

From: Morrissey, Mike (USAAZ)
To: Axelrod, Matthew (ODAG) (SMO)
CC: Cunningham, Patrick (USAAZ); Burke, Dennis (USAAZ)
Sent: 5/17/2011 2:22:04 PM
Subject: RE: Potential Trial Witnesses

Matt -- I had a discussion with Pat that I wanted to pass along. I could not think of a way to include this in your e mail to Steve Castor. But -- [DP]

[ATF]

[ATF]

[ATF]

DP

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

From: Axelrod, Matthew (ODAG) (SMO)
Sent: Tuesday, May 17, 2011 11:07 AM
To: Burke, Dennis (USAAZ); Morrissey, Mike (USAAZ); Cunningham, Patrick (USAAZ)
Cc: Burton, Faith (SMO)
Subject: RE: Potential Trial Witnesses

Thanks, Dennis. We briefed HOGRC staff a few weeks back. Minority staff was present. I'm happy to give you a readout if you want me to give me a call. [DP]

[DP] your suggested edit unfortunately came too late, as the email to Steve Castor had already been sent. Pat sent me back edits prior to me sending the email to Steve Castor, but I didn't see that one among them. If it was among them, I apologize for having missed it.

Matt

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

From: Burke, Dennis (USAAZ)
Sent: Tuesday, May 17, 2011 12:54 PM
To: Axelrod, Matthew (ODAG); Morrissey, Mike (USAAZ); Cunningham, Patrick (USAAZ)
Cc: Burton, Faith (SMO)
Subject: Re: Potential Trial Witnesses

Thx.

What briefing are you referencing and who all attended? I assume the Minority Side has staff in all these "briefings." Correct?

Also, [DP]

[DP]

Thx.

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

From: Axelrod, Matthew (ODAG) (SMO)
Sent: Tuesday, May 17, 2011 12:42 PM
To: Burke, Dennis (USAAZ); Morrissey, Mike (USAAZ); Cunningham, Patrick (USAAZ)
Cc: Burton, Faith (SMO)
Subject: FW: Potential Trial Witnesses

Fyi.

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

From: Axelrod, Matthew (ODAG)

Sent: Tuesday, May 17, 2011 12:41 PM
To: 'Stephen.Castor@mail.house.gov'
Cc: Burton, Faith (SMO)
Subject: RE: Potential Trial Witnesses

Steve,

Adding Faith. Thank you for reaching out on this issue. As we mentioned at the briefing, our strong preference is that you defer any interviews of trial witnesses until after the trial has occurred. We are concerned that pre-trial interviews of trial witnesses by Committee staff has the potential to jeopardize our chances for success at trial, in particular by running the risk that witnesses may feel the need to shape their answers in a particular way when being interviewed by congressional investigators, by complicating our discovery obligations, and by opening the door to defense allegations that the witnesses' subsequent testimony at trial has been shaped by the congressional inquiry. To the extent you have uncertainty about whether someone you wish to interview is a probable trial witness, we are willing to coordinate with you and apprise you of that person's status.

To the extent that you nevertheless plan to interview our trial witnesses prior to trial, we would appreciate you taking the following steps to help reduce the risk of harm to the case that could arise from such interviews. First, as you note below, we ask that you not show the witnesses new documents, as exposing the witnesses to facts that are not already within their personal knowledge may contaminate their recall of events. Second, for the same reasons, we ask that you not orally convey facts to the witness of which the witness was previously unaware. Third, we ask that any such interviews not be transcribed. Fourth, we ask that, to the extent you do transcribe the interviews, you provide us a copy of the transcript as soon as it is made available by the court reporter so that we can review it as part of our preparation for the upcoming trial. Fifth, we ask that you discuss only the generic strategies employed to disrupt gun trafficking on the Southwest Border, and not ask questions regarding the specifics of the case slated for trial.

Thanks, Steve.

Matt

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

From: Castor, Stephen [mailto:Stephen.Castor@mail.house.gov]
Sent: Monday, May 16, 2011 5:51 PM
To: Axelrod, Matthew (ODAG)
Subject: Potential Trial Witnesses

Hello Matt -- As we discussed two Thursdays ago, you had requested an opportunity to provide us with guidance about topics or questions that you would prefer we avoid in speaking with potential trial witnesses. Other than asking us to avoid showing new documents, we haven't received anything further. If you plan to provide any additional guidance, and if you would like us to take it into account, please let me know as soon as you can.

Thank you,

Steve