

Form B3-2. Letter from Witness's Counsel Proposing a Proffer and Requesting Immunity

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When to use. Counsel for a witness asking committee counsel, a commission, or DOJ for a proffer agreement or immunity before testimony. **Not for:** A witness who has already testified without protection.

Deadlines. Before any interview or testimony. Under 18 U.S.C. §6005 the Attorney General must have 10 days' notice of a congressional request for an immunity order.

[Letterhead]

[Date]

[Chief Counsel, Committee / Commission]

[or: Assistant Attorney General, National Security Division, U.S. Department of Justice]

[Address]

Re: [Witness name]: proposed proffer and request for immunity

Dear [Name]:

I represent [witness], [description of role without classified detail, e.g., “a former contractor employee who worked on programs relating to unidentified anomalous phenomena between [years]”]. [Witness] is prepared to provide information relevant to [the Committee’s inquiry / the Commission’s mandate] on the terms described below.

1. Nature of the information. [Witness] has personal knowledge of [general categories, e.g., the existence and funding of a program, the handling of material, communications with Congress, actions taken against other employees]. Some of this information is or may be classified. [Witness] will provide classified information only in a secure setting to persons with appropriate clearances, and requests that [the Committee / Commission] arrange such a setting.

2. Existing protections. To the extent [witness] provides information to the All-domain Anomaly Resolution Office through the authorized reporting mechanism, the disclosure is protected under 50 U.S.C. §3373b(b), which provides that it “shall not be subject to a nondisclosure agreement,” is deemed to comply with Executive Order 13526 and chapter 18 of the Atomic Energy Act, and “is not a violation of section 798 of title 18, or other provision of law relating to the disclosure of information.” [Witness] [has / has not] made such a disclosure. [Note any PURSUE communications and the Department of War’s waiver.]

3. Proposed proffer. We propose an initial proffer session under a written agreement providing that:

(a) no statement made by [witness] during the proffer will be used against [witness] in any criminal case, except for prosecution for false statements made during the proffer; (b) [derivative-use terms to be negotiated]; and (c) the agreement does not bind any state or foreign authority, which [witness] understands.

4. Request for immunity. Following the proffer, we request that [the Committee seek an order under 18 U.S.C. §6005 / the Commission seek an order under 18 U.S.C. §6004 / the Department enter a non-prosecution agreement] covering [witness]’s testimony. We ask that before any immunized testimony the Department of Justice be given the opportunity to secure its existing evidence, consistent with *Kastigar v. United States*, 406 U.S. 441 (1972), and *United States v. North*, 910 F.2d 843 (D.C. Cir. 1990), modified, 920 F.2d 940 (D.C. Cir. 1990), so that the immunity does not prejudice any prosecution of others.

5. Reprisal. [Witness] asks for written assurance that no personnel or security-clearance action will be taken in reprisal for this cooperation, and reserves all rights under 50 U.S.C. §3373b(b)(2), 50 U.S.C. §3234, 50 U.S.C. §3341(j), and 10 U.S.C. §4701, as applicable.

6. Civil exposure. [If a statutory civil shield is available, request determination under it. Otherwise:] [Witness] reserves all defenses and asks that [the Committee / Commission] not release [witness]'s identity without consent except as required by law.

7. Preservation. [Witness] has preserved [general description] and will provide it through appropriate channels. [Witness] has not retained classified material outside authorized storage. [Confirm this is accurate before sending.]

Please contact me to arrange a meeting.

Sincerely,
[Counsel, bar admission, clearance status if any]