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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * *)	
UNITED STATES OF AMERICA,)	Criminal Action
)	No. 21-00670
Plaintiff,)	
)	
vs.)	AFTERNOON SESSION
)	
STEPHEN K. BANNON,)	Washington, D.C.
)	July 20, 2022
Defendant.)	1:21 p.m.
)	
* * * * *)	

TRANSCRIPT OF JURY TRIAL - DAY 3
BEFORE THE HONORABLE CARL J. NICHOLS,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	AMANDA R. VAUGHN, ESQ. MOLLY G. GASTON, ESQ. UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF COLUMBIA 555 Fourth Street, Northwest Eleventh Floor Washington, D.C. 20530
FOR THE DEFENDANT:	MATTHEW E. CORCORAN, ESQ. RIANE A. WHITE, ESQ. SILVERMAN, THOMPSON, SLUTKIN, WHITE 400 East Pratt Street Suite 900 Baltimore, Maryland 21202
	DAVID I. SCHOEN, ESQ. LAW OFFICES OF DAVID I. SCHOEN 2800 Zelda Road Suite 100-6 Montgomery, Alabama 36106

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REPORTED BY: LISA EDWARDS, RDR, CRR
Official Court Reporter
United States District Court for the
District of Columbia
333 Constitution Avenue, Northwest
Room 6706
Washington, D.C. 20001
(202) 354-3269

I N D E X

	<u>Direct</u>	<u>Cross</u>	<u>Red.</u>
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WITNESSES FOR THE GOVERNMENT:

Kristin Amerling		755	817
Stephen Hart	839	858	870

EXHIBITS RECEIVED IN EVIDENCEPAGE

Government's Exhibit No. 10			846
Government's Exhibit No. 11-A			849
Government's Exhibit No. 11-B			851
Defendant's Exhibit No. 9-B			757
Defendant's Exhibit No. 30			810
Defendant's Exhibit No. 31			813
Defendant's Exhibit No. 32			816
Defendant's Exhibit No. 39			859
Defendant's Exhibit No. 40			862

1 THE COURTROOM DEPUTY: Your Honor, we're now back
2 on the record.

3 THE COURT: Thank you, Ms. Lesley.

4 Before we bring the jury back in, very briefly,
5 the point that was raised by Mr. Schoen before the break:
6 Last week, in addressing the question of whether and to what
7 extent potential violations by the Committee of House Rules
8 would be relevant in this case, I largely excluded evidence
9 relating to those questions for two different reasons. The
10 first was that Mr. Bannon waived such arguments. And the
11 second was that those questions presented legal issues
12 typically as to which certainly on the question of the
13 interpretation of the House Rule I was required to defer to
14 the House's view of its own rules because to do otherwise
15 would leave it open -- would raise a separation-of-powers
16 concern.

17 Mr. Schoen is very correct that as to that last
18 question, the second of my alternative holdings, I did note
19 that it could potentially be an issue for the jury about
20 whether a clear House Rule had as a matter of fact been
21 complied with; in other words, a mixed question of fact and
22 law, and that a defense could be presented to the jury or
23 would be a jury question about whether compliance with the
24 House Rule had occurred.

25 I certainly had understood Mr. Bannon to have

1 waived the question that Mr. Corcoran was attempting to ask
2 questions about. And that is whether the Committee had
3 acted in compliance with Paragraph 10 of the relevant
4 regulation.

5 But I suppose it is possible that Mr. Bannon could
6 introduce evidence that he didn't waive that argument. And
7 it's at least possible that, when instructed by me, the jury
8 could conclude that that rule was violated based on the
9 facts -- I'm just saying hypothetically, because I do
10 recognize that the House has taken a position about what the
11 rule means and the regulation and whether it was complied
12 with here.

13 So for just the -- just to be very, very safe that
14 we don't get to the end of this case and have a question
15 that could be relevant not be answered, Mr. Corcoran, you
16 can ask Ms. Amerling whether the Committee provided
17 Mr. Bannon with the materials described in Paragraph 10 of
18 the regulation that accompanied the subpoena.

19 MR. CORCORAN: 11. Paragraph 11, your Honor.

20 THE COURT: I apologize. Paragraph 11. Yes.

21 MR. CORCORAN: Thank you.

22 THE COURT: You can ask her whether that
23 information was provided to Mr. Bannon.

24 Mr. Vaughn?

25 MS. VAUGHN: Your Honor, will the Defendant be

1 required to make a proffer before he's able to argue about
2 that? Because --

3 THE COURT: This is just one question right now,
4 just to make sure that Ms. Amerling before we excuse her is
5 asked that question. I'm not -- this is not a holding that
6 this argument is going to the jury, that there's going to be
7 a defense along these lines presented.

8 The two reasons that I excluded this evidence, I
9 think, both very likely apply here. I did leave open this
10 possibility, as Mr. Schoen correctly points out, at least as
11 to the second argument. As I said, I think it's very likely
12 that this argument was never presented to the Committee and
13 therefore it would have fit within my argument about waiver.
14 But I can't be 100 percent certain about that because we
15 haven't done the complete trial.

16 So for that reason, I'm going to allow this
17 question and this question only on this topic and then we
18 can move on.

19 MS. VAUGHN: Thank you, your Honor.

20 THE COURT: Ms. Lesley, could you bring in the
21 jury, please.

22 (Whereupon, the jury entered the courtroom at 1:25
23 p.m. and the following proceedings were had:)

24 THE COURTROOM DEPUTY: We are now back on the
25 record.

1 THE COURT: Welcome back, ladies and gentlemen of
2 the jury.

3 And welcome back, Ms. Amerling.

4 Mr. Corcoran.

5 MR. CORCORAN: Thank you, your Honor.

6 Your Honor, may I approach the witness?

7 THE COURT: Yes.

8 (KRISTIN AMERLING, GOVERNMENT WITNESS, PREVIOUSLY SWORN.)

9 CONTINUED CROSS-EXAMINATION

10 BY MR. CORCORAN:

11 Q. I'm going to hand you what's been marked as Defendant's
12 Exhibit 9-B for identification purposes.

13 MR. CORCORAN: We would like to publish this to
14 the -- just not the jury, please.

15 THE COURTROOM DEPUTY: It's up.

16 BY MR. CORCORAN:

17 Q. Ms. Amerling, is Defense Exhibit 9-B the regulations for
18 use of deposition authority that we spoke briefly about
19 earlier this afternoon?

20 A. Yes.

21 Q. If you could read the highlighted paragraph, Paragraph
22 11, in Defendant's Exhibit 9-B.

23 A. A witness shall not be required to testify unless the
24 witness has been provided with a copy of Section 3-B of
25 House Resolution 8, 117th Congress and these regulations.

1 Q. To your knowledge, was Steve Bannon ever provided with
2 Section B of H.Res. 8?

3 A. To my knowledge, that section was available at the time
4 of his deposition to be presented to him by the attorney who
5 was preparing to depose him.

6 Q. I understand.

7 But my question is slightly different. And that
8 is: To your knowledge, was Steve Bannon ever provided, ever
9 handed or mailed or in any way given, Section 3-B that's
10 referenced in this Paragraph 11?

11 A. Since Mr. Bannon refused to appear for his deposition,
12 he was not provided a copy of that paragraph on that day.

13 No.

14 Q. Thank you.

15 Could you take the pen and just write "Steve
16 Bannon was not provided with" --

17 MS. VAUGHN: Objection, your Honor.

18 BY MR. CORCORAN:

19 Q. -- "Paragraph 3-B on Exhibit 9-B"?

20 THE COURT: Sustained.

21 BY MR. CORCORAN:

22 Q. Thank you. I'll take that back.

23 A. (Tenders document to counsel.)

24 MR. CORCORAN: Your Honor, we'd move Exhibit 9-B
25 into evidence.

1 MS. VAUGHN: No objection.

2 THE COURT: Defense Exhibit 9-B is admitted.

3 (Whereupon, Defendant's Exhibit No. 9-B was
4 entered into evidence.)

5 BY MR. CORCORAN:

6 Q. Okay. Ms. Amerling, you testified earlier that you've
7 worked on dozens of subpoenas for the Select Committee.

8 Correct?

9 A. That's correct.

10 Q. And in many of those cases, you were involved in
11 negotiations with the lawyers for the subpoena recipients.

12 Correct?

13 A. Generally, the negotiations are conducted by our chief
14 investigative counsel or other counsels that he supervises.

15 Q. I understand generally.

16 But have you ever engaged in negotiations with,
17 apart from Bob Costello, any other lawyer for a subpoena
18 recipient?

19 A. I did not engage in a negotiation with Mr. Costello,
20 sir.

21 Q. I'm asking a slightly different question, which is: Did
22 you ever engage in negotiations with any lawyer for any
23 subpoena recipient of the Select Committee?

24 A. It is possible. I'm trying to think with the way our
25 staff is structured. We have a chief investigative counsel

1 who manages the day-to-day investigative work and the
2 investigative counsels that focus on different subject
3 matters. And generally, they are the attorneys that
4 negotiate with the attorneys for the recipients of
5 subpoenas. So it's possible. But generally, that's not our
6 practice.

7 Q. Now, when you say "our practice," do you mean your
8 personal practice?

9 A. The way that the staff manages the tasks.

10 Q. My question is really just going to focus on what you
11 yourself do. And so my question is: Have you ever
12 negotiated with a lawyer for a subpoena recipient on behalf
13 of the Select Committee over the issue of the date of an
14 appearance?

15 A. It's possible. I've participated in some discussions in
16 our recent hearings about appearance at the hearings. Some
17 of those witnesses have been under subpoena. I don't know
18 that we were talking about the date. But generally, the
19 conversations about document subpoenas and deposition
20 subpoenas and compliance are managed by the attorneys that
21 the chief investigative counsel supervises.

22 Q. And I'm focusing on the dozens and dozens of subpoenas
23 that you said that you've worked on for the Committee. My
24 question is: You specifically, not anyone else, but you,
25 have you ever negotiated with a lawyer for a subpoena

1 recipient about the topics that would be covered at the
2 deposition?

3 A. Our staff has and I have advised on that process. If
4 you're talking about direct conversations with attorneys
5 generally, that's not my role.

6 Q. Again, you used the word "conversations." I would
7 broaden that to include any communications with a lawyer for
8 a subpoena recipient. Have you been involved in
9 negotiations over the topics to be covered in a deposition
10 with any lawyer for a subpoena recipient?

11 A. In the sense of overseeing work that others might be
12 doing, I've been involved with discussions about the content
13 of depositions and the timing of when individuals may come
14 in.

15 Q. And you're aware that in many cases the recipients of
16 subpoenas appear for deposition weeks after the date on the
17 subpoena. Correct?

18 A. I'm aware, sir, that when witnesses are cooperating with
19 the Committee and indicate that they are willing to provide
20 testimony, it's not unusual to have some back-and-forth
21 about the dates when they will appear.

22 Q. My question is not about the back-and-forth.

23 My question is: It's not uncommon, is it, for a
24 person who gets a subpoena from the Select Committee to
25 appear for deposition many weeks after the date in the

1 subpoena?

2 A. With respect to individuals who are indicating that they
3 want to cooperate and who reach out to the Committee and say
4 that they will appear, there is often a dialogue. It's
5 unusual for a witness to just outright say they will not
6 come in.

7 Q. And you testified on direct that you've worked for about
8 20 years on Capitol Hill. Is that accurate?

9 A. That's correct.

10 Q. For much of that time, you've been involved in oversight
11 work where you're dealing with subpoenas. Is that accurate?

12 A. That's correct.

13 Q. How many times over the past 20 years have you been a
14 witness in a criminal trial involving contempt of Congress?

15 A. Well, sir, it's very unusual for witnesses who receive a
16 subpoena to say that they will outright not comply. So
17 there haven't been occasions that I've been involved in to
18 be a witness in a criminal contempt proceeding.

19 Q. If I understand your answer, in the past 20 years, this
20 is the first time that you've been a witness in a criminal
21 case involving contempt of Congress. Is that correct?

22 A. That's correct.

23 Q. Okay.

24 MR. CORCORAN: If we could look at Government's
25 Exhibit No. 4, which is in evidence.

1 BY MR. CORCORAN:

2 Q. Now, this is the letter that you testified you received
3 via email from Bob Costello, who is the lawyer for Steve
4 Bannon. Correct?

5 A. That's correct.

6 Q. At the bottom of Government's Exhibit No. 4, the first
7 page, Mr. Costello is communicating an objection to the
8 subpoena. Correct?

9 A. He's articulating a perspective on a legal argument he's
10 making about the subpoena.

11 Q. And on the next page, US-00419, Mr. Costello makes clear
12 to the reader that Steve Bannon is unable to respond to the
13 request for documents and testimony because of this
14 objection. Is that accurate?

15 A. That's the position taken in this letter. Yes, sir.

16 Q. And Mr. Costello also in the next paragraph indicates
17 that Steve Bannon would comply with the direction of the
18 courts if the issue was resolved civilly, if the privilege
19 issue was resolved by a judge in a civil action. Is that
20 what's being communicated by Mr. Costello?

21 A. I don't believe he used the word "civilly." But he
22 said: We'll comply with directions of the Court. Yes.

23 Q. The last part of your answer was yes?

24 A. Yes.

25 Q. Okay. You testified on direct about -- now, this

1 October 7th, 2021, date as I understand it is the date
2 that's in the subpoena as a date for documents. Correct?

3 A. That's the date that the subpoena required Mr. Bannon to
4 produce documents by. Yes.

5 Q. And you testified that in your view, he had to produce
6 the documents by 10:00 a.m. that day on October 7th. Is
7 that accurate?

8 A. It's accurate that the subpoena demanded that from him.
9 Yes.

10 Q. Are you suggesting that if Mr. Bannon provided documents
11 to the Committee after 10:00 a.m. on October 7th, 2021, he
12 would be in contempt of Congress?

13 A. I didn't say that.

14 Q. Okay. Let's move to Government's Exhibit No. 5.

15 MR. CORCORAN: Before we do that, if we could just
16 have the last exhibit up for one more question. I'm sorry.

17 BY MR. CORCORAN:

18 Q. Again, this is Government's Exhibit No. -- for the
19 record, it's Government's Exhibit No. 4. My question is
20 this: Once you received this letter in which Mr. Costello
21 raised an objection, did you discuss the letter with
22 Chairman Thompson?

23 A. I would have. I don't recall the specific conversation.
24 But I would have shared this letter with the members of the
25 Committee.

1 Q. Which members of the Committee did you speak to about
2 this letter?

3 A. I couldn't tell you the specific members of the nine at
4 this point in time. But they all would have received a copy
5 of this letter.

6 MR. CORCORAN: Let's move to Exhibit No. 5 now.

7 And that's Government's Exhibit No. 5. I'm sorry,
8 your Honor.

9 BY MR. CORCORAN:

10 Q. Now, on direct examination, you said that you had a role
11 in putting together this letter. Is that correct?

12 A. That's correct.

13 Q. And this is essentially your response over the signature
14 of Chairman Thompson to Mr. Costello's letter that we just
15 saw raising an objection. Is that correct?

16 A. This is the response of the Select Committee to
17 Mr. Costello.

18 Q. Well, that's something I want to ask you about, because
19 the Select Committee is made up of people. Right?

20 A. That's correct.

21 Q. What person drafted this letter?

22 A. As I've described, letters generally are drafted by a
23 number of staff and reviewed by members; and then
24 Mr. Thompson is authorized to sign the letters on behalf of
25 the Committee.

1 Q. And can you identify for the jury any language in
2 Government's Exhibit No. 5 that Chairman Thompson wrote?

3 A. Chairman Thompson signed the letter, so he has his name
4 on the entire -- he's representing the Committee with
5 respect to the entire content of the letter.

6 Q. I understand what you're saying.

7 But what I'm asking you is: Can you identify any
8 words in this letter that were words written by Chairman
9 Thompson?

10 A. As I said, the process for drafting letters generally is
11 that staff counsels draft the letters and members review the
12 letters. So it's difficult for me to identify any one
13 sentence to address that question.

14 Q. How about one word?

15 A. No.

16 Q. If we look at the last page of that exhibit -- and
17 that's Government's Exhibit No. 5 -- in the very last
18 paragraph, the letter refers to the possibility of having a
19 civil action.

20 And what I want to ask you is: Is that a process
21 that is available to the Select Committee, to go to court in
22 the civil context rather than a criminal prosecution --

23 MS. VAUGHN: Objection. Relevance.

24 THE COURT: Ms. Vaughn, you have to wait for the
25 question to finish. Will you sit down for a second.

1 Can I hear the full question, Mr. Corcoran?

2 MR. CORCORAN: Yes, your Honor. I'll give a basis
3 to it.

4 BY MR. CORCORAN:

5 Q. On direct examination, you testified about a number of
6 different tools that are available to the Select Committee.
7 Do you remember that testimony?

8 A. I do.

9 Q. I'm asking you about whether the civil action that is
10 referenced in the second-to-the-last sentence of this
11 exhibit is one of the tools that the Select Committee can
12 use to try to obtain testimony rather than pursuing a
13 criminal prosecution.

14 A. It's an additional tool that could be used. Yes.

15 MR. CORCORAN: Let's move to Government's Exhibit
16 No. 6, please.

17 BY MR. CORCORAN:

18 Q. If we look at -- now, just to set the stage again, this
19 is an October 13, 2021, letter to Chairman Thompson of the
20 Committee from Robert Costello, who's the lawyer for
21 Mr. Bannon. Correct?

22 A. That's correct.

23 Q. And in the second-to-the-last paragraph, Mr. Costello
24 raises two separate issues for consideration. One is, he
25 suggests that the Committee try to reach agreement with

1 President Trump on the issue of executive privilege.

2 Correct?

3 A. That's what he wrote. Yes, sir.

4 Q. Did Chairman Thompson ever consider whether trying --
5 let me rephrase that.

6 Did Chairman Thompson ever consider trying to
7 reach an agreement with President Trump over the issue of
8 executive privilege?

9 MS. VAUGHN: Objection. Relevance.

10 THE COURT: Let's have a sidebar about this one.

11 (Whereupon, the following proceedings were had at
12 sidebar outside the presence of the jury:)

13 [REDACTED]

14 [REDACTED]

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16 [REDACTED]

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[REDACTED]

[REDACTED]

(Whereupon, the following proceedings were had in open court:)

THE COURTROOM DEPUTY: We're now back on the public record.

BY MR. CORCORAN:

Q. Mr. Amerling, we're talking about Government's Exhibit No. 6 and the second page of that document, which is a letter from Steve Bannon's lawyer, Bob Costello, to Chairman Thompson.

And my first question is: Did Chairman Thompson explore the option of trying to reach agreement with President Trump over the assertion of executive privilege?

A. If I may, I think what might be helpful in trying to understand Chairman Thompson's position is to look at his detailed reply to Mr. Bannon's counsel that he issued on October 15th.

Q. Well --

A. And I can read you relevant portions that I think address the question that you're raising.

Q. Well, if it does -- I mean, there's going to be redirect, so Government counsel can ask you what they want.

My question is: Did Chairman Thompson explore with President Trump trying to reach an agreement that would

1 allow Mr. Bannon to testify despite the assertion of
2 executive privilege? Did he --

3 A. Sir --

4 Q. -- explore that with President Trump?

5 A. Sir, the presumption of your question is that President
6 Trump had asserted executive privilege. And it gets to the
7 point I was making. I think if I read to you Mr. Thompson's
8 reply, it will help provide context.

9 Q. You can certainly provide all the context you want on
10 redirect. But I'm trying to phrase this as a yes-or-no
11 question.

12 Did Chairman Thompson communicate with President
13 Trump or his representative to try to explore getting rid of
14 executive privilege so Mr. Bannon could testify?

15 THE COURT: Ms. Vaughn, do you have an objection
16 to that question?

17 MS. VAUGHN: Your Honor, I think the witness --
18 first of all, I am objecting for the reasons we talked
19 about.

20 THE COURT: Understand. That's preserved.

21 MS. VAUGHN: I think the witness is trying to
22 answer the question to explain why there was no basis to do
23 that. But --

24 THE COURT: I think the witness, just to speed
25 things up, can give a "yes" or "no" answer with an

1 explanation.

2 THE WITNESS: Okay. Thank you, your Honor.

3 The answer is no. And the reason is that the
4 assumption in your question that the president had asserted
5 executive privilege is not accurate. The Select Committee
6 had not received formal or informal assertion of privilege
7 from the president.

8 In addition, there are a number of procedures laid
9 out in the instructions that accompanied the subpoena for
10 asserting various privileges. They include providing a
11 document-by-document description of where the recipient is
12 asserting a privilege and why.

13 Mr. Bannon had not done that by the time of his
14 October 13th letter.

15 And Chairman Thompson's reply on October 15th went
16 through those issues and also addressed the legal arguments
17 relating to executive privilege.

18 BY MR. CORCORAN:

19 Q. The second option -- it's a yes-or-no question: Did
20 Chairman Thompson explore trying to resolve the executive
21 privilege issue by bringing it to a civil court of law? Yes
22 or no.

23 A. If I may give an explanation if I answer yes or no.

24 THE COURT: I don't think the witness should be
25 restricted to saying yes or no to an answer that she needs

1 to explain.

2 MR. CORCORAN: I don't think so, either.

3 THE WITNESS: Okay. So no, because you are
4 assuming that there was an issue on the table to resolve.
5 There hadn't been an assertion, formal or informal, of
6 executive privilege.

7 BY MR. CORCORAN:

8 Q. I'm not assuming anything. I'm just asking you
9 questions.

10 And if we go back to Page 1 of this exhibit, it
11 states that Mr. Bannon had testified on three prior
12 occasions before a congressional committees and before the
13 Mueller investigation.

14 Did Chairman Thompson --

15 MS. VAUGHN: Objection, your Honor.

16 THE COURT: Ms. Vaughn, let's hear the question
17 first. Okay?

18 BY MR. CORCORAN:

19 Q. Did Chairman Thompson consider the willingness of
20 Mr. Bannon to testify before other congressional committees
21 when deciding how to move forward with this subpoena?

22 MS. VAUGHN: Objection. Relevance.

23 THE COURT: Let's do a very brief sidebar.

24 (Whereupon, the following proceedings were had at
25 sidebar outside the presence of the jury:)

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[REDACTED]

(Whereupon, the following proceedings were had in open court:)

THE COURTROOM DEPUTY: We are now back on the public record.

BY MR. CORCORAN:

Q. I want to ask as well about Government's Exhibit No. 7, which is in evidence, which is a letter from Chairman Thompson to Bob Costello, the lawyer for Steve Bannon. And this one is dated October 15, 2021.

1 My question to you is: Can you identify any word
2 on this three-page letter that Chairman Thompson actually
3 authored or wrote?

4 A. At this date, I can't recall the word-for-word editing
5 process that took place on this letter or any of them. But
6 that same general process that I described that we use for
7 drafting and review and signature of letters would have
8 applied here.

9 Q. You testified when the Government asked you about this
10 exhibit and specifically about the invocation of the
11 contempt procedures set forth in 2 USC, Sections 192 and
12 194, which are legal statutes, you testified that that
13 involves a vote by the full House of Congress on a
14 resolution recommending that Steve Bannon in contempt of
15 Congress be referred to the U.S. Attorney's Office. Is that
16 the vote that you're speaking about?

17 A. It's not a vote of the full Congress; it's the House of
18 Representatives. Yes. I was referring to that.

19 Q. Were you present on the floor of the House when that
20 vote occurred?

21 A. Yes, I was.

22 Q. And did you listen to the debate over that vote on the
23 contempt resolution?

24 MS. VAUGHN: Objection. Relevance.

25 THE COURT: You can answer yes or no.

1 THE WITNESS: I did.

2 BY MR. CORCORAN:

3 Q. Now, with regard to that vote, do you know how many
4 members of Congress voted against referring the matter to
5 the U.S. Attorney's Office?

6 MS. VAUGHN: Objection. Relevance.

7 THE COURT: Sustained.

8 BY MR. CORCORAN:

9 Q. Now, with regard to this letter and the second page,
10 US-000449, the very last paragraph says that if Mr. Bannon
11 believes that there are any additional issues relating to
12 his noncompliance with the subpoena that have not been
13 addressed, please submit them in writing to the Select
14 Committee by 6:00 p.m. EST on Monday, October 18, 2021.

15 My question is this: Who was the person who
16 extended that deadline to October 18th?

17 A. Extended what deadline?

18 Q. Extended the deadline for providing information to the
19 Committee.

20 A. There was no extension of a deadline, sir.

21 Q. Who came up with the date of October 18th, 2021, to
22 provide additional materials to the Committee?

23 A. Chairman Thompson sent Mr. Bannon a letter on October
24 15th when the Committee had decided to schedule a proceeding
25 to consider a criminal contempt resolution because that is a

1 very serious step to take with respect to anyone.

2 Somebody's potentially going to be -- risk criminal
3 liability if they're the subject of that resolution.

4 In light of the decision to proceed with a
5 Committee meeting to consider holding Mr. Bannon in
6 contempt, Chairman Thompson wrote on October 15th to make
7 clear that if there were any reasons or if there was any
8 information that Mr. Bannon could provide regarding his
9 misconduct for the Select Committee to consider that he
10 should provide it by the time noted in this letter.

11 That's not an extension of any deadlines; it's
12 setting a deadline.

13 Q. Okay. But if I understand your testimony, it was
14 Chairman Thompson who set the new deadline of October 18th.
15 Is that accurate?

16 A. There's no new deadline, sir. There's a deadline that
17 he set for providing information that might be -- might bear
18 on the Committee's consideration of Mr. Bannon's misconduct.
19 The misconduct is spelled out in this letter and others,
20 which is Mr. Bannon failed to provide a single document by
21 the deadline of October 7th, 2021. Mr. Bannon failed to
22 comply with the subpoena's requirement that he appear for a
23 deposition on October 14th, 2021.

24 Q. If I understand your answer, you're saying that it was
25 Chairman Thompson who picked this date of October 18 that

1 appears in this letter. Is that what you're saying?

2 A. Chairman Thompson, as with all these letters, is
3 speaking on behalf of the Committee as the chair. Yes. So
4 when this letter says that there's a three-day window for
5 providing any additional information, Chairman Thompson is
6 communicating that message on behalf of the Select
7 Committee.

8 Q. Which members of the Select Committee do you know
9 through your personal knowledge reviewed and approved this
10 letter?

11 MS. VAUGHN: Objection. Relevance.

12 THE COURT: Overruled.

13 THE WITNESS: I described to you, sir, the general
14 review process. I can't recall for each and every letter
15 all the different individuals who may have been involved.
16 But generally, staff drafts recommendations for members to
17 consider. The chair and others review staff
18 recommendations. And then ultimately the chair decides what
19 the content will be that he will approve with his signature.

20 BY MR. CORCORAN:

21 Q. I understand the general process. And you've used that
22 a lot in your answers.

23 But my question is: Do you have a specific memory
24 and firsthand information of any Select Committee member
25 approving this letter?

1 A. I have a memory that the chairman signed off. I do not
2 know all of his consultations and I don't have a specific
3 memory of the different individuals who were involved in
4 drafting.

5 Q. What is your memory of Chairman Thompson, to use your
6 words, signing off on this letter? Did you see him sign it?

7 A. I don't recall if I saw him sign this.

8 Q. I'm going to, if I can, move to Government's Exhibit No.
9 8. This is the second page, which is a letter from Robert
10 Costello, the lawyer for Mr. Bannon, to Representative
11 Thompson, the chairman of the Committee. And in this
12 letter, Mr. Costello is asking for an additional week.
13 Correct?

14 A. He is asking for an additional week to respond to the
15 chairman's October 15th letter.

16 Q. So you read this letter to be that Mr. Costello on
17 behalf of Steve Bannon is asking for an additional week to
18 draft the letter? Is that your testimony?

19 A. My understanding of this letter was that he was asking
20 for a week's delay to respond to the Committee's invitation
21 to provide information that would bear on consideration of
22 his misconduct.

23 The suggestion is in this letter from the phrasing
24 a one-week adjournment that they're referring to the
25 contempt meeting that the Committee was holding.

1 Q. So it's not a week to draft the letter. Correct?

2 A. It appeared from that letter he was requesting a week
3 delay in providing information to the Committee about
4 Mr. Bannon's misconduct.

5 Q. And the reason that Mr. Costello asked for one week, as
6 stated in this letter, is because of new information, a new
7 lawsuit that had been filed dealing with the issue of
8 executive privilege. Correct?

9 A. I disagree with the premise of your question, sir,
10 respectfully. It's not new information. There had been
11 extensive back-and-forth already between the Select
12 Committee and the Defendant's attorney about the issue of
13 executive privilege, and the Select Committee had made its
14 position clear.

15 Q. When I use the word "new information," I'm identifying
16 this in the letter. I'd be interested in your thoughts.
17 Mr. Costello says -- he describes the lawsuit. He says: We
18 have just been advised of the filing of a lawsuit in federal
19 court for the District of Columbia entitled *Donald J. Trump*
20 *v. Bennie Thompson* and then the case number. That lawsuit
21 was a civil lawsuit dealing with the issue of executive
22 privilege. Correct?

23 A. That's correct.

24 Q. Okay. And Mr. Costello says: In light of this late
25 filing, we respectfully request a one-week adjournment.

1 Right?

2 A. That's correct.

3 Q. But your position is that this is not a request based on
4 something new that's happened? Is that your testimony?

5 A. The position of the Select Committee was that, at this
6 time, there were two main issues here relating to executive
7 privilege that Mr. Bannon had not addressed in his
8 communications. One was the issue that the Select Committee
9 chair had repeatedly informed him of in the letters that the
10 Select Committee was seeking information that could not
11 possibly be reached by executive privilege: communications
12 with campaign advisors, members of Congress, other private
13 parties, communications relating to his podcast. Matters
14 that had nothing to do with any communication with the
15 former president or the potential invocation of presidential
16 executive privileges, number one.

17 And number two, the president had not formally or
18 informally invoked the privilege even if you accepted the
19 premise that executive privilege applied, which the Select
20 Committee had made clear that it does not. It hadn't been
21 invoked.

22 So those two issues had been the subject of
23 several letters, and the fact that there was a new lawsuit
24 raising executive privilege was not material.

25 Q. I understand what you've just testified.

1 But my question is this: You said that -- you
2 testified that Mr. Bannon was a private citizen and he has
3 enlisted a lawyer, Bob Costello, to help. My question is
4 this: Can you understand that a private citizen might want
5 a week to consider a newly filed lawsuit on the topic of
6 executive privilege?

7 MS. VAUGHN: Objection. Calls for speculation.

8 THE COURT: Sustained.

9 BY MR. CORCORAN:

10 Q. Now, the request for a one-week extension was rejected.
11 Correct?

12 A. That's correct.

13 Q. Okay. And Government's Exhibit No. 9, which is in
14 evidence, is a letter over the signature of Chairman
15 Thompson rejecting that one-week extension. Correct?

16 A. That's correct.

17 Q. Did you draft this letter?

18 A. My answer is the same as the answer I've given on the
19 other letters: I would have been involved and the process
20 would have been the same that I described.

21 Q. This is a one-paragraph letter. How many Committee
22 staffers or members of the Select Committee were involved
23 with drafting this one paragraph?

24 A. I don't recall, sir.

25 Q. The second part of Exhibit 9, which is US-000457 and

1 000458, is another letter, the same date, from -- over the
2 signature of Chairman Thompson addressed to Bob Costello,
3 Steve Bannon's lawyer.

4 In the first line of that letter, Representative
5 Thompson states: I write yet again to urge your client,
6 Stephen K. Bannon, to change course and comply with the
7 September 23, 2021, subpoena. Correct?

8 A. That's correct.

9 Q. So even on the 19th of October, is it fair to say that
10 Chairman Thompson was open to receiving documents and
11 testimony from Mr. Bannon in connection with the subpoena?

12 A. The Select Committee is always open to receiving
13 documents and testimony relevant to the scope of its
14 investigation. So yes.

15 Q. Now, what date was the House vote on the contempt
16 resolution that we discussed?

17 A. The full House of Representatives voted on the contempt
18 resolution on October 21st, 2021.

19 Q. So two days after this letter. Correct?

20 A. That's correct.

21 Q. What date did the Committee vote to send that resolution
22 to the House?

23 A. The Committee approved the resolution recommending that
24 Mr. Bannon be held in criminal contempt on October 19th,
25 2021.

1 Q. So the very date that -- well, the day after Mr. Bannon
2 through his lawyer, Bob Costello, asked for a one-week
3 extension, the Select Committee voted to refer a resolution
4 finding him in criminal contempt to the full House. Is that
5 accurate?

6 A. That's correct.

7 Q. And the actual document, the Committee report on the
8 resolution, was about a 40-page document. Correct?

9 A. I'll take your word for that, sir. That sounds right.

10 MR. CORCORAN: Well, let me bring up just for the
11 witness's viewing and for identification purposes Defense
12 Exhibit 8. If we could go to Pages US-464 to 50 -- well,
13 start at US-464.

14 Since it's a long document, your Honor, may I
15 approach the witness?

16 THE COURT: You may, Mr. Corcoran.

17 MR. CORCORAN: Thank you.

18 BY MR. CORCORAN:

19 Q. (Tendering document to the witness) So I've handed you
20 what's been marked as Defendant's Exhibit No. 8 for
21 identification purposes. I just want you to scan through it
22 and see if it gives you the ability to answer the question:
23 How long was the Committee report that was sent to the full
24 House recommending contempt for Mr. Bannon?

25 A. The text of the report was 16 pages and then there were

1 appendices, including a copy of the letters, various letters
2 that we've been discussing today, among other items.

3 Q. So overall, it's roughly 40 pages with the text and the
4 exhibits?

5 A. When you add all the attachments, it's about 40 --

6 Q. Yes.

7 A. -- the text itself is about 15 and a half pages.

8 Q. And the 15 and a half pages, that's single-spaced.

9 Correct?

10 A. That's correct.

11 Q. And did you have a hand in drafting that report that was
12 sent to the full House recommending a vote on contempt for
13 Steve Bannon?

14 MS. VAUGHN: Objection. Relevance.

15 THE COURT: I'm going to allow this one.

16 THE WITNESS: The process for drafting that report
17 is similar to what I've described for letters. There were a
18 number of counsels involved with drafting and reviewing.
19 And members and the chair would have reviewed the draft.

20 BY MR. CORCORAN:

21 Q. My question was: Did you personally play a role in the
22 drafting of this 15-and-a-half-page, 16-page, single-spaced
23 report?

24 A. I did.

25 Q. Did you personally?

1 A. I did.

2 Q. You did?

3 A. Yes.

4 Q. When did you begin your drafting process?

5 MS. VAUGHN: Objection. Relevance.

6 THE COURT: Overruled.

7 THE WITNESS: I cannot recall specifically, sir.

8 I mean, it would have been a number of days before the

9 Committee proceeding.

10 BY MR. CORCORAN:

11 Q. You said the Committee proceeding was on October 21st,
12 2021?

13 A. This is when the full House voted on the resolution.

14 The Committee proceeding was on October 19, 2021.

15 Q. Thank you.

16 So at the Committee proceeding on October 19th,
17 2021, that report was already completed. Is that accurate?

18 A. Yes. The Committee has to post the report in advance of
19 its proceeding.

20 Q. And just to be clear, that's the report recommending
21 that the whole House find Steve Bannon in contempt of
22 Congress. Correct?

23 A. That's correct. Yes.

24 Q. How many days in advance of October 19th did you begin
25 drafting your portion of that report?

1 MS. VAUGHN: Objection. Relevance.

2 THE COURT: Overruled.

3 THE WITNESS: Sitting here today, I can't tell you
4 how many days specifically. It would have been a number of
5 days to prepare a report of that nature.

6 BY MR. CORCORAN:

7 Q. What's your best estimate? I understand it's a number
8 of days. But a number is a number. What's your best
9 estimate sitting here today as to when you started drafting
10 this 16-page single-spaced report?

11 A. My best estimate is sometime after October 14th because
12 October 14th is when Mr. Bannon defied the subpoena's demand
13 that he appear for his deposition. So it became clear at
14 that point that he had compounded his noncompliance with the
15 October 7th document production deadline at that point. And
16 that raised -- I'm talking about theoretically, because I
17 don't remember specifically, but that would have raised the
18 possibility that the Committee would need to consider
19 measures, including contempt.

20 Q. So if I understand what you just said, you don't think
21 you started drafting a resolution -- I'm sorry -- a report
22 recommending that Steve Bannon be held in contempt before
23 October 14th, which is the date on the subpoena for his
24 testimony. Is that what you're saying? You didn't start
25 before the 14th?

1 A. That's my best estimate, sir.

2 Q. But you can't be certain?

3 A. I don't know for sure sitting here today. No.

4 Q. Let me ask you, you mentioned that you've been on
5 Capitol Hill for 20 years. Most of that time you've worked
6 for Democratic members of Congress. Correct?

7 A. Well, to be precise, sir, I've worked for a number of
8 congressional committees. Committees are headed by chairs
9 who are in charge of the staff, the committees. So I have
10 worked for Republican chairs, Democratic chairs. I've
11 worked -- had direct reports to Democratic-leading members
12 of the Committee.

13 Q. If I understand your testimony, what you just said is
14 you've worked on committees where there have been
15 Republicans and Democratic members, but you've always worked
16 for the Democrats. Is that accurate?

17 A. What I'm describing is that in the House Committee
18 structure, the chairs are in charge of the Committee staffs.
19 And I've worked for several different committees. Some of
20 the time I've worked for the committees the chair was a
21 Republican; some of the time the chair was a Democrat.

22 I have reported directly throughout my career to
23 the leading Democrat on the body that I've been working for.

24 Q. That's really my question. For your entire career,
25 either you've worked for an individual Democratic member of

1 the House or the Senate, correct, or you've worked for the
2 staff under the leading Democratic member of the Committee?
3 Is that accurate?

4 A. That's correct.

5 Q. Okay. And you've also made personal donations to
6 Democratic candidates. Is that correct?

7 A. That's correct.

8 Q. And you've made a personal donation to the Democratic
9 Congressional Campaign Committee. Correct?

10 A. I take your word for it. That's -- I don't remember
11 that specifically. But I'm sure that's true.

12 Q. Now, when you were interviewed by the FBI on November
13 2nd, 2021, you told the FBI agent that you and the other
14 members of the staff were nonpartisan, didn't you?

15 A. That's correct.

16 Q. I want to ask you about what I understand to be a 17 --
17 you've known for 17 years one of the prosecutors in this
18 case. Correct?

19 A. One of the prosecutors and I overlapped on a
20 congressional Committee staff I think about 15 years ago,
21 10, 15 years ago.

22 Q. Which staff was that?

23 A. I believe it was the House Committee on Oversight, maybe
24 going over into the House Committee on Energy and Commerce
25 after that.

1 Q. And who was the chair of the committee at that time?

2 A. Chairman Henry Waxman.

3 Q. And he's a Democrat. Correct?

4 A. He is.

5 Q. Okay. And how many majority staff members were there on
6 the Committee at that time?

7 MS. VAUGHN: Objection. Relevance.

8 THE COURT: Sustained.

9 BY MR. CORCORAN:

10 Q. Well, point out the person -- point out the prosecutor
11 who you've known for -- did you say 15 or -- 15 years or
12 longer?

13 A. I've overlapped on the staff of Chairman Waxman with the
14 prosecutor who has blond hair with the black mask.

15 Q. Did you ever spend any time with the prosecutor,
16 Ms. Gaston, outside of the work environment?

17 A. It's hard to recall a time when our paths crossed.
18 However, we are in the same book group. But neither of us,
19 I believe, have attended at the same time for a number of
20 years now.

21 Q. So you're in a book club with the prosecutor in this
22 case?

23 A. We are.

24 Q. How long have you been in that book club?

25 A. I think I've been in the club for maybe five or -- I

1 don't remember exactly. Maybe five years. It could be
2 longer.

3 Q. And how often does your book club meet? Is it a monthly
4 meeting of the book club?

5 A. Usually once a month.

6 Q. And are there monthly emails that go out to Ms. Gaston
7 and the other book club members speaking about the books to
8 be read and when the meeting is going to take place?

9 A. Yes. There are scheduling emails that go out to the
10 group.

11 Q. And is it accurate to say that most of the members of
12 your book club work together as Democratic staff for one of
13 the committees?

14 A. The book club is made up of a variety of individuals.
15 The commonality is with most, I think most worked for Henry
16 Waxman at some point in their career.

17 Q. Okay. So most of the members of your book club who meet
18 monthly worked for a Democratic congressmen. Correct?

19 MS. VAUGHN: Objection, your Honor. Beyond the
20 relevant part of this.

21 THE COURT: I'm going to allow a little bit more.

22 BY MR. CORCORAN:

23 Q. I guess I'll repeat my question.

24 Most of the members of your book club that meets
25 on a monthly basis worked for a Democratic congressman at

1 some point in their career named Representative Henry
2 Waxman. Is that correct?

3 A. That's correct.

4 Q. Is it -- you read nonfiction?

5 A. You mean in my book group or are you asking personally?

6 Q. No. In your book group.

7 A. Generally, the book group reads fiction. I should say,
8 I have not attended for at least -- about a year, so I don't
9 know what they're reading right now.

10 Q. And the book club is something that you joined
11 voluntarily, people that you want to spend your time with
12 and discuss things. Correct?

13 MS. VAUGHN: Objection, your Honor. Where are we
14 going with this?

15 THE COURT: Sustained.

16 BY MR. CORCORAN:

17 Q. One last question about the book club that you and
18 Ms. Gaston are in. Do you ever discuss the political topics
19 of the day?

20 MS. VAUGHN: Objection, your Honor. We haven't
21 even established whether this relates to Ms. Gaston.

22 THE COURT: I'll allow it.

23 Overruled.

24 THE WITNESS: To the best of my recollection --
25 and I haven't been in the book group for a year -- the

1 conversations cover a whole variety of topics. We try to
2 start with the book, but then it goes from there. And given
3 the careers of the folks who were involved in the book
4 group, it's not unusual that we would talk about politics in
5 some way or another.

6 BY MR. CORCORAN:

7 Q. You testified earlier that the Committee is open to
8 Steve Bannon still providing documents and appearing for
9 testimony at a deposition. Is that your testimony?

10 A. My testimony is that we always welcome relevant
11 documents and testimony. So if he is interested in
12 providing information to the Committee, we would be
13 interested in exploring that further.

14 Q. And you communicated just last week with Bob Costello,
15 Steve Bannon's lawyer for the Committee issue, about the
16 production of documents this week and testimony at some date
17 in the future based on the subpoena that we've been talking
18 about. Correct?

19 MS. VAUGHN: Objection. Relevance. Could we have
20 a sidebar?

21 THE COURT: I agree. We need a sidebar.

22 (Whereupon, the following proceedings were had at
23 sidebar outside the presence of the jury:)

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1 THE COURT: We are back on the fully public
2 record.

3 As I told the parties on the husher, I'm going to
4 take a very brief recess to address the question that has
5 just been presented.

6 I think for efficiency's sake, Ms. Lesley, I'd
7 like the jury to stay as close as we can here. And we're
8 going to have a ten-minute recess. I'll come back, discuss
9 my views on the open record and then we can bring the jury
10 back in. Okay?

11 Thank you all.

12 And, Ms. Amerling, you may also leave the
13 courtroom if you would like.

14 THE WITNESS: Thank you.

15 (Whereupon, the jury exited the courtroom at 2:43
16 p.m. and the following proceedings were had:)

17 (Thereupon a recess was taken, after which the
18 following proceedings were had:)

19 THE COURTROOM DEPUTY: We are now on the record.

20 THE COURT: I am going to overrule the
21 Government's objection to the question or questions that
22 Mr. Corcoran intends to ask.

23 As everyone knows, I left open the question of
24 whether the most recent set of letters would go to the
25 limited question of whether either the dates in the subpoena

1 or the return dates were malleable in fact or whether
2 Mr. Bannon thought they were.

3 And it seems to me that the bar for relevance is
4 very low and that this letter in particular could be
5 relevant to that question.

6 So I will not prohibit Mr. Corcoran from asking
7 the witness questions about the exchange of letters.

8 The leash will be very tight. And I will consider
9 whatever -- will consider; I'm not saying I'm going to do
10 it -- whatever instruction the Government wants me to make
11 either now or when I instruct the jury.

12 MS. VAUGHN: Your Honor, we think that these
13 letters carry significant potential for confusion that the
14 jury would carry through the trial. So we think that two
15 instructions are required with the entry of this letter and
16 questions about it:

17 First, that the Defendant's belief that executive
18 privilege excused him from complying with the subpoena is
19 not a defense to contempt and that the question the jury
20 will be deciding is instead whether the Defendant's failure
21 to comply with the subpoena was deliberate and that his
22 reasoning is irrelevant.

23 And I think we could do something that's based off
24 the final instructions that the Court had proposed with
25 respect to that.

1 The second instruction that we think is important
2 to make sure that this jury decides this case not on the no
3 harm, no foul theory, but on the actual elements of the
4 offense, is that they be instructed that the fact of later
5 compliance or later efforts at compliance or the Committee's
6 request of later compliance does not by itself waive or
7 erase the prior failure to comply or contempt or something
8 along those lines.

9 THE COURT: Is the Government requesting that I
10 make these instructions now --

11 MS. VAUGHN: We think it's important now to --

12 THE COURT: -- or at deliberation time?

13 MS. VAUGHN: Both, your Honor, because
14 Mr. Corcoran's questions are clearly going to be aimed at
15 suggesting to this jury that -- I mean, Mr. Schoen said this
16 explicitly: We are allowed to show the jury that his belief
17 in executive privilege was valid. That's not a defense to
18 contempt.

19 And so then this jury is going to have these
20 improper notions in their head that executive privilege is a
21 defense, if he truly believed it, despite the Committee's
22 rejection and that the fact that he complied later somehow
23 shows the Committee wasn't -- he wasn't in default or
24 something.

25 They can't be allowed to proceed through the rest

1 of the trial with that incorrect notion of the law.

2 THE COURT: Thank you, Ms. Vaughn.

3 Mr. Schoen?

4 MR. SCHOEN: Yes, your Honor.

5 All that's happening here is the Government
6 doesn't like the way these letters go. The same instruction
7 the Court should give, respectfully, your Honor, about these
8 letters is the same instruction the Court gave to the
9 earlier letters. That is, they're not offered for the truth
10 of the assertion; they're offered for the notice.

11 We understand we can't -- based on the Court's
12 rulings we can't bring to the jury the straight defense that
13 the Defendant believed executive privilege excused him from
14 contempt.

15 This is the belief that executive privilege --
16 that the Committee would consider executive privilege as a
17 factor in extending the dates, and therefore these letters
18 confirm for Mr. Costello his belief. That's why I'm saying
19 these letters are relevant, your Honor, or one of the
20 reasons they're relevant. They confirm what happened here.

21 So President Trump sent the letter saying: I am
22 withdrawing privilege --

23 THE COURT: I get it. I get it.

24 MR. SCHOEN: I feel like I need to explain my
25 theory.

1 THE COURT: I understand the facts. I need the
2 punch line.

3 MR. SCHOEN: Well --

4 THE COURT: We're going to bring the jury in.

5 MR. SCHOEN: Thank you. Is my position clear on
6 the instructions, your Honor? We don't think --

7 THE COURT: Yes. Yes.

8 MR. SCHOEN: Thank you.

9 THE COURT: We can bring the witness in as well.

10 (Whereupon, the jury entered the courtroom at 3:00
11 p.m. and the following proceedings were had:)

12 (Thereupon, the witness entered the courtroom and
13 the following proceedings were had:)

14 THE COURT: Mr. Corcoran?

15 MR. CORCORAN: Thank you, your Honor.

16 THE COURT: Do you want to start again, and then
17 when I have a concrete question in mind I can address the
18 issues we just discussed?

19 MR. CORCORAN: Yes, your Honor.

20 BY MR. CORCORAN:

21 Q. Ma'am, I wanted to follow up on your testimony about
22 the -- about Chairman Thompson continuing to be open to
23 Steve Bannon's provision of documents if he has any that are
24 responsive to the subpoena and his appearance for deposition
25 by the Committee.

1 The first question I want to ask you is about
2 Defendant's Exhibit No. 30 for identification purposes. And
3 that is, are you aware that on July 9th of this year, July
4 9th of 2022, former President Donald J. Trump wrote to
5 Mr. Bannon and addressed the issue of the September 23,
6 2022, subpoena?

7 A. Yes.

8 Q. Have you read -- did you read this letter before today?

9 A. I did.

10 Q. I want to ask you just about a few points in the letter
11 and what is being communicated.

12 First, former President Trump writes --

13 MS. VAUGHN: Objection, your Honor. This letter
14 is not in evidence.

15 MR. CORCORAN: We'll move it into evidence at this
16 time, your Honor.

17 MS. VAUGHN: Same objection.

18 THE COURT: So, ladies and gentlemen of the jury,
19 I'm going to admit this letter and perhaps two others that
20 will be perhaps offered by the Defendant.

21 I'm admitting them not for the truth of the
22 matters asserted with them, but for the fact that they were
23 communicated, first of all, and they communicated the
24 parties' positions.

25 The other thing that I am instructing you today,

1 although I will give you much more detailed instructions
2 about, is I am limiting them -- I am admitting them for a
3 limited purpose. And that is going to the questions of
4 whether the date or dates by which Mr. Bannon had to comply
5 with the subpoena were fixed; and, second, whether
6 Mr. Bannon deliberately and intentionally failed to comply
7 with those dates.

8 You will perhaps hear additional discussion about
9 executive privilege. Mr. Bannon's belief that questions
10 around executive privilege excused him from complying with
11 the subpoena are irrelevant in this case.

12 In addition, as I will instruct you later, whether
13 or not Mr. Bannon in the future complies with the subpoena
14 is not relevant to whether he was in default in October
15 2021, as the Government argues of course here.

16 But with these limiting instructions, I do believe
17 this information is admissible again for two potential
18 purposes: One is, again, whether the dates that we've been
19 discussing today were in fact the dates; and, second,
20 Mr. Bannon's -- whether he deliberately and intentionally
21 defaulted with respect to those dates.

22 As I indicated in the opening statements, I will
23 be giving you more detailed instructions around some of
24 these terms. But I wanted you to understand the context in
25 which I am admitting these documents.

1 (Whereupon, Defendant's Exhibit No. 30 was entered
2 into evidence.)

3 THE COURT: Mr. Corcoran.

4 MR. CORCORAN: Thank you, your Honor.

5 BY MR. CORCORAN:

6 Q. Mr. Amerling, I just want to direct you to a few
7 different points in this letter, which is Defendant's
8 Exhibit 30 in evidence.

9 First, it's a letter from President Trump to
10 Stephen Bannon dated July 9, 2022. Correct?

11 A. That's correct.

12 Q. And in the first line, the former president is informing
13 Mr. Bannon that the subject of this letter is the subpoena
14 that he received in September 2021. Correct?

15 A. Yes.

16 Q. Moving to the second paragraph, the first line,
17 president -- former President Trump states in this letter:
18 When you first received the subpoena to testify and provide
19 documents, I invoked executive privilege. Correct?

20 A. That's what this letter says. Yes.

21 Q. And then in the third paragraph, President Trump states:
22 Therefore, if you reach an agreement on a time and place for
23 your testimony, I will waive executive privilege for you,
24 which allows for you to go in and testify truthfully and
25 fairly.

1 Is that correct?

2 A. That's what the letter says. Yes.

3 Q. So basically, the letter in terms of just the notice
4 that's being conveyed is a letter from former President
5 Trump that he will waive executive privilege if there's an
6 agreement -- well, if there's an agreement to testify and
7 produce documents with the Select Committee. Is that
8 accurate?

9 A. Well, the letter says if we reach an agreement on a time
10 and place for testimony. I don't see where there's a
11 reference to reaching an agreement on documents.

12 Q. Okay. So what's being conveyed is, if I can rephrase
13 it -- I just want to make sure that I'm speaking precisely
14 about the letter and what notice is provided -- this is
15 former President Trump expressing the idea that he would
16 waive privilege for Mr. Bannon to go in and testify before
17 the Select Committee under certain circumstances. Is that
18 accurate?

19 A. Yes. I think he described it as a conditional promise
20 of a waiver with respect to testimony.

21 Q. Thank you.

22 MR. CORCORAN: If we can move to Defendant's
23 Exhibit 31 for identification purposes.

24 THE COURT REPORTER: Judge, I'm sorry. Has
25 Defendant's Exhibit No. 31 been admitted?

1 THE COURT: No. Only 30 has been admitted so far.

2 30 was admitted, again, ladies and gentlemen of
3 the jury, with the instructions that I gave you.

4 BY MR. CORCORAN:

5 Q. Mr. Amerling, what I'm showing you for identification
6 purposes is a two-page letter marked Defendant's Exhibit 31
7 which is dated July 9, 2022. It's from Robert J. Costello,
8 the attorney for Mr. Bannon, and it's directed to Chairman
9 Bennie Thompson of the Select Committee. Correct?

10 A. That's correct.

11 Q. And have you seen this letter before?

12 A. I have. Mr. Costello emailed it to me.

13 MR. CORCORAN: Your Honor, we'd move Exhibit No.
14 31 into evidence, Defendant's Exhibit No. 31.

15 MS. VAUGHN: Same objection, your Honor.

16 THE COURT: That objection is overruled in part.

17 Again, ladies and gentlemen of the jury,
18 consistent with what I said before, the same limiting
19 instructions I gave as to Defendant's Exhibit 30 apply here.
20 It goes only to questions around the subpoena dates and
21 Mr. Bannon's deliberate and intentional, as alleged by the
22 Government, failure to comply.

23 Mr. Bannon's belief that executive privilege
24 excused him from compliance is not relevant, and facts of
25 later compliance with the subpoena do not waive or otherwise

1 make lawful what would otherwise be unlawful contempt.

2 (Whereupon, Defendant's Exhibit No. 31 was entered
3 into evidence.)

4 BY MR. CORCORAN:

5 Q. Ms. Amerling, if I can direct your attention to the
6 first sentence of that letter. Is it accurate to say
7 that -- what Mr. Costello is conveying to Chairman Thompson
8 of the Committee is that on the morning of October 19th,
9 2021, you denied a request for a one-week adjournment in
10 light of the filing of the lawsuit by President Donald J.
11 Trump.

12 So Mr. Costello essentially is speaking about the
13 subpoena that's at issue in this case. Is that accurate?

14 A. If he's talking about the letter relating to Mr. Bannon
15 providing information to the Committee before the October
16 19th proceeding, then the reference is to the exchange of
17 letters with respect to the Committee's invitation for him
18 to provide information that would bear on his misconduct.

19 Q. And if I can direct your attention to the third
20 paragraph, where it says: While Mr. Bannon has been
21 steadfast in his convictions, circumstances have now
22 changed. President Trump has provided us with a letter,
23 which is attached, attesting to the fact that back in
24 October 2021, he did invoke executive privilege with respect
25 to Mr. Bannon's testimony and document production.

1 So Mr. Costello is essentially putting Chairman
2 Thompson on notice that he's referencing what happened back
3 in October of 2021. Correct?

4 A. Can you explain what you mean by "on notice"?

5 Q. Well, not an official term. He's just communicating
6 about what happened back in October 2021 with regard to the
7 subpoena that we have been discussing today?

8 A. He's communicating in this paragraph that President
9 Trump has provided the letter that takes that position.

10 Q. Okay. And on the next page, that first paragraph,
11 Mr. Costello states to Chairman Thompson: President Trump
12 has decided it would be in the best interest of the American
13 people to waive executive privilege for Stephen K. Bannon to
14 allow Mr. Bannon to comply with the subpoena issued by your
15 committee. Mr. Bannon is willing to, and indeed prefers, to
16 testify at your public hearing.

17 Is Mr. Costello in that paragraph conveying to
18 Chairman Thompson that now that the attached Trump --
19 President Trump letter is in play, Mr. Bannon is willing to
20 testify in a public hearing before the Committee?

21 A. That's what it looks like he's saying. Yes.

22 MR. CORCORAN: If we could move to defense --
23 well, I'm sorry, your Honor.

24 THE COURT: I should have said before, Defendant's
25 Exhibit 31 is admitted with the limiting instructions I

1 gave.

2 I take it we're now moving on to another document.

3 MR. CORCORAN: I was going to move on to No. 32.

4 This is Defendant's Exhibit 32 for identification purposes.

5 BY MR. CORCORAN:

6 Q. Ms. Amerling, is this a letter from Chairman Thompson to
7 Robert Costello, the attorney for Mr. Bannon, dated July 14,
8 2022?

9 A. That's correct.

10 Q. So that's just within the last week. Correct?

11 A. That's correct.

12 Q. And in this letter, is Chairman Thompson focusing on the
13 first paragraph, indicating that he's -- well, I'll read it:
14 I'm in receipt of your letter dated July 9, 2022, in which
15 you indicate that your client, Stephen K. Bannon, is now
16 willing to comply with the Select Committee's subpoena.

17 So is Chairman Thompson --

18 MS. VAUGHN: Objection. This document is not in
19 evidence.

20 MR. CORCORAN: Oh, I'm sorry.

21 THE COURT: Agreed.

22 MR. CORCORAN: It's getting late in the day. I'm
23 sorry. We would move the admission of this.

24 THE COURT: Same objection?

25 MS. VAUGHN: Same objection.

1 THE COURT: Ladies and gentlemen of the jury, I am
2 going to admit this document. This is the third of the
3 documents that I'm admitting subject to the limiting
4 instruction that I've already explained. I don't think I
5 need to repeat it again. But what I said earlier about
6 Defendant's Exhibits 30 and 31 is equally applicable to
7 Defendant's Exhibit 32.

8 (Whereupon, Defendant's Exhibit No. 32 was entered
9 into evidence.)

10 THE COURT: Mr. Corcoran.

11 BY MR. CORCORAN:

12 Q. Ms. Amerling, with regard to the first sentence, is
13 Chairman Thompson indicating that he's responding to
14 Mr. Costello's letter of July 9, which attached President
15 Trump's letter that references the Select Committee
16 subpoena?

17 A. That's correct.

18 Q. And if you'd go to the third paragraph, where Chairman
19 Thompson writes: With respect to the Select Committee's
20 demand for documents, Mr. Bannon should begin producing
21 responsive documents today to the Select Committee and
22 provide a complete response by July 21, 2022.

23 By that sentence, is Chairman Thompson reflecting
24 that the Select Committee is open to the receipt of any
25 responsive documents if there are any, given President

1 Trump's new letter that we just looked at?

2 A. He's saying what we've talked about previously today:
3 that the Select Committee always welcomes relevant documents
4 and testimony.

5 Q. And the final paragraph of that -- I'm sorry -- the
6 final sentence of that paragraph, the final two sentences
7 reads: After he has produced all the requested documents,
8 we will identify a date soon following that production on
9 which he must then appear in person in the O'Neill House
10 office building for a deposition. We anticipate that the
11 deposition will occur in the near future.

12 And by this sentence, is Chairman Thompson
13 indicating to Stephen Bannon that he's open for a deposition
14 at a future date pursuant to the September 23, 2021,
15 subpoena?

16 A. He's indicating that he's open to a deposition after
17 Mr. Bannon has produced the requested documents.

18 MR. CORCORAN: Thank you, your Honor. I have
19 nothing further.

20 THE COURT: Thank you, Mr. Corcoran.

21 Ms. Vaughn, redirect?

22 MS. VAUGHN: Can I please have the ELMO?

23 REDIRECT EXAMINATION

24 BY MS. VAUGHN:

25 Q. Ms. Amerling, let's pick up right where Mr. Corcoran

1 left off, with defense -- I think it was Defendant's Exhibit
2 32.

3 Ms. Amerling, first of all, is this the July 14th
4 letter that the Committee sent back?

5 THE COURT: Ms. Vaughn, I think you're going to be
6 asked to either use the microphone or perhaps put on the
7 portable mic, whichever you'd prefer.

8 MS. VAUGHN: I'll use the portable, but this one
9 in the meantime.

10 BY MS. VAUGHN:

11 Q. Ms. Amerling, is this the July 14th letter that the
12 Committee sent back to the Defendant after his sudden offer
13 to comply on July 9th?

14 A. That's correct.

15 Q. Ms. Amerling, I've just highlighted a sentence in the
16 second paragraph there. Can you please read that?

17 A. Yes. It says: The July 9th, 2022, outreach to the
18 Select Committee by you on Mr. Bannon's behalf does not
19 change the fact that Mr. Bannon failed to follow that
20 process and failed to comply with the Select Committee's
21 subpoena prior to the House referral of the contempt
22 resolution concerning Mr. Bannon's defiance of the subpoena.

23 Q. Ms. Amerling, you testified earlier about the --

24 (Feedback emitting from the sound system.)

25 THE COURT: We can fix that, maybe.

1 MS. VAUGHN: Sorry. I'm causing trouble.

2 THE COURT: We just need to turn off the
3 microphone on the podium, if we can.

4 THE COURTROOM DEPUTY: (Assists counsel with the
5 audiovisual equipment.)

6 THE COURT: Let's try that, Ms. Vaughn.

7 MS. VAUGHN: Is this better? Great. Thank you.

8 BY MS. VAUGHN:

9 Q. So what was the date that the Defendant decided to try
10 to comply now?

11 A. The letter from the Defendant's counsel came to the
12 Select Committee on July 9th, 2022.

13 Q. And, Ms. Amerling, you testified earlier about the
14 time-limited nature of the Committee's investigation. When
15 does the Committee's authority expire?

16 A. At the end of this Congress.

17 Q. And when was it that the Committee first issued the
18 subpoena?

19 A. The Committee first issued a subpoena to Mr. Bannon on
20 September 23rd, 2021.

21 Q. And if Mr. Bannon had complied as required with the
22 subpoena, how much time would the Committee have had to look
23 at the information he had, follow up on leads, consider
24 whether there was more relevant information out there to
25 help the Committee get to the bottom of January 6th?

1 A. At least eight -- at least nine months of additional
2 time.

3 Q. And how much time is the Committee left with now?

4 A. Five or so months.

5 Q. And so as opposed to having 14 in total, the Committee
6 now only has five?

7 A. That's correct.

8 Q. Did the Defendant's sudden offer to comply on July 9th
9 include any offer to provide documents?

10 A. It did not.

11 Q. Has the Defendant provided any documents since his
12 sudden offer to comply on July 9th?

13 A. Not unless he's provided evidence since I've been
14 sitting here today.

15 Q. And did the Defendant's offer to comply actually come
16 with conditions that don't follow the subpoena's
17 requirements?

18 A. That's correct.

19 Q. Let's take a look at those.

20 I'm showing you Page 2 of what's been admitted as
21 Defendant's Exhibit 31. Ms. Amerling, can you please read
22 the last sentence there that I've highlighted on that second
23 page?

24 A. It says: Mr. Bannon is willing to, and indeed prefers,
25 to testify at your public hearing.

1 Q. Who gets to decide under what conditions someone answers
2 the Committee's questions: the Committee or the witness?

3 A. The Committee.

4 Q. Because under whose authority is it that the subpoena is
5 issued: the Committee or the witness's?

6 A. The Committee.

7 Q. And is the subpoena a government order or a request to
8 the witness?

9 A. It's a demand by the government.

10 Q. Ms. Amerling, this letter came to the Committee on July
11 9th. Let's talk about some of the things that happened in
12 between when the subpoena was issued and when this letter
13 came in.

14 Ms. Amerling, I'm showing you what's already been
15 admitted as Government's Exhibit 5. What is Government's
16 Exhibit 5?

17 A. It's the October 8th letter from Chairman Thompson to
18 Mr. Bannon's counsel.

19 Q. And in this letter, what does the Committee tell the
20 Defendant in this first paragraph where I've highlighted
21 about his ability to rely on executive privilege?

22 A. It says: Despite this limited instruction, your letter
23 takes the inappropriate position that Mr. Bannon will not
24 comply with any request for information or testimony sought
25 by the Select Committee. Moreover, Mr. Trump's stated,

1 quote, "intention to assert these executive privileges," end
2 quote, that may or may not belong to him does not provide a
3 legal basis for Mr. Bannon's refusal to comply with the
4 subpoena.

5 Q. Let's look at Page 2 of Exhibit 5 again. Can you please
6 read the two lines at the beginning of the last paragraph on
7 that page that I've just highlighted?

8 A. It says: Regardless of any purported privilege
9 assertion by Mr. Trump, Mr. Bannon has an ongoing obligation
10 to produce documents to the Select Committee. Accordingly,
11 please produce all responsive documents and records
12 identified in the subpoena.

13 Q. And going to the third page of this October 8th, 2021,
14 letter, can you please read the first sentence of the top
15 paragraph there that I've just highlighted?

16 A. It says: Finally, the Select Committee expects
17 Mr. Bannon's appearance at the time and place designated in
18 the subpoena for a deposition and respond fully to questions
19 by the Select Committee.

20 Q. Can you please read the last paragraph of Government's
21 Exhibit 5?

22 A. It says: Please be advised that the Select Committee
23 will view Mr. Bannon's failure to respond to the subpoena as
24 willful noncompliance with the subpoena. His willful
25 noncompliance with the subpoena would force the Select

1 Committee to consider invoking the contempt of Congress
2 procedures in 2 United States Code, Sections 192, 194, which
3 could result in a referral from the House to the Department
4 of Justice for criminal charges, as well as the possibility
5 of having a civil action to enforce the subpoena brought
6 against Mr. Bannon in his personal capacity.

7 Q. So by October 8th, had the Committee told the Defendant
8 that the privilege he was claiming not to comply did not
9 provide a basis for him to refuse to show up for a
10 deposition?

11 A. That's correct.

12 Q. By October 8th, 2021, had the Committee told the
13 Defendant that his invocation of a privilege not to comply
14 did not provide a basis to withhold documents from the
15 Committee?

16 A. That's correct.

17 Q. And by October 8th, 2021, had the Committee warned the
18 Defendant that his failure to comply could result in a
19 referral for criminal prosecution?

20 A. That's correct.

21 Q. Did the Defendant offer to comply at that time?

22 A. He did not.

23 Q. Did the Committee send another letter to the Defendant
24 on October 15th, 2021?

25 A. Yes.

1 Q. And what was it the Committee told the Defendant in that
2 letter?

3 A. The Committee told the Defendant that his failure to
4 comply would mean the Committee would have to consider a
5 contempt resolution.

6 Q. Did the Defendant comply with the subpoena at any -- in
7 any way at that time?

8 A. He did not.

9 Q. What day was it that the House -- excuse me -- that the
10 Committee voted to refer the Defendant for criminal
11 prosecution?

12 A. The Committee approved the resolution recommending
13 criminal prosecution on October 19th, 2021.

14 Q. And did the Defendant -- did the Committee notify the
15 Defendant of that?

16 A. Yes.

17 Q. Did the Defendant offer to comply in any way with the
18 subpoena at that time?

19 A. He did not.

20 Q. What day was it that the House, the full House, voted to
21 refer the Defendant for criminal prosecution?

22 A. October 21st, 2021.

23 Q. Did the Committee notify the Defendant of that or was it
24 publicly available?

25 A. It was a public proceeding.

1 Q. Did the Defendant offer to comply at any time after
2 that?

3 A. He did not.

4 Q. Let's talk about this lawsuit that the Defendant cited
5 as a basis not to be held in contempt.

6 I'm showing you what's been admitted as
7 Government's Exhibit 8, Page 2. The lawsuit is titled in
8 the letter *Donald J. Trump v. Bennie Thompson, et al.* And I
9 believe you testified earlier that that lawsuit had to do
10 with the former president's claim of an executive privilege.
11 Is that right?

12 A. That's correct.

13 Q. Are you aware of whether this lawsuit has been resolved?

14 A. It has.

15 Q. And about how long has it been since it's been resolved?

16 A. I believe the appeals court decided it in December 2021
17 and then the Supreme Court ruled in, I believe, January.

18 Q. So January of 2022?

19 A. I believe that's right.

20 Q. So about how long before the Defendant's sudden offer to
21 comply was that?

22 A. However long between the Supreme Court decision,
23 January, through last week.

24 Q. About six months?

25 A. Yes.

1 Q. Are you aware of how that lawsuit was resolved?

2 A. It was resolved in the Select Committee's favor.

3 Q. Meaning they could get records that the former president
4 was trying to withhold?

5 A. That's correct.

6 Q. And did the Defendant offer to comply with the subpoena
7 in any way at that time?

8 A. He did not.

9 Q. The full House referred the Defendant for criminal
10 prosecution and he was actually charged. Is that right?

11 A. That's correct.

12 Q. Are you aware of when about that happened?

13 A. I believe it was November 2021.

14 Q. November 2021?

15 A. I believe around then.

16 Q. And around that time, when the Defendant was criminally
17 charged, did he come and offer to comply in any way with the
18 subpoena?

19 A. He did not.

20 Q. So we're in November, December, January. What about
21 February 2022? Did the Defendant offer to comply at any
22 time in that month?

23 A. He did not.

24 Q. What about March 2022?

25 A. No.

1 Q. April 2022?

2 A. No.

3 Q. May 2022?

4 A. He did not.

5 Q. Ms. Amerling, are you aware that at some point the
6 Defendant tried to get the charges dismissed in the court?

7 A. That's my understanding. Yes.

8 Q. And are you aware that that happened before the
9 Defendant's sudden offer of compliance on July 9th?

10 A. Yes.

11 Q. And when in relation to the start of this trial did this
12 sudden offer of compliance come?

13 A. It came on July 9th, 2022. I think it actually came
14 into my email inbox a little bit after midnight on July
15 10th.

16 Q. And July 10th: About how long ago -- how long before
17 trial was that?

18 A. A matter of days.

19 Q. And who is it that the Defendant is claiming has now
20 given him permission to comply with the subpoena?

21 A. Former President Donald Trump.

22 Q. Was former President Trump ever an official on the
23 Committee?

24 A. He was not.

25 Q. Was he ever a part of Congress at the time the Committee

1 was operating?

2 A. He was not.

3 Q. Does the Committee answer to former President Trump?

4 A. No.

5 Q. And had the Committee told the Defendant that its
6 position was that he had to comply regardless?

7 A. Yes.

8 Q. Ms. Amerling, let's talk about a couple of other things
9 you discussed with Mr. Corcoran.

10 Do you recall that Mr. Corcoran asked you some
11 questions about whether there was a judge at the Committee's
12 depositions for witnesses?

13 A. Yes.

14 Q. Do judges sit on the Committee?

15 A. They do not.

16 Q. What part of our government are judges?

17 A. They belong to the judicial branch.

18 Q. Is that a separate branch of government from Congress?

19 A. Yes, it is.

20 Q. And in fact, does the Committee have procedures in place
21 for witnesses at depositions that want to invoke privileges
22 to protect their rights?

23 A. Yes, it does.

24 Q. Let's take a look at those, because I don't think
25 Mr. Corcoran showed them to you.

1 Ms. Amerling, I'm showing you Page 10 of
2 Government's Exhibit 2. First of all, what is Page 10 of
3 Government's Exhibit 2?

4 A. This shows the regulations that govern depositions.

5 Q. And I want to focus on Item 7 of these regulations that
6 govern depositions. And specifically, I'm highlighting a
7 line in the middle of this. Can you please read that line I
8 just highlighted?

9 A. It says: The witness may refuse to answer a question
10 only to preserve a privilege.

11 Q. Would that include executive privilege?

12 A. Potentially, yes.

13 Q. And to be able to refuse an answer -- to be able to
14 refuse to answer a question based on a privilege, does the
15 witness have to be at the deposition?

16 A. Yes.

17 Q. And then do these regulations provide a procedure for
18 how the witness's privilege is decided?

19 A. Yes.

20 Q. I just highlighted a little bit more of that. Can you
21 please read what I just highlighted for the jury?

22 A. It says: When the witness has refused to answer a
23 question to preserve a privilege, members or staff may,
24 number one, proceed with the deposition; or, number two,
25 either at that time or at a subsequent time seek a ruling

1 from the chair either by telephone or otherwise. If the
2 chair overrules any such objection and thereby orders a
3 witness to answer any question to which an objection was
4 lodged, the witness shall be ordered to answer.

5 BY MS. VAUGHN:

6 Q. And these --

7 MR. CORCORAN: Your Honor, could we have a
8 sidebar?

9 THE COURT: Yes.

10 (Whereupon, the following proceedings were had at
11 sidebar outside the presence of the jury:)

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

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[REDACTED]

(Whereupon, the following proceedings were had in open court:)

BY MS. VAUGHN:

Q. Ms. Amerling, who presides over the Committee's proceedings and makes decisions about what is and is not allowed?

A. The chairman.

Q. Does former President Trump?

A. He does not.

Q. Ms. Amerling, Mr. Corcoran asked you a lot of questions about whether you had written letters or other staff or what have you.

Do you have authority to send letters that have not been approved by the Committee?

A. Not letters that are signed by the chairman. No.

Q. And so when you send a letter, who is it sent on behalf of?

A. I'm sorry. What's your question?

1 Q. When you send a letter, when you sent the letters to the
2 Defendant, who was it sent on behalf of?

3 A. Sent on behalf of the Committee.

4 Q. Mr. Corcoran asked you several questions about whether
5 the Committee would have referred the Defendant for contempt
6 if he had produced documents at 11:00 a.m. on October 7th
7 instead of 10:00 a.m. I want to ask you a couple followups
8 on that.

9 The original deadline in the subpoena was 10:00
10 a.m. on October 7. Had the Committee heard anything from
11 the Defendant by that time?

12 A. No.

13 Q. What I mean by that is, did the Committee receive any
14 communications from the Defendant that he needed more time?

15 A. No.

16 Q. Did the Committee receive any communications from the
17 Defendant that he would like to find an alternative way to
18 provide documents?

19 A. No.

20 Q. And does the fact that a witness provides documents two
21 hours after the deadline, does that change the fact that the
22 deadline was at 10:00 a.m.?

23 A. It does not.

24 Q. But the Defendant, has he ever produced documents?

25 A. No.

1 Q. Mr. Corcoran asked you several questions about whether
2 witnesses sometimes appear later than the date that's set
3 for their deposition.

4 Do you remember those questions?

5 A. I do.

6 Q. What are the circumstances under which witnesses appear
7 later? Is it because they just choose on their own to show
8 up later or is there something else going on?

9 A. There can be a variety of reasons. Sometimes a witness
10 is looking for representation and needs a little bit of time
11 to find an attorney. Sometimes a witness has a scheduling
12 conflict with a specific time that is stated in the
13 subpoena, so we look to arrange a different time.

14 Q. And in those circumstances, do the witnesses reach out
15 to the Committee and tell them that they'd like to find
16 another date that will work because they have some kind of
17 logistical obstacle?

18 A. That's right.

19 Q. Did the Defendant ever reach out to the Committee and
20 tell the Committee that he had a logistical issue that
21 needed to be resolved?

22 A. He did not.

23 Q. Mr. Corcoran asked you several questions about whether
24 you had engaged in negotiation with Mr. Costello.

25 Do you recall those questions?

1 A. Generally, yes.

2 Q. And we're talking about just finding different dates.
3 I'm showing you Government's Exhibit 4. This is the
4 Defendant's October 7th letter to the Committee.

5 Is there anywhere in the October 7th letter to the
6 Committee from the Defendant where he tells the Defendant he
7 just would like to negotiate new dates?

8 A. No.

9 Q. And instead, what is it that he tells the Committee on
10 the second page of the letter that I'm highlighting right
11 here?

12 A. He says: As such, until these issues are resolved, we
13 are unable to respond to your request for documents and
14 testimony.

15 Q. And what was the issue that had to be resolved?

16 A. Executive privilege.

17 Q. And when did the Committee resolve that issue with
18 respect to the Defendant's claim that it excused him?

19 A. The Committee replied regarding its position on
20 executive privilege in a letter on October 8th and
21 reiterated that position in subsequent communications.

22 Q. Now, even though the Committee resolved the objection by
23 October 8th, did the Defendant comply at any point after
24 that?

25 A. He did not.

1 MS. VAUGHN: The Court's indulgence.

2 BY MS. VAUGHN:

3 Q. Ms. Amerling, the Defendant asked you several questions
4 about a book club you're in with Ms. Gaston. I just want to
5 clarify. How long has it been since you all have actually
6 attended this together?

7 A. And I honestly can't remember the last time our paths
8 crossed through book group, because I haven't attended for
9 the past year and I don't think that she had attended for
10 quite a while before then. But I can't give you an exact
11 date.

12 Q. And do you have any personal relationship or friendship
13 with Ms. Gaston?

14 A. I do not.

15 Q. And does Ms. Gaston have any bearing on your work or the
16 Committee's work?

17 A. No.

18 Q. Or on your testimony here today?

19 A. No.

20 Q. Mr. Corcoran asked you several questions about who
21 you've worked for in Congress. And you testified earlier
22 that you have worked on a number of investigations and
23 oversight matters.

24 Are the investigations that you worked on always
25 partisan?

1 A. No. Sometimes the investigations have involved
2 collaboration between the leading Republican on the
3 Committee and the leading Democrat. At other times, they've
4 taken different positions.

5 Q. And on this Committee, do you support the work of just
6 one member of the Committee or all members of the Committee?

7 A. I support the work of the entire Committee.

8 Q. And does the entire Committee -- do they come from one
9 political party or multiple political parties?

10 A. There are both Republican and Democratic members on the
11 Select Committee.

12 Q. Ms. Amerling, do you believe that finding out what
13 happened on January 6th and why is a political or partisan
14 issue?

15 A. I do not.

16 MS. VAUGHN: Nothing further, your Honor.

17 MR. CORCORAN: Your Honor, we have no further
18 questions of this witness. Thank you.

19 THE COURT: Thank you.

20 Ms. Amerling, you may be excused. Thank you very
21 much for your testimony.

22 THE WITNESS: Thank you, your Honor.

23 (Witness excused.)

24 THE COURT: Here's what I'd like to do:

25 Ms. Vaughn, are you ready with your next witness?

1 MS. VAUGHN: We are, your Honor.

2 THE COURT: So I'd like to take just one more
3 brief recess. We'll come back and do roughly an hour.

4 There is one scheduling issue that I need to --
5 that I'm going to address and hopefully have guidance either
6 at 4:00 when we come back or at 5:00.

7 MS. VAUGHN: Thank you, your Honor.

8 THE COURT: It'll relate to tomorrow's schedule.
9 Thank you.

10 (Whereupon, the jury exited the courtroom at 3:47
11 p.m. and the following proceedings were had:)

12 THE COURT: Are we ready to proceed, Ms. Vaughn?

13 MS. VAUGHN: We are, your Honor.

14 THE COURT: Let's bring the jury in, then, please.

15 (Whereupon, the jury entered the courtroom at 4:10
16 p.m. and the following proceedings were had:)

17 THE COURT: Welcome back, ladies and gentlemen.

18 Ms. Gaston.

19 MS. GASTON: Thank you, your Honor.

20 The Government calls Special Agent Stephen Hart to
21 the stand.

22 MS. GASTON: Your Honor, if I may, while he's
23 coming, I have a binder of exhibits that all the parties
24 have. It's a subset.

25 THE COURT: They're on the Government's exhibit

1 list?

2 MS. GASTON: Yes, your Honor.

3 THE COURT: Very well.

4 MS. GASTON: (Places binder on the witness stand.)

5 (Thereupon, the witness entered the courtroom and
6 the following proceedings were had:)

7 THE COURT: Good afternoon.

8 THE WITNESS: Good afternoon, your Honor.

9 THE COURT: Ms. Lesley?

10 STEPHEN HART, GOVERNMENT WITNESS, SWORN.

11 DIRECT EXAMINATION

12 BY MS. GASTON:

13 Q. Good afternoon, Agent Hart. Can you please introduce
14 yourself to the jury and spell your name?

15 A. Certainly. My name is Stephen Hart, S-T-E-P-H-E-N
16 H-A-R-T.

17 Q. And how are you employed?

18 A. I'm a special agent with the FBI.

19 Q. And what do you do for the FBI?

20 A. I investigate federal public corruption cases out of the
21 Washington field office.

22 Q. Did you work on the investigation into whether Stephen
23 K. Bannon failed to comply with a congressional subpoena?

24 A. Yes, I did.

25 Q. Did your investigation include reviewing the Defendant's

1 public statements regarding a subpoena from the Committee?

2 A. Yes, it did.

3 MS. GASTON: Showing to the witness, please, what
4 has been marked as Government's Exhibit 10.

5 BY MS. GASTON:

6 Q. Agent Hart, what is Government's Exhibit 10?

7 A. Exhibit 10 is a screenshot from Steve Bannon's Getter
8 page. That's G-E-T-T-E-R.

9 Q. And what is Getter?

10 A. Getter is a social media in the form similar to Twitter
11 in which people can establish accounts, post --

12 MR. SCHOEN: Your Honor, if I may, we have
13 outstanding objections.

14 THE COURT: Not yet.

15 MR. SCHOEN: No.

16 THE COURT: Let's lay the foundation and we'll
17 have the Government move to admit it. We'll take that up.

18 THE WITNESS: It's a social media platform where
19 individuals and organizations can establish pages where they
20 can put statements, opinions, links to different things
21 along the internet.

22 BY MS. GASTON:

23 Q. And have you reviewed the Defendant's Getter account?

24 A. Yes, I have.

25 Q. Is it a verified Getter account?

1 A. Yes, it is.

2 Q. And what does that mean?

3 A. A verified account under the terms for which Getter uses
4 means that it's been through a process that Getter holds
5 somewhat close, but essentially validates the account as
6 being trustworthy.

7 Q. And, Agent Hart, is Government's Exhibit 10 a fair and
8 accurate depiction of a post that you viewed on the
9 Defendant's Getter account?

10 A. Yes, it is.

11 MS. GASTON: Your Honor, I'd move to admit
12 Government's Exhibit 10 into evidence and publish to the
13 jury.

14 MR. SCHOEN: Objection.

15 THE COURT: Would you like to pick up the phones?

16 MR. SCHOEN: Yes.

17 (Whereupon, the following proceedings were had at
18 sidebar outside the presence of the jury:)

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(Whereupon, the following proceedings were had in open court:)

MS. GASTON: Thank you, your Honor. The Government moves that that be admitted into evidence and be published to the jury.

THE COURT: Government's Exhibit 10 is entered into evidence and may be published to the jury.

1 (Whereupon, Government's Exhibit No. 10 was
2 entered into evidence.)

3 BY MS. GASTON:

4 Q. Agent Hart, do you see the screenshot in front of you?

5 A. Yes, I do.

6 MS. GASTON: Ms. Dunn-Gordon, could we please zoom
7 in on the part above the photograph in this post.

8 BY MS. GASTON:

9 Q. So do you see the Defendant's photograph there on the
10 left?

11 A. Yes, I do.

12 Q. And then his name?

13 A. Yes.

14 Q. And then there's a red V. What does that mean?

15 A. That is the symbol used by Getter to show that an
16 account has been verified.

17 Q. And is the @ sign a handle on Getter?

18 A. Yes.

19 Q. And what is the Getter associated with the Defendant's
20 account?

21 A. The Getter handle is @SteveBannon.

22 Q. What date did the Defendant make this post?

23 A. This would be September 24th, 2021.

24 Q. And when you were looking at the Defendant's Getter
25 account overall, did you see links that went from the Getter

1 page to other -- to any other page?

2 A. Yes.

3 Q. And what does the Defendant's Getter page link to?

4 A. His Getter page predominantly links to another page for
5 his podcast, for the War Room.

6 Q. Thank you, Agent Hart.

7 So looking at this post in particular on September
8 24th, 2021, what did the Defendant post?

9 A. The statement that was posted is: "The Bannon subpoena
10 is just the beginning. Congress's January 6 investigation
11 is going big."

12 MS. GASTON: Ms. Dunn-Gordon, can we zoom in on
13 the photograph and the content below it.

14 Thank you.

15 BY MS. GASTON:

16 Q. Agent Hart, what was below that caption at the top of
17 the Defendant's post?

18 A. Below that caption appears to be a picture of the U.S.
19 Capitol on January 6th. And there is another title, a link
20 to an article on rollingstone.com.

21 MS. GASTON: And then zooming out again,
22 Ms. Dunn-Gordon, please.

23 BY MS. GASTON:

24 Q. Just to orient us in time again, Agent Hart, what day
25 was the Defendant issued a subpoena by the Select Committee?

1 A. It was on September 23rd, 2021, the day before this
2 posting.

3 Q. And what date did the Defendant's attorney accept
4 service?

5 A. The 23rd.

6 MS. GASTON: With your Honor's permission, I'm
7 just going to go add to the timeline.

8 THE COURT: Very well.

9 MS. GASTON: Thank you.

10 BY MS. GASTON:

11 Q. All right, Agent Hart. Showing to you only what's been
12 marked as Government's Exhibit 11-A, what is Government's
13 Exhibit 11-A?

14 A. This is another Getter post from Steve Bannon's account
15 dated October 8th. It's titled -- or the statement within
16 the posting is: "Steve Bannon tells the January 6 Select
17 Committee that he will not comply with their subpoena."

18 Q. First, Agent Hart, is this exhibit a fair and accurate
19 depiction of a post that you saw on the Defendant's Getter
20 account?

21 A. Yes, it is.

22 THE COURT: Just in the future, if you could
23 refrain from quoting from the documents until they've been
24 admitted in evidence.

25 THE WITNESS: Certainly.

1 THE COURT: Thank you.

2 THE WITNESS: Thank you. Sorry, your Honor.

3 MS. GASTON: Your Honor, I would move to enter it
4 into evidence and publish it to the jury.

5 THE COURT: Government's Exhibit 11-A is admitted.
6 (Whereupon, Government's Exhibit No. 11-A was
7 entered into evidence.)

8 THE COURT: Mr. Schoen, your continuing objection
9 is noted.

10 MS. GASTON: Ms. Dunn-Gordon, if we could zoom in
11 on the top of this document, please.

12 Thank you.

13 BY MS. GASTON:

14 Q. What was the date of this post, Agent Hart?

15 A. This posting was October 8th, 2021.

16 Q. And recalling the subpoena, how does October 8th, 2021,
17 relate to when the subpoena required the Defendant to
18 produce documents to the Committee?

19 A. The subpoena required the Defendant to produce documents
20 on October 7th, 2021, the day before this posting.

21 Q. And what is the caption of this post?

22 A. This posting is captioned with "Steve Bannon tells the
23 January 6th Select Committee that he will not comply with
24 their subpoena."

25 MS. GASTON: If we could zoom out,

1 Ms. Dunn-Gordon. Could we look at the picture and the link?

2 Thank you.

3 BY MS. GASTON:

4 Q. There's a graphic there, Special Agent Hart. Who's on
5 the left?

6 A. That would be Steve Bannon.

7 Q. Who's on the right?

8 A. Former President Donald Trump.

9 Q. And then in the middle there is in very, very, very
10 small rendering what appears to be a letter. Do you
11 recognize that letter?

12 A. I do.

13 Q. And what is that letter?

14 A. That is a letter authored by Mr. Bannon's previous
15 attorney, Robert Costello.

16 Q. And looking at the link, what does the link say?

17 A. Could you say that one more time?

18 Q. Sorry. Looking at the link, what does the link below
19 the graphic say?

20 A. The link below the graphic says, "Steve Bannon: I stand
21 with Trump and the Constitution." Then it has a link to an
22 article in the dailymail.co.uk.

23 Q. Have you reviewed that link, Special Agent Hart?

24 A. Yes, I have.

25 Q. Showing to you only Government's Exhibit 11-B, what is

1 Government's Exhibit 11-B generally?

2 A. Generally speaking, that is a copy of the article on the
3 *Daily Mail* website linked from the October 8th posting on
4 Getter.

5 Q. Is that a fair and accurate depiction of the article as
6 you saw it when you followed the link?

7 A. Yes, it is.

8 MS. GASTON: Your Honor, I would move to admit
9 Government's Exhibit 11-B into evidence and publish it to
10 the jury.

11 THE COURT: Government's Exhibit 11-B is also
12 admitted and may be published to the jury.

13 (Whereupon, Government's Exhibit No. 11-B was
14 entered into evidence.)

15 MS. GASTON: Ms. Dunn-Gordon, could we zoom in on
16 the top above the graphic, please.

17 Thank you.

18 BY MS. GASTON:

19 Q. Special Agent Hart, what is the date of this article?

20 A. The date of this article is October 8th, 2021.

21 Q. And the headline is what?

22 A. The headline is: Steve Bannon says, quote, "I stand
23 with Trump," end quote, as he tells January 6 Committee he
24 will not comply with subpoena.

25 Q. And then moving on to Page 2 of this article --

1 MS. GASTON: If we could look at the first
2 paragraph and the quote below it, please, Ms. Dunn-Gordon.

3 BY MS. GASTON:

4 Q. Special Agent Hart, can you please read what appears on
5 the screen?

6 A. Certainly. "Former White House strategist Steve Bannon
7 on Friday said he stood solidly with former President Trump
8 and will not be cooperating with its investigation into the
9 January 6 attack on the U.S. Capitol. Quote: 'I stand with
10 Trump and the Constitution,' he told dailymail.com."

11 Q. Thank you, Agent Hart.

12 MS. GASTON: Your Honor, with your permission I'm
13 just going to add to the timeline quickly.

14 THE COURT: Yes.

15 MS. GASTON: Thank you.

16 BY MS. GASTON:

17 Q. Agent Hart, in the course of your investigation, did you
18 have the opportunity to speak with Robert Costello?

19 A. Yes, I did.

20 Q. And who was Mr. Costello?

21 A. Mr. Costello was an attorney for Mr. Bannon.

22 Q. And when did you speak with Mr. Costello?

23 A. The first time I spoke with Mr. Costello was on November
24 3rd, 2021.

25 Q. And who was Mr. Costello as to the Defendant when you

1 spoke with him?

2 A. At that time, he was representing Mr. Bannon.

3 Q. And what were the circumstances under which you spoke
4 with him?

5 A. Mr. Costello had reached out to the United States
6 Attorney's Office via memo and requested a meeting and a
7 discussion with the U.S. Attorney's Office regarding his
8 status as Mr. Bannon's attorney and his desire to advise the
9 U.S. Attorney's Office they should not prosecute Mr. Bannon.

10 Q. And did he want to bring facts related to Mr. Bannon's
11 case to the United States Attorney's Office's attention?

12 A. Yes.

13 Q. And was he doing so as the Defendant's attorney?

14 A. Yes, he was.

15 Q. Did Mr. Costello offer to send the United States
16 Attorney's Office a written explanation about the facts and
17 circumstances leading to the Defendant's noncompliance with
18 the subpoena?

19 A. Yes. He sent a memo over.

20 Q. And did he indicate to the U.S. Attorney's Office that
21 he was checking with the Defendant on that written
22 submission?

23 A. Yes.

24 Q. Did he also offer to meet and explain the facts leading
25 to the Defendant's noncompliance via videoconference with

1 the United States Attorney's Office?

2 A. Yes, he did.

3 Q. Did you and attorneys from the United States Attorney's
4 Office take him up on that offer?

5 A. Yes, we did.

6 Q. In the course of that, did he explain the facts
7 underlying the Defendant's noncompliance?

8 A. Yes.

9 Q. First, can you remind the jury of when Mr. Costello
10 accepted service of the subpoena from the Committee?

11 A. Mr. Costello accepted service of the subpoena on
12 September 23rd, 2021.

13 Q. Did he accept it on -- okay. One moment, Agent Hart.
14 I'm going to show you something to refresh your
15 recollection.

16 Agent Hart, can I show you Government's Exhibit 3,
17 which has been admitted.

18 A. Yes.

19 Q. Do you see that email?

20 A. Yes, I do.

21 Q. When did Mr. Costello accept service of the subpoena?

22 A. That would be September 24th. My apologies. One day
23 later.

24 Q. Thank you.

25 And, Agent Hart, when you spoke with Mr. Costello,

1 did he indicate that he had then passed the subpoena on to
2 the Defendant?

3 A. Yes, he had.

4 Q. And can you remind the jury when the document deadline
5 for the subpoena was?

6 A. The document deadline was October 7th, 2021.

7 Q. And when he spoke with you, did Mr. Costello say whether
8 he and the Defendant had gathered any documents by the
9 October 7th, 2021, deadline for the Committee's subpoena?

10 A. He said they had not gathered any documents by that
11 point.

12 Q. And did Mr. Costello state whether he had provided the
13 Defendant with the Committee's follow-up letters regarding
14 the Defendant?

15 A. Yes, he had.

16 Q. He stated whether he had?

17 A. Yeah. He provided the letters to Mr. Bannon.

18 Q. And what did Mr. Costello say about the Defendant's
19 involvement in the process regarding the subpoena generally?

20 A. He said he was fully engaged throughout the entire
21 process.

22 Q. Did Mr. Costello discuss with you the Defendant's reason
23 for not providing documents and not providing testimony?

24 A. Yes.

25 Q. And you're aware that in communications with the

1 Committee, he told the Committee that the reason was related
2 to executive privilege?

3 A. That's correct.

4 Q. In his discussions with you and other government
5 representatives, did he give any other reason?

6 A. No, he did not.

7 Q. Did he suggest that the dates on the subpoena had moved?

8 A. No.

9 Q. Did he suggest that the Defendant was mistaken about the
10 deadlines?

11 A. No.

12 Q. Did he suggest that he and the Defendant thought the
13 dates were malleable?

14 A. No.

15 Q. Did he ever suggest that he was negotiating for a
16 different date?

17 A. No.

18 Q. Did he ever say that if the Committee set another date,
19 he would come?

20 A. No.

21 MR. SCHOEN: Your Honor, objection.

22 THE COURT: Would you like to go sidebar?

23 MR. SCHOEN: Yes.

24 (Whereupon, the following proceedings were had at
25 sidebar outside the presence of the jury:)

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(Whereupon, the following proceedings were had in open court:)

THE COURT: We're back on the fully public record.
MS. GASTON: Nothing further, your Honor.
THE COURT: Thank you.
Mr. Corcoran.

1 MR. CORCORAN: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY MR. CORCORAN:

4 Q. Agent Hart, good afternoon.

5 A. Good afternoon, Mr. Corcoran.

6 Q. I had a couple questions just to follow up on what you
7 were asked about your investigation and what you did and
8 didn't do.

9 First, I want to ask you about these Getter posts.
10 I think one is Government's Exhibit No. 10.

11 MR. CORCORAN: If we could pull that up, please.

12 BY MR. CORCORAN:

13 Q. Agent Hart, you're not suggesting to the jury that
14 anything on Government's Exhibit 10 is Steve Bannon's words,
15 are you?

16 A. I'm attesting to what's in Government's Exhibit 10 is
17 what's being shown on his Getter page.

18 Q. I just want to make clear, the words at the very top
19 that say, "The Bannon subpoena is just the beginning.
20 Congress's Jan. 6 investigation is going big," these aren't
21 Steve Bannon's words. Correct?

22 A. I don't know if they're his words or if they're words
23 that were written by someone else to whom he gave access to
24 his Getter account.

25 Q. So you think that the statement "The Bannon subpoena is

1 just the beginning. Congress's Jan. 6 investigation is
2 going big" was written by Mr. Bannon or somebody who works
3 with Mr. Bannon and put on Getter?

4 A. That's a possibility. Yes.

5 Q. I'm going to show you what's been marked for
6 identification purposes as Defendant's Exhibit No. 39.

7 And is Defendant's Exhibit No. 39 an article from
8 *Rolling Stone* online dated September 24, 2021?

9 A. Yes, it is.

10 Q. And is the headline of that *Rolling Stone* article "The
11 Bannon subpoena is just the beginning. Congress's Jan. 6
12 investigation is going big"?

13 A. Yes.

14 Q. And in that *Rolling Stone* article, is there a picture
15 that is the exact same picture as Government's Exhibit No.
16 10 that was just offered into evidence by the Government?

17 A. They appear to be similar. Yes.

18 Q. Okay.

19 MR. CORCORAN: Your Honor, we'd move Defendant's
20 Exhibit No. 39 into evidence.

21 MS. GASTON: No objection.

22 THE COURT: Defendant's Exhibit 39 is admitted and
23 can be published to the jury.

24 (Whereupon, Defendant's Exhibit No. 39 was entered
25 into evidence.)

1 BY MR. CORCORAN:

2 Q. Agent Hart, a minute ago you said that you thought that
3 the top statement, "The Bannon subpoena is just the
4 beginning. Congress's Jan. 6 investigation is going big" in
5 Government's Exhibit No. 10 are the words of Steve Bannon or
6 somebody associated with Steve Bannon. Do you remember that
7 testimony?

8 A. I do.

9 Q. Did you when you pulled up the electronic information on
10 the Getter account click through what's on the bottom of
11 Government's Exhibit 10, which is an internet link to
12 rollingstone.com?

13 A. Yes.

14 Q. And this is the article that popped up. Correct?

15 A. That's correct.

16 Q. So these are not -- these are not the words of
17 Mr. Bannon. Correct?

18 A. The title of this article could easily be copied and
19 pasted into the Getter account for Mr. Bannon to make it
20 appear as though they are his words or the words of someone
21 else who might have control over his account.

22 Q. Let's look at the next exhibit, which is Government's
23 Exhibit 11-A. I'm going to ask you the same question:
24 Under the words Steve Bannon at the top, it says "Steve
25 Bannon tells the January 6 Select Committee that he will not

1 comply with their subpoena."

2 My question is: Are you suggesting to this jury
3 that those are the words of Steve Bannon?

4 A. What I'm suggesting to the jury is those are the words
5 associated with his Getter account to which either he or
6 someone who probably works with him has access.

7 Q. To be more precise, are you trying to tell the jury that
8 Steve Bannon stated the words "Steve Bannon tells the
9 January 6 Select Committee that he will not comply with
10 their subpoena"?

11 A. Based upon this posting, what I'm saying is the Getter
12 account shows that those are the words affiliated with his
13 account at that time.

14 Q. I'm going to show you what's been marked as Defense
15 Exhibit No. 40 for identification purposes, Agent Hart. I'm
16 going to ask you, is this a *Daily Mail* article that is dated
17 July 20, 2022 -- I'm sorry -- a *Daily Mail* article that's
18 dated October 8, 2021?

19 A. Yes, it is.

20 Q. And in this article, does it state --

21 THE COURT: Mr. Corcoran, let's deal with whether
22 we're going to admit this first and then -- before you read
23 it to the jury.

24 BY MR. CORCORAN:

25 Q. Does this appear to be the same article that is related

1 to Government's Exhibit 11-A?

2 A. Yes; in a different format than how I saw it. But I
3 imagine that's --

4 MR. CORCORAN: Your Honor, we'd move to admit
5 Defendant's Exhibit No. 40.

6 MS. GASTON: No objection.

7 BY MR. CORCORAN:

8 Q. Now --

9 THE COURT: Defendant's Exhibit No. 40 is admitted
10 and may be published to the jury.

11 (Whereupon, Defendant's Exhibit No. 40 was entered
12 into evidence.)

13 BY MR. CORCORAN:

14 Q. My question is this, Agent Hart: The headline of the
15 *Daily Mail* article reads after the colon "Steve Bannon tells
16 the January 6 Select Committee that he will NOT, in capital
17 letters, comply with their subpoena."

18 And is that the same language that was in
19 Government's Exhibit 11-A?

20 A. Yes. It appears to be.

21 Q. In other words, this is just -- did you click through
22 the link in Mr. Bannon's Getter account to get to the *Daily*
23 *Mail* article?

24 A. Yes.

25 Q. So is it fair to say that basically what you're saying

1 in terms of your testimony about these articles is that
2 somebody simply posted -- reposted another article on
3 Mr. Bannon's Getter page? Is that what you're saying,
4 basically?

5 A. Yeah. Those are what the links are on the Getter page
6 postings that we looked at.

7 Q. Let me ask you about some of the interviews that you
8 did.

9 You said that you participated in a meeting with
10 Bob Costello, who's the lawyer for Steve Bannon. Correct?
11 Where did that meeting take place?

12 A. It was a virtual meeting over WebEx.

13 Q. And were you -- did your face appear on the screen so
14 that Costello and others could see?

15 A. No, it did not.

16 Q. So you were essentially off-screen. Correct?

17 A. Yes. My -- you know, essentially a black box shows as
18 opposed to my face with my name underneath.

19 Q. And who asked the questions during that meeting with Bob
20 Costello?

21 A. Primarily the assistant U.S. attorneys.

22 Q. And you're familiar in your cases with instances where
23 defense lawyers will meet with --

24 MS. GASTON: Objection, your Honor.

25 THE COURT: Let's let the question finish.

1 BY MR. CORCORAN:

2 Q. You're familiar in your job with meetings where defense
3 lawyers meet with prosecutors to try to convince them not to
4 bring a criminal case. Correct?

5 A. Yes.

6 Q. Those are called proffer meetings sometimes. Correct?

7 MS. GASTON: Objection, your Honor. Relevance.

8 THE COURT: Overruled.

9 THE WITNESS: Yes, they are.

10 BY MR. CORCORAN:

11 Q. And at those meetings, the defense lawyer tries to
12 explain the evidence and the reasons why the prosecutor
13 should not bring a criminal case. Right?

14 A. Yes.

15 Q. Okay. Do you in those kinds of cases consider that an
16 FBI interview of the defense lawyer?

17 MS. GASTON: Objection.

18 THE COURT: Let's go on a sidebar.

19 (Whereupon, the following proceedings were had at
20 sidebar outside the presence of the jury:)

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22 [REDACTED]

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24 [REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Whereupon, the following proceedings were had in open court:)

THE COURT: We're back from the under-seal portion or the husher.

BY MR. CORCORAN:

Q. Focusing back on when you participated in a discussion, you said it was virtual that involved prosecutors in this case, you and Robert Costello, the lawyer for Mr. Bannon. Let me ask you a question. And that is, have you participated in similar meetings where the defense lawyer is providing information to the Government in order to persuade

1 them, if possible, not to bring a criminal case?

2 A. Yes.

3 Q. And you understand that in those settings, the defense
4 lawyer sometimes doesn't give all the information that they
5 have. Correct?

6 A. That has happened.

7 Q. Okay. Let me ask you about your interview -- because
8 one of the other witnesses that has appeared that you
9 interviewed was Ms. Amerling, Kristin Amerling. Did you
10 participate in that interview?

11 A. Yes, I did.

12 MS. GASTON: Objection, your Honor. Scope.

13 MR. CORCORAN: It's an investigation.

14 THE COURT: This goes to the scope of the
15 investigation?

16 MR. CORCORAN: Yes.

17 THE COURT: I'll allow a couple questions.

18 BY MR. CORCORAN:

19 Q. When you spoke with -- when you were questioning
20 Ms. Amerling, were you trying to learn what you could about
21 the facts to determine whether or not a crime of contempt of
22 Congress had been committed?

23 MS. GASTON: Objection, your Honor. Scope. This
24 is outside the scope of direct.

25 THE COURT: I understood the objection before to

1 be about scope of direct.

2 I'm going to allow a little leeway here. So
3 overruled.

4 THE WITNESS: Would you repeat the question? I'm
5 sorry.

6 BY MR. CORCORAN:

7 Q. Was your goal in interviewing Kristin Amerling to learn
8 about facts that bear on whether a crime was committed here?

9 A. The goal or the discussion with Ms. Amerling was to get
10 her interpretation of the events as she understood them and
11 to provide any potential information she may have relevant
12 to the case.

13 Q. Did you impress upon her that it was important to be
14 truthful and forthcoming about information that dealt with
15 your investigation of this matter?

16 MS. GASTON: Objection, your Honor. Improper
17 attempted impeachment.

18 THE COURT: Improper attempted impeachment.
19 Sustained.

20 BY MR. CORCORAN:

21 Q. When you interview any witness, do you try to determine
22 whether that person has a bias?

23 A. I would imagine that everyone we speak to has a bias of
24 some kind.

25 Q. And is --

1 MS. GASTON: Objection, your Honor. This is
2 improper as to -- it's improper to try to impeach other
3 witnesses through this witness.

4 MR. CORCORAN: We can go on the husher if you
5 want, your Honor, and talk.

6 THE COURT: I'm going to allow the question.
7 Objection overruled.

8 BY MR. CORCORAN:

9 Q. Did you learn in that interview that Ms. Amerling has
10 known the prosecutor for 15 years?

11 A. No. I don't think so.

12 Q. Now, I want to ask about other potential witnesses that
13 you spoke with to try to determine whether or not the crime
14 of contempt of Congress took place here. Okay?

15 MS. GASTON: Objection, your Honor. Relevance and
16 scope.

17 THE COURT: What's the question? Is there a
18 question?

19 MR. CORCORAN: It was a heading.

20 I'd like to ask the witness about --

21 THE COURT: What's the question?

22 BY MR. CORCORAN:

23 Q. The question is, sir: Did you interview for purposes of
24 this case the 200-plus members of Congress who voted not to
25 refer Stephen Bannon to the U.S. Attorney's Office for

1 contempt of Congress?

2 MS. GASTON: Objection. Relevance and scope.

3 THE COURT: The objection is sustained. The
4 jury --

5 You don't have to answer the question.

6 MR. CORCORAN: Thank you, your Honor.

7 THE COURT: Thank you.

8 Ms. Gaston, any redirect?

9 MS. GASTON: Just very briefly, your Honor.

10 REDIRECT EXAMINATION

11 BY MS. GASTON:

12 Q. Agent Hart, Mr. Corcoran asked you some questions about
13 whether you knew certain words were the Defendant's.

14 Do you remember that?

15 A. Yes, I do.

16 Q. Looking at Exhibit 11-B, the second page, there's a
17 quote from the Defendant.

18 THE COURT: Is there a question?

19 MS. GASTON: I'm just waiting for it to appear.

20 Sorry.

21 THE COURT: Oh, I apologize.

22 BY MS. GASTON:

23 Q. There's a quote there from the Defendant. Right?

24 A. Yes, there is.

25 Q. And those are his words. Right?

1 A. Yes, they are.

2 Q. And what did he say?

3 A. He said, "I stand with Trump and the Constitution."

4 Q. And last question, Agent Hart: In your experience in
5 conversations in which attorneys try to convince the
6 Government not to charge their clients, do they go to
7 lengths to provide any information that shows that their
8 client is innocent?

9 A. Yes.

10 MS. GASTON: Nothing further.

11 MR. CORCORAN: One question, your Honor.

12 THE COURT: Very well.

13 RECROSS-EXAMINATION

14 BY MR. CORCORAN:

15 Q. Just on that last question. The prosecutor asked you
16 about a statement saying that Steve Bannon stood with Trump
17 and the Constitution. Earlier, you mentioned that in your
18 discussion with Bob Costello he raised the issue and
19 advanced the issue of executive privilege. Is that correct?

20 A. Yes.

21 Q. Do you understand that executive privilege is a
22 privilege based in the Constitution?

23 A. Yes.

24 MR. CORCORAN: Thank you.

25 THE COURT: Thank you, sir. You may be excused.

1 THE WITNESS: Thank you.

2 THE COURT: Thank you for your testimony.

3 (Witness excused.)

4 MS. VAUGHN: Your Honor, the Government rests.

5 THE COURT: So here's what we're going to do:

6 We're going to recess for the afternoon/day.

7 There is one scheduling issue, as I had suggested
8 earlier today, that requires us to start a little bit later
9 in the morning than we would have otherwise. So we are --
10 the plan is to start at 11:00 a.m. tomorrow and to pick up
11 with the jury at that time.

12 I suppose, given that we're starting late, if it
13 turns out that the parties have issues that they would like
14 to discuss with me before the jury is here, please inform
15 Ms. Lesley perhaps as early as 10:30 or something so that we
16 could perhaps take those up.

17 Mr. Corcoran?

18 MR. CORCORAN: I think we can do it at 10:30. But
19 we'll make a motion for judgment of acquittal after -- since
20 the defense has rested in the morning in ten minutes or
21 something.

22 THE COURT: Understood.

23 Why don't we do that at 10:30.

24 MR. CORCORAN: Okay.

25 THE COURT: We'll do that at 10:30.

1 And then, depending on what happens with that, we
2 would resume, assuming it's not granted -- I'm not
3 prejudging it, of course -- we would then move to your case
4 and any evidence you're going to present at 11:00.

5 MR. CORCORAN: Very well, your Honor. Thank you.

6 THE COURT: Thank you.

7 Anything, Ms. Lesley, that I need to cover?

8 THE COURTROOM DEPUTY: No, sir.

9 THE COURT: Thank you all.

10 (Whereupon, the jury exited the courtroom at 4:59
11 p.m. and the following proceedings were had:)

12 (Proceedings concluded.)

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CERTIFICATE

I, LISA EDWARDS, RDR, CRR, do hereby
certify that the foregoing constitutes a true and accurate
transcript of my stenographic notes, and is a full, true,
and complete transcript of the proceedings produced to the
best of my ability.

Dated this 20th day of July, 2022.

/s/ Lisa Edwards, RDR, CRR
Official Court Reporter
United States District Court for the
District of Columbia
333 Constitution Avenue, Northwest
Washington, D.C. 20001
(202) 354-3269

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