

# TRUMP'S ATTORNEY DEBUNKED TRUMP'S CLAIM TO HAVE INVOKED EXECUTIVE PRIVILEGE TWO WEEKS AGO

Since WaPo first reported as BREAKING NEWS that they had been duped by Steve Bannon, I've spent a whole bunch of time pointing out that the claims multiple outlets were falsely reporting as true – specifically, that Trump had invoked Executive Privilege over Bannon's testimony – were instead news only because it was a transparent lie.

I laid out all the reasons why it could not be the case that an Executive Privilege invocation was the reason Bannon had refused to testify:

- The January 6 Committee asked for things that Bannon's own attorney, Robert Costello, acknowledged weren't privileged
- Trump's attorney, Justin Clark, provided broad guidance about claiming privileges generally but did not do the things – like making individualized privilege claims – required to invoke Executive Privilege
- Clark acknowledged that some of the things DOJ asked for

weren't privileged at all

- Clark also twice warned Costello that his guidance did not extend to immunity from testifying entirely, which Costello had repeatedly claimed it did

I even provided links – so all the journalists getting their ass handed to them by Steve Bannon – could check for themselves.

Those same journalists plus Mar-a-Lago stenographer might also refer to **the letter that Trump's attorney, Justin Clark, sent Costello**, which among other things acknowledges that the subpoena calls for records and testimony,

including but not limited to information which is potentially protected from disclosure by the executive and other privileges, including among others the presidential communications, deliberative process, and attorney-client privileges.

That's a far cry from invoking Executive Privilege over the things that might actually be privileged, and it concedes that not all potentially privileged materials are covered by Executive Privilege and further concedes the subpoena is "not limited" to information that might be privileged. So even if Bannon's decision to blow off the Committee was entirely guided by that letter, it would be inaccurate to say Trump properly invoked Executive Privilege or that Executive Privilege was the only issue.

That's pertinent because among other things these bozos wanted to do was

claim attorney-client privilege over meetings between non-attorney Mike Flynn and non-attorney Bannon.

The journalists plus Mar-a-Lago stenographer might also check out **the two emails that Clark sent Costello**, which made it clear that his instructions didn't go beyond that ambivalent letter, and sure as hell didn't give him immunity from showing up and answering questions, which is (contra to what the WaPo claims) what distinguishes Bannon from Mark Meadows and Dan Scavino, **on whose behalf** Trump did claim immunity from testifying, valid or not. [my emphasis]

I should have just waited.

In a motion in limine from the government seeking to exclude Bannon's latest manufactured stunt from his trial, DOJ revealed that a surprise witness identified in a recent filing was in fact Trump's lawyer, Justin Clark, and Clark confirmed much of what I had laid out in my post.

On June 29, 2022, former President Donald Trump's attorney, who sent the letter on which the Defendant claimed his noncompliance was based, confirmed what his correspondence has already established: that **the former President never invoked executive privilege over any particular information or materials**; that the former President's counsel never asked or was asked to attend the Defendant's deposition before the Select Committee; that **the Defendant's attorney misrepresented to the Committee what the former President's counsel had told the Defendant's attorney**; and that **the former President's counsel made clear to the Defendant's attorney that the letter provided no basis for total noncompliance**.<sup>3</sup> Even the Defendant's

claim that the reason he is now willing to testify is because the former President is “waiving” executive privilege is subject to question given all of the evidence and law that has been addressed in this case, of which he must be aware, demonstrating that executive privilege never provided a basis for total noncompliance in the first place.

3 The Government provided an FBI report of the interview in which the attorney made these statements to the Defendant on June 30, 2022, the day after the interview was conducted. [my emphasis]

In other words, Justin Clark has testified (and may, at Bannon’s trial) that what Trump has gotten a bunch of credulous journalists reporting as fact is a lie.

Trump’s own attorney says Trump is lying (and by association, the journalists got badly duped).

DOJ’s filing says a number of other things I’ve been saying too. First, if Bannon had really changed his mind about cooperating, he would have *already* turned over documents.

First, the Defendant apparently has not told the Committee he wishes to provide documents responsive to the subpoena, so his eleventh-hour efforts do nothing to begin to cure his failure to produce records.

Costello may have already known about this filing when he claimed, after Kyle Cheney asked him specifically about it, that he was going to work on documents – in the future – too.

It even points out what I did about instance of Maggie humiliating herself for Trump: In addition to sharing a lawyer with Rudy Giuliani, Bannon also shares lawyer Evan Corcoran with Trump.

The Government notes as well that news reports indicate the Defendant's attorney in this case now also works for the former President and that his law firm is being paid by the former President's Super PAC.<sup>4</sup>

<sup>4</sup> "Despite Growing Evidence, a Prosecution of Trump Would Face Challenges," N.Y. Times, June 18, 2022, available at <https://www.nytimes.com/2022/06/18/us/politics/trump-jan-6-legal-defense.html> (last accessed July 10, 2022); "Trump Group Pays for Jan. 6 Lawyers, Raising Concerns of Witness Pressure," N.Y. Times, June 30, 2022, available at <https://www.nytimes.com/2022/06/30/us/trump-jan-6-lawyers-witness-pressure.html> (last accessed July 10, 2022)

Let's be clear: From the start, the headlines from this latest Trump-Bannon stunt should have been that Justin Clark debunked it months ago.

But now, for the reporters who are too lazy to read the court record they're purportedly reporting on, DOJ just made that so clear that even the credulous reporters should understand now.