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The Honorable Darrell E. Issa  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515

Dear Mr. Chairman:

I am writing in response to your letter of yesterday.

My client, Patrick Cunningham, has spent his entire 32-year career in government service, including as a JAG officer in the United States Army, as a state court prosecutor, and as a federal prosecutor. He also served on the State Bar of Arizona's Committee on Rules of Professional Conduct (Ethics Committee) from 1995 to 2002. When he returned to the United States Attorney's Office in 2010, he did so to advance the law enforcement interests of the United States. Regrettably, he now finds himself caught in the middle of a dispute between the Legislative Branch and the Executive Branch, with both, according to the allegations in your letter, finding it convenient to make accusations that are inconsistent with the documentary evidence and the public record.

My client and I offered your staff alternative ways to provide the Committee with the information it wants. Those options have been rejected. I am writing to explain why an interview was not an acceptable option from my perspective. According to your letter, Department of Justice officials have reported to the Committee that my client relayed inaccurate information to the Department upon which it relied in preparing its initial response to Congress. If, as you claim, Department officials have blamed my client, they have blamed him unfairly.

The objective evidence collected by this Committee demonstrates that Mr. Cunningham did nothing wrong and that he acted in good faith. Indeed, your staff has provided me with documentary evidence demonstrating the following. First, Mr. Cunningham proposed draft

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language internally to his supervisor in the United States Attorney's Office. Second, Mr. Cunningham vetted the accuracy of the draft language with others in the United States Attorney's Office. Third, Mr. Cunningham's supervisor reported that he provided the draft language to the Department of Justice. Fourth, the Department of Justice did not include in its response to Congress the draft language Mr. Cunningham's supervisor reportedly provided.

Further, although your staff purported to provide me with all documents sent or received by my client, it has provided no documents supporting the allegation in your letter that my client had anything to do with approving the "unacceptable tactics used in Fast and Furious." Indeed, it is a matter of public record that the Fast and Furious investigation began in 2009, months before my client even started at the United States Attorney's Office in 2010.

Finally, as a professional courtesy, and to avoid needless preparation by the Committee and its staff for a deposition next week, I am writing to advise you that my client is going to assert his constitutional privilege not to be compelled to be a witness against himself. The Supreme Court has held that "one of the basic functions of the privilege is to protect innocent men." *Grunewald v. United States*, 353 U.S. 391, 421 (1957); *see also Ohio v. Reiner*, 532 U.S. 17 (2001) (per curiam). The evidence described above shows that my client is, in fact, innocent, but he has been ensnared by the unfortunate circumstances in which he now stands between two branches of government. I will therefore be instructing him to assert his constitutional privilege.

If the Committee still wishes to proceed with the deposition, please let me know.

Respectfully submitted,



Tobin J. Romero

cc: The Honorable Elijah E. Cummings, Ranking Minority Member  
Committee on Oversight and Government Reform