

PAUL MARTIN WOLFF
WILLIAM E. McDANIELS
BRENDAN V. SULLIVAN, JR.
RICHARD M. COOPER
JERRY L. SHULMAN
ROBERT B. BARNETT
DAVID E. KENDALL
JOHN J. BUCKLEY, JR.
TERRENCE O'DONNELL
DOUGLAS R. MARVIN
JOHN K. VILLA
BARRY S. SIMON
KEVIN T. BAINE
STEPHEN L. URBANCZYK
PHILIP J. WARD
F. WHITTEN PETERS
JAMES A. BRUTON, III
PETER J. KAHN
MICHAEL S. SUNDERMEYER
JAMES T. FULLER, III
DAVID D. AUFHAUSER
BRUCE R. GENDERSON
F. LANE HEARD III
STEVEN R. KUNNEY
GERSON A. ZWEIFACH
PAUL MOGIN
MARK S. LEVINSTEIN
DANIEL F. KATZ
WILLIAM R. MURRAY, JR.
EVA PETKO ESBER

STEPHEN D. RABER
DAVID C. KIERNAN
LON E. MUSSEWHITE
HEIDI K. HUBBARD
GLENN J. PFADENHAUER
GEORGE A. BORDEN
ROBERT J. SHAUGHNESSY
DAVID S. BLATT
ARI S. ZYMELMAN
DANE H. BUTSWINKAS
DENNIS M. BLACK
PHILIP A. SECHLER
LYNDA SCHULER
PAUL K. DUEFFERT
R. HACKNEY WIEGMANN
ROBERT M. CARY
KEVIN M. HODGES
DAVID M. ZINN
JOSEPH G. PETROSINELLI
STEVEN M. FARINA
KEVIN M. DOWNEY
THOMAS G. HENTOFF
PAUL B. GAFFNEY
EMMET T. FLOOD
ROBERT A. VAN KIRK
MARCIE R. ZIEGLER
KENNETH C. SMURZYNSKI
JOHN E. SCHMIDTLEIN
CRAIG D. SINGER
JAMES L. TANNER, JR.

LAW OFFICES
WILLIAMS & CONNOLLY LLP

725 TWELFTH STREET, N.W.
WASHINGTON, D. C. 20005-5901

(202) 434-5000

FAX (202) 434-5029

WWW.WC.COM

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

January 19, 2012

J. ANDREW KEYES
M. ELAINE HORN
ENU MAINIGI
MICHAEL F. O'CONNOR
PAUL T. HOURIHAN
WILLIAM J. BACHMAN
MARGARET A. KEELEY
EDWARD J. BENNETT
TOBIN J. ROMERO
BETH A. LEVENE
THOMAS G. WARD
WILLIAM T. BURKE
LISA M. DUGGAN
JOHN E. JOINER
NICHOLAS J. BOYLE
ADAM L. PERLMAN
ANDREW W. RUDGE
DENEEN C. HOWELL
ALEX G. ROMAIN
DAVID A. FORKNER
JONATHAN M. LANDY
CHRISTOPHER N. MANNING
RYAN T. SCARBOROUGH
JENNIFER G. WICHT
STEPHEN D. ANDREWS
KANNON K. SHANMUGAM
MALACHI B. JONES
THOMAS H. L. SELBY
KEVIN HARDY
EDWARD C. BARNIDGE

JOSEPH M. TERRY
AARON P. MAURER
JON R. FETTEROLF
STEPHEN P. SORENSEN
F. GREG BOWMAN
ANA C. REYES
JONATHAN B. PITT
DAVID I. BERL
ELLEN E. OBERWETTER
EDWARD C. REDDINGTON
DANIEL P. SHANAHAN
VIDYA ATRE MIRMIRA
JESSAMYN S. BERNIKER
RICHMOND T. MOORE
KENNETH J. BROWN
LUBA SHUR
PATRICK H. KIM
WILLIAM P. ASHWORTH
LANCE A. WADE
CHARLES DAVANT, IV
DOV P. GROSSMAN

OF COUNSEL
JOHN W. VARDAMAN
JEREMIAH C. COLLINS
DAVID POVICH
JOHN G. KESTER
ROBERT P. WATKINS
CAROLYN H. WILLIAMS

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

WILLIAMS & CONNOLLY LLP
The Honorable Darrell E. Issa
January 19, 2012
Page 2

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