

From: Grindler, Gary (OAG)
To: **Attorney General**
Sent: 6/4/2011 9:46:45 AM
Subject: Fw: ATF / Newell Interview

Fyi

----- Original Message -----

From: Weich, Ron (SMO)
Sent: Saturday, June 04, 2011 09:40 AM
To: Grindler, Gary (OAG); Goldberg, Stuart (ODAG); Delery, Stuart F. (OAG); O'Neil, David (ODAG); Schmalzer, Tracy (SMO); Burton, Faith (SMO); Colborn, Paul P (SMO); Richardson, Margaret (SMO)
Cc: Axelrod, Matthew (ODAG)
Subject: Fw: ATF / Newell Interview

DP

DP It is highly ironic that this staffer is outraged by DOJ interference in leg branch prerogatives when Grassley won't allow the President to staff this key exec branch agency.

----- Original Message -----

From: Axelrod, Matthew (ODAG)
Sent: Saturday, June 04, 2011 08:58 AM
To: Weich, Ron (SMO); Burton, Faith (SMO); Colborn, Paul P (SMO); Richardson, Margaret (SMO); Wilkinson, Monty (OAG); Schmalzer, Tracy (SMO)
Subject: Fw: ATF / Newell Interview

----- Original Message -----

From: Foster, Jason (Judiciary-Rep) [mailto:Jason_Foster@judiciary-rep.senate.gov]
Sent: Friday, June 03, 2011 10:43 PM
To: Axelrod, Matthew (ODAG)
Subject: ATF / Newell Interview

Matt,

I understand that the interview previously scheduled for Wed is off because DOJ objects to the participation of Senator Grassley's staff.

Ron Weich raised this issue for the first time with me today around 2pm, and as far as I am aware, no one else had raised it as an issue in the discussions with Chairman Issa's staff about scheduling the interview prior to today.

As you know, Senator Grassley's staff has participated in every other transcribed interview conducted by the House Committee in this matter. We have attended at the invitation of Chairman Issa and without any objection by the Minority staff.

I am fully aware of the DOJ's preference to have a so-called "Chairman's letter" before disclosing certain types of information to Members of Congress. As you and I have previously discussed, however, that issue is not actually joined here given Chairman Issa's very active inquiry in cooperation and coordination with Senator Grassley. In other words, the DOJ's general concern that Congressional inquiries ought to be conducted by and through the authority of a Committee Chairman of jurisdiction seems to be satisfied here. Whatever disagreements Senator Grassley generally has with the way this policy is used to thwart oversight requests by Ranking Members are beside the point in this instance since there is, in fact, a Committee Chairman actively pursuing the inquiry with him.

It seems as if DOJ is asserting a new and much more expansive principle--one that is even more intrusive into internal Legislative Branch decisions about how we organize ourselves and exercise the inherent Constitutional power of inquiry. This new principle seems to be that a Chairman's request from a committee of jurisdiction is no longer good enough to authorize providing information to a Ranking Member. By its actions and the position it is taking in the

negotiations over various procedural accommodations, DOJ seems to be taking the position that it will not participate or consent to any information flowing to a Ranking Member unless the Chairman of *that Member's Committee* authorizes it.

It is as if DOJ is saying that a Ranking Member needs permission not merely from *a* chairman, but also from *his* chairman before DOJ will consent to provide information. I have not seen DOJ take that position before in my 14 years of experience in conducting Congressional oversight inquiries.

In my experience, Members frequently form partnerships and alliances on particular projects. If a Member has an interest in an inquiry and is not on the "right" committee, it is not unusual to join with the chairman of another committee in an effort to obtain information. That is a generally accepted practice that I don't recall any agency objecting to before--nor could I have imagined such an objection would ever be raised until now.

For DOJ to behave as if a Ranking Member lacks the authority to receive information from the Executive Branch or participate in an inquiry even when working in conjunction with the Chairman of another committee of jurisdiction would be a new and alarming intrusion into the legislative sphere. It would violate the spirit of comity between the branches and inhibit our ability to come to mutually agreeable, reasonable accommodations of one another's legitimate interests.

So, if there is some other, more understandable basis for DOJ's objection, please help me understand what it is.

What is the precise nature of the concern that caused DOJ to cancel the interview even though the terms had already been negotiated and agreed?

Even without regard to the previous agreement, why does DOJ object now? What policy or other concern is implicated by the participation of Senator Grassley's staff? Thanks.

Cordially,
Jason

Sent using BlackBerry