

MINORITY VIEWS

Report of the Committee on Oversight and Government Reform

Resolution Recommending that the House of Representatives Find Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, in Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on Oversight and Government Reform

On June 20, 2012, the Committee adopted on a strictly party-line vote a report and resolution (hereinafter “Contempt Citation”) concluding that Attorney General Eric H. Holder, Jr., the chief law enforcement officer of the United States, should be held in contempt of Congress for declining to produce certain documents pursuant to the Committee’s investigation of “gunwalking” during Operation Fast and Furious and previous operations.

Committee Democrats were unanimous in their opposition to the Contempt Citation. These dissenting views conclude that Congress has a Constitutional responsibility to conduct vigorous oversight of the executive branch, but that holding the Attorney General in contempt would be an extreme, unprecedented action based on partisan election-year politics rather than the facts uncovered during the investigation.

These views find that the Committee failed to honor its Constitutional responsibility to avoid unnecessary conflict with the executive branch by seeking reasonable accommodations when possible. The Committee flatly rejected a fair and reasonable offer made by the Attorney General to provide additional internal deliberative documents sought by the Committee in exchange for a good faith commitment toward resolving the contempt dispute. Instead, the Committee has repeatedly shifted the goalposts in this investigation after failing to find evidence to support its unsubstantiated allegations.

The Contempt Citation adopted by the Committee contains serious and significant errors, omissions, and misrepresentations. To address these inaccuracies, these views hereby incorporate and attach the 95-page staff report issued by Ranking Member Elijah Cummings in January 2012, which provides a comprehensive analysis of the evidence obtained during the Committee’s investigation.

I. The Committee’s Actions Have Been Highly Partisan

The Committee’s contempt vote on June 20, 2012, was the culmination of one of the most highly politicized congressional investigations in decades. It was based on numerous unsubstantiated allegations that targeted the Obama Administration for political purposes, and it ignored documented evidence of gunwalking operations during the previous administration.

During the Committee’s 16-month investigation, the Committee refused all Democratic requests for witnesses and hearings. In one of the most significant flaws of the investigation, the Chairman refused multiple requests to hold a public hearing with Kenneth Melson, the former head of ATF, the agency responsible for conducting these operations.¹ The Chairman’s refusal

came after Mr. Melson told Committee investigators privately in July 2011 that he never informed senior officials at the Justice Department about gunwalking during Operation Fast and Furious because he was unaware of it himself.² Mr. Melson's statements directly contradict the claim in the Contempt Citation that senior Justice Department officials were aware of gunwalking because Mr. Melson briefed Gary Grindler, then-Acting Deputy Attorney General, in March 2010.³

Despite promising that he would be "investigating a president of my own party because many of the issues we're working on began on [sic] President Bush," the Chairman also refused multiple requests for former Attorney General Michael Mukasey to testify before the Committee or to meet with Committee Members informally to discuss the origination and evolution of gunwalking operations since 2006.⁴ Documents obtained during the investigation indicate that Mr. Mukasey was briefed personally on botched efforts to coordinate firearm interdictions with Mexican law enforcement officials in 2007 and was informed directly that such efforts would be expanded during his tenure.⁵

The Committee also failed to conduct interviews of other key figures. For example, the Committee did not respond to a request to interview Alice Fisher, who served as Assistant Attorney General in charge of the Criminal Division from 2005 to 2008, about her role in authorizing wiretaps in Operation Wide Receiver, or to a request to interview Deputy Assistant Attorney General Kenneth Blanco, who also authorized wiretaps in Operation Fast and Furious and still works at the Department, but who was placed in his position under the Bush Administration in April 2008.⁶ No explanation for these refusals has been given.

During the Committee business meeting on June 20, 2012, every Democratic amendment to correct the Contempt Citation by noting these facts was defeated on strictly party-line votes.

II. Holding the Attorney General in Contempt Would Be Unprecedented

The House of Representatives has never in its history held an Attorney General in contempt of Congress. The only precedent referenced in the Contempt Citation for holding a sitting Attorney General in contempt for refusing to provide documents is this Committee's vote in 1998 to hold then-Attorney General Janet Reno in contempt during the campaign finance investigation conducted by then-Chairman Dan Burton.⁷

Chairman Burton's investigation was widely discredited, and the decision to hold the Attorney General in contempt was criticized by editorial boards across the country as "a gross abuse of his powers as chairman of the committee,"⁸ a "fishing expedition,"⁹ "laced with palpable political motives,"¹⁰ and "showboating."¹¹ That action was so partisan and so widely discredited that Newt Gingrich, who was then Speaker, did not bring it to the House Floor for a vote.¹²

Similarly, numerous commentators and editorial boards have criticized Chairman Issa's recent actions as "a monstrous witch hunt,"¹³ "a pointless partisan fight,"¹⁴ and "dysfunctional Washington as usual."¹⁵

III. The Committee Has Held the Attorney General to an Impossible Standard

For more than a year, the Committee has held the Attorney General to an impossible standard by demanding documents he is prohibited by law from producing.

One of the key sets of documents demanded during this investigation has been federal wiretap applications submitted by law enforcement agents in order to obtain a federal court's approval to secretly monitor the telephone calls of individuals suspected of gun trafficking.

The federal wiretapping statute, which was passed by Congress and signed by President Lyndon B. Johnson on June 19, 1968, provides for a penalty of up to five years in prison for the unauthorized disclosure of wiretap communications and prohibits the unauthorized disclosure of wiretap applications approved by federal judges, who must seal them to protect against their disclosure.¹⁶ The statute states:

Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction. ... Applications made and orders granted under this chapter shall be sealed by the judge.¹⁷

Similarly, in 1940, Congress passed a statute giving the Supreme Court the power to prescribe rules of pleading, practice, and procedure in criminal cases.¹⁸ In 1946, the modern grand jury secrecy rule was codified as Rule 6(e) of the Federal Rules of Criminal Procedure, which provides for criminal penalties for disclosing grand jury information.¹⁹

The Department has explained this to the Committee repeatedly, including in a letter on May 15, 2012:

Our disclosure to this oversight Committee of some material sought by the October 11 subpoena, such as records covered by grand jury secrecy rules and federal wiretap applications and related information, is prohibited by law or court orders.²⁰

Despite these legal prohibitions, the Chairman continued to threaten to hold the Attorney General in contempt for protecting these documents. He also publicly accused the Attorney General of a "cover-up,"²¹ claimed he was "obstructing" the Committee's investigation,²² asserted that he is willing to "deceive the public,"²³ and stated on national television that he "lied."²⁴

IV. The Documents at Issue in the Contempt Citation are Not About Gunwalking

The documents at issue in the Contempt Citation are not related to the Committee's investigation into how gunwalking was initiated and utilized in Operation Fast and Furious.

Over the past year, the Department of Justice has produced thousands of pages of documents, the Committee has interviewed two dozen officials, and the Attorney General has testified before Congress nine times.

In January, Ranking Member Cummings issued a comprehensive 95-page staff report documenting that Operation Fast and Furious was in fact the fourth in a series of gunwalking operations run by ATF's Phoenix field division over a span of five years beginning in 2006. Three prior operations—Operation Wide Receiver (2006-2007), the Hernandez case (2007), and the Medrano case (2008)—occurred during the Bush Administration. All four operations were overseen by the same ATF Special Agent in Charge in Phoenix.²⁵

The Committee has obtained no evidence that the Attorney General was aware that gunwalking was being used. To the contrary, as soon as he learned of its use, the Attorney General halted it, ordered an Inspector General investigation, and implemented significant internal reform measures.²⁶

After finding no evidence of wrongdoing by the Attorney General, the Committee's investigation shifted to focusing on a single letter sent by the Department's Office of Legislative Affairs to Senator Charles Grassley on February 4, 2011. This letter initially denied allegations that ATF "knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico" and stated that "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico."²⁷

The Department has acknowledged that its letter was inaccurate and has formally withdrawn it. On December 2, 2011, the Department wrote that "facts have come to light during the course of this investigation that indicate that the February 4 letter contains inaccuracies."²⁸

Acknowledging these inaccuracies, the Department also provided the Committee with 1,300 pages of internal deliberative documents relating to how the letter to Senator Grassley was drafted. These documents demonstrate that officials in the Office of Legislative Affairs who were responsible for drafting the letter did not intentionally mislead Congress, but instead relied on inaccurate assertions and strong denials from officials "in the best position to know the relevant facts: ATF and the U.S. Attorney's Office in Arizona, both of which had responsibility for Operation Fast and Furious."²⁹

Despite receiving these documents explaining how the letter to Senator Grassley was drafted, the Committee moved the goalposts and demanded additional internal documents created after February 4, 2011, the date the letter to Senator Grassley was sent. It is unclear why the Committee needs these documents. This narrow subset of additional documents—which have nothing to do with how gunwalking was initiated in Operation Fast and Furious—is now the sole basis cited in the Contempt Citation for holding the Attorney General in contempt.³⁰

V. The Committee Refused a Good Faith Offer by the Attorney General for Additional Documents

The Committee failed to honor its Constitutional responsibility to avoid unnecessary conflict with the Executive Branch by seeking reasonable accommodations when possible. On the evening before the Committee's contempt vote, the Attorney General met with Chairman Issa, Ranking Member Cummings, Senator Grassley, and Senator Patrick Leahy. The Attorney

General offered to take the following steps in response to the Committee's demands for additional documents. Specifically, the Attorney General:

- (1) offered to provide additional internal deliberative Department documents, created even after February 4, 2011;
- (2) offered a substantive briefing on the Department's actions relating to how they determined the letter contained inaccuracies;
- (3) agreed to Senator Grassley's request during the meeting to provide a description of the categories of documents that would be produced and withheld; and
- (4) agreed to answer additional substantive requests for information from the Committee.

The Attorney General noted that his offer included documents and information that went even beyond those demanded in the Committee's subpoena. In exchange, the Attorney General asked the Chairman for a good faith commitment to work towards a final resolution of the contempt issue.³¹

Chairman Issa did not make any substantive changes to his position. Instead, he declined to commit to a good faith effort to work towards resolving the contempt issue and flatly refused the Attorney General's offer.

There is no question that the Constitution authorizes Congress to conduct rigorous investigations in support of its legislative functions.³² The Constitution also requires Congress and the executive branch to seek to accommodate each other's interests and to avoid unnecessary conflict. As the D.C. Circuit has held:

[E]ach branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation.³³

Similarly, then-Attorney General William French Smith, who served under President Ronald Reagan, observed:

The accommodation required is not simply an exchange of concessions or a test of political strength. It is an obligation of each branch to make a principled effort to acknowledge, and if possible to meet, the legitimate needs of the other branch.³⁴

VI. The Committee's Decision to Press Forward with Contempt Led to the Administration's Assertion of Executive Privilege

After the Chairman refused the Attorney General's good faith offer—and it became clear that a Committee contempt vote was inevitable—the President asserted executive privilege over the narrow category of documents still at issue. The Administration made clear that it was still willing to negotiate on Congress' access to the documents if contempt could be resolved.

On June 20, 2012, Deputy Attorney General James Cole wrote to the Chairman to inform the Committee that “the President, in light of the Committee’s decision to hold the contempt vote, has asserted executive privilege over the relevant post-February 4 documents.”³⁵ An accompanying letter from Attorney General Holder described the documents covered by the privilege as limited to “internal Department ‘documents from after February 4, 2011, related to the Department’s response to Congress.”³⁶

Claims by House Speaker John Boehner and others that the Administration’s assertion of executive privilege raises questions about the President’s personal knowledge of gunwalking reflect a misunderstanding of the scope of the privilege asserted.³⁷ Regarding the narrow subset of documents covered by the assertion, the letter from Attorney General explained:

They were not generated in the course of the conduct of Fast and Furious. Instead, they were created after the investigative tactics at issue in that operation had terminated and in the course of the Department’s deliberative process concerning how to respond to congressional and related media inquiries into that operation.³⁸

The Attorney General’s letter also explained the Administration’s legal rationale for invoking executive privilege over internal deliberative Justice Department documents, citing opinions from former Attorneys General Michael B. Mukasey, John Ashcroft, William French Smith, and Janet Reno, as well as former Solicitor General and Acting Attorney General Paul D. Clement.³⁹ The letter also quoted the Supreme Court in *United States v. Nixon*, writing:

The threat of compelled disclosure of confidential Executive Branch deliberative material can discourage robust and candid deliberations, for “[h]uman experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process.” ... Thus, Presidents have repeatedly asserted executive privilege to protect confidential Executive Branch deliberative materials from congressional subpoena.⁴⁰

VII. The Committee Failed to Responsibly Consider the Executive Privilege Assertion

Despite requests from several Committee Members, the Committee did not delay or postpone the business meeting in order to responsibly examine the Administration’s assertion of executive privilege and determine whether it would be appropriate to continue contempt proceedings against the Attorney General.

Instead of following the example of previous Committee Chairmen who put off contempt proceedings in order to conduct a serious and careful review of presidential assertions of executive privilege, Chairman Issa stated that “I claim not to be a constitutional scholar” and proceeded with the contempt vote.⁴¹

In contrast, former Committee Chairman Henry Waxman put off a contempt vote after President George W. Bush asserted executive privilege in the investigation into the leak of the covert status of CIA operative Valerie Plame.⁴² He took the same course of action after

President Bush asserted executive privilege over documents relating to the Environmental Protection Agency's ozone regulation on the same day as a scheduled contempt vote. At the time, he stated:

I want to talk with my colleagues on both sides of the aisle about this new development. I want to learn more about the assertion and the basis for this assertion of the executive privilege.⁴³

Although the Committee ultimately disagreed with the validity of President Bush's assertions of executive privilege, in neither case did the Committee go forward with contempt proceedings against the officials named in the contempt citations.

Similarly, Rep. John Dingell, as Chairman of the Energy and Commerce Committee during that Committee's 1981 investigation into the Department of Interior, received an assertion of executive privilege from the Reagan Administration regarding documents pertaining to the administration of the Mineral Lands Leasing Act.⁴⁴ Before proceeding to contempt, the Committee held two separate hearings on the executive privilege assertion, and the Committee invited the Attorney General to testify regarding his legal opinion supporting the claim of executive privilege.⁴⁵

VIII. The Investigation Has Been Characterized by Unsubstantiated Claims

The Committee's investigation of ATF gunwalking operations has been characterized by a series of unfortunate and unsubstantiated allegations against the Obama Administration that turned out to be inaccurate.

For example, during an interview on national television on October 16, 2011, the Chairman accused the Federal Bureau of Investigation (FBI) of concealing evidence of the murder of Agent Brian Terry by hiding a "third gun" found at the murder scene.⁴⁶ The FBI demonstrated quickly that this claim was unsubstantiated.⁴⁷ Although the Chairman admitted during a subsequent hearing that "we do go down blind alleys regularly," no apology was issued to the law enforcement agents that were accused of a cover-up.⁴⁸

At the same time, the Chairman has defended the previous Administration's operations as "coordinated."⁴⁹ In response to a question about gunwalking during the Bush Administration, the Chairman stated:

We know that under the Bush Administration there were similar operations, but they were coordinated with Mexico. They made every effort to keep their eyes on the weapons the whole time.⁵⁰

To the contrary, the staff report issued by Ranking Member Cummings on January 31, 2012, documents at least three operations during the previous Administration in which coordination efforts were either non-existent or severely deficient.⁵¹

In addition, the Chairman has stated repeatedly that senior Justice Department officials were “fully aware” of gunwalking in Operation Fast and Furious.⁵² After conducting two dozen transcribed interviews, none of the officials and agents involved said they informed the Attorney General or other senior Department officials about gunwalking in Operation Fast and Furious. Instead, the heads of the agencies responsible for the operation—ATF and the U.S. Attorney’s Office—told Committee investigators just the opposite, that they never informed senior Department officials about gunwalking in Operation Fast and Furious because they were unaware of it.⁵³

Finally, the Chairman has promoted an extreme conspiracy theory that the Obama Administration intentionally designed Operation Fast and Furious to promote gunwalking. He stated in December 2011 that the Administration “made a crisis and they are using this crisis to somehow take away or limit people’s second amendment rights.”⁵⁴ This offensive claim has also been made by Rush Limbaugh and other conservative media personalities during the course of the investigation. For example, on June 20, 2011, Mr. Limbaugh stated:

The real reason for Operation Gunrunner or Fast and Furious, whatever they want to call it now, the purpose of this was so that Obama and the rest of the Democrats can scream bloody murder about the lack of gun control in the US, which is causing all the murders in Mexico. This was a setup from the get-go.⁵⁵

Another conservative commentator stated that “their political agenda behind this entire thing was to blame American gun shops for cartel violence in America in order to push an anti-Second Amendment, more regulations on these gun shops.”⁵⁶ Yet another one stated:

This was purely a political operation. You send the guns down to Mexico, therefore you support the political narrative that the Obama administration wanted supported. That all these American guns are flooding Mexico, they’re the cause of the violence in Mexico, and therefore we need draconian gun control laws here in America.⁵⁷

As recently as this month, Committee Member John Mica repeated this claim on Fox News. On June 15, 2012, he stated:

People forget how all this started. This administration is a gun control administration. They tried to put the violence in Mexico on the blame of the United States. So they concocted this scheme and actually sending our federal agents, sending guns down there, and trying to cook some little deal to say that we have got to get more guns under control.⁵⁸

There is no evidence to support this conspiracy theory. To the contrary, the documents obtained and interviews conducted by the Committee demonstrate that gunwalking began in 2006, was used in three operations during the Bush Administration, and was a misguided tactic utilized by the ATF field division in Phoenix.⁵⁹

NOTES

¹ Letter from Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (Oct. 28, 2011).

² House Committee on Oversight and Government Reform, Transcribed Interview of Kenneth E. Melson (July 4, 2011).

³ House Committee on Oversight and Government Reform, *Report of the Committee on Oversight and Government Reform on Resolution Recommending that the House of Representatives Find Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, in Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on Oversight and Government Reform*, at 11 (June 14, 2012) (“Contempt Citation”).

⁴ *The Daily Rundown*, MSNBC (Nov. 3, 2010) (online at <http://videocafe.crooksandliars.com/david/darrell-issa-obama-must-answer-several-hundr>); Letter from Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (June 5, 2012); Letter from Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (Feb. 2, 2012); Letter from Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (Nov. 4, 2011).

⁵ Department of Justice, *Meeting of the Attorney General with Mexican Attorney General Medina Mora* (Nov. 16, 2007).

⁶ Letter from Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (June 5, 2012).

⁷ House Committee on Government Reform and Oversight, *Contempt of Congress: Refusal of Attorney General Janet Reno to Produce Documents Subpoenaed By the Government Reform and Oversight Committee*, 105th Cong. (1998) (H. Rept. 105-728).

⁸ *The Contempt Citation*, Washington Post (Sept. 22, 1998).

⁹ *Buck Stops With Reno; Appointing an Independent Counsel in Campaign Contribution Case: That Decision is Reno’s Alone to Make on the Basis of Her Information and Her Interpretation of the Law*, Los Angeles Times (Aug. 6, 1998).

¹⁰ *Tell Him No, Ms. Reno!*, Miami Herald (Aug. 6, 1998).

¹¹ *Give Reno Some Room*, St. Petersburg Times (Aug. 6, 1998).

¹² Congressional Research Service, *Congressional Contempt Power and the Enforcement of Congressional Subpoenas: Law, History, Practice, and Procedure* (May 8, 2012).

¹³ Juan Williams, *Issa’s Monstrous Witch Hunt*, The Hill (May 14, 2012).

¹⁴ *A Pointless Partisan Fight*, New York Times (June 20, 2012).

¹⁵ *Holder Contempt Vote is Dysfunctional Washington as Usual*, Baltimore Sun (June 21, 2012). See also Eugene Robinson, *GOP Witch Hunt for Eric Holder Reflects Bigger Problem*, Washington Post (June 21, 2012); Paul Barrett, *In Contempt of Government Reform*, Businessweek (June 20, 2012); Dana Milbank, *Republicans' Attempt to Hold Holder in Contempt is Uphill Battle*, Washington Post (June 20, 2012) (describing the “contemptible antics” of the Committee’s contempt proceedings); Sandra Hernandez, *Partisan Politics Plague Probe of ‘Fast and Furious,’* Los Angeles Times (“Issa’s demand loses some of its credibility and lapses into political theater when he threatens Atty. Gen. Eric H. Holder Jr. with criminal contempt for failing to cooperate”) (Mar. 29, 2012).

¹⁶ The White House, *Statement by the President Upon Signing the Omnibus Crime Control and Safe Streets Act of 1968* (June 19, 1968); 18 U.S.C. § 2511(4)(a) (providing that violators “shall be fined under this title or imprisoned not more than five years, or both”); 18 U.S.C. § 2511(1)(e) (covering any person who “intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized” under this chapter).

¹⁷ 18 U.S.C. §§ 2518(1), 2518(8).

¹⁸ Sumner Courts Act, Pub. L. No. 76-675, 54 Stat. 688 (1940).

¹⁹ Fed. R. Crim. Pro. 6(e)(7) (providing that a knowing violation of Rule 6 “may be punished as a contempt of court”); 18 U.S.C. § 401(3) (providing that a “court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority”).

²⁰ Letter from James M. Cole, Deputy Attorney General, Department of Justice, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (May 15, 2012).

²¹ Letter from Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to Eric H. Holder, Jr., Attorney General, Department of Justice (Jan. 31, 2012).

²² Letter from Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to Eric H. Holder, Jr., Attorney General, Department of Justice (Oct. 9, 2011).

²³ Letter from Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to Eric H. Holder, Jr., Attorney General, Department of Justice (Jan. 31, 2012).

²⁴ *On the Record with Greta Van Susteren*, Fox News (June 7, 2012) (online at www.foxnews.com/on-air/on-the-record/2012/06/08/issas-fast-and-furious-frustration-bubbles-over-holders-truth-not-consistent-facts?page=2).

²⁵ Minority Staff, House Committee on Oversight and Government Reform, *Fatally Flawed: Five Years of Gunwalking in Arizona* (Jan. 2012) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5575&Itemid=104).

²⁶ *Id.*; House Committee on the Judiciary, Testimony of Eric H. Holder, Jr., Attorney General, Department of Justice, *Oversight of the United States Department of Justice* (June 7, 2012).

²⁷ Letter from Ronald Weich, Assistant Attorney General, Office of Legislative Affairs, Department of Justice, to Sen. Charles E. Grassley, Ranking Member, Senate Committee on the Judiciary (Feb. 4, 2011).

²⁸ Letter from James M. Cole, Deputy Attorney General, Department of Justice, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, et al. (Dec. 2, 2011).

²⁹ *Id.*

³⁰ Contempt Citation, at 41-42.

³¹ *Id.*

³² Congressional Research Service, *Congressional Oversight Manual* (June 10, 2011).

³³ *United States v. AT&T*, 567 F.2d 121, 127 (D.C. Cir. 1977).

³⁴ 5 Op. Off. Legal Counsel. 27, 31 (1981).

³⁵ Letter from James M. Cole, Deputy Attorney General, Department of Justice, to Rep. Darrell E. Issa, Chairman, House Oversight and Government Reform (June 20, 2012).

³⁶ Letter from Eric H. Holder, Jr., Attorney General, Department of Justice, to Barack H. Obama, President (June 19, 2012) (quoting Letter from Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to Eric H. Holder, Jr., Attorney General, Department of Justice (June 13, 2012)).

³⁷ *Fast and Furious: How President Obama and John Boehner Got to the Brink*, Politico (June 22, 2012) (quoting Speaker John A. Boehner as stating that the “decision to invoke executive privilege is an admission that White House officials were involved in decisions that misled the Congress and have covered up the truth”); House Committee on Oversight and Government Reform, *Business Meeting* (June 20, 2012) (quoting Rep. James Lankford as stating “we weren’t even aware that the President was engaged in the deliberations” and Rep. Jason E. Chaffetz stating that the assertion means that the President “somehow was personally involved”).

³⁸ Letter from Eric H. Holder, Jr., Attorney General, Department of Justice, to Barack H. Obama, President (June 19, 2012) (quoting Letter from Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to Eric H. Holder, Jr., Attorney General, Department of Justice (June 13, 2012)).

³⁹ Letter from Eric H. Holder, Jr., Attorney General, Department of Justice, to Barack H. Obama, President (June 19, 2012) (quoting Letter from Michael B. Mukasey, Attorney General, Department of Justice, to George W. Bush, President (June 19, 2008); Letter from Paul D. Clement, Solicitor General and Acting Attorney General, Department of Justice, to George W. Bush, President (June 27, 2007); Letter from John D. Ashcroft, Attorney General, Department of Justice, to George W. Bush, President (Dec. 10, 2001); 23 Op. Off. Legal Counsel 1, 1-2 (1999) (opinion of Attorney General Janet W. Reno); 5 Op. Off. Legal Counsel 27,29-31 (1981) (opinion of Attorney General William French Smith)).

⁴⁰ Letter from Eric H. Holder, Jr., Attorney General, Department of Justice, to Barack H. Obama, President (June 19, 2012) (citing *United States v. Nixon*, 418 U.S. 683, 705 (1974)).

⁴¹ House Committee on Oversight and Government Reform, Statement of Chairman Darrell E. Issa, *Business Meeting* (June 20, 2012).

⁴² House Committee on Oversight and Government Reform, *Report Regarding President Bush's Assertion of Executive Privilege in Response to the Committee Subpoena to Attorney General Michael B. Mukasey*, 110th Cong. (2008).

⁴³ House Committee on Oversight and Government Reform, Statement of Chairman Henry A. Waxman, *Hearing on the Johnson and Dudley Contempt of Congress Resolutions*, 110th Cong. (June 20, 2008).

⁴⁴ House Committee on Energy and Commerce, *Congressional Proceedings Against Interior Secretary James G. Watt for Withholding Subpoenaed Documents And For Failure to Answer Questions Relating to Reciprocity Under the Mineral Lands Leasing Act*, 97th Cong. (Sept. 30, 1982) (H. Rept. 97-898).

⁴⁵ *Id.*

⁴⁶ *Face the Nation*, CBS News (Oct. 16, 2011) (online at www.cbsnews.com/stories/2011/10/16/ftn/main20121072.shtml).

⁴⁷ *Justice Department Accuses Issa of "Mischaracterizing" Evidence in Probe of Operation Fast and Furious*, Fox News (Oct. 17, 2011) (online at www.foxnews.com/politics/2011/10/17/justice-department-accuses-issa-mischaracterizing-evidence-in-probe-operation/#ixzz1xiMQtvoh).

⁴⁸ House Committee on Oversight and Government Reform, *Hearing on Operation Fast and Furious: Management Failures at the Department of Justice* (Feb. 2, 2012).

⁴⁹ *Face the Nation*, CBS News (Oct. 16, 2011) (online at www.cbsnews.com/stories/2011/10/16/ftn/main20121072.shtml).

⁵⁰ *Id.*

⁵¹ Minority Staff, House Committee on Oversight and Government Reform, *Fatally Flawed: Five Years of Gunwalking in Arizona* (Jan. 2012) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5575&Itemid=104).

⁵² The Roger Hedgecock Show (Nov. 21, 2011) (online at www.youtube.com/watch?v=pGYUxuBNxk0).

⁵³ House Committee on Oversight and Government Reform, Transcribed Interview of Kenneth E. Melson (July 4, 2011); House Committee on Oversight and Government Reform, Transcribed Interview of Dennis K. Burke (Aug. 18, 2011).

⁵⁴ *Hannity*, Fox News (Dec. 8, 2011) (online at <http://video.foxnews.com/v/1317212270001/holder-on-the-hot-seat-over-fast--furious>).

⁵⁵ *The Rush Limbaugh Show* (June 20, 2011) (online at www.rushlimbaugh.com/daily/2011/06/20/on_the_cutting_edge_we_covered_the_fast_and_furious_story_in_march).

⁵⁶ *O'Reilly Factor*, Fox News (Apr. 16, 2012) (online at www.foxnews.com/on-air/oreilly/2012/04/17/will-fast-and-furious-hurt-obamas-re-election-chances).

⁵⁷ *American Newsroom*, Fox News (Mar. 12, 2012) (online at <http://video.foxnews.com/v/1502683781001/tea-party-turning-up-the-heat-on-fast--furious>).

⁵⁸ *Hannity*, Fox News (June 15, 2012) (online at <http://video.foxnews.com/v/1691933147001>).

⁵⁹ Minority Staff, House Committee on Oversight and Government Reform, *Fatally Flawed: Five Years of Gunwalking in Arizona* (Jan. 2011) (online at http://democrats.oversight.house.gov/images/stories/minority_report_13112.pdf).