

EXHIBIT A

RESPONSE TO THE FALSE CLAIM THAT EXECUTIVE PRIVILEGE WAS NOT INVOKED BY PRESIDENT TRUMP

I was counsel to Stephen Bannon throughout the dealings with the January 6 Committee. I read the Government's Sentencing memo and it is false in a number of aspects:

- 1. With respect to the issue of whether President Trump invoked Executive Privilege with respect to Mr. Bannon's Subpoena, he clearly did and I told Mr. Bannon that he did. Simply stated, Justin Clark is either not telling the truth or his recollection is very faulty. My first communication with Justin Clark was by telephone. I called him after being provided with his phone number by other lawyers who had represented President Trump in the past. Since my client Stephen Bannon had been a White House advisor and had had communications with President Trump, it was necessary to ascertain what President Trump's position was with respect to Executive Privilege and communications with the President.**
- 2. This was not Mr. Bannon's first subpoena during the Trump Administration. It was his Fifth. Mr. Bannon had previous experience with the Mueller Commission, the Senate Intelligence Committee and twice with the House Intelligence Committee chaired by Representative Adam Schiff, who was also on the January 6 Committee. So, it is reasonable to deduce that the January 6 Committee was well aware that Mr. Bannon would testify and produce documents once the Executive Privilege issues were resolved.**
- 3. Stephen Bannon, on the four previous occasions involving Executive Privilege, asked those respective committee's to either reach an accommodation with President Trump regarding executive privilege or seek an order from a District Court Judge in the District of Columbia respecting what communications or documents were covered by Executive Privilege or were not covered. Mr. Bannon, through me, stated in every single communication I had with Chairman Thompson that he would testify and produce documents once either of those two options were met.**
- 4. In each of the prior four instances, the committee in question reached out to counsel for President Trump and reached an accommodation. Following that, in each of the four occasions, Stephen Bannon testified and provided documents. There is no pattern of contumacious conduct here- quite the opposite. The January 6 Committee through Rep. Adam Schiff was well aware of this.**
- 5. In my initial phone call with Justin Clark, Mr. Clark stated that President Trump was invoking executive privilege and that he (Justin Clark) would be sending me a letter to that effect. It is true that at no time did Justin Clark and I discuss any particular document or oral communication. There was no need to at that time because presumptively executive privilege covers whatever the President claims it**

covers until such time as a District Court Judge decides to the contrary. Additionally, I was aware and informed Mr. Bannon, that the Office Of Legal Counsel had an opinion, binding upon the Executive Branch of Government, that stated that where, as here, the Committee had a rule that prevented the President's counsel from attending the deposition to protect the Executive Privilege, that the subpoena in question was null and void and incapable of being enforced either civilly or criminally.

6. Since I was aware Executive Privilege was invoked, which by way of additional proof, President Trump himself confirmed in writing on July 9, 2022, attached to this memo, in a letter to Mr. Bannon addressed to me stating: "When you first received the Subpoena to testify and provide documents, I invoked Executive Privilege", I asked the January 6 Committee to reach an accommodation with President Trump or obtain a Court Order. This was the exact procedure followed four previous times which allowed Mr. Bannon to provide documents and give testimony.
7. In every communication that I had with the January 6 Committee, I pointed out that Mr. Bannon was not being contumacious but was simply asking the Committee to do what every other Committee had done and reach an accommodation with President Trump as to what he was claiming Executive Privilege for, or in the alternative to seek Court intervention and an order deciding the issue.
8. This was clearly the correct procedure to follow. I was aware of Justin Clark's legal experience, and it was clear to me that he did not have a firm grasp of Executive Privilege. The privilege belongs to President Trump. Mr. Bannon had no authority to waive whatever President Trump declared to be covered by Executive Privilege. President Trump's determination of privilege was presumptively correct, until a Court determined that it was not. I told the January 6 Committee that Mr. Bannon was a bystander here and that the dispute, if there was one about what Executive Privilege covered, was between the Committee and the President. Mr. Bannon said he would abide by whatever accommodation was reached or any Court ruling that was issued. I did that on his behalf in every communication with the Committee.
9. In almost every response I received from the Committee, Chairman Thompson stated that President Trump had not invoked Executive Privilege formally or informally to the Committee. Since I knew that Executive Privilege had been invoked and because I was tired of hearing the same lame argument from Chairman Thompson, I asked Justin Clark to end this silly dispute by sending an email directly to the Committee to stop this frivolous claim. Justin Clark never refused to send such an email, he simply never did. Failing to perform a task is not the same as refusing to perform that task.
10. There has been discussion by the Government, through claims apparently made by Justin Clark, that on behalf of Mr. Bannon, I was advised that that the President did not think that Mr. Bannon had immunity from testifying. That was simply a

total irrelevancy, since neither I nor Mr. Bannon had ever claimed that he had immunity. That was not the legal reason why Mr. Bannon did not have to testify.

- 11. In connection with representing Mr. Bannon with respect to this Subpoena, I reviewed all of the relevant decisions of the Office of Legal Counsel (“OLC”) that involved congressional subpoenas and the issue of Executive Privilege. I explained to Mr. Bannon that the OLC was a part of the Justice Department that advised the Attorney General and the President of the United States on issues of importance to both the Justice Department and the President. I informed Mr. Bannon that OLC would sometimes draft formal opinions on legal matters and that those opinions, while not binding upon the courts, were binding on the Executive Department. I explained that the decisions of the OLC would be binding upon the United States Attorney’s Office since it was part of the Executive Branch of Government.**
- 12. I told Mr. Bannon that the January 6 Committee had a procedural rule in place that would not allow counsel for the President, as the privilege holder, to attend the deposition of Mr. Bannon. The result would be that the privilege holder (the President) could not protect his Executive Privilege. I informed Mr. Bannon that OLC had considered this same situation and had issued an opinion binding upon the Executive Branch. I informed Mr. Bannon that the opinion of OLC concluded that where, as here, the committee in question had a rule that prevented the attendance of the privilege holder’s counsel, the subpoena issued under such circumstances was null and void. Specifically, the subpoena was in the words of OLC, illegal, unlawful, unconstitutional and incapable of being enforced either civilly or criminally.**
- 13. I informed Mr. Bannon that in the opinion of OLC, the subpoena I accepted on his behalf was unenforceable and therefore he did not have to appear or provide documents at all whether covered by Executive Privilege or not.**
- 14. At no time has Mr. Bannon been contumacious. He was always willing to testify and provide documents once the Committee reached the same type of accommodation, that four previous committees reached with President Trump or if they could not reach an accommodation, Mr. Bannon asked that they obtain a court ruling.**
- 15. It was clear from the very beginning of this event that the Committee never really wanted Mr. Bannon’s testimony or documents because if they did, they would have followed the same route as the previous four committees. If they wanted Bannon’s testimony and documents, even if they refused to follow the path of the other Committees, they would have chosen to proceed by civil contempt. The path they chose of criminal contempt, makes it clear that their real purpose was to try and make an example of Mr. Bannon. They thought that if they could bring Mr. Bannon to his knees, every other witness would cower and capitulate. They misjudged Mr. Bannon.**

Dated: October 19, 2022


Robert J. Costello



DONALD J. TRUMP

July 9, 2022

Stephen K. Bannon
c/o Robert J. Costello, Esquire
Davidoff Hutcher & Citron LLP
605 Third Avenue
New York, New York 10158

Dear Steve,

I write about the Subpoena that you received in September 2021 from the illegally constituted Unselect Committee, the same group of people who created the Russia Russia scam, Impeachment hoax #1, Impeachment hoax #2, the Mueller Witch-Hunt (which ended in no "Collusion"), and other fake and never-ending yarns and tales.

When you first received the Subpoena to testify and provide documents, I invoked Executive Privilege. However, I watched how unfairly you and others have been treated, having to spend vast amounts of money on legal fees, and all of the trauma you must be going through for the love of your Country, and out of respect for the Office of the President.

Therefore, if you reach an agreement on a time and place for your testimony, I will waive Executive Privilege for you, which allows for you to go in and testify truthfully and fairly, as per the request of the Unselect Committee of political Thugs and Hacks, who have allowed no Due Process, no Cross-Examination, and no real Republican members or witnesses to be present or interviewed. It is a partisan Kangaroo Court.

Why should these evil, sinister, and unpatriotic people be allowed to hurt and destroy the lives of so many, and cause such great harm to our Country?

It has been, from the time I came down the escalator at Trump Tower, a political hit job against the overwhelming majority of Americans who support the concept and policy of Making America Great Again and putting America First.

Good luck in all of your future endeavors.

Sincerely,

A handwritten signature in black ink, appearing to be "Donald Trump", written in a cursive style.