

# DOES LANNY BREUER HAVE A CONFLICT IN THE CHENEY INTERVIEW FOIA CASE?

Assistant Attorney General Lanny Breuer's background has been a key topic of discussion in CREW's lawsuit to force DOJ to release Dick Cheney's interview with Patrick Fitzgerald. The problem is, DOJ forgot to reveal that Breuer had represented one of the people involved with issues directly related to Cheney's interview.

## **DOJ needed an expert on investigations of White House officials—so they got Breuer**

During a hearing on whether or not DOJ should release Dick Cheney's interview with Patrick Fitzgerald back in June, Judge Emmet Sullivan suggested that DOJ ought to have someone with actual experience in investigations of high level White House officials make their argument that releasing Cheney's interview would make such investigations more difficult in the future.

MR. SMITH: In this case I don't see — the law enforcement issue here is very unique and it's very different than I think in Sussman and in most other cases. It's an interest, it's basically a chilling interest that if the Vice-President's interview is released, that could have a chilling effect on future senior leadership.

THE COURT: Says who?

MR. SMITH: Says the Attorney General Mukasy [sic], that was his conclusion.

THE COURT: He didn't file a declaration. Mr. Bradbury filed a declaration. He didn't base it upon any experience, he didn't base it upon anything. He didn't articulate the bases for his

declaration. Other than he was designated to follow declaration. So it wasn't Mr. Mukasy [sic] who filed the declaration which arguably could have carried great weight. If the chief law enforcement officer says based on my experience and experience of others in law enforcement, it could have but that's not the case here. Bradbury was a political appointee. I don't know what his experience was. He was appointed to, maybe he was appointed to file this declaration. I don't know what else he did. He's no longer there at OLC. And essentially the government in footnote says I should defer to his declaration.

This is not a deferential review. **I want to be clear I'm not suggesting that the Attorney General should sign a declaration. I'm not ordering, certainly not ordering him to do anything, but I'm just saying in response to what you just said arguably it could have carried greater weight for such a declaration to come from a law enforcement official based upon his or her experiences with respect to this chilling effect.**

Otherwise, it's just an assumption this man makes based upon nothing he can point to. [my emphasis]

So rather than have the discredited Steven Bradbury submit this declaration, DOJ got Breuer to do so. After Breuer submitted a statement arguing that release of Cheney's interview will present some new disincentive for high level White House officials in the future to cooperate that thirty years of routine release don't already present, CREW questioned what basis Breuer had to make that claim.

The only experience plaintiff is aware of Mr. Breuer having with law enforcement investigations involving the White House is his tenure as special counsel to President Clinton during the

Independent Counsel's "Whitewater" investigation. Mr. Breuer "appeared before the grand jury . . . and invoked Executive Privilege," a claim that was rejected by Chief Judge Johnson and that the Independent Counsel described as "interposed to prevent the grand jury from gathering relevant information."

In response, DOJ played up Breuer's experience relevant to this issue.

Mr. Breuer's experience in criminal law and government investigations is, in fact, extensive. Prior to his appointment as Assistant Attorney General for the Criminal Division, Mr. Breuer served as an Assistant District Attorney in Manhattan, a senior legal official in the Clinton Administration, and the Co-Chair of Covington & Burling's White Collar Defense and Investigations practice group.

What they didn't say, though, is that Breuer represented someone involved **in this very case**.

What they didn't say is that Breuer represented someone whose involvement in this matter may be related to precisely those things being hidden by DOJ's refusal to release the interview.

**Lanny Breuer represented one of the people at CIA involved in responding to Dick Cheney's inquiries**

Breuer, as his financial disclosure reveals, has provided John Kiriakou at least \$5,000 of legal services. Now, Kiriakou is best known for going on ABC in 2007—shortly after the destruction of the torture tapes was first revealed—and claiming Abu Zubaydah was waterboarded just once, for 30, 35 seconds. A claim that, as readers of this site know well, turned out to be totally false.

But Kiriakou was also closely involved in the

CIA Leak case. He was the one who, on June 10, 2003, was trying to come up with some answers about Joe Wilson for Vice President Cheney. He's the author of the email that explains,

The VP apparently heard the below story and had questions on it. The DDCI needs a response before his noon meeting tomorrow (Wednesday [June 11]) with the VP, so if you could get back to me by 1000 or 1100 tomorrow, I'd appreciate it. Thanks a million.

Story: In February 2002, CIA received an initial report of a shipment of uranium from Niger to Chad [sic]. Former Ambassador to Cameroon [sic] Joe Wilson (an old friend of the Agency and former Charge d'Affaires in Baghdad) was supposedly sent by CIA to Niger to investigate the story. He did so, and he concluded that there was no truth to it. Wilson said that he was debriefed by a CIA case officer who flew in (to where is unclear) [redacted].

VP Questions: Is this story true? Do we have a chronological account of the above events? What is the nature of Wilson's relationship with CIA? What exactly did Wilson report to us? Was this in a reporting cable [redacted] (if it was, can somebody send me a copy of it? Will you also send me a copy of the intel? [redacted] Didn't the Brits come out with a similar report detailing a Niger-Iraq uranium connection? [redacted]

And that's relevant because two of the things DOJ is trying to protect in Cheney's interview pertain to Cheney's conversations with the CIA—precisely what Kiriakou was personally involved in.

Vice President's discussion of the substance of a conversation he had with

the Director of the CIA concerning the decision to send Ambassador Wilson on a fact-finding mission to Niger in 2002. (Page 3, lines 15-17, 21-28)

Vice President's discussion of his requests for information from the CIA relating to reported efforts by Iraqi officials to purchase uranium from Niger. (Page 6, lines 30-33, 39-40)

Indeed, Cheney's conversation with Tenet is one of just two things in the interview DOJ is trying to hide that was not otherwise released in some form at the Libby trial (the other being a conversation Cheney had with Condi Rice). And we know that Kiriakou was gathering evidence for Tenet's Deputy, John McLaughlin, on precisely this issue, around the same time that—Libby claimed—Tenet told Cheney about Plame's identity.

**Lanny Breuer's ethics letter limits whether he can participate in issues related to people he represented**

Now, I'm not sure whether and to what extent that at-least \$5,000 of legal services involved helping to explain the context of Kiriakou's e-mail about collecting information for Cheney. But I do know that Breuer has a letter agreeing that he would not participate in any matter in which a former client of his is a party for one year after he last provided services to that client.

For a period of one year after his resignation from the law firm of Covington & Burling, LLP, he also will not participate personally and substantially in any particular matter involving specific parties in which that law firm is a party or represents a party, unless he is first authorized to participate pursuant to 5 C.P.R. § 2635.502(d). In addition, he will not participate personally and substantially

in any particular matter involving specific parties in which a former client of his is a party or represents a party for a period of one year after he last provided service to that client, unless he is first authorized to participate pursuant to 5 C.F.R. § 2635.502(d).

Now, so long as Breuer's relationship with Kiriakou ended at least a year ago, so long as Covington & Burling is not still representing Kiriakou, this letter should not be a problem at all (yes, I'm working on finding out when C&B ended their relationship with Kiriakou).

But as a matter of common legal ethics, shouldn't Breuer at least reveal to the Court that he represented someone who was personally involved in precisely the matters DOJ is trying to hide?

There was a fair amount of back-and-forth in court filings about why Lanny Breuer was the one guy at DOJ best qualified to make the Jon Stewart defense: Whitewater, Assistant DA, Covington & Burling's White Collar Defense practice. Somehow, though, DOJ forgot to mention Breuer's most direct qualification for assessing whether the exposure of Cheney's interview would embarrass him: representing one of the guys who was personally involved in one of the matters DOJ is trying to hide, Cheney's discussions with the CIA about Wilson.

You'd think DOJ maybe could have mentioned that.