justice Department as a whole...

ADAMS:

I yield back.

HOLDER:

And I am...

(CROSSTALK)

ADAMS:

Mr. Chair, I'm not going to get the answer...

(CROSSTALK)

HOLDER:

... with regard to the Justice Department as a whole -- and I'm certainly a member of the Justice Department -- we will not provide memos after February the 4th. And that is a way in which we are...

ADAMS:

With regards to e-mails, I didn't ask memos, I said e- mails.

HOLDER:

E-mails, memos -- consistent with the way in which the Department of Justice has always conducted itself in its interactions...

(CROSSTALK)

ADAMS:

What about prior to February 4th?

SMITH:

The gentlewoman's time has -- the answer was no, is that correct, Mr. Attorney General?

HOLDER:

No, but consistent with the way in which the Justice Department has always conducted itself. This is not something that I am making up in terms of new policy.

SMITH:

I know, but you used the word "not." I took "not" to be no.

HOLDER:

Oh, I said no.

SMITH:

OK.

HOLDER:

I'm saying no. But, again, consistent with DOJ policy.

(CROSSTALK)

SMITH:

Thank you, Ms. Adams.

The gentleman from Arizona, Mr. Quayle, is recognized.

QUAYLE:

Thank you, Mr. Chairman.

And thank you, Attorney General Holder, for being here.

I want to kind of go back to the February 4th letter, as well, that Mr. Gowdy was talking about earlier. Because when we were looking over some of the e-mails between DOJ, ATF and the U.S. Attorneys Office in Phoenix in trying to kind of parse the language of how they were going to respond to Senator Grassley's letter...

HOLDER:

I'm not hearing you very well in that mike.

QUAYLE:

Is that better?

HOLDER:

OK.

QUAYLE:

OK.

One of the things (inaudible) just parsing the language and figuring out how to respond properly to Senator Grassley in the letter, for me it kind of looked like you -- that group was starting to move into a -- not a cover-up mode, but a mode that -- that really is more intent on language rather than providing a straightforward response.

At any time, wouldn't it have been easier -- because the letter was actually addressed to the Acting Director Melson. Wouldn't it have been easier -- and do you know or if anybody else knows if Acting Director Melson actually just said, "Hey, why don't I go in to Senator Grassley, talk to him, brief him, brief his staff on what the operation's all about rather than relying on somebody who did not have the requisite information to draft the letter that turned out to be factually inaccurate that you later had to withdraw?"

HOLDER:

Well, I think -- a couple of things there.

Acting Director Melson actually did come to the committee headed by Chairman Issa on his own.

(CROSSTALK)

QUAYLE:

But that was well after the letter.

HOLDER:

That's fine. That's fine. That's true. But he went in there and spoke to them on his own after -- before we had scheduled an appointment with him. And so he did that on his own.

But with regard to the formation or the -- the formation of that letter, ATF was intimately involved. If you look at the e-mails, you will see that you have people from ATF at a high level here in Washington as well as ATF people in the field who were involved in the interaction (inaudible) the back-and-forth of that e-mail traffic trying to get accurate information to send back to that congressional inquiry.

QUAYLE:

And I would just say, sometimes it is just easier to just have a -- a short briefing. And I don't know if -- did the acting director offer to go and meet with Senator Grassley at that time and then was he rebuffed and told not to do that?

HOLDER:

No.

QUAYLE:

He was not?

HOLDER:

No. I think what we were doing was responding to a letter that was sent to us and that expected a letter back in response.

QUAYLE:

Well (inaudible) briefing. I'm just -- I'm just curious because I thought that that would probably be the most efficient use of time and resources rather than the back-and-forth of making sure that we have the language right.

(CROSSTALK)

HOLDER:

My guess would be that having the director show up would be the person who would have to get briefed in order to do that -- that -- that exchange of information. It's probably better to have the people who are lower down and closer to the facts be the ones who were involved.

QUAYLE:

OK.

HOLDER:

And if you look at the e-mails you will see that that was the case.

QUAYLE:

In -- in talking about that letter, do you know when was the last time that the Department of Justice actually had to withdraw a letter that it had sent to Congress?

HOLDER:

I don't know.

QUAYLE:

So is it a rare thing or is it...

HOLDER:

Sure, it's a rare thing.

QUAYLE:

It's a pretty rare thing.

So -- I mean, I know that Mr. Gowdy already addressed this issue, but what sort of policies did you put in place or structural reforms that you put in place so that something like the factually -- virtually (ph) factually inaccurate letter that was sent to Congress doesn't happen again, and if it does that the Department of Justice will act more swiftly in withdrawing that letter so that the members of Congress can have accurate information?

HOLDER:

Well, I think we've learned lessons here. And we've had requests for information regarding Fast and Furious since that time that, frankly, we have taken more time to respond to. We have sent interim responses to indicate that we are in the process of looking at information, gathering information to make sure that what we send is in fact accurate.

I mean, you got to understand something, it is rare, as you said. And it is something about which I have great regret. This is not something I want to have happen on my watch.

But I want to make sure that it doesn't happen again. People who are in the department, who were involved in that process and (inaudible) have observed it, I think, have all been sensitized in a way that perhaps we were not before, which is not to say that people were cavalier, but that I think we need to up our game and be even more careful than -- than we had been in the past.

QUAYLE:

OK.

Have you been putting into place other structural reforms to make sure that -- I mean, you've stated that Fast and Furious was just an abject failure and had fundamental flaws -- that are put into place so that something like Fast and Furious does not happen again?

HOLDER:

Yeah. I think that if you will look at all of the things that have been done at ATF -- there is, for instance, now a protocol that has to be followed at ATF when gun trafficking is observed or when you're doing gun -- gun trafficking investigations. You cannot lose sight of guns. You have to make a decision about when an arrest is going to occur.

What happened in Fast and Furious, under the new regulations and assuming that they are followed, it could not happen.

In addition, I have sent out through the deputy attorney general an edict that makes very clear that gun walking is simply an unacceptable practice.

QUAYLE:

I know that you're aware of this, but there's a number of members of Congress who've -- who've called for your resignation over this. And so I just wonder, will you be resigning over -- from -- because of the fallout from Fast and Furious?

HOLDER:

I have no intention of resigning. I'm the attorney general who put an end to these misguided tactics that we used in Fast and Furious and...

QUAYLE:

Do you think that...

(CROSSTALK)

HOLDER:

... when I found out about them.

I'm also the attorney general who called on the acting inspector general...

(CROSSTALK)

QUAYLE:

So you're not?

HOLDER:

... investigate this matter. I'm also the attorney general...

(CROSSTALK)

QUAYLE:

I want to ask, who do you -- who...

SMITH:

The gentleman's time has expired.

QUAYLE:

(inaudible) for 15 more seconds...

(CROSSTALK)

SMITH:

The gentleman is recognized for an additional 15 seconds.

HOLDER:

More time is fine. If I could finish my question?

QUAYLE:

Well, I was (inaudible) just a yes-or-no, and that's fine.

But do you think that Mr. Breuer or Mr. Grindler should resign or be removed from their posts?

HOLDER:

On the basis of the information that I have now, no.

QUAYLE:

What about Mr. Weinstein and Mr. Siskel, if we're going down another level? I mean, I know Mr. Siskel's over the White House counsel, but do you think that they should resign or be removed from...

(CROSSTALK)

HOLDER:

On the basis of the information I have now, no.

QUAYLE:

OK, thank you...

(CROSSTALK)

SMITH:

Should anyone resign?

HOLDER:

Hmmm?

SMITH:

Should anyone resign?

HOLDER:

Again, on the basis of the information that I have at this point, no.

Now, there have been resignations that have occurred (inaudible) take those (inaudible) think that nothing has happened here since Fast and Furious was exposed. Resignations have occurred. People have been moved in terms of personnel actions.

And as I indicated, I guess, in one of my responses to somebody, the personnel actions that I have ordered are initial ones and I will be monitoring the situation to see if there are other things that I should be doing.

SMITH:

OK. OK. Thank you.

Thank you, Mr. Quayle.

The gentleman from Arkansas, Mr. Griffin.

GRIFFIN:

Thank you, Mr. Chairman.

Thank you, General Holder, for being here today.

I just want to follow up on a few points that my colleagues have touched on today.

First of all, I want to talk a little bit about Ms. Adams' point that she was making, and that is -- certainly, I worked at main Justice. I worked in the Criminal Division with Assistant Attorney General Chertoff. I understand how much paper comes across your desk and everyone else's desk, and I understand that -- that time is limited and you have to -- you have to do the best you can to process a lot of information. I get that.

But I think Ms. Adams makes -- she raises a good point, and that is, at what point do you believe the assistant attorney general or someone else had or has an obligation to, particularly in your case with Lanny Breuer, because you have a close relationship, or a longstanding relationship with him -- at what point is there an obligation for one of these senior officials to raise something like this to your level?

I understand that they're in briefings and you can't read them all. There's a lot of stuff that my staff puts in my inbox. But they know that, if there's something really urgent, they don't stick it in my inbox; they call me; they come in my office; they get in my face and say, hey, this is very important.

So this is not just an operation -- or this was not just an operation. This was in fact an international operation, if taken -- if looked at broadly, because of the consequences of these firearms going across a border. And that was -- that was part of the plan.

So my question would be, at what point is someone expected to raise something like this, knowing that, if it were maybe Canada, or the U.K. or some other country, where we were trying to let guns walk, we certainly would -- I would think we would want to inform them or work with them.

Help me understand what your perspective is on that. Because, at some level, at some level, someone has to walk into your office and say this should not be occurring.

And I want to give you one more fact on that. Mr. Breuer indicated that, when he learned about gun walking in early 2010, instead of calling the head of the ATF or telling you, he just asked two of his deputies to raise concerns with folks at the ATF.

And so in light of what has happened, who and when should they come to you about something like this?

HOLDER:

Well, I think that's a very legitimate question.

And Lanny Breuer has indicated that the information that he obtained about Operation Wide Receiver and the gun walking that happened there, or the failure of the mission to stop the flow of guns into Mexico, that is something that he should have brought to my attention, to the attention of the deputy attorney general.

And I think that's the kind of information that in fact should be. If we had an instance where you had evidence of gun walking, either the assistant -- whoever had possession of that information, the assistant attorney general, people on my staff -- that's the kind of information that should have been brought to my attention. And as Mr. Breuer indicated, he said that he made a mistake in not doing so.

GRIFFIN:

Are there set policies on that now?

HOLDER:

I'm not sure there are set policies as much as, you know, you've got to look at this information and you've got to know what are the kinds of things that are routine and need not be brought to somebody's attention and that which is important.

GRIFFIN:

I'm limited on time, so I'm going to try to move quickly here. I would suggest that, regardless of what other issues might arise at the Department of Justice, you might want to put gun walking on a list somewhere of something that raises flags.

The other question -- I see my time is running -- running out. I want to go back to what Mr. Lungren asked about earlier. He referred to a CBS article that talked about using anecdotal cases to support a demand letter on long gun multiple sales, basically using a situation created by the government to support a policy argument folks in the government want to make.

And you -- your response was that that was somehow unrelated, or it was so far back in time that maybe it was unconnected. What exactly was your response on that...

HOLDER:

Well...

GRIFFIN:

... to Lungren?

HOLDER:

The statement -- the notion that somehow this operation was used to justify the request for that regulation is simply not accurate. It did not happen that way. The operation was conducted separate and apart from any desire to have this long gun regulation. That -- that's simply not there. Now, the -- so that just didn't happen.

GRIFFIN:

Mr. Chairman, I ask unanimous consent for 30 more seconds.

SMITH:

The gentleman is recognized, without objection, for another 30 seconds.

GRIFFIN:

Well, I looked down further in that CBS News article, and it says that, quote, "On January 4th of 2011" -- because the quote referenced earlier was July of 2010 -- on January 4, 2011, "as ATF prepared a press conference to announce arrests in Fast and Furious, Newell saw it as another time to address multiple sale on long guns issue, and the next day he e-mailed -- Chait e-mailed Newell, "Bill, well done yesterday. In light of our request for demand letter three, this case could be a strong supporting factor if we can determine how many multiple sales of long guns occurred during the course of this case."

I know I'm running out of time. I just ask you to take another look at that. You may not have intended it. I don't know what was going on over there. But clearly some folks had -- what happened in Fast and Furious, they had that in mind as something to use to support a policy that people in this administration are advocating for. So I just ask you to take a second look at that. This is an article on CBS News website yesterday. Thank you.

Thank you, Mr. Chairman.

And thank you for being here.

HOLDER:

Clearly, an attempt to use Fast and Furious as a way to bolster the request for that long gun regulation would have been foolhardy, given the flawed way in which Fast and Furious was carried out.

SMITH:

Thank you, Mr. Griffin.

The very patient gentleman from Nevada, Mr. Amodei, is recognized.

AMODEI:

Thank you. Thank you, Mr. Chairman.

And, thank you, General Holder, for your patience, too.

How would you -- how would you describe your leadership style?

HOLDER:

I'm sorry?

AMODEI:

How would you describe your leadership style?

HOLDER:

I think I'm a person who delegates pretty well. I think I set goals that I expect people to meet. I'm not a micromanager. I hire good people, invest them with the authority to carry out that which I expect them to do, try to give them the resources they need in order to do their jobs.

And I would think that, on the basis of what I -- I'm being immodest here -- what I've been able to do over the last couple of years, two and a half years, whatever it's been at the Justice Department, I think I've done a good job in managing the Justice Department.

AMODEI:

Do you lead from the front?

HOLDER:

I'm sorry?

AMODEI:

Do you lead from the front?

HOLDER:

Yeah, I think I do. You know, I don't ask anything of the people who work for me that I would not be willing to do myself. I work hard. I work long hours, as -- as do they.

AMODEI:

OK. Thank you.

Mr. Chairman, I would like to yield the balance of my time from -- to my colleague from South Carolina.

SMITH:

OK. The gentleman from South Carolina, Mr. Gowdy, has the balance of the time.

GOWDY:

I thank the gentleman.

Mr. Holder, there were a series of wiretap applications made to the Department of Justice in Fast and Furious. Do you recall how many?

HOLDER:

No.

GOWDY:

Several. Would you disagree with that?

HOLDER:

I'm sorry?

GOWDY:

Several?

HOLDER:

I -- I don't know how many. But I have to say that, with regards to discussions of wiretaps, there's a limited amount of information that I'm going to be able to share in this forum.

GOWDY:

Right, and I'm not going to ask you anything that's going to get you in trouble with a federal judge.

HOLDER:

Please don't.

GOWDY:

Those applications are voluminous. They're long, and there are factual predicates to support the

application for a wiretap, correct?

HOLDER:

Speaking just generally and not...

GOWDY:

Right.

(CROSSTALK)

HOLDER:

I'm not getting in any trouble. Just speaking generally, that's accurate.

GOWDY:

Are you convinced there is no discussion of gun walking in any of those T-3 applications?

HOLDER:

Again, I can't get into the...

GOWDY:

Have you read them?

HOLDER:

I have not read them. But I can't...

GOWDY:

Who approves them? Whose division is that? Is that the criminal division?

HOLDER:

That's in the criminal division.

GOWDY:

That would be Mr. Breuer?

HOLDER:

No, he only approves roving wiretaps.

GOWDY:

Is he the head of the criminal division?

HOLDER:

Right, but there are no roving wiretaps in Operation Fast and Furious.

GOWDY:

But there are several wiretaps, wiretaps that would have a long factual predicate supporting the application?

HOLDER:

I have not seen them. But I make that assumption.

GOWDY:

And you haven't read them, so you can't say whether or not yet another Department of Justice official would have been put on notice that gun walking was part of Fast and Furious?

HOLDER:

I can't say that. But you cannot say it, either.

GOWDY:

No, I can't.

HOLDER:

You cannot say the converse.

GOWDY:

No, I can't. Who does Mr. Weich report to?

HOLDER:

Who does Mister...

GOWDY:

Weich.

HOLDER:

Ron Weich?

GOWDY:

Yeah.

HOLDER:

I guess, on the Justice Department track, probably through the deputy attorney general to me.

GOWDY:

Well, what I'm trying to get at -- your defense of your friend Lanny Breuer, I guess at some level, is admirable. I just don't understand it. It took me a minute to get you to admit that he knew that guns were being walked, and there are scores of e-mails where he admitted it.

He assigned a prosecutor to Fast and Furious. This is someone who, on his own website, boasts of being one of the best 100 lawyers in America. He knew that guns were being walked. He assigned a prosecutor to Fast and Furious. He forwarded an e-mail to his home computer of a draft of Mr. Weich's letter. And he's going to stick around, Mr. Attorney general?

HOLDER:

Well, you're saying things -- you're doing what I asked you not to do before.

That is conflating things. He said -- I said he knew about and he admitted he knew about gun walking when it came to Operation Wide Receiver.

(CROSSTALK)

GOWDY:

Mr. Holder, the letter is very specific. "ATF makes every effort to interdict" -- "interdict weapons that have been purchased illegally and prevent their transportation to Mexico." Is that true or false?

HOLDER:

That is not accurate. But Mr. Breuer didn't -- as he indicated, he said he did not have anything to do with the creation...

GOWDY:

He forwarded this letter, a draft of it, to his home computer. Now, it does not take a long walk to get that he forwarded it to his home computer to read it.

HOLDER:

I'm only going by what Mr. Breuer has testified to, which is that he did not think that he reviewed the letter -- reviewed the drafts before they went out.

(CROSSTALK)

GOWDY:

But you agree with me...

(UNKNOWN)

Mr. Chairman? Regular order, Mr. Chairman.

ISSA:

Would the -- would the...

(UNKNOWN)

The witness should be allowed to finish...

ISSA:

Would the gentleman from Nevada be willing to further yield?

SMITH:

The gentleman from South Carolina has the time.

GOWDY:

I'd be happy to yield to the gentleman from California.

ISSA:

I thank the gentleman.

Mr. Attorney General, if there were seven wiretaps and they were all approved under the criminal justice committee -- criminal -- the Criminal Division, certainly we would hope that between now and the time you next appear you would read them, as would Lanny Breuer, in detail, since he approved them through his minions.

Let me just go through one thing that I have to ask you. Yesterday we became aware...

(CROSSTALK)

ISSA:

Mr. Attorney General...

(UNKNOWN)

Mr. Chairman, regular order. The time has expired.

ISSA:

Mr. Attorney General, I didn't ask you a question, I simply said I'd like you to be aware...

(CROSSTALK)

SMITH:

The gentleman from California has the time. The gentleman from California is granted an extra one minute to allow the A.G. to respond.

ISSA:

Right. There was no question. Here is the question.

(CROSSTALK)

ISSA:

Yesterday, Mr. Attorney General, we became aware that e-mail between Lanny Breuer and the deputy -- his deputy, Jason Weinstein, about Fast and Furious in March time frame, that they exist. Some of these -- actually all of these have been withheld from the committee. Will you agree to turn over those communications in the March time frame between Lanny Breuer and his deputy, Jason Weinstein?

HOLDER:

March of what year?

ISSA:

2011.

HOLDER:

As I have indicated, we are not going to be turning over materials after February...

ISSA:

Are you aware that you are in fact, by doing so, in the fact that we already issued from the Oversight Committee a subpoena, you are standing in contempt of Congress unless you have a valid reason, that you express it, that you provide logs, which you've refused to provide for the --

the other information? Otherwise you will leave the committee no choice but to seek contempt for you failure to deliver or to cite a constitutional exemption.

SMITH:

The gentleman's time has expired. The attorney general will be allowed to respond.

HOLDER:

We will respond in a way that is consistent with the way in which the Justice Department has always responded to those kinds of requests.

ISSA:

That's not the question, Mr. Attorney General.

(CROSSTALK)

(UNKNOWN)

Regular order, Mr. Chairman.

SMITH:

Please proceed, Mr. Attorney General.

HOLDER:

We'll respond in a way that other attorneys general have, other Justice...

(CROSSTALK)

ISSA:

John Mitchell responded that way, too, Mr. Attorney General.

(UNKNOWN)

Regular order, Mr. Chairman.

HOLDER:

Was that called for, I mean, Mr. Chairman?

(UNKNOWN)

He should be allowed to finish...

(CROSSTALK)

SMITH:

The -- actually the gentleman from South Carolina has the time, but I'm going to allow the attorney general.

Do you any further response to that question...

(CROSSTALK)

ISSA:

To the question, Mr. Chairman, about whether or not he understood that it was in fact an act of contempt unless they recited a constitutional exemption and still had a responsibility to provide us logs, both of which they are refusing to do in testimony here today.

SMITH:

Gentleman from South Carolina's time has again expired.

Do you have a final response, Mr. Attorney General.

HOLDER:

Ms. Adams asked me about -- Congresswoman Adams asked me about political points. The reference to John Mitchell, let's think about that. Think about that. At some point, as they said in the -- it was the McCarthy hearing, at some point have you no shame, you know?

In any case, I will say that with regard to that, we have made our point clear how we will

respond.

With regard to the question of wiretap information, as Mr. Gowdy knows, there's only so much I'm going to be able to say about wiretap information. So reading it should not lead anybody to believe that I'm going to be free unless I want to get in real trouble with a federal judge about what's contained in a wiretap..

(CROSSTALK)

(UNKNOWN)

Mr. Chair?

SMITH:

Thank you, Mr. Attorney.

Mr. Attorney General, thank you for your testimony today.

Without objection, all members will have five legislative days to submit additional written questions for the witness or additional materials for the record.

I ask unanimous consent that the gentleman from Colorado, Mr. Polis, be assigned to the Subcommittee on Courts, Commercial and Administrative Law and the Subcommittee on Crime, Terrorism and Homeland Security. Is there an objection? If not, so ordered.

The hearing is adjourned.

CQ Transcriptions, Dec. 8, 2011

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WITNESSES:

ATTORNEY GENERAL ERIC H. HOLDER JR.

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