

1 not there are potentially executive privileges out
2 there that may limit any kind of questioning of
3 himself, so --

4 THE COURT: Don't you waive executive
5 privilege when you put in an affidavit? I mean, I
6 think you've made this choice. Did you already make
7 him a witness.
use ?

8 MR. DELORME: Your Honor, I'm not talking
9 about the issue as it is, but that if there should be a
10 question as far as policy or otherwise, Washington D.C.,
11 gets an opportunity to make sure we have motions in
12 place to ensure that the US Attorney is not there
13 testifying as the Department of Justice on any kind of
14 policy, but potentially only limited to the fact of his
15 recusal in this matter.
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16 THE COURT: Well, he can only be
17 cross-examined on the facts on his affidavit. I mean,
18 they can't go beyond that.

19 Mr. Cates, do you have a position?

20 MR. CATES: I agree with the Court, Your
21 Honor, that once they make him a fact witness, he's a
22 fact witness.

23 I do agree with Mr. Delorme; they never said
24 they wouldn't put him up as a witness. They're asking
25 for more time, and I wouldn't object to giving them