

From: Axelrod, Matthew (ODAG)
To: Burton, Faith (SMO); Weich, Ron (SMO); Gaston, Molly (SMO); Colborn, Paul P (SMO)
Sent: 4/28/2011 3:40:50 PM
Subject: FW: ATF Deposition - Committee on Oversight and Government Reform

From: ATF (ATF)
Sent: Thursday, April 28, 2011 3:38 PM
To: Axelrod, Matthew (ODAG)
Cc: Hoover, William J. (ATF); Chait, Mark R. (ATF); Rubenstein, Steve R. (ATF); ATF
Subject: FW: ATF Deposition - Committee on Oversight and Government Reform

FYI

ATF

Associate Chief Counsel (Field Operations and Information)
Bureau of Alcohol, Tobacco, Firearms and Explosives
U.S. Department of Justice
99 New York Ave. NE
Rm. 6E-441
Washington, DC 20226
202-648-ATF desk
ATF cell
202-648-9620-fax

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**ATTORNEY WORK PRODUCT PRIVILEGED DOCUMENT
ATTORNEY-CLIENT PRIVILEGED COMMUNICATION**

From: ATF
Sent: Thursday, April 28, 2011 3:22 PM
To: ATF
Cc: Brandon, Thomas E.; Atteberry, Thomas G.
Subject: ATF Deposition - Committee on Oversight and Government Reform

On Thursday, April 28, 2011 at approximately 11:00 a.m., I was present at the Westin Hotel, 333 N. Central Avenue, Phoenix, AZ – in the hallway outside the Grassberg Room opposite Room 1307. At that time, I was chatting with ATF Special Agent ATF

ATF

Unrelated

Unrelated I asked Agent ATF where his attorney was and he indicated that ATF would be participating by phone. An unknown individual came out of the Grassberg Room and asked if he could help us. Agent ATF introduced himself. I told him that I was the attorney for ATF and that I was present to attend Agent ATF deposition. The individual stated that I would need to speak to Mr. Cantor.

Agent ATF and I were approached in the hallway by Donald Sherman, Counsel for the

Committee on Oversight and Government Reform (Democratic Staff – Rep. Elijah E. Cummings). I introduced myself as ATF Division Counsel for the Phoenix Field Division and stated that I was present to attend the deposition of Special Agent [ATF] at the direction of the Department of Justice and the Office of Chief Counsel, Bureau of Alcohol, Tobacco, Firearms and Explosive. He asked if I represented Agent [ATF] and I responded that I did not – that I represented the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. He asked if Agent [ATF] had asked me to be present – I stated that he had not requested my presence. I reiterated that I was the local Division Counsel for ATF. I provided Mr. Sherman with my business card and he reciprocated. Mr. Sherman stated that his people were not paying for the court reporter or the room, so I would need to discuss the matter with Mr. Cantor – whose people were in fact paying for the room and court reporter.

As Mr. Sherman and I were speaking, we were then joined in the hallway by Steve Cantor, Chief Counsel, Investigations for the Committee on Oversight and Government Reform (Darrell Issa, Chairman). Mr. Sherman indicated to Mr. Cantor that I was agency counsel. I introduced myself to Mr. Cantor and told him that I was present to attend the deposition of Special Agent [ATF]. He indicated that agency counsel were not permitted to attend the depositions. I stated that I was present to make sure that neither the questions nor the answers strayed into areas about which Agent [ATF] and other ATF personnel being deposed – were not authorized to disclose. I stated that Mr. [ATF] counsel had been informed of the limitations on testimony. I indicated that the deponents were not authorized to testify about any pending investigation – including Fast & Furious. Furthermore, their testimony was limited by 28 C.F.R. § 16.26. I provided both Mr. Sherman and Mr. Cantor with a photocopy of § 16.26. Both individuals scanned the photocopy I provided for a brief period. I handed Mr. Cantor one of my business cards and he provided me with one of his business cards. Mr. Cantor then stated that agency counsel were not permitted in Committee depositions as the presence of an agency representative may cause the witness to withhold information or not be as forthright due to the presence of an agency representative.

During my conversation with Mr. Cantor, we were joined in the hallway by three other individuals who were not identified but appeared to know Mr. Cantor and Mr. Sherman. I then asked Mr. Cantor directly whether I would be permitted to attend the deposition and he stated that I would not be permitted to attend. I stated that I would be available at the phone numbers listed on my card should there be any questions relating to the scope of the agent's authorization. At that time I left the hotel and returned to my office.

ATF

ATF Division Counsel (Phoenix)
201 E. Washington Street, Suite 940
Phoenix, AZ 85004
Phone: (602) [ATF]
Fax: (602) 776-5439
E-Mail: [ATF]

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