

# **EXHIBIT 5**

**From:** [Tonoli, Sean](#)  
**To:** [Buckley, David](#); [Amerling, Kristin](#); [Heaphy, Tim](#)  
**Subject:** RE: Memo to File re Call with Robert Costello  
**Date:** Wednesday, October 13, 2021 4:28:23 PM

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Follow-Up Call with Robert Costello

October 13, 2021

Approximately 4:10pm

- Bob called me at my desk. He expects to send the letter at or before 5pm, but cannot guarantee it – an unspecified “they” are reviewing the letter before it goes out. He still does not know whether Justin Clark or anyone else will directly notify the Committee that President Trump is invoking executive privilege.
- Bob confirmed, again, he and his client are not appearing tomorrow. And again he said there is no reason to work out logistics for their appearance.
- He asked two questions for future reference, but said he does not need answers tonight or by tomorrow. He did not characterize these as an effort to engage on arranging for his client to appear, but that is certainly the thrust of the questions. So I demurred and said I could answer if and when necessary.
  - (1) Is there a way to allow a lawyer for Trump to participate in the deposition to allow them to make privilege objections? He knows what the deposition rules state about third-party attorneys.
  - (2) Can a deposition be conducted remotely?

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**From:** Tonoli, Sean

**Sent:** Wednesday, October 13, 2021 2:33 PM

**To:** Buckley, David <David.Buckley@mail.house.gov>; Amerling, Kristin <Kristin.Amerling@mail.house.gov>; Heaphy, Tim <Tim.Heaphy@mail.house.gov>

**Subject:** Memo to File re Call with Robert Costello

Call with Robert Costello re Steve Bannon Deposition

October 13, 2021

Approximately 1:40pm

- On October 13, 2021, at 12:35pm, I emailed Robert (“Bob”) Costello to ask that he call me to discuss logistics for the deposition of Steve Bannon, scheduled for October 14, 2021, at 10am.
- Bob called me at 1:35pm at my desk phone, but I was unable to pick up. He left a voicemail and asked me to return his call. I did so at approximately 1:40pm, reaching him on his cell phone at 516-987-0213. I had the call on speakerphone so that Kevin Elliker could listen as a witness.

**Jan. 6 Sel. Comm. 0054**

US-000389

In sum and substance, Bob said that, as he explained in his October 7 letter, he and his client are not appearing for the deposition tomorrow. He will be sending a letter later today to Chairman Thompson further explaining his client's position.

- The letter is not finalized because of communications Bob has had today with Justin Clark, President Trump's attorney. Bob sent Justin the October 8 letter from Chairman Thompson, which Justin had not previously seen. Bob directed him in particular to the portion that says President Trump has not notified the Select Committee that he is invoking executive privilege. Bob told Justin that it would be helpful to Mr. Bannon's position if President Trump would do so. Bob did not represent whether we should expect the notification to come in.
- Whether President Trump notifies the Select Committee or not, Bob said Mr. Bannon's position is the same – he is not coming to the deposition tomorrow. And therefore Bob said there was no reason to work out logistics for his appearance.
- Bob added that he has asked President Trump, through Justin, to delineate the subject areas for which he is invoking executive privilege to provide Mr. Bannon more guidance. But to date that delineation has not been made, and Mr. Bannon's position is that he is not able to draw those lines himself. These issues need to be resolved and/or litigated between the Select Committee and President Trump—he and Mr. Bannon are just "sitting in ring-side seats."

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**Sean P. Tonelli**  
Senior Investigative Counsel  
Select Committee to Investigate  
the January 6th Attack on the United States Capitol  
U.S. House of Representatives

