
From: Burton, Faith (SMO)
To: Axelrod, Matthew (ODAG)
Sent: 4/29/2011 3:55:52 PM
Subject: RE: **ATF** Deposition - Committee on Oversight and Government Reform

Thanks.

From: Axelrod, Matthew (ODAG)
Sent: Friday, April 29, 2011 11:54 AM
To: Burton, Faith (SMO); Colborn, Paul P (SMO); Gaston, Molly (SMO)
Subject: RE: **ATF** Deposition - Committee on Oversight and Government Reform

I got a voicemail from ATF counsel's office. Turns out that **ATF** (the ATF lawyer in PHX) simply mixed up who was who in his initial email. Both Foster and Sherman were present.

From: Axelrod, Matthew (ODAG)
Sent: Thursday, April 28, 2011 7:37 PM
To: Burton, Faith (SMO); Colborn, Paul P (SMO); Gaston, Molly (SMO)
Subject: Fw: **ATF** Deposition - Committee on Oversight and Government Reform

Odd. I'm working on getting additional info.

From: **ATF** ATF
Sent: Thursday, April 28, 2011 07:22 PM
To: Axelrod, Matthew (ODAG)
Cc: Hoover, William J. (ATF); Rubenstein, Steve R. (ATF); **ATF** ATF
Subject: Fw: **ATF** Deposition - Committee on Oversight and Government Reform

FYI

From: **ATF**
To: **ATF**
Cc: Brandon, Thomas E.; Atteberry, Thomas G.
Sent: Thu Apr 28 19:20:46 2011
Subject: RE: **ATF** Deposition - Committee on Oversight and Government Reform
Correction.

SA **ATF** came down to my office at approximately 4:00 p.m. this afternoon, just to say hello and to say that he was sorry that I was treated rudely. During our brief conversation, he identified the individual that I referred to as "Donald Sherman" from the business card I received to actually be Jason Foster from Sen. Grassley's staff.

ATF

ATF Division Counsel (Phoenix)
(602) 776-**ATF**

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From: ATF
Sent: Thursday, April 28, 2011 12:22 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

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