

BRAND LAW GROUP

A PROFESSIONAL CORPORATION

923 FIFTEENTH STREET, N.W.

WASHINGTON, D.C. 20005

TELEPHONE: (202) 662-9700

TELECOPIER: (202) 737-7565

February 28, 2014

Democratic Staff, House Committee on
Oversight and Government Reform
2157 Rayburn House Office Building,
Washington, D.C. 20515

Re: Attorney Proffers

I have been asked to address a series of questions which have arisen from a witnesses assertion of her Fifth Amendment privilege and the Committee's consideration of its response to that assertion.

What is an attorney proffer?

An attorney proffer is simply a representation of what a witnesses testimony would be if called given by the attorney for the witness. It is a practice that has developed to allow the government, or in this case the Committee, to determine whether it wishes to seek immunity for the witness through a formal application to the Court. Because it is the attorney's representation, it is not a waiver of the privilege and thereby preserves the right of the witness to assert it in any subsequent proceeding.

How is an attorney proffer used?

It is used by the government (again in this case the Committee) to evaluate the scope, value and content of a witnesses testimony to determine whether the committee should, in its judgment, seek an order pursuant to 18 U.S.C. § 6005, requiring such individual to testify.

How typically is a proffer used by the investigators?

Again, it would be used by investigators to assist the Committee in assessing whether it should seek statutory immunity order.

BRAND LAW GROUP

Democratic Staff, House Committee on
Oversight and Government Reform
February 28, 2014
Page 2

Does an attorney proffer create an obligation to provide the attorney's client with immunity?

No. It imposes no obligation on the Committee's part to avail itself of the provisions of the statute which authorize it to seek an immunity order. It is merely a way to provide the Committee with a sense of the testimony that would be given in order to assist it in the determination it needs to make under the statute, while at the same time providing a mechanism for the witness to do so without having to confront an issue of waiver.

Sincerely,



Stanley M. Brand

SMB:mob

Enclosure

BRAND LAW GROUP

A PROFESSIONAL CORPORATION
923 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005

Telephone: (202) 662-9700
Facsimile: (202) 737-7565
sbrand@brandlawgroup.com

Stanley M. Brand

Since founding a Washington, D.C. based law firm in 1983, Mr. Brand has “specialized in cases at the intersection of politics, criminal law and communicating in the Washington echo chamber,” according to former client George Stephanopoulos in his bestselling autobiography “*All Too Human: A Political Education*” (Little Brown and Company, 1999). These cases have included representing major corporations, trade associations, labor unions, and individuals in major Justice Department, grand jury and independent counsel investigations and trial proceedings, including Whitewater, HUD, the savings and loan crisis and the campaign finance task force investigations.

From 1974 to 1976 Mr. Brand served as an attorney advisor at the U.S. Securities and Exchange Commission in the Division of Investment Management involved in compliance and enforcement of the Investment Company and Investment Advisers Acts.

From 1976 to 1983 Mr. Brand served as General Counsel to the U.S. House of Representatives under Speaker Thomas P. “Tip” O’Neill, Jr., and was the House’s chief legal officer responsible for representing the House, its members, officers and employees in connection with legal procedures and challenges to the conduct of their official activities. Mr. Brand represented the House and its committees before both federal district and appellate courts, including the U.S. Supreme Court, in actions arising from the subpoena of records by the House, in contempt proceedings in connection with congressional demands, and in landmark cases involving the legislative veto, congressional chaplaincies, immunity of congressional employees, separation of powers, and constitutional and common law tort suits, including defamation, discrimination actions, and state and federal wiretapping statutes.

Since leaving the House of Representatives, Mr. Brand has had a succession of high profile, political and public corruption and ethics cases and clients, including former White House aide George Stephanopoulos in the Whitewater investigation, former Congressman and Gore 2000 Chairman Tony Coelho, former House Majority Whip Bill Gray, Senator Larry Craig and Congresswoman Maxine Waters. In 2002, he served as counsel to Arthur Andersen in the government’s various investigations of and charges against the company and Lehman Brothers in connection with congressional investigations into the company’s collapse in 2008. In 2005 he was counsel to Major League Baseball, representing MLB in connection with congressional investigations into baseball’s steroid policy. He was featured in *The Washingtonian* magazine’s 2002 survey of the 75 best lawyers in Washington. In 1999, Mr. Brand was named by the *Legal Times* to the magazine’s White Collar Crime “Top Gun” list for knowing “when to fight and when not to fight.”

Brand Law Group

Mr. Brand currently also serves as the Distinguished Fellow in Law and Government at the Penn State Dickinson School of law and is the on-site supervisor for the Washington semester program and teaches Federal Regulation and Legislative Practice seminar (which includes the study of government ethics, lobbying and election law compliance) and Election Law. He also co-authored *Congressional Investigations and Oversight: Cases Studies and Analysis* (Carolina Academic Press, 2011), a leading treatise on the investigative power of Congress.

Since 1992 Mr. Brand has served as Vice President of the National Association of Professional Baseball Leagues, (MiLB), the governing body of minor league baseball. In that capacity he was responsible for representing minor league baseball during congressional consideration of baseball's historic antitrust exemption.

Mr. Brand received his B.A. from Franklin & Marshall College in 1970 and his J.D. from Georgetown University Law Center in 1974.