

Message

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**From:** Webster, Brent [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=47B2D01E6F744ED7B2594F40D8DB3EC0-BEW2]  
**Sent:** 8/22/2021 4:03:59 PM  
**To:** Sutarwalla, Murtaza [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cf80d5746b8746bda0530e76c9f8bb5a-MFS2]  
**Subject:** Narrative Report 08222021 - Sunday Final Substantive  
**Attachments:** Narrative Report 08222021 - Sunday Final Substantive.docx

Murtaza,

This is the final draft. I added a paragraph at the end of the first section that I feel strongly that I want to keep, as the bulk of report is my work and I would like to have a disclaimer present in the event that someone provides evidence I was not aware of.

Can you do me a favor and format the conclusion?

Thanks,

Brent

House Managers

EX. 434

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## I. PURPOSE AND SCOPE OF INVESTIGATION

This internal investigation report (this “Report”) documents the investigation conducted to review and analyze the actions taken by employees and political appointees of the Attorney General of Texas (“AG”) and other individuals. This Report evaluates allegations made by former political appointees in a criminal complaint (and a related formal complaint made to the AG on or about September 30, 2020). These allegations in turn arose out of two criminal complaints made by Nate Paul. The investigation underlying this Report began on October 5, 2020, and this Report is limited to facts presented to the AG related to events occurring before October 5, 2020, and any relevant information that informs understanding around those facts (and subsequent interviews thereof), and inferences from all such information. Any allegations that were not included in the above-mentioned formal complaint or that have surfaced in the media after such date (in particular, the allegations made by the plaintiffs in a pending lawsuit, *Brickman et. al. v. Office of Attorney General*) are not addressed in this Report.<sup>1</sup>

The former political appointees that made the criminal complaint against Attorney General Ken Paxton (“AG Paxton”) are Jeff Mateer, Ryan Bangert, Lacey Mase, Ryan Vassar, Mark Penley, Blake Brickman, and Darren McCarty (“the Complainants”). See Exhibit 1, Letter from the Complainants Disclosing Criminal Complaint. Their complaint contained four accusations: that AG Paxton improperly: (1) issued an opinion regarding the State’s open records laws; (2) intervened in the investigation of the Mitte Foundation; (3) issued an informal guidance document regarding foreclosure sales; and (4) authorized attorney Brandon Cammack to act on behalf of the State of Texas in a criminal case. Because the Complainants accused AG Paxton of bribery, this investigation also examined whether these or any other acts relating to Nate Paul or his criminal complaints were improperly influenced by a bribe or other illegal consideration.

This investigation includes a review of documents and interviews of numerous individuals. A majority of the documents reviewed were located within the Office of the Attorney General (“OAG”). The collective term “OAG” refers to the collective body of buildings, employees, document systems, email systems, and files belonging to the AG. Along with reviewing documents within the OAG system, the investigation included interviews or information obtained from the following individuals: Mark Penley, David Maxwell, Ryan Bangert, Darren McCarty, Ryan Vassar, Lesley French, Aaron Reitz, Michael Wynne, Nate Paul, Brandon Cammack, Jason Anderson, Brittany Hornsey, Robert Sunley, Les St. James, Erin Mitchell, Joshua Godbey, Justin Gordon, Enrique Varela, Mindy Montford, and Amy Meredith, as well as others regarding their observations, actions, and conversations. Facts within this Report were discovered through the above interactions and documents maintained within OAG (and also as provided by outside parties). This Report includes a summary and timeline of events based on the evidence discovered and reviewed.

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<sup>1</sup> Complainants memorialized their allegations against Ken Paxton in writing around September 30, 2020. Several months later, a subset of the Complainants has made additional allegations in a lawsuit, which were not included in their original September 30 written complaint. Since those allegations were not found within OAG records (nor found within their September complaint), they are not addressed in this Report.

This report largely relies on facts rooted in documents, third-party interviews and the application of Texas law. However, through the course of this investigation, it was discovered that some of the Complainants operated in an unaccountable manner by not documenting their actions, instructing subordinates not to document their actions, dismissing other employees so that they could have secret meetings, communicating with unsaved word documents, deleting emails, and potentially other acts taken to conceal behaviors, processes, and evidence. Therefore, it is impossible to affirm that all documents, communications, emails, or evidence has been discovered through this investigation. We reserve the right to update and modify this report and its conclusions, in the event that additional relevant documents or evidence are found.

DRAFT

## II. EXECUTIVE SUMMARY

The Complainants' allegations are either factually incorrect or legally deficient.<sup>2</sup> Review of relevant documents and interviews, and based on the timeline and analysis laid out in this Report, this investigation revealed the following:

- AG Paxton's actions were lawful, and consistent with his legal duties and prior actions taken by Attorneys General of Texas. AG Paxton committed no crime.
- The Complainants provided no evidence to OAG of a bribe, and likewise the investigation otherwise uncovered no evidence of a *quid pro quo* relationship between Paul and AG Paxton.
- The actions taken by AG Paxton in his official capacity or his authorized designees were likewise proper pursuant to his legal obligations.
- Contradictory to the claims made by the Complainants in their formal complaint, the following actions by AG Paxton were indeed lawful:
  - *First Claim:* The Open Records division issued a closed letter that made a determination not to disclose information to the requestor (who was allegedly connected to Nate Paul) on due process grounds. On two prior occasions involving Nate Paul's interests, the Open Records Division sided with the government agency against disclosing to Nate Paul (or his attorney), consistent with the position taken by the United States Department of Justice's briefing.
  - *Second Claim:* AG Paxton's actions to intervene, investigate and mediate a possible settlement regarding the Mitte Foundation were in keeping with past investigations into that charity. Former Attorney General, and now Governor, Greg Abbott had previously sued the Mitte Foundation, as the Mitte Foundation has a long history of bad acts and scandals requiring government intervention and private litigation. AG Paxton's involvement is consistent with his predecessor and in line with his required duties and legal obligations as Attorney General of Texas. Most relevant here, the position taken by the AG in this litigation was adverse to Nate Paul and in support of a higher settlement amount to be paid by Nate Paul to the Mitte Foundation, as opposed to the prospect of continued and costly litigation that would disproportionately benefit the charity's court-appointed receiver and its lawyer.
  - *Third Claim:* The informal guidance letter regarding foreclosure sales written by Bangert was made in response to a request for disaster counsel advice from Texas Senator Bryan Hughes during the height of the pandemic, and not for the benefit of Nate Paul.

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<sup>2</sup> As this investigation remains ongoing, this Report will be updated and supplemented as further interviews are conducted and if any additional evidence is obtained.

- *Fourth Claim:* In connection with the two criminal referrals made by the Travis County District Attorney’s Office (“TCDAO”) to OAG, AG Paxton (with input from Mateer) retained Brandon Cammack as outside counsel for OAG. Cammack legally and properly exercised authority delegated to him by both AG Paxton and the TCDAO. Cammack was designated as outside counsel for OAG by AG Paxton, and he was also knowingly appointed as a Special Prosecutor by TCDAO. Texas law authorized Cammack to serve in these two capacities simultaneously.<sup>3</sup> In particular, the following deficiencies with the Complainants’ allegations are noted:
  - At the time the Complainants made their criminal complaint against AG Paxton, they did not know that Cammack had been appointed outside counsel, nor did they know that TCDAO had appointed him as a special prosecutor for both criminal referrals. Without this knowledge, the Complainants incorrectly assumed that Cammack acted illegally by taking various actions, though he was in fact authorized to take such actions. This misunderstanding underlies several of the false allegations and assumptions Complainants made in their complaint.
  - Likewise, though the Complainants said in their written criminal complaint that “staff refused to approve the request to retain outside legal counsel to investigate the Travis County complaint,” several Complainants participated in the process leading to Cammack’s engagement. For example, then-First Assistant Attorney General Jeff Mateer took part in interviewing candidates for outside counsel for this investigation, including Cammack. Another Complainant, then-Deputy Attorney General Ryan Vassar, drafted the outside counsel contract for Cammack, emailed it to the parties, and approved the contract in DocuSign. Cammack’s engagement as outside counsel was further recommended by then-General Counsel (and now Chief of Staff) Lesley French, at the request of Vassar.
  - TCDAO, through First Assistant Mindy Montford and Director of Special Prosecutions Don Clemmer, voluntarily and with full knowledge of what they were investigating opened two different criminal investigations referenced herein as Referral #1 and Referral #2. Referral #1 related to allegations regarding tampering by federal and state officials of a government record (i.e., altering a search warrant after it was signed by a federal magistrate). Referral #2 related to allegations of a conspiracy by private persons and entities to foreclose properties owned by Nate Paul’s companies at fraudulently lowered prices.
  - Material facts were unknown, ignored, and, in some cases, willfully obfuscated by the Complainants. For example, the Complainants did not know about Referral #2, which was material to the false assumptions within their criminal complaint. Referral #2 involved different potential defendants and different potential crimes than Referral #1.

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<sup>3</sup> This is not uncommon in Texas government. For example, a Department of Family and Protective Services lawyer is sometimes deputized to be a Special Assistant Attorney General by OAG, and such lawyer serves in both roles simultaneously.

- TCDAO did not recuse themselves from either Referral #1 or Referral #2, and therefore, under Texas law, TCDAO retained legal care, custody, and control of the investigations.
- OAG could only “assist” TCDAO in their investigation because there had been no recusal by TCDAO.
- Cammack never personally appeared before a judge or before a grand jury in the referrals he was working on, but he instead relied on TCDAO to have the subpoenas issued.
- TCDAO Chief of Public Integrity Unit Amy Meredith and her staff, including Bailey Molnar, with the full knowledge and assistance of TCDAO Director of Special Prosecutions Don Clemmer, were responsible for obtaining grand jury subpoenas and maintained control of that process, from entering the subpoenas into DocuSign, setting up the signature fields in DocuSign, communicating information and providing the subpoenas to the judge presiding over the grand jury.
- TCDAO knew what was being subpoenaed by Cammack (i.e., investigations into Referral #1 and Referral #2) and, most importantly, held control over all decisions regarding the subpoenas presented to the Court.
- The claims against the potential defendants in Referral #1 and Referral #2 were never ruled out, and questions remain as to whether a crime was committed in Referral #1 and Referral #2. The Complainants’ actions (and the media controversy that resulted) likely created an untenable situation for Cammack to complete his investigation.
- There is no evidence that Nate Paul committed any criminal act in filing either criminal complaint. In fact, Paul followed the proper procedure of completing Travis County’s complaint paperwork.
- There is no evidence that Nate Paul attempted to bribe AG Paxton. The Complainants attempt to use a campaign donation as proof of the bribe, however, Paul has made only one campaign donation to AG Paxton in 2018 – not only well before the allegedly improper actions taken by AG Paxton in 2020, but even before the FBI’s 2019 raid that formed the *gravamen* of Nate Paul’s criminal complaints. By definition, this 2018 donation could not legally constitute a bribe, because neither Paul nor AG Paxton could have known that the FBI would raid Paul’s house in 2019 and did not know the future events that would occur after such raid had taken place. “In order to convict a briber, the government must prove that the accused intended to bribe the official. Intending to make a campaign contribution does not constitute bribery, even though many contributors hope that the official will act favorably because of their contributions.” *US v. Tomblin*, 46 F.3d 1369, 1379 (5th Cir. 1995). *See also US v. Allen*, 10 F.3d 405, 411 (7<sup>th</sup> Cir. 1993) (“[A]ccepting a campaign contribution does not equal taking a bribe unless the payment is made in exchange for an explicit promise to perform or not perform an official act. Vague expectations of some future benefit should not be

sufficient to make a payment a bribe.”). Here not only was there no promise, but there was not even a vague expectation of a future event taking place (i.e., the FBI executing a sealed search warrant in the future).

- As the investigation uncovered, it was in fact Vassar and Penley who violated Texas Code of Criminal Procedure article 20.02(h). Furthermore, Penley misled Don Clemmer to obtain copies of secret grand jury subpoenas for the unlawful purpose of providing those subpoenas to a third party, namely Johnny Sutton.
- Penley misled the 460th Criminal District Court Judge in a court filing by not disclosing that Penley had, within his possession, a signed contract between AG Paxton and Cammack that designated Cammack as outside counsel for OAG.
- Vassar, upon notice that an investigation was being conducted into his actions, deleted government documents and tampered with evidence (or attempted to tamper with evidence), thereby violating Texas Penal Code sections 37.09 and 37.10.
- Former Director of Law Enforcement David Maxwell<sup>4</sup> instructed OAG forensic examiners Erin Mitchell and Les St. James not to document their findings nor to log the search in any official manner. This was a violation of OAG policy and best practices that could have jeopardized their investigation. Additionally, Maxwell’s directions call into question the sufficiency of any actions taken by the forensic examiners
- It should be noted that the Complainants in many cases did not provide any information or details of their complaints, or otherwise flatly refused to cooperate with requests to do so (including by voluntarily providing government records in their possession, if any).

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<sup>4</sup> While Maxwell did not make a criminal complaint to the FBI on September 30, 2020, he is a plaintiff in the pending lawsuit noted above and appeared to align with the Complainants as to the allegations made against AG Paxton.



### **III. FACTUAL BACKGROUND: JUNE 2020 THROUGH OCTOBER 2, 2020**

The chronological discussion that follows is based on dozens of witness interviews, numerous exhibits, and other evidence gathered in the scope of this investigation. This chronology includes brief legal discussions underlying relevant events as necessary for the sake of clarity.

The Attorney General of Texas at any time is responsible for approximately 37,000 active cases and fulfilling numerous constitutional and statutory duties on behalf of the State of Texas. To accomplish the goals of his job, the Attorney General of Texas employs approximately 4,200 employees to manage the caseload. Within the Executive leadership team, there are Deputy Attorneys General responsible for specific divisions based on the type of case and activity. The potential for the work of the AG to impact the lives and businesses of any individual Texan, in more ways than one, is not unusual. *See* Exhibit 43, 73-Page List of Statutes Requiring or Authorizing Action by the Attorney General.

#### **A. Referral #1 and OAG Investigation**

Nate Paul originally complained to AG Paxton about what Paul believed to be criminal actions by federal and state officials against him. Paul's first criminal complaint arose from a dispute regarding the legality of actions taken by the FBI against Paul, particularly including search warrants executed against Paul and his business, World Class Holdings. Paul contacted AG Paxton and informed him of his concerns, asking AG Paxton to investigate Paul's belief that he was the victim of a crime by various federal and state officials. According to Paul, AG Paxton informed Paul that TCDAO, not OAG, had the authority to initiate such an investigation, and that AG Paxton offered to introduce Paul to TCDAO First Assistant District Attorney Mindy Montford.

A meeting was arranged with Montford, and she invited TCDAO Director of Special Prosecutions Don Clemmer to the meeting with Paul. Paul had lunch with Montford and Clemmer, where Paul discussed his criminal complaints. AG Paxton attended this meeting briefly, arriving late and leaving early. AG Paxton missed most of Paul's presentation to the TCDAO officials.

Between that lunch meeting and June 10, 2020, Nate Paul made a written criminal complaint to TCDAO and provided evidence. *See* "Criminal Complaints by Nate Paul, Complaint #1. In summary, he claimed that employees of the Texas State Securities Board ("SSB"), the FBI, the Texas Department of Public Safety ("DPS"), the U.S. Attorney's Office for the Western District of Texas, and a federal magistrate violated Texas Penal Code section 37.10, tampering with a governmental record, and section 39.03, prohibiting official oppression. Paul provided documentation that demonstrated to him that the metadata within the search warrant document had been modified after the document was signed.

Filing a criminal complaint against law enforcement officers for actions taken in their job, including federal officers, is not an uncommon occurrence. Prosecutors know allegations against law enforcement officers need to be properly investigated (unless the allegations can be immediately ruled out) for several reasons. First, if there was a crime committed by an officer, it is important that the officer be held accountable and their position of authority be taken away. Second, many law enforcement agencies perform the investigation to clear the name of an accused law enforcement officer. A law enforcement officer with a pending criminal complaint against him will have difficulty on the witness stand, especially if the defense bar is aware of the uncleared

allegations. No matter the outcome, a documented, written, and thorough investigation is beneficial to all parties involved even, perhaps especially, if the allegations are false.

Every complaint made to the TCDAO—including the ones made by Nate Paul—is logged and assigned a number before a decision is made as what to do with it.<sup>5</sup> After this initial logging, TCDAO had several options in handling and processing Paul’s complaint:

- **Reject the complaint.** This occurs when a complaint is received by a law enforcement agency, and the complaint does not articulate a crime that can be investigated or include enough information to conduct an investigation. This commonly occurs when there is a civil violation of law that does not rise to the level of a crime, or when a complaint lacks a sufficient factual basis to justify further investigation.
- **Refer the complainant to another law enforcement agency.** TCDAO could have directed Nate Paul to take his complaint to another law enforcement agency able to conduct the investigation and with jurisdiction over the alleged crime, such as, potentially, the Austin Police Department or the Travis County Sheriff’s Office. At that point, the complaint would be closed within TCDAO’s system.
- **Ask the Texas Rangers or DPS to investigate.** Criminal claims against law enforcement officials are typically referred to the Public Integrity Unit of the Texas Rangers for investigation, and not OAG or other statewide offices, as Don Clemmer confirmed in Referral #1, stating that “My office would typically forward such a complaint to the Public Integrity Unit of the Texas Rangers for review.” *See* Exhibit 3, Referral #1. Here, TCDAO affirmatively chose not to take this option, ostensibly because one of the individuals named in Nate Paul’s complaint worked for DPS (thus conflicting out DPS).
- **Keep the investigation and conduct an investigation internally.** TCDAO and other district attorneys’ offices in Texas can conduct their own investigations internally.
- **Keep the investigation and officially ask OAG to assist with the investigation, as Don Clemmer ultimately decided.** OAG fills a unique position in the criminal justice system in Texas in that it fills an *assistance* role in criminal investigations. The Texas Legislature has only given OAG original jurisdiction in criminal investigations for a few select crimes. Neither Referral #1 nor Referral #2 implicated OAG’s original jurisdiction, limiting OAG to an assistance role in these two referrals. Notably, Don Clemmer was aware that Nate Paul knew AG Paxton at the time he made the referral and did not believe a conflict existed that would bar his referral to OAG, based on Clemmer’s writings in the referral letter. TCDAO chose the option to request OAG assistance. *See* Exhibit 3, Referral #1.

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<sup>5</sup> Investigations by district attorneys’ offices are subject to the Texas Disciplinary Rules of Professional Conduct. For example, Rule 3.09 provides in part: “The prosecutor in a criminal case shall: (a) refrain from prosecuting or threatening to prosecute a charge that the prosecutor knows is not supported by probable cause.”

## B. OAG Relationship with TCDAO; Special Prosecutors vs. *Pro Tem* Prosecutors

OAG's relationship with TCDAO—and the legal consequences of Clemmer's decision to ask OAG to assist in the investigation—had far-reaching legal effects.

When OAG assists in a criminal investigation, it does so pursuant to sections 41.102(b) and 402.028 of the Texas Government Code. Both Texas statutes authorize OAG to “assist” a district attorney's office in their investigation or prosecution of a matter.<sup>6</sup> “A prosecuting attorney may request the assistance of the attorney general, and the attorney general may offer to the prosecuting attorney the assistance of his office, in the prosecution of all manner of criminal cases *or in performing any duty imposed by law on the prosecuting attorney.*” TEX. GOV'T CODE § 41.102(b) (emphasis added). OAG has a team of law enforcement investigators and experts that can investigate whether government documents, including digital documents, have been altered. Also, OAG can and commonly does hire outside counsel and outside experts to assist with all legal matters involving OAG. This includes, where appropriate, assistance in criminal investigations.

But even where OAG assists a district attorney with a criminal investigation, that assistance remains subordinate to that district attorney. With the exception of a few select crimes where the AG has statutory jurisdiction, the only way for OAG to take a non-subordinate role in a district attorney led investigation is if the district attorney recuses their office from the case. If a district attorney chooses to not recuse their office from an investigation, then they retain ultimate authority over the case and any investigation maintained under it. District attorneys in Texas maintain their own investigative staff and can utilize the power of a grand jury to conduct their own investigations, without needing permission from a local law enforcement agency. However, if a district attorney recuses their office, then OAG can be appointed *pro tem* prosecutor to take on final authority over the matter in which the district attorney has recused. *See* TEX. CODE CRIM. PROC. Art. 2.07; Exhibit 4, Tex. Att'y Gen. Op. No. KP-0273.<sup>7</sup> However, unless the district attorney is recused, OAG's assistance role is subordinate at all times to the district attorney.

Any lawyer, including an outside counsel for OAG, may be appointed to be a special prosecutor to assist a district attorney. *See* Tex. Att'y Gen. Op. No. KP-0273. The term “special prosecutor” is commonly confused with “pro tem” prosecutor, but the distinction is significant. As the Court of Criminal Appeals described the difference in *Coleman v. State*:

Although the terms “attorney pro tem” and “special prosecutor” are sometimes used interchangeably and have many similarities, the two are fundamentally different. *See State v. Rosenbaum*, 852 S.W.2d 525, 529 (Tex. Crim. App. 1993) (Clinton, J., concurring). Both are attorneys who are not members of the district attorney's regular staff. *Id.* But a special prosecutor participates in a case only to the extent allowed by the district attorney and operates under his supervision. *Id.* An attorney pro tem assumes all the duties of the district attorney, acts independently, and, in effect, replaces the district attorney. *Id.* The special prosecutor need not take an

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<sup>6</sup> *See Coleman v. State*, 246 S.W.3d 76, 82 n.19 (Tex. Crim. App. 2008).

<sup>7</sup> Jeff Mateer and Ryan Bangert are authors of Texas Attorney General Opinion KP-0273, which is inconsistent with Mateer's and Bangert's actions in contesting the “special prosecutor” status TCDAO conferred upon Cammack.

oath of office. *Id.* The attorney pro tem, if not an attorney for the state, must take an oath. *Id.* Court approval for a special prosecutor is not required because the ultimate responsibility for the special prosecutor’s actions remains with the elected district attorney. *Id.* In contrast, the trial court must approve the appointment of an attorney pro tem. *Id.* See also, *In re Guerra*, 235 S.W.3d 392, 409 (Tex. App.—Corpus Christi 2007, orig. proc.); *Rogers v. State*, 956 S.W.2d 624, 625 n. 1 (Tex. App.—Texarkana 1997, pet. ref’d).

246 S.W.3d 76, 82 n.19 (Tex. Crim. App. 2008). In other words, special prosecutors remain subject to the authority of the elected district attorney, while pro tem prosecutors do not.

### C. Clemmer Requests OAG Assistance; OAG Actions Taken in Response

On June 10, 2020, Don Clemmer mailed Referral #1 to OAG, though it was not received until June 17, 2020.

On June 16, 2020, at the request of the FBI and the U.S. Department of Justice (“DOJ”), Texas Assistant Attorney General Josh Godbey and Bangert had a conference call with Dee Raibourne (SEC), Rani Saaban (FBI, seconded from the Texas SSB), and Neeraj Gupta (representing the U.S. Attorney’s Office for the Western District). On the call, DOJ, FBI and the SEC wanted to discuss OAG intervening into the Mitte Foundation case. OAG was made aware of the fact that the Mitte Foundation was an alleged “victim” in one of the FBI’s cases and the federal authorities were concerned that an OAG investigation or intervention could be used to tarnish someone they viewed as a victim and/or a possible witness. (See below for Mitte Foundation’s problematic past activities). After this meeting, there was an email exchange that started on June 16, 2020, and ended on June 17, 2020, at 12:57 a.m. Assistant U.S. Attorney Neeraj Gupta wrote the following at 12:57 a.m.:

**From:** [Gupta, Neeraj \(USATXW\)](#)  
**To:** [Godbey, Joshua](#)  
**Cc:** [Day, Cathleen](#)  
**Subject:** Re: Discussion re: Mitte Fdn vs. WC 1st and Trinity et al; Cause No. D-1-GN-18-007636; In the 126th Judicial District Court of Travis County, Texas  
**Date:** Wednesday, June 17, 2020 12:57:43 AM

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Thanks. The world class lawyers have sued someone who complied w a search warrant, made official complaints against the agents, filed some stuff that was pretty aggressive, and met with some Texas AG special criminal investigations group asking them to open a criminal case against me for investigating Nate Paul. I’m looking forward to reading about how these lawyers are or aren’t compensated.

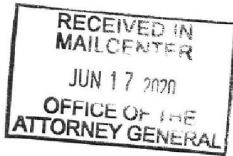
As of the time Gupta sent his email, OAG had not received Referral #1 and had not commenced any investigation. Referral #1 is stamped as received by OAG on June 17, 2020, which would have occurred during business hours (Gupta’s email was sent before Referral #1 was stamped received by OAG mail center):

Don Clemmer



OFFICE OF THE  
DISTRICT ATTORNEY  
MARGARET MOORE  
P.O. Box 1748  
Austin, Texas 78767

FORWARDING AND ADDRESS CORRECTION REQUESTED.



Mr. David Maxwell  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

78711\$2548 B007



The referral stated:

Dear Mr. Maxwell:

I am forwarding to you the attached complaint which was recently received by my office regarding allegations of misconduct by employees of the State Securities Board, the Federal Bureau of Investigations, the Department of Public Safety, the United States Attorney's Office for the Western District of Texas, and a federal magistrate. My office would typically forward such a complaint to the Public Integrity Unit of the Texas Rangers for review. However, since an employee of the Department of Public Safety is one of the subjects of the complaint, referral to the Rangers would appear inappropriate. I am therefore requesting that your agency conduct the review.

Thank you for your attention to this matter.

Sincerely,

Don Clemmer

See Exhibit 3, Referral #1.

Former Assistant United States Attorney and then-Deputy Attorney General for Criminal Justice Mark Penley (one of the Complainants) kept a notepad with personal notes, office meeting notes, and legal research notes. The notepads appeared to be kept in chronological order. Penley made the following note on July 6, 2020, that appears to be related to a meeting he had with AG Paxton as it is titled, "Ken":

7/16/20

KEN

Shirley

Tampering w/ Docs is a State Issue.  
per Mindy at Travis County

He alleges they changed the search warrant.

Ken just wants the truth.

Penley notes that "Ken just wants the truth."

AG Paxton inquired on July 16, 2020, to determine what was happening with the criminal investigation. Once again, Penley made contemporaneous notes about his discussion with AG Paxton:

Ken: We've had this for 6 weeks!  
Concern @ TM article. TM concerning Paul.  
He just wants the truth!



[REDACTED] NATE PAUL  
Sheena Paul - Duke, #1 in class



This hasn't been a priority at all 6 weeks.

Been leaked to Texas Monthly.

SEEK THE TRUTH!!  
let results be what they are

This was sent over by LF  
Referred by Travis Co. DA.

Penley records AG Paxton's directive to "SEEK THE TRUTH!! Let [the] results be what they are." This contradicts Penley's allegations against AG Paxton as set forth in the criminal complaint made against AG Paxton on September 30, 2020.

Aside from Penley's contemporaneous notes, the first evidence that OAG acted on Referral #1 dates from July 17, 2020—four weeks after Referral #1 was received by OAG. Penley would not have normally been involved in an investigation like this at such an early stage, as it would fall within David Maxwell's division. Here, it appears both Penley and Maxwell worked on the investigation at different times. Within OAG, the normal procedure for processing criminal referrals requires that the referral is first reviewed by the director of law enforcement (then Maxwell), and it is then forwarded on to a major in the appropriate division where it will be investigated. A referral is to be entered into Webpass and/or the OAG offense report system. In this case, Referral #1 was assigned to Major Robert Sunley. Maxwell then reassigned the matter to himself and informed Sunley. This was unusual for an official as senior as Maxwell, the Director of Law Enforcement, to do his own investigation. As Maxwell confirmed during a November 10, 2020, interview, Maxwell indicated that he rarely took part in actual investigations, and instead remained in a supervisory role.

Chief of the Criminal Investigations Division Jason Anderson performed a due diligence search and determined that Referral #1 was never entered into Webpass, and it did not exist within the offense report system. Maxwell did not write any reports and, with the exception of two videotaped interviews with Nate Paul and Paul's attorney Michael Wynne, any conclusions he may have drawn during his investigation of Referral #1 were off-the-books and undocumented. In fact, Maxwell instructed two digital forensic examiners (Erin Mitchell and Les St. James) to not document anything nor keep notes. Law enforcement officers are trained to keep an ongoing report as to their contacts in an investigation, information they have collected, and actions they have taken. This practice protects the investigating officer and promotes a thorough and objective process that can be analyzed and vetted in court if the case is prosecuted. Major Robert Sunley confirms that Referral #1 was never recorded in any law enforcement databases. The Law Enforcement Division maintains a Webpass system and an offense report system which is specifically maintained for the purpose of recording referrals that come to OAG. *See Exhibit 5, Email from Sunley.* At the date of signing this initial report, the OAG has been unable to locate any report written by Maxwell.

These deviations are extremely unusual for law enforcement professionals in general and OAG in particular, raising questions as to whether Maxwell's personal connections and contacts with any of the subjects being investigated played a role in his actions.

Extensive investigation revealed that Maxwell took at least the following investigative actions.

First, David Maxwell interviewed Paul and Wynne on July 21, 2020, and the entire meeting was videotaped at AG Paxton's request. AG Paxton was concerned that Maxwell would not take the investigation seriously and wanted his actions documented. Additionally, AG Paxton wanted the investigation to follow normal criminal investigation procedures, including the standard documenting of Maxwell's investigation.

Second, Maxwell and Penley interviewed Paul and Wynne on August 5, 2020. The entire meeting was videotaped, again pursuant to AG Paxton's request.

Third, around August 5, 2020, Maxwell instructed two members of OAG's forensics team to analyze the PDF files relating to Referral #1 that might have been altered. The team conducted a review of evidence available at that time. The team did not have all the evidence and would later determine that they needed more information and evidence to draw any conclusions. They were instructed by Maxwell not to write anything down or prepare a report of their findings.

On August 6, 2020, in response to a question from Penley about Referral #1, OAG Chief Information Officer Tina McLeod provided the definition of metadata:

**Penley, Mark**

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**From:** McLeod, Tina  
**Sent:** Thursday, August 6, 2020 3:24 PM  
**To:** Penley, Mark  
**Subject:** 'metadata'

Metadata is "data that provides information about other data".

Example – the information in a PDF document is the 'data'. Metadata includes document properties such as when a document was created, modified, what template its based off of, the author, and the file size. Metadata can be automatically created or custom metadata can be 'tagged'.

Hope this helps 😊.

This note strongly suggests that Penley did not previously know what metadata was—a critical omission given that Penley was actively investigating whether a search warrant was illegally modified *by analyzing the metadata* contained in the search warrant PDFs in Referral #1.

On August 12, 2020, there was a group meeting with AG Paxton, Maxwell, Penley, Paul, Wynne, and two members of the forensics team (Mitchell and St. James). By all accounts, this meeting did not go well. The meeting was scheduled to be an update on the investigation and findings. Penley began the meeting notifying Paul that the investigation had been closed. This surprised AG Paxton, as he had been told that the meeting was to be an update on the forensics team's findings. The forensics team provided information to the parties. In response, Paul asked for a computer and demonstrated on the computer that the metadata had been modified. Because Paul's demonstration appeared problematic for the forensic team's findings (or at a minimum raised questions), and the forensics team could not replicate Paul's results, the team decided to continue their review, as they believed that they needed more information and evidence to determine the meaning behind the modifications reflected in the metadata. Additionally, they had technical issues with the recent updated version of the Adobe software. Forensic investigator St. James indicated in an interview that the request to investigate (including as to the targets of such investigation) did not strike him as being unusual, but that he was concerned that he would not be able to do his forensic analysis without the original documents. St. James saved the documents he generated on the server, which is physically located within the closed digital forensic room at the OAG's offices.

At the end of the August 12<sup>th</sup> meeting, Penley declared and believed that there was more to investigate and requested more documents from Paul and Wynne. This is in addition to the forensics technicians needing more information to determine if the PDFs had been illegally



modified. A thorough search of OAG records has yielded no results of any further examination being performed.

On August 13, 2020, at 4 p.m., Penley wrote the following note, which was left for AG Paxton,

Paul Docs Case  
8/13/20  
4PM

KEN -

I reexamined the documents we were given. It appears we weren't given everything. I called Mr. Paul's attorney, Michael Wynne, and requested the additional documents, which include the Sealing Orders for the other 3 Search Ws. Once I receive them, I may be able to answer additional questions you've asked.

Thanks,

Mark Penley

#### **D. Process of Hiring Outside Counsel to Investigate**

The events of the August 12<sup>th</sup> meeting caused Mateer and AG Paxton to seek outside counsel to pursue the investigation further. Contrary to Mateer's later statements, Mateer played a direct role in the decision to hire outside counsel. Mateer agreed with AG Paxton that it was appropriate to hire outside counsel given how poorly the interview went with Maxwell, and that it was the only way to ensure the investigation would be completed. Mateer and AG Paxton scheduled interviews with potential outside counsel. Based on the evidence available at the time of this report, the other Complainants (with the exception of Vassar) were not included in the decision-making process to interview and hire outside counsel.

Several candidates were considered for the outside counsel position. Mateer and AG Paxton interviewed Brandon Cammack on August 26, 2020, and Joe Brown on August 27, 2020.

Cliff Stricklin was also considered for the job.<sup>8</sup> See Exhibit 6, Visitor Logs. The interview went well enough for Brown and Cammack that they both emailed Vassar regarding contract language. See Exhibit 7, Vassar Emails with Cammack About the Outside Counsel Contract; see also Exhibit 8, Vassar Emails with Joe Brown About a Potential Outside Counsel Contract.

Once the decision was made to proceed with Cammack, Vassar requested then-General Counsel Lesley French to review the arrangement and provide a recommendation to OAG to proceed with hiring Cammack. French complied with Vassar's request and ultimately recommended to hire Cammack. This step was in line with the OAG's process at the time for outside counsel.

### E. Cammack's Authority as Outside Counsel

After interviews were completed, and on or before September 3, 2020, Ryan Vassar drafted an outside counsel contract for Cammack and provided that contract to AG Paxton.

**Subject:** OAG OCC fy21 draft  
**Date:** Thursday, September 3, 2020 4:09:43 PM  
**Attachments:** [image001.png](#)  
[OAG OCC fy21 draft\\_1.docx](#)  
[image002.png](#)

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General,

Per your request, attached is the draft contract. Please let me know if you have any questions.

Thank you,  
Ryan

**Ryan M. Vassar**  
*Deputy Attorney General for Legal Counsel*  
Office of Attorney General Ken Paxton  
P.O. Box 12548  
Austin, Texas 78711-2548  
(512) 475-4280

This message may contain confidential and/or privileged attorney-client communications or attorney work product and be excepted from required disclosure under the Texas Public Information Act, Texas Government Code chapter 552. The contents of this message should not be disclosed without the express authorization of the Attorney General.

See Exhibit 9, Vassar Email to Paxton Providing Outside Counsel Contract for Cammack, with Draft Contract Attached.

The evidence known to AG Paxton and OAG at the time of entering into the contract and during the investigation indicated that Cammack certified in writing that he did not have any conflicts (i.e., could be objective). See Exhibit 7, Vassar Emails with Cammack about the Outside Counsel Contract. Specifically, Vassar asked Cammack:

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<sup>8</sup> A calendar entry was not located for the interview with Stricklin, but Penley confirmed in his interview that Stricklin was considered.

**From:** "Vassar, Ryan" <Ryan.Vassar@oag.texas.gov>  
**Date:** September 3, 2020 at 6:51:35 PM CDT  
**To:** "brandon@cammacklawfirm.com"  
<brandon@cammacklawfirm.com>  
**Subject:** OAG OCC fy21 draft\_1.docx

Please see attached for review.

Also, subsection 57.4(d) of Title 1, Part 3 of the Texas Administrative Code (linked below) requires a prospective outside counsel to disclose past and current conflicts of interest with the State and its agencies, boards, commissions, and other entities, and officials.

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=1&pt=3&ch=57&rl=4](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=1&pt=3&ch=57&rl=4)

We will need to obtain a list from you identifying relevant conflicts, or a written statement indicating that no such conflicts exist.

Thank you,  
Ryan

<OAG OCC fy21 draft\_1.docx>

*Id.* Cammack responded to this email stating,

**From:** Brandon R. Cammack <brandon@cammacklawfirm.com>  
**Sent:** Friday, September 4, 2020 5:33 PM  
**To:** Vassar, Ryan <Ryan.Vassar@oag.texas.gov>  
**Subject:** Re: OAG OCC fy21 draft\_1.docx

This draft looks good. Please send an executed copy back.

Additionally, my firm does not have any conflicts of interest with regards to this investigation and OCC agreement. I will continue to look for potential conflicts that may arise in the future and inform the Attorney General's Office in the event a conflict arises.

Respectfully,

Brandon R. Cammack

*Id.* In addition to the written certification from Cammack stating that he had no conflict, the preliminary investigation has revealed no documents to suggest that Cammack was conflicted at the time of his retention as outside counsel.

AG Paxton met with Brandon Cammack in early September and appointed him to be outside counsel. *See* Exhibit 10, Cammack Affidavit; *see also* Exhibit 11, Signed Outside Counsel

Contract. Cammack again certified that he had no conflicts by signing the contract and promised to notify OAG of any conflicts:

**9.8.3 Outside Counsel shall regularly conduct conflicts analyses on its interests and those of its clients and any subcontractor and immediately disclose, in writing, to Agency any actual or potential conflict with respect to Agency or the State of Texas.**

**9.8.4 Outside Counsel has a continual and ongoing obligation to immediately notify Agency, in writing, upon discovery of any actual or potential conflict to Agency or the State of Texas.**

*Id.*<sup>9</sup>

#### **F. Penley Returns to the Office**

From September 3 through 14, 2020, Penley was on vacation and not involved on this matter.

Penley continued his investigation when he made contact with Wynne on September 15, 2020, renewing his request for more documents:

**From:** [Penley, Mark](#)  
**To:** [mwynne@gcfirm.com](mailto:mwynne@gcfirm.com)  
**Subject:** Document request  
**Date:** Tuesday, September 15, 2020 3:45:07 PM

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Michael:

Please give me a call to discuss the status of the documents that I have requested from you and Mr. Paul. I am awaiting receipt of those documents so I can continue with my investigation.

Thank you,

Mark Penley  
Office of the Attorney General  
512/936-1595

Penley also claimed that he learned about the interview and selection of Cammack as outside counsel on the same day, September 15, 2020.

Penley spoke with AG Paxton on the next day (September 16, 2020). Penley provided AG Paxton a written list of documents he believed were outstanding from Wynne and necessary to assist Penley in determining if a crime had been committed. AG Paxton told Penley that Paul and

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<sup>9</sup> “Conflicts” in this instance generally means the lack of any legal or financial relationships with the complaining witness (Nate Paul in this case), potential witnesses, OAG, or the subjects of the investigation.

Wynne did not provide the documents because they likely did not trust Penley and Maxwell after the August 12, 2020 meeting and prior treatment by Maxwell. Penley admits that AG Paxton instructed Penley not to do anything further on the criminal investigation involving Referral #1, effective September 16, 2020.

### **G. Referral #2**

At some time after June 10, 2020 and before September 23, 2020, Nate Paul made another criminal complaint to the TCDAO. *See* Criminal Complaints by Nate Paul, Complaint #2. On September 24, 2020, Director of Special Prosecution Don Clemmer emailed a second referral (“Referral #2”) to Brandon Cammack directly. *See* Exhibit 12, Email Communications Between Cammack and Clemmer.

September 23, 2020

Mr. Brandon R. Cammack  
Office of the Attorney General of Texas  
4265 San Felipe Street, Suite 1100  
Houston, Texas 77027

Dear Mr. Cammack:

I am forwarding to you the attached complaint which was recently received by my office from Mr. Nate Paul regarding allegations of misconduct taking place as part of a federal bankruptcy proceeding. The complainant alleges that the misconduct involves various attorneys and a federal magistrate, along with other individuals named in the complaint. My office would typically forward a complaint of this nature to the Public Integrity Unit of the Texas Rangers for review. However, because Mr. Paul has previously filed a complaint, which was also referred to your office, alleging misconduct in an unrelated matter by agents of the Department of Public Safety, of which the Rangers are a part, it would appear inappropriate to direct this matter to them. I am therefore requesting that your agency conduct the review.

Thank you for your attention to this matter.

Sincerely,

*/s/ Don Clemmer*

Don Clemmer  
Director, Special Prosecutions Division

*See* Exhibit 13, Referral #2.

Cammack was likely discussing this referral with Clemmer and Paul before he obtained the actual document, based on the contents of emails between Clemmer and Cammack. Cammack’s discussions with Paul were not unusual, as criminal investigations commonly require contact with the complainant. Paul appears to have revealed to Cammack during one of these conversations that he made a second criminal complaint during communications about Referral #1. Cammack was also communicating with TCDAO before September 24, 2020, and Cammack was made aware of the fact that Paul had made a second criminal complaint.

Referral #2 alleged an ongoing fraudulent financial scheme where private parties, lawyers, and a bankruptcy judge colluded to defraud mortgage borrowers. Paul identified third-party witnesses that had information and heard confessions of illegal activity from one of the potential defendants. There is no overlap between the potential defendants in Referral #1 and the potential

defendants in Referral #2. Referral #2 alleged a criminal act that was wholly unrelated to the acts and persons cited in Referral #1.

Since the TCDAO was already working with Cammack and knew that he was outside counsel for this investigation, Referral #2 was directed to Cammack as a member of OAG, but addressed to his Houston business office:

September 23, 2020

Mr. Brandon R. Cammack  
Office of the Attorney General of Texas  
4265 San Felipe Street, Suite 1100  
Houston, Texas 77027

Dear Mr. Cammack:

*See Exhibit 13, Referral #2.* While Cammack was aware of the referral and had begun assisting with TCDAO's investigation, all the evidence, including writings by the Complainants, indicate that the Complainants were completely unaware of Referral #2. A due diligence search was conducted, with the assistance of Chief of Criminal Investigations Division Jason Anderson, but failed to locate Referral #2 in any internal OAG database, nor was it located on any desk in the Criminal Investigations Division. First Assistant Attorney General Webster also contacted the TCDAO and asked for information about Referral #2. *See Exhibit 14, Email to Clemmer from Webster.*

#### **H. Cammack's Authority as Special Prosecutor**

Based on emails provided by Cammack, TCDAO emails, emails located on OAG servers, and interviews with TCDAO employees, the evidence establishes that TCDAO made Cammack a "Special Prosecutor." The Complainants were unaware of this fact, as they were not directly involved with TCDAO's internal actions.

TCDAO offered Cammack support consistent with his role. For example, TCDAO Chief of Public Integrity Amy Meredith was instructed by Don Clemmer to assist Cammack with obtaining grand jury subpoenas. On September 23, 2020, Cammack was contacted by TCDAO offering Cammack assistance in his investigation:

On Sep 23, 2020, at 5:02 PM, Bailey Molnar  
<[Bailey.Molnar@traviscountytx.gov](mailto:Bailey.Molnar@traviscountytx.gov)> wrote:

Good Afternoon Mr. Cammack,

I am the legal secretary for the Public Integrity Section at the Travis County District Attorney's Office and Amy Meredith, our section chief has asked me to contact you. Please let me know how we can help you with Grand Jury subpoenas. I create all the requests for our section so I am happy to assist in whatever way you need!

Thank you so much. I hope you have a wonderful night and look forward to working with you soon,  
Bailey Molnar

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This electronic mail message, including any attachments, may be confidential or privileged under applicable law. This email is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this email, you are notified that any use, dissemination, distribution, copying, disclosure or any other action taken in relation to the content of this email including any attachments is strictly prohibited. If you have received this email in error, please notify the sender immediately and permanently delete the original and any copy of this email, including secure destruction of any printouts.

See Exhibit 15, Emails Between Cammack and TCDAO to Obtain Grand Jury Subpoenas.

Grand jury subpoenas are commonly used in the investigative phase of a criminal investigation and there is no requirement that anyone appear before a grand jury to obtain a grand jury subpoena. See TEX. CODE CRIM. PROC. Arts. 20.10, 20.11, 24.01, 24.02, and 24.15; *TDCAA Case Preparation for Investigators* (Blue Cover), p. 172; and Exhibit 17, excerpt from *TCDA Case Preparation for Investigators*. (In practice, investigators can contact the local DA and ask it for assistance in obtaining grand jury subpoenas from the judge presiding over the grand jury, unless the information requested is in the county, then the attorney for the state can sign the grand jury subpoena. A special prosecutor is an attorney for the state for this purpose.)

On September 24, 2020, Bailey Molnar described the grand jury subpoena process for Cammack:

On Sep 24, 2020, at 8:17 AM, Bailey Molnar  
<Bailey.Molnar@traviscountytx.gov> wrote:

Good Morning Mr. Cammack,

Attached you will find our subpoena request form. If you already have a form created with the information in the form attached, go ahead and just send yours! You do not need to use our form, this is just a helpful go-by. As long as I have your contact information, the subpoenaed parties information, and the description of requested material, I can make it work. Once I receive the requests, I will create the subpoenas, send them back to you for a final review, and then send them to the ADA and Judge for signature!

All of this can be done through email!

Thank you so much,  
Bailey Molnar

See Exhibit 15, Emails Between Cammack and TCDAO to Obtain Grand Jury Subpoenas.

Molnar correctly pointed out that the grand jury subpoenas must be obtained through a state prosecuting attorney when she wrote that she would “send them to the ADA and Judge for signature.” See TEX. CODE CRIM. PROC. ARTS. 24.01, 24.02, 24.15, and 20.11. At the time TCDAO obtained these grand jury subpoena requests, TCDAO could have an assistant district attorney sign the subpoena, or they could have Cammack sign the subpoenas as “Special Prosecutor.” See *Coleman*, 246 S.W.3d at 82 n.19; see also Tex. Att’y Gen. Op. No. KP-0273. Assistant District Attorney Amy Meredith or a person on her team was responsible for entering the grand jury subpoenas into DocuSign with Cammack’s title, communicating these subpoena requests to the 460<sup>th</sup> Criminal District Court Judge presiding over the grand jury, and submitting the subpoenas with Cammack’s signature and a signature line designating him as a special prosecutor. Interviews revealed that TCDAO assistant district attorneys knew what was being subpoenaed, discussed what was being subpoenaed, and ensured that Cammack, as special prosecutor, signed these subpoenas.

From September 23, 2020 through September 29, 2020, grand jury subpoenas were provided to Cammack relating to both Referral #1 and Referral #2. Cammack served those subpoenas on parties during that time period.

### **I. September 29, 2020—Trigger of Criminal Complaint Against AG Paxton**

On September 29, 2020, Lacey Mase was meeting with Ryan Vassar, Lesley French, and two other OAG employees. During this meeting, Mase received a cell phone call from a lawyer of an employee at a financial institution notifying her about grand jury subpoenas being served on that institution by Brandon Cammack. This investigation has not yet revealed who called Mase, but the evidence currently suggests the call was likely related to grand jury subpoenas served on two financial institutions.<sup>10</sup> Coincidentally, on the same day Mase received this call, Stephen Lemmon called then-Associate Deputy Attorney General Lisa Tanner, claiming to represent a financial institution and questioning the validity of a grand jury subpoena he had received.<sup>11</sup> See Exhibit 16, Lisa Tanner Email Summarizing Her September 29<sup>th</sup> Call with Steve Lemmon.

Mase left that meeting and went to Mateer’s office. Mateer was in a Zoom meeting. Mase told Mateer’s Executive Assistant that she had to get Mateer out of his meeting because it was an emergency. From eyewitness information, it was learned that the Complainants began meeting frequently in person beginning at this point, and at times included Maxwell and Missy Carey, former OAG Chief of Staff, via telephone.

Email and documents recovered within OAG systems demonstrate that at the time of this meeting, the Complainants believed that Cammack had illegally obtained grand jury subpoenas with the assistance of AG Paxton. This belief was false on two grounds: first, Cammack obtained

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<sup>10</sup> Lacey Mase, in her role as Deputy Attorney General of Administration, played no role in OAG criminal investigations, and this phone call raises questions as to how or why she came to be called regarding the service of the grand jury subpoenas. It has been suggested (but not confirmed yet) that an executive of this financial institution was involved with Mase’s election campaign in some capacity, thus she may have had a close, personal relationship with the person who called her. The investigation continues to examine these unconfirmed questions.

<sup>11</sup> Coincidentally, Stephen Lemmon is the attorney for the receiver in the Mitte Foundation lawsuit referenced in the Complainants’ criminal complaint against AG Paxton, and the receiver he represents is accused of a crime in Referral #2. This presents a conflict that was not disclosed in any writings or emails.



his subpoenas legally; second, he did so with TCDAO's assistance. No one contacted AG Paxton, Cammack, or TCDAO to verify these false assumptions. Additionally, had no evidence that AG Paxton was personally aware of the actual contents of subpoena requests.

The first document to be drafted by the Complainants was a September 29, 2020, letter to Cammack instructing him to cease further action and accusing him of "illegal" acts. Around 5:21 p.m., Bangert, who was in the office at the time, emailed himself the beginning draft Microsoft Word document of a letter that would eventually be sent to Cammack, which stated:

**Dear Mr. Cammack:**

It has come to our attention that you appeared before the Travis County grand jury on September 28, 2020 and represented yourself to be a Special Prosecutor for the Office of Attorney General. It further has come to our attention that you served a subpoena today on at least one private business.

You have no authority to represent yourself to anyone as a "Special Prosecutor for the Office of Attorney General." You have not been retained or authorized by this office and your actions are entirely inappropriate and may be illegal. We demand that you immediately cease and desist from taking any actions in which you purport to be acting pursuant to authority conferred by the Office of Attorney General.

*See Exhibit 18, Documents Demonstrating Drafting of Letter Accusing Brandon Cammack.*<sup>12</sup>

This document and subsequent versions—which would later become the "Penley Letter"—demonstrate that the Complainants assumed Cammack had illegally represented himself before a grand jury, had obtained grand jury subpoenas for items not related to Referral #1 (see below), and was falsely holding himself out as a special prosecutor. Each of these assumptions proved false.

At some point during the evening of September 29, 2020, Mateer's Executive Assistant was instructed by the Complainants to modify a blank Word document with OAG letterhead by deleting the words "Attorney General Ken Paxton" and only leaving the seal (the "Unauthorized Letterhead"). The Complainants would continue to use the unauthorized letterhead without any authority to do so.

#### **J. September 30, 2020—The Penley Letter**

The drafting efforts described above resulted in the Penley Letter, issued on the Unauthorized Letterhead. *See Exhibit 19, Penley Letter.* Around 8:06 a.m. on September 30, 2020, Mateer's Executive Assistant assisted Penley with scanning Penley's letter to Cammack, which was sent to Cammack at 9:17 a.m. *Id.*; *see also Exhibit 20, Mateer's Executive Assistant Email*

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<sup>12</sup>It is unusual that some of the Complainants would communicate via unsaved Microsoft Word documents. This behavior is inconsistent with transparency, insofar as it makes it difficult to impossible to track the communications.

Scan. Immediately after Penley's letter was scanned, Mase instructed all executive floor personnel to go home, with the exception of the Complainants and Mateer's Executive Assistant.

#### **K. The Criminal Complaint Against AG Paxton**

The Cammack grand jury subpoena was the trigger for the Complainants' decision to submit a criminal complaint against AG Paxton. Immediately after drafting the Penley Letter, the Complainants began writing their criminal complaint. The initial draft circulated by Vassar was predicated on the allegations against Cammack and the criminal investigation into the FBI. *See* Exhibit 21, Process of Drafting Criminal Complaint.

Vassar was tasked by the Complainants to write the first draft. This first draft reveals the Complainants' understanding of the events that had transpired and showcases the main accusation against AG Paxton. The first assertion of a criminal complaint against AG Paxton appeared in a draft complaint that was circulated at 7:53 p.m. on September 29, 2020, when Vassar emailed the Complainants, Carey, and Maxwell. *Id.* Another draft was emailed at 12:22 a.m. on September 30, 2020.

Two documents appear to be the "nearly final" or "final" drafts of the criminal complaints against AG Paxton. *See* Exhibit 22, Final Draft of Complaints. Both documents were printed around noon on September 30, 2020, right before the Complainants left the office to make their criminal complaint. Two documents provided by Bangert in response to a litigation hold correspond to these two drafts.

#### **L. Additional Events on September 30, 2020**

On September 30, 2020, the only individuals present in the OAG executive leadership offices were the Complainants and Mateer's Executive Assistant. That morning, Mase expressed concern to Mateer's Executive Assistant about who had access to her and the Complainants' email accounts and instructed his Executive Assistant to make changes to email access.

At 10:55 a.m. on September 30, Stephen Lemmon emailed Penley with a grand jury subpoena attached and no written content. Based on this correspondence, it seems likely that Penley had been communicating with Lemmon. *See* Exhibit 27, Email from Lemmon to Penley.

Bangert printed out copies of their criminal complaint around noon. *See* Exhibit 23, Word Document "Information" Relating to Actions Taken by Ryan Bangert. The Complainants stayed in the office for a short time, ate a meal together, then left the office together. The Complainants, with the exception of Mase, left their cell phones at the office and told Mateer's Executive Assistant that she could contact Mase if she needed anything. It is unknown where they went, but according to Blake Brickman's formal complaint filed with OAG regarding his termination, the Complainants made a criminal complaint on September 30, 2020.

Around 12:31 p.m., Cammack sent his invoice for services rendered to the OAG General Counsel email address. *See* Exhibit 24, Cammack and General Counsel Email. At 2:09 p.m., Mateer's Executive Assistant emailed Mase informing her of changes that removed various individuals' access to executive email. *See* Exhibit 25, Mateer's Executive Assistant Email to Mase.

At 5:12 p.m., Vassar instructed then-General Counsel Lesley French to respond to Cammack and informed him that OAG cannot pay the invoice because they do not have a copy of

the executed contract. *See* Exhibit 24, Cammack and General Counsel Email. Cammack responded at 9:52 p.m. and notified Vassar that he would provide the contract in the morning:

**From:** [Brandon R. Cammack](#)  
**To:** [Vassar, Ryan](#)  
**Subject:** Fwd: OCC Invoice & Expense Submission  
**Date:** Wednesday, September 30, 2020 9:52:01 PM

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Hey Ryan,  
I did not expect to run into this issue, however, I'll forward over the fully executed contract tomorrow.

Respectfully,

Brandon R. Cammack

*See* Exhibit 24, Cammack and General Counsel Email.

At some point on this day, Penley contacted TCDAO Director of Special Prosecutions Don Clemmer and told him about what had transpired from the perspective of the Complainants. This probably alarmed Clemmer, as he had been under the impression that Cammack had been hired as outside counsel for OAG. Clemmer emailed Penley at 7:15 p.m. notifying him of some of the communications TCDAO had with Cammack and providing his understanding of Cammack's role. *See* Exhibit 26, September 30 Emails from Clemmer to Penley. By this time, Cammack had been in contact with multiple people at TCDAO by phone and email, so there is no way to piece together all those communications without having access to TCDAO email and phone systems.

Finally, beginning on September 30, and continuing for an indeterminate time, a subset of the Complainants, began visits with clients of the AG, including State government staff and elected officials, to attempt to cause political damage to the AG and his attorney-client relationship with those individuals. These actions were unauthorized, insubordinate, and substantially disruptive to the efficient and effective operation of government.

#### **M. Events on October 1, 2020**

At 8:21 a.m., Cammack responded to the September 30 email from Vassar, providing the executed contract between the Attorney General and Cammack. *See* Exhibit 28, October 1 Vassar-Cammack Email; Exhibit 11, Signed Outside Counsel Contract. The preliminary investigation revealed that this was the first time the Complainants saw the executed contract with Cammack.

Once again, the Complainants instructed all other non-executive employees in OAG's executive building to work remotely on this date.

Vassar notified the other Complainants, including Penley, about the existence of the signed contract between OAG and Cammack. *See* Exhibit 29, Email from Vassar to Webster. Approximately four hours after Cammack sent the contract, Jeff Mateer and others drafted a letter to Cammack on the Unauthorized Letterhead, disavowing the outside counsel contract and, apparently as a safeguard, declaring the contract terminated effective immediately. *See* Exhibit 30, Mateer Letter. This reaction suggests that most of the Complainants did not know Cammack's contract had been signed before filing a criminal complaint against AG Paxton. (And Mateer's involvement in the interview process to hire outside counsel raises questions about his knowledge at the time of signing the Mateer Letter.)

At 12:49 p.m., Mateer group-texted with the Complainants and AG Paxton, notifying him that they had made a criminal complaint against him and instructing AG Paxton to meet them at 3:00 p.m. *See* Exhibit 31, Group Text.

At 12:56 p.m., Bangert emailed Cammack the Mateer Letter, again on the Unauthorized Letterhead. *See* Exhibit 30, Mateer Letter.

At 1:04 p.m., Mase emailed the “whistleblower letter” on Unauthorized Letterhead to Greg Simpson, head of OAG Human Resources. *See* Exhibit 1, Letter from the Complainants Disclosing Criminal Complaint. Later, this letter was leaked to the press by one or more of the Complainants.

#### **N. Misleading Don Clemmer and Violation of Tx. Code of Crim. Proc. Article 20.02**

At 1:20 p.m. on October 1, 2020, Mark Penley emailed the following letter to Don Clemmer at the TCDAO:

October 1, 2020

Via email ([don.clemmer@traviscountytx.gov](mailto:don.clemmer@traviscountytx.gov))

Mr. Don Clemmer  
Director, Special Prosecutions Division  
Travis County District Attorneys Office  
Austin, Texas

Dear Mr. Clemmer:

It has come to our attention that attorney Brandon Cammack of Houston, ostensibly acting as a “Special Prosecutor” for the Office of Attorney General, has recently requested and obtained the issuance of a number of subpoenas from the Travis County Grand Jury. To be clear, Mr. Cammack is not properly authorized to take any action on behalf of our office. Any representations he makes to the contrary are false, and he should not be permitted by you to take any further actions on behalf of our office.

Mr. Cammack has been notified that he is not properly authorized to act as a special prosecutor for the Office of Attorney General and has been directed immediately to cease and desist from all activities taken in that purported capacity. At your earliest convenience, please provide me, by email addressed to me at [mark.penley@oag.texas.gov](mailto:mark.penley@oag.texas.gov), with copies of each of those subpoenas for our review any further appropriate action.

Thank you for your assistance.

Respectfully,

*s/ J. Mark Penley*

J. Mark Penley  
Deputy Attorney General for Criminal Justice

*See* Exhibit 32, Email from Penley to Clemmer.

As Penley had access to the fully executed contract prior to this point, Penley knew or should have known that these statements were false. Penley did not acknowledge that he had seen the signed contract in his note to Clemmer, nor did he refer to the contract’s existence. These omissions materially affected TCDAO’s understanding of Cammack’s authority.

At 2:51 p.m., Vassar surreptitiously communicated grand jury information and criminal investigative information to private lawyer Johnny Sutton. *See* Exhibit 33, Vassar Email to Johnny Sutton (attachments redacted to protect grand jury information). All the Complainants were included on this email and aware of this act. Vassar’s illegal communication criminally violated

Texas Code of Criminal Procedure article 20.02, which requires secrecy regarding grand jury proceedings; the subpoenas themselves likewise contained warnings that the subpoenas were to be kept secret.<sup>13</sup>

At 3:03 p.m., Penley logged into DocuSign and rejected the Cammack outside contract. *See* Exhibit 34, DocuSign Record for Cammack Executive Approval Process. DocuSign keeps a record of all actions taken with a document being routed through OAG, including when it was sent, when it was opened, and any other digital actions taken in regard to the document.

At 3:08 p.m., AG Paxton texted the Complainants back stating, “Jeff, I am out of the office and received this text on very short notice. I am happy as always to address any issues or concerns. Please email me with those issues so that they can be fully addressed.” *See* Exhibit 31, Group Text.

Meanwhile, on the same day, Penley obtained copies of the grand jury subpoenas for Referral #1 and Referral #2 directly from Clemmer. Before releasing this grand jury information, Clemmer noted to Penley that Texas Code of Criminal Procedure article 20.02(h) could apply here to any third-party disclosure.

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**From:** [Don Clemmer](#)  
**To:** [Penley, Mark](#)  
**Subject:** RE: [CAUTION EXTERNAL] Re: Grand Jury Subpoena  
**Date:** Thursday, October 1, 2020 9:59:05 AM

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I'm not positive that there will be a record of what subpoenas have been issued but I will try to find out. I'm also not sure about the application of Art. 20.02(h) given the extraordinary nature of this situation. I'll get back to you.

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**From:** Penley, Mark <Mark.Penley@oag.texas.gov>  
**Sent:** Thursday, October 1, 2020 9:42 AM  
**To:** Don Clemmer <Don.Clemmer@traviscountytexas.gov>  
**Subject:** Re: [CAUTION EXTERNAL] Re: Grand Jury Subpoena

Can you tell how many subpoenas he obtained, and to what entities? I want to withdraw those.

Thanks, Mark  
512/936-1595

Sent from my iPhone

Beginning at 2:06 p.m., Clemmer sent all grand jury subpoenas for Referral #1 and Referral #2 via email to Penley. Upon receipt of the secret grand jury subpoenas, and without notifying Clemmer of his intent, Penley promptly leaked this grand jury information to private lawyer Johnny Sutton. This was a violation of Texas Code of Criminal Procedure article 20.02. *See* Exhibit 35, Emails to Sutton from Penley.

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<sup>13</sup> Instead of disobeying the secrecy requirements for the grand jury subpoena, Vassar had a duty to approach the district judge in Travis County presiding over the grand jury to ask permission to release the secret grand jury subpoenas to private parties or to the potential defendants of the criminal investigation.

There is no exception to article 20.02 that allows for secret grand jury information to be provided to a private lawyer, nor is there an exception permitting disclosure of grand jury subpoenas to individuals under criminal investigation.<sup>14</sup>

On October 2, 2020, more than 24 hours after learning about the outside counsel contract, Penley, with the assistance of Lisa Tanner, filed a motion to quash the grand jury subpoenas. *See* Exhibit 42, Motion to Quash Grand Jury Subpoenas. Here too, Penley omitted the material fact that AG Paxton had authorized Cammack to act as outside counsel. Cammack's express authority to act was clearly material to a court's analysis of whether to quash the subpoenas. Additionally, TCDAO can retain any lawyer as a special prosecutor as TCDAO sees fit (as opposed to a pro tem attorney), regardless of a lawyer's status with OAG. Since TCDAO had designated Cammack a special prosecutor, Penley had no authority to attempt to undermine grant of authority.

Finally, Mateer resigned from the OAG on October 2, 2020.

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<sup>14</sup> Instead of disregarding the secrecy requirements ordered within the grand jury subpoena, Penley had a duty to approach the district judge in Travis County presiding over the grand jury, to ask permission to release the secret grand jury subpoenas to private parties or to the potential defendants of the criminal investigation.

## IV. LEGAL ANALYSIS

### A. The Complainants Compromised the Integrity of the Referral Investigations

Beginning October 5, 2020, OAG worked to preserve all documents within the agency that were connected to the Complainants' allegations. The documents, litigation files, and other recordings made or created by members of the agency before the Complainants made their allegations, and the documents memorializing communications, were material. The investigation included, in cooperation with OAG's Chief Information Officer, the retrieval and preservation of Microsoft Outlook communication files, the separation of still-employed Complainants and other conflicted parties from the investigation, and a litigation hold on all persons involved with, and all materials relating to, the Complainants' allegations. The investigation has not yet finished reviewing all these files. The review process will continue following the publication of this Report, and this Report may be updated to reflect any new material facts or additional evidence uncovered in that review.

#### i. Ryan Vassar—Deletion of Evidence

On or around Monday, October 5, 2020, near the end of the day, then-Deputy First Assistant Ryan Bangert notified Webster that he objected to the decision to meet with Cammack in the office. Webster notified Bangert in response that an investigation into what had transpired within the office was being conducted and that Cammack's interview was being conducted in connection with that investigation. In any event, the undersigned's orders seeking to preserve emails and relevant documents regarding the Complainants' allegations caused word to spread regarding the pending investigation.

As mentioned above, Ryan Vassar provided secret grand jury subpoenas to private attorney Johnny Sutton on October 1, 2020. Vassar kept a separate folder in outlook, called "zNew," in which he selectively retained emails related to the Complainants' actions. Vassar deleted the evidence of his email to Johnny Sutton containing the illegally transmitted grand jury subpoenas at 9:17 p.m. on October 6, 2020.<sup>15</sup> This deletion risked that OAG would not retain these important documents; once the file was moved to the deleted folder, OAG's system was set to purge the email in three days, instead of the customary 30 days. The deletion of the document that most directly proves that Vassar violated Texas Code of Criminal Procedure article 20.02 strongly suggests that Vassar tampered with evidence, a third-degree felony. *See* TEX. PENAL CODE § 37.09. This also violates OAG's retention policy. OAG continues to investigate whether Vassar or anyone else illegally deleted documents or other emails as well.

#### ii. Jeff Mateer—Disappearing Evidence

Mateer had a long-standing practice of keeping a written journal of his days at OAG. Chief of OAG's Information Governance Division, April Norris, personally conducted an inventory of the items left in Mateer's office after he resigned. *See* Exhibit 36, Inventory. The inventory includes the following journals for 2020:

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<sup>15</sup> The OAG Chief Information Officer reviewed Vassar's Outlook files and determined that the item was deleted. OAG would not have discovered this deletion had Webster not instructed the CIO to preserve Vassar's inbox immediately upon his arrival as the First Assistant Attorney General.

- Two journals for 2020
  - 1/2020 - 3/2020
  - 4/2020 – 6/2020

Mateer did not resign until October 2, 2020, suggesting that Mateer’s journal from July 2020 to October 2020 is missing. Past journals included meticulous records, including his itinerary, notes, and “to do” items. These journals likely included information about his interviews with candidates to serve as outside counsel for Referral #1. Webster instructed Human Resources Director Greg Simpson to contact Mateer asking for the missing journal. Mateer responded that he did not have any journals in his possession and did not account for the absence of this significant piece of evidence.

### iii. Leaked Documents

Documents and information were leaked from OAG, by one or more of the Complainants, and separate from their complaints made to law enforcement. The investigation into the exact originator(s) of the leaks is ongoing. These leaks and disclosures violated State law and ethics rules, as this information involved privileged information, including attorney client communications and attorney client work product.<sup>16</sup>

The information leaked to the press involved documents, legal conclusions, work product and internal decision-making of agency attorneys. Complainant Mateer had previously decried this type of behavior by sending a cease and desist letter to a former employee who had leaked information, and wrote an article that was published in the Texas Lawyer. *See Exhibit 2, Cease and Desist Letter.* Addressing the leaking of documents, legal conclusions, work product, and internal decision-making of agency attorneys, Mateer wrote:

That is quintessential privileged information. An agency with law enforcement duties cannot function if every single one of its 4,000 employees could send confidential documents to the press every time they personally disagreed with a discretionary decision their boss made. Nor can the former employee’s actions be defended under some theory that he was a whistleblower calling attention to alleged corruption by a public official.

Jeffrey C. Mateer, *Protecting Privilege and the Trump University Investigation*, TEXAS LAWYER (June 14, 2016, 1:00 AM), <https://www.law.com/texaslawyer/almID/1202760014296/OpEd-Protecting-Privilege-and-the-Trump-University-Investigation/?slreturn=20210301192503>.

One of the documents leaked Cammack’s initial billing statement to OAG. These documents included information that should have been lawfully redacted by OAG’s public information team before it was released. This unredacted information included confidential criminal investigation information, confidential information regarding Referral #2, and the name of an individual connected to Referral #2. Indeed, as that individual’s identity was not connected to Referral #1, it could only have been significant to the person being investigated in Referral #2.

The person being investigated had confessed his illegal actions to this third-party person, and the person on the billing statement was the witness who heard that confession. As a result of that leak, AG Paxton has been threatened by the person investigated in Referral #2, and the third-

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<sup>16</sup> Texas Disciplinary Rules of Professional Conduct, pmb1. ¶¶ 1, 3; *id.* Rule 1.05.



party witness on the invoice has been harassed. Neither of these things would have occurred had OAG employees not leaked criminal investigation information. The investigation into who leaked this information is ongoing, and a criminal referral will follow if appropriate.

**iv. September 30, 2020, Penley Letter—False and Incorrect Statements**

The Penley Letter is set out in full below. This letter was written on the Unauthorized Letterhead two weeks after Penley was instructed by AG Paxton not to work on this matter any further. The highlighted and alphabetized portions are either factually or legally incorrect:



September 30, 2020

Brandon R. Cammack  
Criminal Defense Attorney  
Cammack Law Firm, PLLC  
4265 San Felipe St. #1100  
Houston, Texas 77027

Dear Mr. Cammack:

(Red Letters added for reference by Brent Webster)

(A) It has come to our attention that you appeared before the Travis County grand jury on September 28, 2020, and represented yourself to be a Special Prosecutor for the Office of Attorney General. It further has come to our attention that you served a subpoena today on at least one private business. (B) The subpoena you obtained and served has no connection to any criminal investigation authorized by, or referred to, the Office of Attorney General.

(C) You have no authority to represent yourself to anyone as a "Special Prosecutor for the Office of Attorney General." The Office of Attorney General may be authorized by a district attorney to provide assistance in the prosecution of criminal matters. TEX. GOV'T CODE § 402.028(a); *see id.* § 41.102(b). (D) Assistance in such matters, however, does not include prosecuting a criminal case, such as obtaining a subpoena from a grand jury without being appointed to do so by a district attorney. *Id.* (E) Moreover, the law only allows a district attorney to appoint an assistant attorney general as an assistant prosecuting attorney. *Id.* (F) You have no such appointment.

(G) You have not been retained, authorized, or deputized by this office as such and your actions are entirely inappropriate and may be illegal. We demand that you immediately cease and desist from taking any actions in which you purport to be acting as a Special Prosecutor pursuant to authority conferred by the Office of Attorney General or under a delegation of authority by the Travis County District Attorney.

Respectfully,

J. Mark Penley  
Deputy Attorney General for Criminal Justice

Sentence A is false. Brandon Cammack never appeared before a grand jury. Grand jury subpoenas are obtained from a judge, and those subpoenas were submitted to the 460<sup>th</sup> Criminal District Court Judge by TCDAO staff.

Sentence B is false. The private business subpoena related to a criminal investigation into Referral #2. The Complainants did not know about Referral #2.

Sentence C is false. TCDAO appointed Cammack to be a special prosecutor.

Sentence D is incorrect. Special prosecutors can obtain grand jury subpoenas. Even if the TCDAO had not made Cammack a special prosecutor, he would have still been able to legally obtain a grand jury subpoena (through a different avenue) as an investigator. Investigators in the State of Texas commonly use grand jury subpoenas to obtain information during the investigation phase of the criminal justice process. *TDCAA Case Preparation for Investigators*, (Blue Cover), p. 172; and Exhibit 17, Excerpt from *TCDA Case Preparation for Investigators*.

Sentence E is incorrect. Penley fails to distinguish between a pro tem prosecutor, who cannot be a private practice attorney, and a special prosecutor, who can be an attorney in private practice. See *Coleman*, 246 S.W.3d at 82 n.19; Tex. Att’y Gen. Op. No. KP-0273 (2019);

Sentence F is false. Cammack did have this authority pursuant to the TCDAO appointment.

Sentence G is false. Penley possessed the outside counsel contract approximately 24 hours after this letter was sent. Additionally, AG Paxton had designated Cammack outside counsel, which was sufficient under Texas law.

**v. October 1, 2020, Mateer Letter—Proof of Lack of Knowledge and False Statements**

The Mateer Letter—Exhibit 30—demonstrates that the Complainants did not know about OAG’s signed contract with Cammack at the time they made the criminal complaint on September 30, 2020. Instead of reexamining their theories regarding AG Paxton and his actions granting authority to Cammack, the letter attempted to deny or rescind Cammack’s authority. Neither effort was legally effective given that the contract was fully executed and TCDAO had made Cammack a special prosecutor.

At the writing of the letter (October 1, 2020), Mateer was in possession of the outside counsel contract signed by AG Paxton and Cammack. The day before he obtained the contract, he made a criminal complaint under the false assumption that there was no outside counsel contract with OAG. The existence of the contract apparently surprised the Complainants, despite Mateer’s involvement in the hiring of outside counsel. In response to the receipt of the signed contract, Complainants made the decision to disavow the contract. Within the letter, Mateer does not articulate a legal basis for why the contract was invalid, nor does he articulate how AG Paxton’s signature was invalid or insufficient under Texas law. AG Paxton is legally empowered to authorize and sign outside counsel contracts – as the attorney general. His subordinates do not have the authority to cancel contracts signed by him without his approval. Any internal policy regarding signatures and approvals is for the accountability over subordinates, and it is how the attorney general delegates his authority – however, such internal policy does not constrain the attorney general’s lawful discretion to act.

Furthermore, instead of contacting TCDAO to ask them whether they had made Cammack a special prosecutor, Mateer wrote a statement that reflected his lack of understanding of the difference between a pro tem prosecutor and a special prosecutor, incorrectly identified Cammack as “Special Prosecutor of the Office of Attorney General”, and further, falsely threatened criminal exposure to a duly-designated special prosecutor:

Finally, the Office of Attorney General has been notified that you are representing yourself to members of the public and government officials as a “Special Prosecutor” of the Office of Attorney General. The Office of Attorney General does not employ an outside legal counsel as a special prosecutor. Impersonating a public servant is a third-degree felony. TEX. PENAL CODE § 37.11. Continuing to represent yourself as a special prosecutor or other representative of the Office of Attorney General may constitute a crime under state law. We demand, again, that you immediately

Exhibit 30, Mateer Letter.

Mateer expressly contradicted the opinion he signed in his capacity as First Assistant Attorney General and caused to be issued on October 11, 2019, namely Texas Attorney General Opinion KP-0273, which covers what a special prosecutor is and how the district attorney creates and controls special prosecutors. *See* Exhibit 4, Tex. Att’y Gen. Op. No. KP-0273.<sup>17</sup> Armed with an understanding of the opinion, the prudent and logical next step would have been for Mateer to contact TCDAO and determine if they had given Cammack a special prosecutor designation. He did not take that step, however. And at no time did Mateer or the Complainants contact AG Paxton to ask whether he had signed the contract.

#### **B. TCDAO Had Legal Control Over the Investigation into Referral #1 and Referral #2**

TCDAO Assistant District Attorney Amy Meredith and First Assistant Mindy Montford were interviewed to understand the facts in this case from the perspective of the TCDAO. Those discussions and their related documents, as understood through settled Texas law, revealed the following:

- TCDAO leadership, First Assistant Mindy Montford and Director of Special Prosecutions Don Clemmer, voluntarily and with full knowledge of what they were investigating, opened two different investigations, which this Report has named Referral #1 and Referral #2.
- TCDAO did not recuse themselves, therefore they retained legal care, custody, and control of the investigations.
- OAG could only assist TCDAO in their investigation, and only at TCDAO’s request.
- Cammack never appeared before a judge or before a grand jury, but instead relied on TCDAO to have the subpoenas issued.
- Chief of Public Integrity Unit Amy Meredith and her staff, including Bailey Molnar, were responsible for obtaining grand jury subpoenas and maintained control of that process, which included entering the subpoenas into DocuSign, setting up the signature fields in DocuSign, communicating information about the subpoenas to the judge presiding over the grand jury, and providing the subpoenas to the judge presiding over the grand jury.

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<sup>17</sup> This opinion was personally signed by Mateer, as AG Paxton had previously recused himself from reviewing the subject matter covered by this Opinion for even the appearance of impropriety, and Mateer personally confirmed the recusal at the time of issuing Opinion KP-0273.

- TCDAO knew what was being subpoenaed by Cammack (i.e., investigation into federal agents, Referral #1 and Referral #2).
- TCDAO made Cammack a special prosecutor, as indicated through the grand jury subpoena process. While it is not customary to actually supervise special prosecutors, TCDAO is still legally responsible for the prosecutor.
- On October 9, 2020, after the Complainants lodged their allegations and substantial press coverage began, TCDAO exercised their legal and actual control to close their investigation.

Cammack held two different legal and authoritative designations because he was both outside counsel for OAG, operating under the authority of OAG, and a special prosecutor for TCDAO. Since TCDAO had not recused themselves from the criminal referrals, TCDAO retained legal control over the investigation and any authority Cammack or OAG operated under was subordinate to TCDAO.

TCDAO was at all times the gatekeeper for grand jury subpoenas and the only law enforcement authority that had the power to appoint a “special prosecutor.” *See Coleman*, 246 S.W.3d 76, at 82 n.19; Again, TCDAO presented Cammack as special prosecutor upon providing grand jury subpoena requests to the judge. TCDAO assistant district attorneys knew what was being subpoenaed, discussed what was being subpoenaed, and made sure that the special prosecutor was the one signing the subpoenas. Complainants’ allegations that Cammack had any defect in his obtaining of grand jury subpoenas fail as a matter of fact and law, because TCDAO retained legal and actual control over the grand jury subpoena process and TCDAO retained actual control over any special prosecutor designated by the judge presiding over the grand jury.

On October 8, 2020, after discovering the misrepresentations and false information provided by the Complainants to the TCDAO, newly-appointed First Assistant Attorney General Brent Webster notified TCDAO Assistant District Attorneys Meredith and Clemmer and requested relevant documents from TCDAO for the OAG’s files.

**From:** [Webster, Brent](#)  
**To:** [Don.Clemmer@traviscountytx.gov](mailto:Don.Clemmer@traviscountytx.gov); [Amy.Meredith@traviscountytx.gov](mailto:Amy.Meredith@traviscountytx.gov)  
**Subject:** Nate Paul Complaint  
**Date:** Thursday, October 8, 2020 7:51:45 PM  
**Attachments:** [Fully Executed OAG OCC.pdf](#)  
[image2020-10-07-122407.pdf](#)  
[quash GJ subpoena.cammack \(002\).pdf](#)

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Good Evening Don and Amy,

General Paxton recently appointed me to be his First Assistant Attorney General. One of my tasks is to collect our agency documents and other evidence to determine what has transpired internally with our agency, regarding the referral you sent to our office on June 10, 2020, which is attached. Is this the only referral? I understand there were two, but I have been unable to locate the second one. I also wish to update you on what I have discovered.

This collection of documents and emails is on-going. If you have any documents or email communications you are willing to release to me that would assist me in understanding what has transpired, I would appreciate it.

#### **The Attorney General did contract with Brandon Cammock**

I have confirmed that General Paxton did sign a contract with Brandon Cammock to fulfill the investigative role that your office requested in the referral(s). (See page 15 regarding job description) I am providing those documents to you with this email. General Paxton informs me that this outside contract was signed in early September, and before Brandon Cammock contacted your office for Grand Jury subpoena assistance. I do not know why there is no contract number. It is on my list to learn how those number are assigned and why no number was assigned. Regardless of the number issue, the General confirmed that he did sign it.

#### **Termination by First Assistant Jeff Mateer**

Then acting First Assistant Jeff Mateer mailed a letter to Brandon Cammock terminating the contract on October 1, 2020. Jeff Mateer resigned on October 2, 2020. The contract termination was not authorized by General Paxton.

#### **Notice of Statements made by Mark Penley that should have been disclosed to the Judge**

Deputy Assistant Attorney General Mark Penley prepared a motion to quash to submit to the court that omitted the fact that the Texas Attorney General had hired Brandon Cammock to address this investigation. Additionally, Brandon Cammock had also forwarded a copy of the signed contract to deputies in the Attorney General's office one day *before* the motion was filed. Having been a Texas prosecutor for 10 years, I believe this fact is so substantial, that the omission causes this motion to be substantially misleading, or at a minimum, was a fact any reasonable judge or ADA would want to know. Unfortunately, I am still investigating email communications and looking for internal documents relating to this specific issue, so I cannot provide you any further documents or explanations on this matter at this time. Mark Penley is currently on administrative leave.

#### **Next Steps**

Given the nature of what has transpired, I believe it is important that our office be completely transparent and up front with what has occurred so that we can continue to have a good working relationship with the Travis County District Attorney's Office.

Can we discuss this tomorrow at your convenience? If neither of you are available, is there an ADA in the office that I could talk with regarding this investigation? Moving forward, I will be the point of contact on this situation.

Thank you,

Brent Webster

Webster did not receive any responsive documents to his request. However, soon after this, Webster received a letter from then-Travis County District Attorney Margaret Moore, replicated below. At the time Moore wrote her letter, she did not know that the Complainants hid the existence of the outside counsel contract and she was not aware that Penley had misled Clemmer to obtain grand jury subpoenas and then leaked them in violation of Texas Code of Criminal Procedure article 20.02. For these reasons, it appears that Moore wanted to distance herself from a fraught situation. Moore's rapid response to the October 8th letter did not accurately reflect the legal authority of the investigation and did not accurately reflect the affirmative and intentional actions taken by her employees. Specifically, the following highlighted sentences are inaccurate and omit key information necessary to make them accurate:



**OFFICE OF THE  
DISTRICT ATTORNEY**

P.O. Box 1748, Austin, TX 78767  
Telephone: 512/854-9400  
Fax: 512/854-4206

**MARGARET MOORE**  
DISTRICT ATTORNEY

**MINDY MONTFORD**  
FIRST ASSISTANT

October 9, 2020

Ken Paxton  
Attorney General of Texas  
Office of the Attorney General

Red letters and highlights added by  
Brent Webster for reference

*Via email and by hand delivery*

Dear Attorney General Paxton:

(A) On June 10, 2020, my office sent to David Maxwell a letter referring a Request to Investigate (RTI) filed in our office by Nate Paul. (B) The RTI was received by us after you asked my office to hear his complaints. The referral to the OAG was made with your approval. (C) We did not conduct any investigation into the merits of the matters complained of. (D) In referring the matter to the OAG, we concluded that ours was not the appropriate office to either address the matters raised in the complaint or to conduct an investigation into them.

(E) The referral cannot and should not be used as any indication of a need for investigation, a desire on the Travis County D.A.'s part for an investigation to take place, or an endorsement of your acceptance of the referral.

(F) My office has closed this file and will take no further action. Furthermore, I have instructed my employees to have no further contact with you or your office regarding this matter.

(G) Any action you have already taken or will take pursuing this investigation is done solely on your own authority as provided by Texas law. The newly surfaced information raises serious concerns about the integrity of your investigation and the propriety of your conducting it.

Sincerely,

A handwritten signature in cursive script that reads "Margaret Moore".

Margaret Moore

Cc: Brent Webster

Ronald Earle Building, 416 W. 11<sup>th</sup> Street, Austin, Texas 78701

Sentence A references Referral #1 but fails to include information about Referral #2. This raises questions as to whether the TCDAO had closed its investigation into Referral #2. The TCDAO has and continues to refuse to discuss this matter with OAG (Sentence F). OAG participates in these criminal investigations only to assist TCDAO, so out of an abundance of caution, OAG ceased its participation in both matters until TCDAO advises that either investigation remains ongoing or has been re-opened.

Sentence C is incorrect. TCDAO authorities Montford and Clemmer conducted an interview with the complainant and oversaw the special prosecutor, which qualifies as investigative activity. Additionally, Meredith and Clemmer were aware of the subpoenas issued by the special prosecutor and discussed the content of the subpoenas internally, eventually allowing the grand jury subpoenas to go forward. Montford and Clemmer have more information as it relates to the investigative actions they took.

Sentence D is legally and factually wrong. As noted above, TCDAO did initially investigate and referred the matter to the OAG.

Sentence E is legally and factually wrong. As a matter of law and practice, TCDAO takes no action on some complaints it receives, refers some of the complaints to other agencies, and on other occasions asks OAG for assistance with a TCDAO investigation. If OAG is involved, there are only two options for TCDAO: (1) recuse TCDAO and ask OAG to proceed on a pro tem basis, or (2) open an investigation and ask OAG to assist TCDAO with its investigation. Texas law affords no other options in this situation. With that background, and as a matter of law, Referral #1 and Referral #2 undeniably indicated a need to investigate, expressed TCDAO's desire that an investigation take place, and constituted TCDAO's endorsement of the referral because at all times it was TCDAO's investigation to conduct.

Sentence G is legally and factually wrong. As mentioned above, this was always a TCDAO investigation. TCDAO accepted the complaint, TCDAO did not recuse, and TCDAO requested OAG's assistance with its investigation. OAG obtained no independent authority in this investigation and was at all times subordinate to TCDAO's authority. Although it references Texas law, Moore's Sentence G in fact contradicts Texas law. OAG has no independent authority under Texas law for this type of investigation, unless we are assisting a district attorney.

### **C. Interference into Criminal Investigations**

Some Complainants intentionally interfered with the criminal investigation into Referral #1 and interfered with Referral #2 collaterally by interfering with Referral #1. (That interference is thoroughly discussed in other sections of this Report.) There is also evidence that suggests that there may have been interference into the investigation by Neeraj Gupta, Johnny Sutton, Steve Lemmon, and other unknown actors.

As a reminder, Referral #1 was, in part, an investigation into allegations made against federal employees that operate under the U.S. Attorney's Office for the Western District of Texas. These allegations implicate crimes under Texas law, and the TCDAO has jurisdiction over these criminal acts. Additionally, it now appears that Gupta's colleagues in the U.S. Attorney's Office for the Western District of Texas have opened an investigation specifically investigating the investigation into their own office.

#### **i. Assistant U.S. Attorney for the Western District – Neeraj Gupta**

Gupta, an Assistant U.S. Attorney for the Western District of Texas, appears to have known about the criminal investigation into him, before employees of OAG knew that TCDAO had begun an investigation and asked OAG to assist with that investigation. Gupta admitted this via email, before OAG had even received the first referral:

**From:** [Gupta, Neeraj \(USATXW\)](#)  
**To:** [Godbev, Joshua](#)  
**Cc:** [Day, Cathleen](#)  
**Subject:** Re: Discussion re: Mitte Fdn vs. WC 1st and Trinity et al; Cause No. D-1-GN-18-007636; In the 126th Judicial District Court of Travis County, Texas  
**Date:** Wednesday, June 17, 2020 12:57:43 AM

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Thanks. The world class lawyers have sued someone who complied w a search warrant, made official complaints against the agents, filed some stuff that was pretty aggressive, and met with some Texas AG special criminal investigations group asking them to open a criminal case against me for investigating Nate Paul. I'm looking forward to reading about how these lawyers are or aren't compensated.

Before the above email was sent, Gupta scheduled a call to deter OAG from investigating, among other matters, the Mitte Foundation. Given Gupta's expressed knowledge about the fact that law enforcement had opened an investigation into him, combined with his own self-interest to make sure no one brings charges against him, calls into question the contacts he made with OAG employees, including the Complainants.

**ii. Johnny Sutton**

Johnny Sutton is a former U.S. Attorney for the Western District of Texas who may have personal and professional relationships with the potential defendants being investigated by TCDAO and OAG in Referral #1. Potential defendants included Assistant U.S. Attorneys in the Western District of Texas, FBI agents in the Western District, and others. Sutton also received information provided through Penley's and Vassar's violation of Texas Code of Criminal Procedure article 20.02. This illegal transmission directly caused grand jury subpoenas of the Referral #1 criminal investigation to be received by a person that is possibly connected to the potential defendants being investigated in Referral #1. TCDAO (through the assistance of OAG and its outside counsel Cammack) was investigating the FBI and DPS, and Mark Penley directly interfered with that investigation by providing secret grand jury subpoenas to the agencies and individuals being investigated.

**iii. Steve Lemmon**

Steve Lemmon is the attorney for the receiver in the Mitte Foundation litigation with Nate Paul. The complaint against AG Paxton was triggered by Lacey Mase receiving a call from a lawyer connected to a financial institution notifying her about grand jury subpoenas being served on said financial institution by Brandon Cammack. On the same day Mase received this call, Lemmon called OAG Associate Deputy Attorney General Lisa Tanner claiming to represent a financial institution and questioning the validity of a grand jury subpoena he had received.<sup>18</sup> See Exhibit 16, Lisa Tanner Email Summarizing Her September 29th Call with Steve Lemmon.



However, Lemmon's representations appear misleading because on November 5, 2020, during a deposition, he makes representations that are different than the representations that he made to Lisa Tanner:

16           A.    Correct.

17           Q.    Who is Mr. Hardeman?

18           A.    I don't know exactly.  I think he may own some  
19 car dealerships and is an individual who perhaps has  
20 purchased, or what I read in the newspaper has purchased  
21 other World Class debt.

22           Q.    And he purchased that World Class debt from a  
23 company called Amplify, correct?

24           A.    I do not know that.

25           Q.    Do you know that Amplify is represented by your

DRY

1 attorney, Mr. Lemmon?

2 A. I do not know that.

3 MR. LEMMON: And, Your Honor, I object.  
4 Actually, I don't represent Amplify. My firm's  
5 represented Amplify for a couple of years. But the  
6 primary responsibility is one of my law partners.

7 Q. (By Mr. Cassidy) And are you aware that Amplify  
8 was selling Mr. Paul's debt to Mr. Hardeman who is  
9 represented by Mr. Riley? Did you know that,  
10 Mr. Milligan?

11 A. I did not know that.

12 Q. If you did know that, would you be concerned  
13 that your attorney has relationships with a company  
14 that's selling Mr. Nate Paul's debt to a third party,  
15 Mr. Riley?

Exhibit 44, Transcript of November 5, 2020 Gregory Milligan Deposition, pages 137–38.

Whether and to what extent Steve Lemmon may have interfered with the criminal investigation is unknown, as his relationship with the Complainants was not disclosed. Nevertheless, his involvement is concerning given his questionable representations to OAG and his potential personal motivation to gain a strategic advantage for his client in the Mitte Foundation litigation with Nate Paul.

#### **D. Cases in Referral #1 and Referral #2 Were Not Closed As Unfounded; Questions Remain**

Though Complainants asserted that Nate Paul's criminal allegations were meritless, OAG records directly contradict that claim. For example, Penley's writings and documents show that he was mid-investigation when AG Paxton told him that outside counsel would be taking over the investigation. Furthermore, Maxwell did not document his investigation and findings. Verbal conclusory statements that the case into Referral #1 was closed neither hold merit nor reflect OAG's position at the time. Furthermore, Referral #2 was never investigated by any OAG staff, who was unaware of its existence. Referral #2 therefore could not have been closed based on its merits.

It is confirmed that the investigation was never documented through OAG's normal channels, including Webpass and the offense report system, and actions taken to investigate by

Maxwell were not documented, with the exception of video recordings of interviews with complainant Nate Paul. Maxwell went so far to instruct his own staff *not* to document their actions. Proper procedures regarding the handling of Referral #1 by David Maxwell and Mark Penley, were not followed and the claims against the potential defendants in Referral #1 were not ruled out.

Penley admitted in an interview on November 2, 2020 that, on August 12, 2020, he had determined there were more investigative actions he could take and that he had asked Wynne to provide him with more documents and evidence. Penley then went on vacation. Between the August 12, 2020, meeting and vacation, he did not work further on the case. Penley led his fellow Complainants to believe that he had ruled the actions out, but his last act on the case was to identify things that he needed to investigate. Penley never finished the actions he identified that required investigation. Other evidence later found in his office demonstrated he had a list of items to investigate, with only one of the several questions on the list having been answered. *See* Exhibit 37, Penley List. The day before AG Paxton told Penley to cease working on the case, Penley confirmed in writing that he wished to take further steps in his investigation:

**From:** [Penley, Mark](#)  
**To:** [mwynne@gcfirm.com](mailto:mwynne@gcfirm.com)  
**Subject:** Document request  
**Date:** Tuesday, September 15, 2020 3:45:07 PM

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Michael:

Please give me a call to discuss the status of the documents that I have requested from you and Mr. Paul. I am awaiting receipt of those documents so I can continue with my investigation.

Thank you,

Mark Penley  
Office of the Attorney General  
512/936-1595

There is no evidence that Penley completed an investigation or documented any findings of his investigation. And with the exception of two meetings recorded on video at AG Paxton's direction, and verbal instructions to the forensics team, David Maxwell's actions and conclusions are also undocumented. Additionally, the forensics team disclosed that they needed more information to draw conclusions.

Maxwell and Penley articulated to some in the office that they believed the State of Texas should not investigate the federal authorities for crimes that federal agents and lawyers may have committed in Texas. They expressed the opinion that only the FBI can investigate itself. That idea is incorrect, and it is well established that federal authorities can be investigated and prosecuted by state or local authorities if they violate state law.<sup>19</sup> TCDAO has investigated federal officers,

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<sup>19</sup> In some situations, federal authorities can assert immunity and have their case removed to federal court, but those are procedural and defensive actions in response to investigation and prosecution; they are not a bar to investigation and prosecution.

most notably, their investigation and indictment of Charles Kleinert, who was a deputized federal agent at the time he was accused of committing an offense.<sup>20</sup>

Once the case passed to Outside Counsel/TCDAO Special Prosecutor Cammack, it appears he was making progress on the investigation. A preliminary review of the criminal investigative file that Cammack turned over to OAG reveals that the outside counsel conducted his investigation in a way that met minimum investigative standards, including meeting with the complainant, interviewing witnesses, and collecting evidence, which includes obtaining grand jury subpoenas to assist in the collection of evidence.<sup>21</sup>

Cammack had not completed his investigation when TCDAO closed the investigation, including both Referral #1 and Referral #2. At the time Moore closed her criminal files into Referral #2, no one at OAG was then aware of the existence of Referral #2, with the exception of Paxton and Cammack. Only Cammack had access to the contents of Referral #2. Paxton did not read Referral #2 until after the OAG's internal investigation had begun.

If Cammack had been allowed to continue, upon completion of his investigation, he would have provided his report and a presentation to TCDAO as to his findings and the evidence. Then TCDAO would have decided if they wanted to proceed with prosecuting the case. Ultimately, any actions would have been TCDAO's to take, and not OAG's (other than to assist TCDAO).

At the time of the completion of this Report, and in accordance with the outside counsel contract, OAG is still waiting on Cammack's final report regarding his findings and his investigation.

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<sup>20</sup> Other law enforcement agencies around the nation have investigated federal authorities for crimes that were committed both on and off duty. *See, e.g.,* Rebecca Lindstrom & Lindsey Basye, *He had 76 bullet wounds from police guns. The DA is asking why*, 11 ALIVE (June 13, 2019, 11:06 AM), <https://www.11alive.com/article/news/investigations/the-reveal/he-had-76-bullet-wounds-from-police-guns-the-da-is-asking-why/85-3cac22b8-0f5f-4003-bbb0-85f50485d53e>; *FBI agent charged with assault after accidental backflip shooting on dance floor*, KETV OMAHA (June 13, 2018, 4:15 AM), <https://www.ketv.com/article/fbi-agent-charged-with-assault-after-accidental-backflip-shooting-on-dance-floor/21335428>.

<sup>21</sup> Traditionally, criminal investigations begin with a criminal complaint by a citizen. This is usually received by a uniformed police officer. The uniformed officer will meet with the complainant and get a summary of the complaint. If the information articulated presents facts that could be considered a crime, the complaint is forwarded to a detective for an investigation. The detective will likely contact the complainant and get more information. Then the detective might do the following actions as part of his investigation:

- Interview other witnesses;
- Collect public documents;
- Obtain grand jury subpoenas from a District Attorney's office to obtain information from third parties or from the subjects of the investigation, including, bank records, phone records, video recordings, audio recordings, medical records;
- Conduct surveillance;
- Make controlled calls; and/or
- Conduct other law enforcement actions.

## **E. The Criminal Complaint Against AG Paxton**

The Complainants' criminal complaints against AG Paxton are based on four events, each representing its own alleged criminal transaction: (1) an open records opinion, (2) an intervention in litigation involving a nonprofit, (3) guidance on foreclosure sales during COVID-19, and (4) the retention of Brandon Cammack and his pursuit of Referral #1. *See* Exhibit 22, Final Draft of Complaints. This Report concludes that the evidence supports none of these four allegations, and frequently contradicts key factual or legal assertions on which the Complainants rely.<sup>22</sup>

As noted above, the early drafts of the Complainants' complaint were built around Brandon Cammack and Referral #1. *See* Exhibit 21, Process of Drafting Criminal Complaint. The draft versions are important to this analysis because they demonstrate the process the Complainants went through to accuse AG Paxton of wrongdoing. Upon review of the complaint drafts, it is clear that each starts with Cammack, then seeks other examples of ways that Nate Paul might have benefited from some action taken by OAG. *Id.* The draft versions demonstrate a lack of concrete facts and include personal opinions and speculative conclusory statements. Additionally, they fail to provide documentation or evidence to support certain of their statements and conclusions.

The Complainants' final draft complaint is broken into four sections, involving an open records ruling, the legal intervention into a case involving the scandal-plagued Mitte Foundation, a Covid-disaster opinion guidance regarding legality of foreclosure sales during Government Abbott's executive order restricting attendees at public gatherings, and TCDAO's criminal investigation (through Cammack as special prosecutor).

### **i. The Open Records Ruling ("Paragraph 1")**

The Complainants' Paragraph 1 raises objections about an open records opinion that allegedly reached a "novel" result. The complaint states:

The Attorney General directed the Open Records Division (ORD) to issue a ruling more favorable to Mr. Paul's interest than then-existing open records policy would allow. Specifically, ORD was requested to rule on whether records relating to the underlying investigation into Mr. Paul must be disclosed to the public under the Texas Public Information Act. The Attorney General Paxton announced his intent for the Agency to find a way to order that the records be released, because he did not trust law enforcement. Unable to reach such a conclusion under the law, ORD crafted a determination that it could not issue a ruling on the request submitted by Mr. Paul's presumed representative in a manner that comports with the due-process requirements of the PIA, a novel result that ORD would not otherwise have reached absent pressure from the Attorney General.

Exhibit 22, Final Draft of Complaints. Standing alone, this accusation neither alleges a crime nor provides evidence of such. Nonetheless, the preliminary investigation thoroughly examined the open records ruling and the basis for this determination. The investigation has shown that AG

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<sup>22</sup> The criminal complaint against AG Paxton deserves a full and complete analysis, as there are substantial factual and legal defects present on its face. At the time of completing this Report, however, there has not been adequate time and resources to conduct a complete analysis.

Paxton's actions were lawfully taken and his ruling is legally correct. More importantly, the AG opinion letter was not favorable to Nate Paul, as it did not require disclosure of the information.

When there is a dispute about whether a Texas governmental entity should release requested information to the public, OAG is responsible for resolving it. OAG accomplishes this by issuing opinions pursuant to section 552 of the Texas Government Code. This section requires broad transparency:

Sec. 552.001. POLICY; CONSTRUCTION. (a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.

(b) This chapter shall be liberally construed in favor of granting a request for information.

TEX. GOV'T CODE §552.001.

At the time OAG's opinion was requested, there were several procedural obstacles to issuing an opinion. *See* Exhibit 38, Open Records Opinion. First, the information sought was already subject to pending litigation in Travis County District Court. Second, DPS had failed to timely notify the FBI that there had been an open records request. Third, the FBI failed to timely reply and only provided heavily redacted comments, which presented a problem for OAG.

OAG Assistant Attorney General and Division Chief of Open Records Justin Gordon decided that given the above facts, the pending litigation was the best place to resolve the records dispute. OAG then issued a closed letter and declined to issue a decision. *See* Exhibit 38, Open Records Ruling. In the letter, OAG noted that the late timing of the DPS notice to the FBI and the FBI's late-arriving and heavily redacted comments prevented OAG from issuing a decision in accordance with due process. Importantly, the letter issued by OAG maintained the status quo and allowed the trial court to independently review the claims. This result appears to be objectively correct. In any event, OAG's decision to defer to a district court's determination suggests that AG Paxton did not commit a crime or other wrongdoing – contrary to the Complainant's allegation that he exerted pressure to produce an outcome favorable to Nate Paul's interests.

In addition to this open records ruling, there were at least two other related rulings issued by the Open Records Division in 2019 and 2020 in which OAG again ruled against disclosure and sided with the state agency. It should be noted that the Department of Justice also provided briefing in support of non-disclosure in two of the three opinions – which was the position ultimately taken by OAG.

**ii. The Nonprofit Intervention—Mitte Foundation’s Past Scandals (“Paragraph 2”)**

The Mitte Foundation is a troubled institution that has been frequently investigated in the past. OAG’s investigation into what transpired with the Mitte Foundation intervention remains ongoing, but certain then-known key facts suggest that AG Paxton properly decided to investigate the Foundation, and continued OAG’s long history of investigating the Mitte Foundation, which began with then-AG Greg Abbott.

First, within Paragraph 2, no crime is alleged, and no evidence of any crime is articulated:

The Attorney General directed the agency’s Financial Litigation Division (FLD) to intervene in a lawsuit between a charitable trust named the Mitte Foundation and Mr. Paul’s company, World Class. The court had imposed a receivership on World Class assets in which Mitte had invested, and it became clear that counsel for World Class desired our office’s intervention to prevent the receiver from fulfilling its court-ordered duty. After FLD intervened, the Attorney General pressured counsel to seek an immediate stay of all proceedings, to investigate the conduct of the charity and the receiver, and to pursue a settlement whereby World Class would purchase Mitte’s interests in the investment.

Exhibit 22, Final Draft of Complaints. Paragraph 2 omits material facts and asserts other facts that are contrary to actions taken by OAG employees involved in the intervention. The OAG’s actions in the case in fact benefited the Mitte Foundation when OAG unilaterally gave information about World Class to the Mitte Foundation attorneys in an effort to give them a better bargaining position during mediation.

For example, now-Governor and then-Attorney General Greg Abbott sued the Mitte Foundation in 2009. *See* Exhibit 39, the Greg Abbott Petition. The petition in that lawsuit included the following substantial allegations of wrongdoing:

- 5.6 The Attorney General’s extensive investigation of the Mitte Foundation and Scott Mitte’s role in the Mitte Foundation revealed the following improper actions by Scott Mitte in his capacity as a member and officer of the Mitte Foundation:
- a. improper use of Mitte Foundation credit cards for private use by Scott Mitte;
  - b. improper personal use of Foundation property by Scott Mitte;
  - c. Scott Mitte’s failure to secure board approval for \$200,000 worth of renovations to the carriage house property behind the main Mitte Foundation offices, at a time when the Foundation was in financial difficulty;
  - d. Scott Mitte’s authorization and acceptance of excessive executive compensation;
  - e. failure of the members of the Mitte Foundation to conduct a meaningful salary and performance review for Scott Mitte;
  - f. failure to review the performance of Scott Mitte in his role as Mitte Foundation president;
  - g. improper spending of Mitte Foundation assets on travel by Scott Mitte;
  - h. breach of the duty of loyalty by Scott Mitte in his insistence on receiving full pay and benefits while taking a year’s leave of absence in lieu of stepping down as requested by certain member of the Board;
  - i. poor management and investing of Mitte Foundation funds by Scott Mitte;
  - j. poor oversight by members of the Mitte Foundation over finances of the Mitte Foundation;
  - k. retaliatory removal of a dissenting director by Scott Mitte.

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*See* Exhibit 39, *Greg Abbott vs. Mitte Foundation*.

The Attorney General is authorized by statute to intervene in any lawsuit involving a nonprofit to protect beneficiaries and the State's interest. The right to intervene is broad:

Sec. 123.002. ATTORNEY GENERAL'S PARTICIPATION. For and on behalf of the interest of the general public of this state in charitable trusts, the attorney general is a proper party and may intervene in a proceeding involving a charitable trust. The attorney general may join and enter into a compromise, settlement agreement, contract, or judgment relating to a proceeding involving a charitable trust.

TEX. PROP. CODE ANN. §123.002.

The Mitte Foundation has had conflicts and lawsuits with many individuals and institutions over the years. For example, the University of Texas cut ties with the Mitte Foundation when allegations of sexual harassment arose.<sup>23</sup> Texas State University also cut ties with the Mitte Foundation over allegations of cocaine usage and financial mismanagement.<sup>24</sup>

Given the history of the Mitte Foundation and the unusual payment terms for the receiver in the case, AG Paxton and OAG developed justified concerns regarding the Foundation's operations and use of its funds. While the Complainants allege that AG Paxton's intervention was undertaken to benefit Nate Paul and his corporation, the preliminary investigation suggests that OAG's actions in intervention were not undertaken to aid Paul. The act of intervening in a charitable matter is a neutral act. Intervention, by itself, is not an adverse action against the Mitte Foundation, nor is it an action taken in support of World Class Properties or Nate Paul. Our review of the matter affirms that OAG's actions taken in the case were appropriate (with the exception of the information shared with the Mitte Foundation by OAG attorney Godbey) and that no attempts were made to help Nate Paul and his company.

At the outset of OAG's involvement, Josh Godbey was contacted by Neeraj Gupta and others with the DOJ / FBI regarding Nate Paul and the Mitte Foundation on or about June 16, 2020. This was followed up with the June 17, 2020 email from AUSA Gupta detailed in this Report. Josh Godbey understood from this call that the DOJ / FBI believed the Mitte Foundation to be a "victim" and wanted to support the victim (i.e., by insinuating that OAG should stay away from the matter).

Upon further review, both Darren McCarty (who was the deputy in charge of civil litigation) and Josh Godbey confirmed that OAG settled on the position that OAG would assist the parties to resolve their case cost-effectively, by mediation. McCarty wrote the following about the case with the administrative assistance of OAG employee Sarah Burgess:

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<sup>23</sup> *Mitte Foundation Withdraws Gift to U. of Texas*, THE CHRONICLE OF HIGHER EDUCATION (June 13, 2003), <https://www.chronicle.com/article/mitte-foundation-withdraws-gift-to-u-of-texas>.

<sup>24</sup> Brad Rollins, *Texas State severs ties with embattled philanthropist*, SAN MARCOS MERCURY (April 19, 2008), <http://smmercury.com/2008/04/19/the-bottom-line-texas-state-says-it-will-not-take-money-from-foundation-after-arrest-of-its-director-on-cocaine-charge>.



**From:** [Burgess, Sarah](#) on behalf of [McCarty, Darren](#)  
**To:** [Shannon Najmabadi](#)  
**Subject:** RE: Request for comment  
**Date:** Wednesday, October 21, 2020 12:10:46 PM

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I never said that there would be “trouble” for the foundation or place the foundation under any pressure. I merely recommended that a mediation and a settlement, fully and independently approved by the foundation and its board, could serve the Foundation’s interests. Ultimately, the foundation made the decision not to settle.

Darren McCarty

Contrary to the Complainants’ allegations that OAG intervened solely to benefit World Class Properties and Nate Paul, this investigation revealed that OAG’s intervention worked to the Foundation’s advantage in mediation. OAG Financial Litigation Division Chief Joshua Godbey noticed that Sheena Paul, the lawyer for World Class Properties, desired mediation. Godbey construed this as a sign that the Mitte Foundation could possibly get a higher settlement amount out of World Class Properties at the mediation, and Godbey provided this information and his opinion directly to Ray Chester, the attorney for the Mitte Foundation, before the mediation, on July 13, 2020.

This information placed the Mitte Foundation in a better bargaining position and could theoretically enable it to get more money out of the settlement than they would have if it had not had this information. Contrary to allegations made by the Complainants that the actions taken by OAG benefited Nate Paul, the actions benefited the Mitte Foundation instead.

Additionally, Nate Paul expressed his frustration that OAG was involved in the case:

The contention that the OAG intervention somehow benefitted my client is preposterous. The OAG intervention was non-productive and only served to create confusion, frustrate any resolution, and add to false media reporting about these events.

See Exhibit 40, Nate Paul Letter to OAG.

OAG had every right to intervene in litigation involving a historically problematic nonprofit, pursuant to statute, and the content in “Paragraph 2” articulates no criminal act. The actions taken by OAG employees in the Mitte Foundation intervention were neutral at the start and adverse to Paul at the time of mediation. In fact, during the investigation, OAG lawyers were accused of acting adverse to Nate Paul and his interests (in that they did not investigate the charity) and also by the Mitte Foundation (in that AG Paxton had a personal relationship with Nate Paul). Ultimately, the parties did not settle while OAG was involved, and thus neither side could credibly state that OAG’s involvement affected their position in this litigation.

### **iii. AG Guidance on Foreclosure Sales (Paragraph 3)**

Paragraph 3 of the Complainants’ written complaint goes to great lengths to attribute wrongdoing to an otherwise logical and appropriate informal letter. Within this paragraph, again, no crime is alleged, and no evidence of any crime is articulated:

The Attorney General frantically insisted that an informal guidance document concerning foreclosure sales be drafted and released over the course of one weekend. The Attorney General indicated that the guidance document would help homeowners but could not identify an authorized requester who had asked for the guidance. Rather, he directed staff to a private citizen who had no knowledge of the issue, and then insisted that staff procure an elected state official to prepare a request for guidance. After the guidance was issued, the Attorney General insisted, against advice of staff, that a press release be issued concerning the guidance, eventually settling for a website posting. The guidance document appears directly suited to assist Mr. Paul, who has placed several of his properties into bankruptcy, and who faces the prospect of foreclosure sales by banks holding notes on those properties.

*See* Exhibit 22, Final Draft of Complaints. Paragraph 3 omits material facts and fails to disclose the factual predicate for the informal guidance—namely the COVID-19 pandemic.

The informal guidance letter benefitted all Texans who might be subject to foreclosure during Governor Abbott’s COVID-related restrictions on the number of individuals allowed to gather together as a group. *See* Exhibit 41, Foreclosure Informal Guidance. During July 2020, OAG received a legislative request related to the COVID-19 pandemic and certain courthouse foreclosure sales. The request was submitted by a Texas State Legislator, Senator Bryan Hughes. Because it was an issue related to the pandemic and similar to other property questions handled by OAG’s Disaster Counsel team, the request was forwarded to then-Deputy Attorney General for Legal Counsel Ryan Vassar. This was routed to him as a disaster-related question (through the disaster counsel function within the General Counsel Division) and not set up as an official opinion request (through the Opinion Committee).<sup>25</sup> This distinction was important, as disaster-related questions did not go through the traditional official opinion process, and the guidance was only informal as a result. The informal guidance affirms that foreclosure sales were subject to the COVID-related ten-person gathering limit, and also asserts that the foreclosure sales should not be held if the ten-person limit would negatively impact the bidding. Specifically:

If a foreclosure sale is subject to, and not exempted from, the 10-person attendance limit imposed in Executive Order GA-28, it should not proceed if one or more willing bidders are unable to participate because of the attendance limit. “[A] sale of real

*See* Exhibit 41, Foreclosure Informal Guidance. On its face, this informal opinion is good for Texans and, given the extraordinary circumstances of the COVID-19 emergency, it cannot reasonably be argued that this was an unusual or unwarranted result. Indeed, both the Supreme Court of Texas and federal law have halted or otherwise impeded evictions or foreclosures for the same sound public policy reasons. To date, there is a federally-mandated eviction moratorium in

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<sup>25</sup> In fact, the guidance notes that it does not even carry the weight of a formal AG opinion (which is itself legally nonbinding) under the Texas Government Code, but merely informal guidance. Throughout the COVID-19 disaster, disaster counsel has drafted countless items of advice, emails and full guidance documents (including as to houses of worship and other topics of interest) to officials all over the state of Texas. As a comparison, OAG has issued thirteen formal opinions (under the Texas Government Code) related to COVID-19 through the Opinions Committee since April 2020.

place throughout the country. Foreclosure sales did not formally restart in Travis County until May 2021 (though some form of informal sale occurred in December 2020).

The Complainants contend that AG Paxton acted illegally by procuring an elected official to request an opinion. The Disaster Counsel function (within the General Counsel Division) had received questions regarding foreclosures from many sources, including private citizens. However, to issue a written official opinion, an elected official authorized by the Government Code must ask the question to OAG. The ability of OAG to ask elected officials to request opinions was very important and useful for Texans during the statewide COVID disaster because the Governor's orders were regularly changing and required substantial interpretation and clarification from OAG and the Disaster Counsel. And doing so in this manner is both legal and routine.

Finally, the informal guidance document issued by the Attorney General does not have any legally binding effect: the decision to stop foreclosure sales in Travis County ultimately rests with the Travis County Judge (and the Commissioners' Court) in the normal course, or with the Governor or someone empowered under the Texas Disaster Act in the case of a declared disaster—not the Attorney General or OAG. The issuance of the document did not directly result in any foreclosure sale being stopped anywhere in Texas, let alone in Travis County.

**iv. TCDAO Referral #1 (Paragraph 4)**

The criminal referrals were and remained at all times TCDAO matters. TCDAO always maintained legal control over this referral. Brandon Cammack was both outside counsel for OAG and a special prosecutor for TCDAO and, as noted above, AG Paxton acted appropriately in retaining Cammack and handling the subsequent criminal investigation. Beginning with the portions of the Complainants' complaint that deal with TCDAO and Cammack, the Complainants make plainly incorrect assertions. Given this Report's nature, the following are merely a few examples of these defective statements.

The prime example of a false statement is the summary section of Paragraph 4:

“All facts considered, we have reasonable suspicion to believe Attorney General Paxton may have approved or may be directly supervising the unlawful use of criminal process to further private, nongovernmental interests. In particular, the information sought in the subpoena has no reasonable connection to the allegations contained in the Travis County complaint. And the appearance by Mr. Paul's private attorney at the location of Mr. Cammack's personal service of the subpoena undercuts any reasonable argument that the subpoena was obtained for official purposes.”

*See* Exhibit 22, Final Draft of Complaints.

Yet “[a]ll facts considered” by the Complainants did not include critical facts and information. TCDAO had directly authorized these grand jury subpoenas and some of those subpoenas were related to Referral #2 – which was a lawful referral by TCDAO to OAG (acting through Cammack). Therefore, the Complainants wrongly stated that there was “unlawful use of process.” Additionally, with no evidence to support the contention, the Complainants concluded that AG Paxton “may be directly supervising the unlawful use of criminal process to further private, nongovernmental interests.” This ignores TCDAO's involvement and control of the matter – and is incorrect as it is premised on faulty logic (that Referral #1 was the only referral made by

TCDAO to OAG related to Paul). Finally, the Complainants discuss Paul's private attorney Wynne being present for the service of a grand jury subpoena as proof of untoward actions. Wynne's presence may have been required to waive any objections to releasing the information if Paul, his client, was a party or owner of the subpoenaed bank records. There is *no* evidence that AG Paxton was involved in, or aware of, the decision to have Wynne in attendance. Furthermore, there is *no* evidence that AG Paxton was aware that subpoenas had been issued by TCDAO and by the judge presiding over the grand jury. The "unlawful use of process" allegation is factually unsupported.

At the beginning of the section of their complaint dealing with Cammack and Referral #1, the Complainants state:

The Attorney General submitted a complaint to the Travis County District Attorney's Office alleging potential criminal conduct committed by employees of the State Securities Board, the Department, the FBI, and the United States Attorney's Office for the Western District of Texas, as part of the investigation precipitating the search warrants that were executed in 2019.

*See* Exhibit 22, Final Draft of Complaints.

This statement is misleading because it falsely asserts that AG Paxton himself submitted or wrote Referral #1. The Complainants knew that he did no such thing.<sup>26</sup> AG Paxton has at all times acknowledged that he knew Nate Paul, and that he introduced Paul to TCDAO. But AG Paxton did not submit a complaint for Paul. Indeed, he missed most of Paul's presentation to TCDAO in the first place, and TCDAO exercised and retained criminal jurisdiction over the complaints Paul made.

Paul and his attorneys made the criminal complaint to the TCDAO, both in writing and in a lunch meeting where AG Paxton was not present until after Paul had verbally described his complaint to Montford and Clemmer.<sup>27</sup> Additionally, the criminal complaint contained in Referral #2 was made without AG Paxton's knowledge and directly between Paul and TCDAO. Most importantly, Clemmer and Montford independently approved the criminal complaint and referred it to OAG for assistance in the investigation for the reasons discussed in this Report.

Another controverted fact is found in this statement:

On or about September 16, 2020, OAG staff notified Attorney General Paxton that staff refused to approve the request to retain outside legal counsel to investigate the Travis County complaint because approving the request was not in the State's best interest.

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<sup>26</sup> One of the versions has slightly different wording.

<sup>27</sup> At the time Referral #1 was made by Don Clemmer to OAG, Clemmer knew that AG Paxton knew Nate Paul and did not believe that to be a conflict in the same way he believed that the DPS investigating themselves was a conflict. This logically makes sense, since OAG's job was to collect evidence and present that evidence to the TCDAO. This can be contrasted with the potential for DPS to ignore or omit evidence in its presentation to the TCDAO, if DPS had conducted an investigation into one of its own employees. *See* Exhibit 3, Referral #1. There was also no allegation made by Paul involving an employee of the AG in his criminal complaint.



See Exhibit 22, Final Draft of Complaints.

The Complainants' belief that they, as subordinates, could functionally veto their principal, a constitutionally established and statewide-elected official, reflects a profound misunderstanding of both Texas law and the facts underlying their complaint.

First, AG Paxton's unelected political appointees and staff cannot legally prevent the Attorney General from obtaining outside counsel for actions taken by his office, and employees in the office do not have discretion separate and independent from the constitutionally-created and elected officer, the Attorney General. *See generally* TEX. CONST. ART. IV, §§1, 22; TEX. GOV'T CODE ANN. § 402; *Terrell v. Sparks*, 135 S.W. 519 (Tex. 1911); 7 Tex. Jur. 3d Att'y Gen. § 4 (citing *State ex rel. Hill v. Pirtle*, 887 S.W.2d 921, 924 (Tex. Crim. App. 1994) ("An assistant Attorney General is a public employee and not a public officer [like the Attorney General]. An assistant Attorney General operates under the direct supervision of the Attorney General and exercises no independent executive power.")).


Second, Mateer, as Paxton's then-top appointee, was personally involved in the decision to hire outside counsel. Indeed, Mateer affirmatively participated in the interview process of selecting an outside counsel. Mateer's assertion in his criminal complaint that outside counsel was not in the State's best interest is contradicted by his actions in attempting to secure that counsel. Vassar and General Counsel Lesley French were also involved in the process of engaging Cammack.

Third, this statement is contradicted by the DocuSign record. In accordance with internal OAG procedure, the Complainant staff members signed the DocuSign request. Contrary to the statement that "staff" notified the Attorney General that they would not approve the request, on September 16, 2020, *Vassar had already personally approved the Cammack outside counsel contract on September 15, 2020*. The only action taken on September 16, 2020, was the approval by OAG Controller Michelle Price. Here is Vassar's time-stamped approval signature:

Signer Events	Signature	Timestamp
<p>Ryan Vassar  Ryan.Vassar@oag.texas.gov  Chief General Counsel  Office of the Attorney General of Texas  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	 Signature Adoption: Pre-selected Style Using IP Address: 204.64.50.216	<p>Sent: 9/5/2020 12:31:37 PM  Viewed: 9/8/2020 9:23:15 AM  Signed: 9/15/2020 10:18:23 AM</p>
<p>Michael Jones  michael.jones@oag.texas.gov  Office of the Attorney General of Texas  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<p><b>Completed</b></p> Using IP Address: 204.64.50.216	<p>Sent: 9/16/2020 2:23:40 PM  Viewed: 9/16/2020 3:32:37 PM  Signed: 9/16/2020 4:46:33 PM</p>
<p>L. Michele Price  Michele.Price@oag.texas.gov  Controller  Office of the Attorney General of Texas  Signing Group: L. Michele Price  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	 Signature Adoption: Pre-selected Style Using IP Address: 204.64.50.216	<p>Sent: 9/16/2020 4:46:36 PM  Viewed: 9/16/2020 6:40:40 PM  Signed: 9/16/2020 6:43:09 PM</p>

See Exhibit 34, DocuSign Record for Cammack Executive Approval Process.

Oddly enough, the next “signer” within DocuSign, Mark Penley, did not even open the DocuSign until *after* making his criminal complaint. The first time Penley read the outside counsel contract within DocuSign was after he had made an entry in DocuSign rejecting the contract. Furthermore, this entry was made after learning that AG Paxton had signed the contract with Cammack. Here is Penley’s out-of-order DocuSign entry:

<p>L. Michele Price  Michele.Price@oag.texas.gov  Controller  Office of the Attorney General of Texas  Signing Group: L. Michele Price  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	 Signature Adoption: Pre-selected Style Using IP Address: 204.64.50.216	<p>Sent: 9/16/2020 4:46:36 PM  Viewed: 9/16/2020 6:40:40 PM  Signed: 9/16/2020 6:43:09 PM</p>
<p>Mark Penley  Mark.Penley@oag.texas.gov  Deputy Attorney General for Criminal Justice  Office of the Attorney General of Texas  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<p>Declined  Decline Reason: I cannot and will not sign this contract because the complainant has not provided all requested documents in his possession custody or control, and is thus non-cooperative. I believe the complainant is trying to manipulate the AG and me in an attempt to use the authority of this Office for his own personal legal and financial benefit. I cannot ethically proceed with the investigation or authorize another to do so under these circumstances.</p>	<p>Sent: 9/16/2020 6:43:14 PM  Viewed: 10/1/2020 4:06:37 PM  Declined: 10/1/2020 3:03:44 PM</p>

See Exhibit 34, DocuSign Record for Cammack Executive Approval Process. This paper trail is hard to reconcile with the assertions in the Complainants’ criminal complaint.

Indeed, Penley's rejection can only be explained as an attempt to nullify Cammack's authority as a special prosecutor after the fact. Penley lacked this power as a subordinate official empowered only to carry out AG Paxton's orders. For that matter, Penley's entry could have been made to bolster his own credibility, *after* he had learned that his September 30th allegations that Cammack was a fraud were false. Penley did not appear concerned with the contract's contents; he reviewed it for the first time an hour after he declined it, and even that was two weeks after he received the contract approval in the first place.<sup>28</sup>

Penley conveyed that he learned about Cammack, and the interviews with other potential outside counsel, on September 15, 2020—after his return from a two-week vacation. In some form or fashion he did verbally object to the hiring of outside counsel, but this was only after Mateer and AG Paxton had interviewed outside counsel for the express purpose of taking over the investigation, and after the outside counsel contract had been signed.<sup>29</sup> While Mateer's signature was not required for the contract, he interviewed candidates to be outside counsel for this case. It is therefore perplexing that the Complainants would rely upon Penley's objection to outside counsel while knowing the role that First Assistant Mateer played in hiring Cammack.<sup>30</sup> Furthermore, Vassar knowingly drafted and submitted the contract for signature (and asked the General Counsel to recommend the hiring of Cammack – his direct report), and seven other employees approved the contract through DocuSign. At a minimum, the statement that “staff refused to approve the request to retain outside legal counsel,” omits material facts that render the statement highly misleading.

**v. There Is No Evidence of Bribery or Criminal Undue Influence**

There is no evidence of any bribe or criminal undue influence articulated in the criminal complaint prepared by the Complainants. No evidence was uncovered in this investigation. In Webster's November 2, 2020 interview with Penley, he stated that the bribe in question was a campaign donation made by Nate Paul to AG Paxton on October 29, 2018. During the 2018 campaign and election for Attorney General of Texas, AG Paxton raised over \$8 million.<sup>31</sup> Thus, Nate Paul's 2018 donation to AG Paxton of \$25,000 represented only a tiny fraction of the total donations to AG Paxton's contested statewide race.

More importantly, it would have been a logical and legal impossibility for this campaign donation to be a bribe for unforeseeable actions taken in 2020. Bribery and similar statutes require that there be some express quid pro quo. Because of the protected First Amendment interests

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<sup>28</sup> DocuSign approval is OAG's system of approval documentation, and it requires daily attention for all executives. It is unusual for an executive within OAG to not take action on a DocuSign request for two weeks.

<sup>29</sup> It is unknown what Penley's motivations were by objecting. It is common for prosecutors to not want to have cases taken away from them, especially after they have devoted time to the case. Also, given the fact that Penley was a former Assistant U.S. Attorney, and OAG was investigating Assistant U.S. Attorneys, and given Penley's illegal actions in providing documents to Johnny Sutton, it is unknown at this time if other relationships motivated him to keep control over the investigation.

<sup>30</sup> While it is likely that Mateer shared this fact with fellow Complainants, it is unknown whether he actually notified them of his involvement in obtaining outside counsel.

<sup>31</sup> *Attorney General of Texas 2018 Election Season*, TRANSPARENCY USA, <https://www.transparencyusa.org/tx/race/attorney-general-of-texas?cycle=2018-election-cycle>.

associated with making campaign contributions, Texas statutes specifically require evidence of an express agreement for a campaign donation to be a bribe:

Any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.

TEX. PENAL CODE § 36.02(a)(4).

Federal law carries a similar standard: “[A]ccepting a campaign contribution does not equal taking a bribe unless the payment is made in exchange for an explicit promise to perform or not perform an official act. Vague expectations of some future benefit should not be sufficient to make a payment a bribe.” *United States v. Allen*, 10 F.3d 405, 411 (7th Cir. 1993).

A quid pro quo was impossible here. While Paul donated to AG Paxton’s campaign in 2018, even the Complainants do not allege that Paul identified, much less asked for, any official action he desired from Paxton until well over a year later. To be sure, there is no evidence present that Paul made such a request. But even assuming for argument’s sake that such a request had been made in the first place, the timing precludes the possibility of an express agreement as required by Texas and federal law. For example:

- Paul could not have envisioned the COVID-19 pandemic on which at least one of the Complainants’ accusations rely (of a letter issued by the AG involving foreclosure sales in response to Governor Abbott’s executive order).
- At the time he made his 2018 donation, Nate Paul did not know and could not have anticipated that federal authorities would execute a search warrant on his properties in 2019.
- Paul further did not know in 2018 what would happen in the Mitte Foundation case and did not know that there would be pending litigation over whether government records should be released.

Everything articulated in the Complainants’ complaint was unknown by Paul at the time he made donations to AG Paxton. It seems highly implausible that such an alleged quid pro quo arrangement for things unknown could support a Texas law bribery prosecution.

Beyond that, the Complainants articulate no theory of a criminal act, much less a theory that AG Paxton sought or accepted a bribe or otherwise improperly exercised his official influence.

The Complainants’ theory of bribery, abuse of power and undue influence, moreover, could—if generally adopted—subject every elected official in Texas to criminal prosecution if an elected official could be said to have taken any action that happens to benefit a past donor. The Attorney General of Texas has the authority to act in hundreds of different ways within the State of Texas. *See* Exhibit 43, 73-Page List of Statutes Requiring or Authorizing Action by the Attorney General. Given the Attorney General’s broad, statewide power, there is always potential for those



actions to impact a donor, friend, or acquaintance in some manner; however, such actions should not be imputed to an improper purpose without evidence of wrongdoing, or an unlawful act, or an express agreement to confer the benefit. Put another way, the fact that an action may help a donor, friend or acquaintance by itself is not evidence of a crime – it is not “*res ipsa loquitor*”. No law or rule prevents the Attorney General from taking actions in cases involving a past donor, and even were that rule to exist (which it does not), it would significantly impair the efficient execution of the duties that the legislature and Constitution have bestowed upon the Attorney General.

As evidenced by his recent testimony under oath, Mateer has been unable to articulate any criminal allegation. At the temporary injunction hearing on March 1, 2021, Mateer was called to testify on behalf of the movants (Maxwell and Vassar) in *Brickman, et. al. v. Office of the Attorney General of the State of Texas*, Trial Cause No. D-1-GN-20-006861.

Throughout his testimony, counsel for the Office of Attorney General objected to Mateer being called as a witness, in particular on the basis of the attorney-client privilege and the lack of authorization to disclose confidential information obtained during his former employment. Notwithstanding such objections, the Court allowed Mateer to respond to a line of questioning by counsel friendly to him. But when asked to articulate the criminality of AG Paxton’s acts, so that the attorney could demonstrate to the court the applicability of the “crime-fraud exception” to attorney-client privilege under Tex. R. Evid. 503(d), Mateer was unable to do so –

15           Q.     (BY MR. SOLTERO) Okay. And did you come to  
16 believe that the Office of Attorney General was being  
17 engaged in ongoing criminal activity in connection with  
18 Nate Paul?

After a series of objections (including attorney client privilege) to this specific question were made and overruled by the Court, Mateer came up with the following confusing response:

15           A.     And I know it called for yes or no, but it's a  
16 question that it's hard to give a yes or no, so that  
17 makes it difficult for me as -- as -- as the witness.  
18 What I would say is it -- it could have led to that.  
19 Certainly it's -- did I have concerns? I had potential  
20 concerns.

The question asked whether or not the OAG had engaged in criminal activity, and Mateer’s answered that he could **not** say “yes or no”; and then that “it could have led to that.” And, finally, that he had “potential concerns.”

If Mateer had proof of bribery or quid pro quo, or any other illegal act, it was of paramount importance to the Complainants that he furnish that information in response to this question put to him under oath. Yet he did not. The inescapable conclusion left by Mateer’s testimony at the TI

hearing is that he had no knowledge of any facts, any evidence that existed, or even discussions involving criminal acts by the Attorney General.

### **Conclusion**

Based upon the evidence collected and review of all relevant factors, it is the finding of this report that former political appointees of General Paxton had no basis for their criminal complaint. Brandon Cammack was known to all those making the complaints to be legally and factually contracted as outside counsel of the OAG. Cammack was then duly appointed Special Prosecutor and conducted a legal investigation into complaints made to TCDAO, which had been forwarded to Cammack for investigation. Allegations made against OAG regarding Open Records request and Foreclosure Opinions claiming to benefit Nate Paul, in fact, had no such effect. There is no evidence that actions taken by OAG were in response to a “quid pro quo”. This finding is supported by the evidence collected to this point, and OAG will continue to conduct a review of any evidence presented, as the duty is ongoing to seek the truth of these matters.

DRAFT