
From: Monaco, Lisa (ODAG)
To: Agrast, Mark D. (SMO); Burton, Faith (SMO)
CC: Axelrod, Matthew (ODAG); Goldberg, Stuart (ODAG)
Sent: 4/19/2011 7:03:01 PM
Subject: Fw: ODAG version with Proposed AZ Edits

Pls see the below from matt

From: Axelrod, Matthew (ODAG)
Sent: Tuesday, April 19, 2011 03:00 PM
To: Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG)
Subject: Re: ODAG version with Proposed AZ Edits

Thanks, Lisa. As to the first edit, taking out the whole sentence (as AZ suggested) gives the misimpression that staff insisted on a public hearing, which they did not. I understand that AZ quarrels with the last phrase of the sentence, which I guess would be okay to remove. But I feel strongly that you need to add back the front half of the sentence, so that it reads:

"We understand that your staff indicated that he could submit to an interview rather than appear at a public hearing at this time."

Thanks.

Matt

From: Monaco, Lisa (ODAG)
Sent: Tuesday, April 19, 2011 02:30 PM
To: Axelrod, Matthew (ODAG); Goldberg, Stuart (ODAG)
Subject: RE: ODAG version with Proposed AZ Edits

I told Dennis we would take the first edit as that goes to accuracy. I told Dennis we would NOT go with the 2nd and 3rd proposed edits as they go contrary to how we and the DAG want this thing to read. So, I've just asked Mark to circulate the final.

Ps not to worry, all in a day's work – and I hope you are getting some vacation during your vacation – but given the number of emails I've seen from you I am not sure that's the case!

From: Axelrod, Matthew (ODAG)
Sent: Tuesday, April 19, 2011 2:26 PM
To: Monaco, Lisa (ODAG); Goldberg, Stuart (ODAG)
Subject: Fw: ODAG version with Proposed AZ Edits

Lisa, first of all let me say how sorry I am that you have to deal with this in my absence. Second, I disagree with the USAO's edits. My recommendation is that you instruct Faith to send out the ODAG-cleared version (with the OLA edits previously identified). Without you pinging her, I'm not sure she'll know how to proceed. Again, sorry about this.

From: Cunningham, Patrick (USAAZ)
Sent: Tuesday, April 19, 2011 12:56 PM
To: Monaco, Lisa (ODAG); Burton, Faith (SMO); Axelrod, Matthew (ODAG); Colborn, Paul P (SMO); Burke, Dennis (USAAZ)
Cc: Weich, Ron (SMO); Gaston, Molly (SMO); Goldberg, Stuart (ODAG); Hernandez, Rachel (USAAZ)
Subject: ODAG version with Proposed AZ Edits

Lisa and Team: thanks for the opportunity to look at the letter. Dennis and I have reviewed and here are our comments, which are also enclosed in Track Changes in the enclosed letter Faith sent this morning. Thanks again.
PJC

1. The final sentence in paragraph # 1 is not accurate regarding the offer for an interview. As we explained in our Saturday email reprinted below the staff was not responsive when the defense attorney [LES] raised his concerns: "[LES] advised them his client was a witness in the F and F case and advised them that [LES] was concerned for his physical safety and so much so that [LES] were going to through a "threat assessment next with the US Marshal's Service." The staff had no reaction [LES] advising them of these concerns."

Only later in the conversation did the staff suggest an interview and it cannot be fairly stated that they did it to address [LES] concerns for his clients safety. We suggest deleting that final sentence in paragraph 1 and ending the paragraph with the sentence in which the defense attorney informed the staff that "he was concerned that his appearance at a public congressional hearing might jeopardize his physical safety."

2. The paragraph # 3 has a sentence which is states, "The Department wants to find out what happened in this regard as well." We believe we do know what happened and that ATF and the USAO never "knowingly allowed guns to enter Mexico." We believe this sentence should be deleted because we feel we know our case completely and this never happened.
3. We suggest an edit to one additional sentence in paragraph # 3 in which we suggest we turn the sentence into a positive statement and not a negative one: We are addressing ~~not ignoring~~ the allegations that have been raised, and we respect ~~nor are we questioning~~ the Committee's responsibility to conduct oversight of this matter.

From: Monaco, Lisa (ODAG) (SMO)
Sent: Tuesday, April 19, 2011 7:49 AM
To: Burton, Faith (SMO); Axelrod, Matthew (ODAG) (SMO); Cunningham, Patrick (USAAZ); Colborn, Paul P (SMO)
Cc: Weich, Ron (SMO); Gaston, Molly (SMO); Goldberg, Stuart (ODAG) (SMO)
Subject: RE: ODAG version with Paul's edits from yesterday morning plus OLA suggested changes to the first para.

Thanks Faith. We're fine w/ this version and your additional language in the first paragraph.

From: Burton, Faith (SMO)
Sent: Tuesday, April 19, 2011 10:31 AM
To: Monaco, Lisa (ODAG); Axelrod, Matthew (ODAG); Cunningham, Patrick (USAAZ); Colborn, Paul P (SMO)
Cc: Weich, Ron (SMO); Gaston, Molly (SMO)
Subject: ODAG version with Paul's edits from yesterday morning plus OLA suggested changes to the first para.

From: Cunningham, Patrick (USAAZ)
Sent: Saturday, April 16, 2011 3:11 PM
To: Axelrod, Matthew (ODAG) (SMO)
Cc: Burke, Dennis (USAAZ); Morrissey, Mike (USAAZ)
Subject: Saturday April 16: Confirming all facts with [LES]

Matt: These facts were relayed by [LES] to Mike Morrissey and me on April 16, 2011. The edited letter is also enclosed. Thanks for your work on this investigation! PJC

Staffers from Chairman Issa's office contacted [LES] on Friday April 15, 2011 and advised they wanted to interview his client [LES]. [LES] told them he was not going to agree to a voluntary interviews and that they would have to issue a subpoena. [LES] "told them we need a subpoena." They discussed two options of A) a voluntary interview and B) a subpoena, and [LES] "elected B, a Subpoena."

[LES] advised them his client was a witness in the F and F case and advised them that [LES] was concerned for his physical safety and so much so that [LES] were going to through a "threat assessment next with the US Marshal's Service." The staff had no reaction [LES]'s advising them of these concerns.

[LES] advised the staff that his client "does not want to get in any dispute between the Leg and Exec branches." Staffers advised that they "were flexible as to date and place to conduct an interview." [LES] related that the staff seemed surprised that [LES] would not agree to a voluntary interview and that [LES] needed a subpoena. (We have been advised by [LES] other counsel [LES] that [LES] had previously reached out to Issa's staff and Rapp had terminated that contact. [LES] did not advise us of this earlier contact.) When [LES] advised the staff that [LES] would not agree to a voluntary interview, the staff offered to serve [LES] with a "forthwith subpoena" in Phoenix so [LES] could give an interview, and [LES] rejected that proposal saying he is in Texas and not Arizona. The staff then asked [LES] if he would accept service of a subpoena by email, and [LES] said yes he would accept such service. He received such a subpoena by email Friday evening from Steve Caster.

[LES] described the subpoena as having both the Testimony and Production boxes checked. The Testimony return date is May 23 in the Government Reform Committee Hearing in the Rayburn building and [LES] is Commanded to Appear. [LES] described the staff left open the option for an interview in lieu of appearance, but the subpoena and email do not mention that option and he is unclear how that would work.

[LES] described the Production box as commanding the return of documents to the Rayburn Building in these categories:

1. All documents and communications with ATF from September 2009 to present.
2. All documents and communications with the District of Arizona USAO from September 2009 to present.
3. All records regarding whether [LES] should or should not testify before Congressional Committees."
4. All communications with ATF Agents Newell, Needles, [ATF] Campbell, Gillett and [ATF] (and any others)
5. All communications with anyone "relating to complaints or objections to selling weapons to straw purchasers."

Regarding compliance with the subpoena, both Cunningham and Morrissey at different points made clear to [LES] that we are taking no position on [LES] compliance with the subpoena, that Congress is a separate branch of government, and that how they respond to the subpoena is completely up to [LES] and his client.

[LES] offered that he has "no ability to quash or stop the subpoena, and that he will not file such a motion unless a "legal basis jumps into my mind."

(We suggested no basis whatsoever). He suggested the option of a voluntary interview is still open but that he was unclear how or if he will try to arrange that. He will check with his client on whether he will forward a copy of the subpoena to us.

Thanks. PJC

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