

THE SENATE OF THE STATE OF TEXAS
SITTING AS A HIGH COURT OF IMPEACHMENT

IN THE MATTER OF §
WARREN KENNETH §
PAXTON, JR. §

TRIAL
VOLUME 5 - AM SESSION
SEPTEMBER 11, 2023

The following proceedings came on to be heard in the
above-entitled cause in the Senate chambers before Lieutenant
Governor Dan Patrick, Presiding Officer, and Senate members.

Stenographically reported by Kim Cherry, CSR, RMR.

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September 11, 2023

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P R O C E E D I N G S

September 11, 2023

(9:00 a.m.)

1
2
3
4 THE BAILIFF: All rise. The Court of
5 Impeachment of the Texas Senate is now in session. The
6 Honorable Lieutenant Governor and President of the Senate Dan
7 Patrick now presiding.

8 PRESIDING OFFICER: Good morning, everyone.
9 Good morning.

10 Will the bailiff bring in the jury.

11 (Senate members enter the Senate chamber)

12 PRESIDING OFFICER: Senator Birdwell, would
13 you come forward for the prayer.

14 And before the prayer, I'd like for every
15 member to come up and stand alongside of Colonel Birdwell on
16 this remembrance of 9-11. We will first have a moment of
17 silence and then he will pray and make a few-minute remark.

18 Everyone bow their heads in a moment of
19 silence, remembering those that we lost on this day.

20 (Moment of silence)

21 PRESIDING OFFICER: Senator Birdwell?

22 SENATOR BIRDWELL: Thank you, Mr. President.
23 I -- I come to this duty with emotion. Today is the first
24 day in -- the first September 11th in 18 years that I've been
25 apart from Mel, but I am at my assigned place of duty with my

1 colleagues at their assigned place of duty. And it is that
2 that we wish to remember as I -- as I offer this prayer, if I
3 may, Members. Please know that it is my honor to be among
4 you at this appointed place of duty.

5 Father, we come before you, thankful for your
6 grace, thankful for your mercy. We thank you for the
7 miracles that you worked in the lives of the Birdwells, ask
8 you for peace on Mel's heart and calm for her as we are apart
9 today, and thank you for the blessing of friends that are
10 with her.

11 Thank you for the first responders that
12 stepped out of their homes that morning thinking it would be
13 a normal day and in many cases did not return home, but they
14 responded to their places of duty and the circumstances
15 before them.

16 Bless those families of the loved ones lost,
17 the loved ones injured, and bring peace and calm to their
18 hearts on this day of remembrance.

19 Let us not forget those that responded to the
20 nation's call to arms because of the events that day. They
21 left the shores of this great nation to defend our ideals and
22 our way of life, and that their families be blessed and your
23 peace and quiet be upon their hearts today.

24 Thank you for those currently serving in our
25 towns and our foreign lands on Freedom Sentinel.

1 Father, we ask you for the wisdom that you
2 gave Solomon in our current duties, but most of all we thank
3 you for ordering your Son to step out of the perfection of
4 heaven in your throne room to be the greatest example of
5 selfless service to redeem a fallen world to you. And we
6 thank you for the day that you have made today. In Christ's
7 name we pray. Amen.

8 PRESIDING OFFICER: Thank you, Senator.

9 For those of you watching online who may not
10 see other Senate proceedings or be as familiar with our
11 Senators, Senator Birdwell was in the Pentagon on 9-11, a
12 Lieutenant Colonel in the Army. And the plane hit right
13 where his office was, and it's a miracle that he survived.
14 He's had over 50 surgeries. And we're -- we're so honored to
15 have Senator Birdwell, Lieutenant Colonel Birdwell with us
16 today, and his wife, Mel, who he spoke to who didn't know if
17 he was alive or not, no communications for hours and hours
18 until later in the day. So, Mel, we know you're watching,
19 and we're with you as a body as well.

20 You all may be seated.

21 Members and counsel, before we begin, I'd like
22 to go over the clock and a reminder of the schedule ahead.
23 Beginning today, the time remaining for the House Managers is
24 14 hours, 28 minutes, and 17 seconds. And the time remaining
25 for Respondent, 14 hours, 23 minutes, and 17 seconds.

1 That means -- and we plan to go until 6:30 or
2 7:00 tonight and tomorrow night, possibly Wednesday. And
3 since both of you have been almost even in direct and
4 cross-examination, redirect and recross, that you both have
5 about the same amount of time. And so based on that time
6 schedule, both sides will be likely down to under five hours
7 by sometime late Wednesday, depending on how the time is
8 divided. And both sides could be out of time on Thursday
9 morning.

10 I want to be very clear that one side or the
11 other could have time left that the other could not respond
12 to. Those are the rules that both sides proposed and agreed
13 to. So it's up to you to strategize and manage your time
14 properly. But when you're at the end of the time, I'm not
15 going to cut you off in midsentence. We'll give everyone
16 ample notice; you have an hour left, 30 minutes left, 15
17 minutes left. But there will not be "I need another half
18 hour," "I need another witness," "I need a few more
19 questions." When the time is up, the time is up. And then
20 you'll have an hour for rebuttal, and you'll have an hour for
21 your closing arguments beyond that.

22 That means, members of the jury, you may have
23 this in your hands late Thursday or Friday. We will not take
24 a day off until a final resolution, whether you deliberate a
25 short time, midtime, long time. We'll stay here through

1 Friday, Saturday, Sunday, Monday until you've made a decision
2 on every Article that you're prepared to come and vote. So
3 from this moment forward, no off days until the trial
4 deliberations and the decision is given.

5 With that, call your first witness.

6 MR. HARDIN: We call Mark Penley.

7 PRESIDING OFFICER: Bailiff, please bring in
8 the witness.

9 (Witness entered the chambers)

10 PRESIDING OFFICER: Mr. Penley, please step
11 forward. Did you take the oath the other day?

12 THE WITNESS: I did not take an oath.

13 PRESIDING OFFICER: All right. You don't have
14 to repeat after me. You can just at the end answer. Please
15 raise your right hand.

16 (Witness sworn by the Presiding Officer)

17 PRESIDING OFFICER: Please be seated.

18 MARK PENLEY,

19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HARDIN:

22 Q. Good morning.

23 A. Good morning, Mr. Hardin.

24 Q. I want to warn you now, each of us needs to be a
25 little bit closer to the microphone than you are right now.

1 I think that base actually does move, if you want to move it
2 towards you a little bit. If it doesn't, don't force it.

3 A. All right.

4 Q. All right. If you would just keep that in mind,
5 please because we have some acoustic issues.

6 State your name, please.

7 A. My name is Mark Penley.

8 Q. Mr. Penley, how old a man are you?

9 A. I'm 69.

10 Q. Where did you grow up?

11 A. Grew up in Denton, Texas.

12 Q. And when you -- high school? College? Give us a
13 little bit, like a minute and a half or so if you can.

14 A. All right. Went to Denton High School, graduated
15 in 1972, played high school football, president of the
16 student council, was in the fellowship of Christian Athletes,
17 went to church and Sunday school and sang in the youth choir
18 at the First Baptist Church. I was in Boy Scouts and was an
19 Eagle Scout.

20 Q. Let me stop you there. Let me just try to do some
21 of it, if I can, by question and answer rather than just a
22 narrative, which I first asked for.

23 If you'll keep in mind, you started talking
24 fast. You're an interesting combination. You talk slowly,
25 but you talk fast, if that makes any sense. So just stay

1 with me long enough, and everybody will be able to hear you.

2 After high school -- and I think -- you folks
3 who are Eagle Scouts, y'all stay pretty close together, do
4 you not, in terms of later in life or so? Have you stayed
5 active with them at all?

6 A. Well, I didn't. After I attained the rank of
7 Eagle, I was busy playing football and doing other things,
8 so -- but certainly something I was very proud to attain.

9 Q. Mr. Penley, you've mentioned religion. Would you
10 describe for the jury in your life what role religion has
11 played?

12 A. Yes, sir. I'm a Christian. My belief in Jesus
13 Christ is the most important thing in my life. He guides me
14 in everything I do. He's my strength. He's the cornerstone
15 of my life, and I try my best to honor Him in every area of
16 my life.

17 Q. Was there a particular moment in your life that you
18 particularly saw the road ahead for yourself?

19 A. I did. I grew up going to church, and I thought
20 being a Christian meant being good. But in 1968 in the
21 summer, I went on a school trip to San Antonio, and there was
22 a man by the name of Billy Graham having a crusade at Alamo
23 stadium. And for the first time in my life, I understood the
24 gospel. We can't save ourselves, but Jesus died to save us,
25 and I put my faith and trust in Christ that night.

1 Q. Mr. Penley, those of us, like myself, that grew up
2 in North Carolina are very familiar with Billy Graham.

3 From then on -- and I want to ask you if we
4 could make our answers short and to the point of the
5 question.

6 A. Yes, sir.

7 Q. But from then on, from the time you were 14 up --
8 14, was your religion a very, very big, integral part of your
9 life?

10 A. Yes, sir.

11 Q. All right. And then what about politics? If
12 you -- did you at any time in your education and early
13 careers become interested in politics?

14 A. Well, I've always been interested in politics. My
15 father was. He was active in local Republican politics in
16 Denton County. He was the county chairman for Senator John
17 Tower.

18 Q. All right. So throughout your career -- this is
19 not a -- probably a favorable point for Democrats but might
20 be interesting to a Republican. Have you ever voted for a
21 Democrat in your life? Just yes or no.

22 A. No, not to the best of my recollection.

23 Q. All right. Not on purpose? You mean you might
24 have accidentally done it?

25 A. Well, I might have voted for a judge.

1 Q. All right. Okay. Now, let me ask you, so high
2 school, where did you go to college?

3 A. I went to the United States Air Force Academy.

4 Q. Did you serve all four years?

5 A. Yes, sir, I stayed all four years and then --

6 Q. And how long were you in the Air Force?

7 A. I was on active duty for five years in the Air
8 Force.

9 Q. After Air Force, you were how old when you
10 graduated?

11 A. I'm sorry? Could you --

12 Q. How old were you when you graduated from the Air
13 Force Academy?

14 A. I was 22.

15 Q. What did you do then?

16 A. Well, I went on active duty, and I became an
17 aircraft maintenance officer and primarily stationed at Reese
18 Air Force Base in Lubbock.

19 Q. All right. Then after your service, how many -- I
20 think you said, but how old were you when you got out of the
21 Air Force?

22 A. I was 27.

23 Q. What did you do then?

24 A. I went to law school at the University of Texas.

25 Q. When did you graduate?

1 A. 1984.

2 Q. What did you do then?

3 A. I took a job at Andrews & Kurth in Houston in
4 commercial litigation.

5 Q. Andrews & Kurth at that time was one of the three
6 or four largest firms in -- one of the four or five,
7 probably, largest firms in Houston, was it not?

8 A. Yes, sir.

9 Q. And how long were you at Andrews & Kurth?

10 A. I stayed there four years.

11 Q. And then what type of practice did you do?

12 A. A general commercial litigation practice, a little
13 bit of tort litigation as well.

14 Q. And then after your time at Andrews & Kurth, where
15 did you go?

16 A. I transferred to Strasburger & Price in Dallas. I
17 wanted to do more trial work, and I felt like I'd get more
18 opportunities there.

19 Q. How long were you at Strasburger & Price?

20 A. I stayed there 13 years, I believe, from the fall
21 of '88 until January of '03, so --

22 Q. While were you at Strasburger & Price, did you meet
23 Mr. Ken Paxton?

24 A. I did.

25 Q. And how was that? How did you meet him?

1 A. Well, he was a fellow associate at the law firm.
2 He got there a year or two after I started, and we met each
3 other and had some similar interests and knew each other a
4 little bit.

5 Q. And so how long were you at Strasburger & Price
6 with Mr. Paxton?

7 A. I think we overlapped a year or two and then he
8 left.

9 Q. After that time, how would you describe your
10 relationship? Were you a friend or associate, or tell us in
11 your own words how you would describe your relationship at
12 that time with Mr. Paxton?

13 A. We stayed friendly acquaintances. I saw him
14 infrequently; but when I did, we always spoke. It was always
15 pleasant. We had similar interests in politics.

16 Q. All right. And so then how long -- what -- how old
17 were you and where did you go from Strasburger Price?

18 A. Goodness. I left Strasburger & Price in January of
19 2003, so I guess I was 48, 49. I'm not doing the math very
20 well, but --

21 Q. That's okay.

22 A. -- late 40s.

23 Q. And was Mr. Paxton -- how long was he there? Did
24 he leave before you?

25 A. Oh, he left many years before me.

1 Q. After he left and you're no longer a member of the
2 same firm, did y'all stay in touch?

3 A. Well, we had a mutual friend, and I would hear what
4 he was doing. And I saw him infrequently, but we did see
5 each other on a few occasions. And we went to the same
6 church for a year or so.

7 Q. Which church was that?

8 A. That was Stonebriar Community Church in Frisco.

9 Q. After you left Strasburger Price, where did you go?

10 A. I spent a few months working in a small firm in
11 Fort Worth, and then I got a job offer from the United States
12 Attorney's Office in Dallas, which I accepted.

13 Q. How long were you a federal prosecutor with the
14 U.S. Attorney's Office in the Northern District of Texas?

15 A. For 16 years.

16 Q. And what were your jobs during that period? And I
17 want to try to do it if we can hit the high points.

18 A. All right. I started out doing general crimes,
19 counterfeiting, identity theft, things like that. And after
20 I had been there a couple of years, I transferred to the
21 national security section and worked on terrorism cases and
22 export control cases for the rest of my time there.

23 Q. And so the last two or three years, or four years
24 even, what were your assignments as a federal prosecutor?
25 How would you describe it?

1 A. I did some violent crimes. I did some computer
2 crimes, but mainly I did terrorism cases. I did a -- helped
3 out on a large mortgage fraud trial, and I worked on a very
4 large export control matter involving a foreign company
5 selling American technology to prohibited nations.

6 Q. And when -- how is it that you then joined the
7 Attorney General's Office? How did that come about?

8 A. I had spent a year in D.C. at the main justice
9 department in the counterintelligence section in 2018. And
10 in the summer of 2019 after I returned to Dallas, I got a
11 phone call from First Assistant Jeff Mateer at the Office of
12 Attorney General. He told me they had an opening for the
13 deputy for criminal justice, and he said Ken Paxton wanted me
14 to interview for the job.

15 Q. So he indicated to you the idea of giving you a
16 call was Ken Paxton's?

17 A. Yes, sir.

18 Q. Did you interview for the job?

19 A. I did.

20 Q. Whom did you interview with?

21 A. Well, I came down here to Austin. I met a number
22 of the deputies. I met Lacey Mase. I met Lisa Tanner who
23 was the head of the criminal prosecutions division. I met
24 the Chief of Staff Missy Cary, Ryan Bangert, several others.
25 I can't recall everybody, but most of the people on the 8th

1 floor.

2 Q. And did you meet also with the Attorney General
3 himself?

4 A. I did not meet with him in person. We spoke on the
5 phone about a week later.

6 Q. All right. And when you spoke on the phone, were
7 you offered the job?

8 A. Yes.

9 Q. So who offered you the job to come to work at the
10 Attorney General's Office?

11 A. Mr. Paxton.

12 Q. And what year and month, if you recall, was that?

13 A. That would have been in July of 2019.

14 Q. All right. Now, at some time until the end of the
15 year of 2019, had you ever heard the name Nate Paul?

16 A. No.

17 Q. And how is it that you ultimately did, if you did?

18 Well, let me back up and ask, did you
19 ultimately become familiar with the name of Nate Paul?

20 A. Yes, sir.

21 Q. And when was that that you became aware of it?

22 A. On December 16, 2019.

23 Q. And how and what was the occasion for you to become
24 familiar with the name of Nate Paul?

25 A. I was in Dallas that weekend. Mr. Paxton called

1 me, asked me to stay over on Monday and meet with him at the
2 Highland Park Village shopping center at a coffee shop. And
3 I agreed to do that, of course, and --

4 Q. Hold on. That -- that'll get us a start.

5 Now, when you got that call, explain to the
6 jury how your working relationship -- the agreement with --
7 as far as your residence in Dallas and working in Austin,
8 what was your schedule by that time with the Attorney
9 General's Office?

10 A. Yes, sir. When I was offered the job, I explained
11 to Mr. Paxton and to Jeff Mateer that my wife and I each had
12 an elderly parent in their 90s in the Dallas area, and we
13 were looking after them. And I couldn't move to Austin, but
14 I could stay down here most of the time. And they said,
15 Look, just be here three or four days a week. We have a
16 civil division office in Dallas. We'll give you a desk and a
17 computer and a phone there. You can work from there one or
18 two days a week. Typically, I worked in Dallas one workday a
19 week, either a Friday or a Monday, and then commuted to
20 Austin for the rest of the week, generally four days.

21 Q. So that's why he asked you to stay over as opposed
22 to come back to Austin?

23 A. Yes, sir.

24 Q. All right. Did you meet with Mr. Paxton?

25 A. I did.

1 Q. And the day and place that you met, you said
2 Highland Park. The date was what?

3 A. It was Monday, December 16, 2019.

4 Q. And where did you meet and what was the
5 circumstance for your meeting?

6 A. Well, first I met in the coffee shop. He was
7 finishing another conversation. And then he said, Let's go
8 out to the car. We're going to make a phone call to a friend
9 of mine.

10 Q. So you went out to a car to have this phone call?

11 A. Yes, sir. And I don't remember if it was my car or
12 his, but we had the phone call on his cell phone.

13 Q. All right. And then I assume he put him on
14 speaker?

15 A. He did.

16 Q. And how did he describe -- what did he say to you
17 to describe who he wanted you to talk to?

18 A. He told me this was a friend of his who had had
19 some search warrants executed on his home and offices.

20 Q. Did he say anything else before the phone call that
21 you recall?

22 A. Not much.

23 Q. All right. And then what happened?

24 A. Then Mr. Paul came on the phone. Ken Paxton
25 introduced us, and then I listened as Mr. Paul told his

1 story.

2 MR. LITTLE: Objection, hearsay to anything he
3 said.

4 Q. (BY MR. HARDIN) Excuse me. Did you listen in the
5 presence of the Attorney --

6 PRESIDING OFFICER: Sustained.

7 Q. (BY MR. HARDIN) Excuse me. Did you listen --

8 MR. HARDIN: I'm sorry. I didn't mean to
9 speak.

10 Q. (BY MR. HARDIN) Did you listen in the presence of
11 the Attorney General?

12 A. Yes, sir. He was sitting at my right elbow.

13 Q. And did Mr. -- did the Attorney General also
14 periodically make observations or discuss during the phone
15 call?

16 A. Yes. He participated in the conversation.

17 MR. HARDIN: I renew my questions, Your Honor.
18 These are party admissions from the Attorney General himself.
19 If -- I wanted to go back to the original question and ask
20 him what was said.

21 PRESIDING OFFICER: Go ahead.

22 MR. HARDIN: Thank you.

23 Q. (BY MR. HARDIN) Now, can you recall what Mr. Paul
24 said to you and the Attorney General in this car?

25 MR. LITTLE: Mr. President, objection,

1 hearsay.

2 MR. HARDIN: I'm sorry? I didn't hear the --
3 apology.

4 PRESIDING OFFICER: Repeat your objection so
5 he can hear.

6 MR. LITTLE: I said it was objection,
7 hearsay.

8 PRESIDING OFFICER: Sustained.

9 MR. HARDIN: Your Honor, if I may, I certainly
10 don't want to argue with the Court, but this is a
11 conversation that the Attorney General himself is
12 participating in. And by participating and asking questions,
13 he is really acceding to what the conversation is.

14 And finally, the conversation in the presence
15 of the Attorney General is not being offered for the truth of
16 the matter. In fact, as the Court knows, we contend that
17 what he was saying is untrue. But whether that's true or
18 untrue, we're not offering it to prove the truth but only
19 that that's what this witness was telling -- was being told
20 in the presence of the Attorney General by Mr. Paul. And so
21 we renew our offer.

22 MR. LITTLE: Mr. President, may I be heard in
23 response?

24 Mr. President, thank you. Nate Paul is not a
25 party to this case. He's not an agent of any of the parties

1 of this case. And party admission is not an exception to the
2 hearsay rule, and none of the stated reasons to allow this
3 information to come in are exceptions to the hearsay rule.
4 So we renew our objection.

5 PRESIDING OFFICER: I have my legal counsel on
6 some of these more sophisticated, complex issues, a former
7 judge, of course. And we'll overrule this objection.
8 Continue.

9 MR. HARDIN: Thank you, Your Honor.

10 Q. (BY MR. HARDIN) You can answer that question.
11 What did Mr. Paul say?

12 A. He narrated a series of events related to search
13 warrants that were served on his home and two of his business
14 properties in August of 2019.

15 Q. How long did this conversation take place, would
16 you estimate?

17 A. Twenty to 30 minutes.

18 Q. Do you recall what your own thought processes were
19 as you listened to him?

20 A. I thought, Why is the Attorney General involved in
21 this? Why is he wanting me to know about this? This is not
22 a state matter from what I could tell. And I thought it was
23 very suspicious that someone who was the target of a federal
24 investigation was reaching out to the Attorney General of
25 Texas for legal help.

1 Q. Did you make sure in your conversation with him in
2 the presence of the Attorney General to Mr. Paul that you
3 yourself were not allowed or able to give him legal advice?

4 A. Yes, sir. I specifically told Mr. Paul that. I
5 said, I represent the State of Texas. I can't be your
6 lawyer. I can't give you legal advice. Do you have counsel?
7 And he gave an affirmative answer. And I said, You need to
8 talk to your counsel about this so they can guide you.

9 Q. All right. When this conversation was over -- and
10 I think you said it was like 20 to 25 minutes?

11 A. Yes, sir.

12 Q. Did you talk to the Attorney General about that
13 subject anymore --

14 A. We --

15 Q. -- on that occasion?

16 A. Yes, sir, we did, and on later occasions. But on
17 that day, December 16th, he made comments to me that
18 indicated he was very mistrustful of law enforcement, and he
19 made a comment as to how he felt about how he had been
20 treated by law enforcement, which was in a negative way.

21 Q. Do you recall what he said, please?

22 A. He said, I've been the subject of a corrupt
23 investigation.

24 Q. Did you know at that time that he had pending
25 criminal charges?

1 A. I knew about the securities fraud charges. I knew
2 nothing about the facts of the case, and I still don't.

3 Q. Okay. Now, at the -- at the end of the day, did
4 that -- on that occasion, did he say any more to you about
5 his feelings about law enforcement in general?

6 A. Not on that day.

7 Q. All right. Then after that occasion, when is the
8 next time that you heard anything about Nate Paul?

9 A. It was on June 16th or 18th of 2020.

10 Q. Let me stop you there. So is it your testimony
11 that from that conversation in December of '19 until June of
12 2020, you neither heard nor had any involvement with any
13 issues involving Nate Paul?

14 A. That's correct.

15 Q. All right. And then what was the date in June did
16 you say?

17 A. It was either June the 16th or the 18th to the best
18 of my recollection because those were the dates of our two
19 weekly staff meetings.

20 Q. All right. So that the jury knows, there's been
21 some reference maybe to different meetings. What was the
22 normal schedule about staff meetings of the upper -- upper
23 management of the AG's Office at that time when you were
24 there in 2020?

25 A. We met every Tuesday and Thursday. If the Attorney

1 General was in town, he attended, but First Assistant Jeff
2 Mateer chaired the meetings if he wasn't there. And if I'm
3 correct, on one of those days, we had a strategy meeting.

4 Q. Hold on. I'll get there. I didn't ask you about
5 that yet.

6 On those meetings, would -- how long would
7 they last and what time of day would they usually be?

8 A. I believe they started at 9:00 or 9:30, and they
9 would last an hour, hour and 15 minutes.

10 Q. Where would you have them?

11 A. In the executive conference room right next to the
12 Attorney General's Office on the 8th floor.

13 Q. And who all -- and do this slowly so the jury can
14 absorb who all the upper staff would be at these -- these
15 weekly meetings. Who all would attend those weekly meetings?

16 A. All of the deputies, and there were 12 or 13
17 positions at the deputy level; the first assistant; and if he
18 was in town, the Attorney General.

19 Q. All right. And what about the chief of staff?
20 Would she -- would she attend the meetings?

21 A. Yes.

22 Q. And who was the chief of staff at that time?

23 A. That was Missy Cary.

24 Q. All right. Would there be any other staff member?

25 And let me ask you this: Were you familiar

1 with the young man named Andrew Wicker?

2 A. Yes, sir.

3 Q. And what was his position?

4 A. He was a personal assistant to General Paxton. He
5 had a desk outside his office, and he'd travel with the
6 General and just took care of whatever duties the Attorney
7 General gave him.

8 Q. Would Mr. Wicker ever attend any of these meetings?

9 A. I don't have a specific recollection of that one
10 way or the other.

11 Q. All right.

12 A. And if I may, sometimes other staff people and
13 other executives were present. So I'm not trying to say it
14 was only the deputies that were there. There could be
15 different people involved on different days.

16 Q. So would Mr. Wicker perhaps attend sometime at the
17 request of somebody?

18 A. Certainly he could.

19 Q. All right. Now, back to the June time when you say
20 that you became familiar with -- again with the name of
21 Mr. Paul. What was the circumstance in which you again came
22 into contact with something about him?

23 A. It was the weekly deputies meeting, and I believe
24 it was on a Thursday. The Attorney General was present, and
25 he announced that he had received a referral from the Travis

1 County District Attorney's Office. And after the meeting was
2 over, Jeff Mateer handed that referral document to me and
3 David Maxwell.

4 Q. All right. So at that meeting, was that a meeting
5 just between you and Mr. Maxwell and Mr. Mateer?

6 A. Well, initially it was the deputies meeting with
7 everybody present. But then as the meeting adjourned, Jeff
8 Mateer asked me and Mr. Maxwell to stay, and we -- we talked
9 about the referral.

10 Q. All right. Once you became aware of the referral,
11 what did you do?

12 A. Well, first, I read the referral and realized I've
13 heard this story before.

14 Q. And was the referral -- and why did you say that
15 you had heard it before? What was it about the referral that
16 was similar to what you had heard before?

17 A. Well, it was basically the same story in a little
18 more detail, and it was typed up. It was unsworn, but it was
19 signed by Nate Paul.

20 Q. And did you learn where that complaint had
21 originally gone to?

22 A. Yes. I --

23 Q. You answered. That's good enough.

24 A. All right, sir.

25 Q. Thank you. And then did you -- when you read the

1 referral, did that -- did that inform you as to how it
2 originated and with what agency?

3 A. Yes, sir.

4 Q. And which agency was that?

5 A. That had initially gone to the Travis County
6 District Attorney's Office.

7 Q. Were you informed at that time by the Attorney
8 General one way or the other anything about whether he had
9 already personally met with representatives of the District
10 Attorney's Office about this matter?

11 A. Not that day, no.

12 Q. All right. So when you -- did you share that
13 referral and what it said with Mr. Maxwell at that time?

14 A. Well, we both read it.

15 Q. All right. And then did you lay out a plan of
16 action as it applied to that referral?

17 A. Yes, sir.

18 Q. Did you at that time -- what did you do after that
19 meeting and you had been shown the referral?

20 A. Well, the first thing we did was talk about it, the
21 three of us.

22 Q. And when you say "the three of us," you mean who?

23 A. Jeff Mateer, David Maxwell, and me.

24 Q. After you had that conversation, did you make any
25 plans for how you would deal with it?

1 A. Yes.

2 Q. When did you make plans -- your initial reaction,
3 what did you do with it?

4 A. Well, my initial reaction was this is crazy.

5 Q. All right. After you -- and without going into
6 anything Mr. Maxwell said, what type of reaction did you get
7 from him when he read it?

8 A. The same as mine.

9 Q. All right. So then did you decide not to
10 investigate it at that time?

11 A. We hoped to slow walk it and see if the Attorney
12 General would drop it.

13 Q. All right. Did you talk to the Attorney General
14 any more about it before you then met with anybody about it?

15 A. I think the Attorney General talked to me.

16 Q. And when did the Attorney General talk to you after
17 he had informed you of that referral?

18 A. I recollect two conversations. One of them
19 occurred in my office when he came to my office.

20 Q. All right. I'm going to stop -- stop you there. I
21 want to know when that was. How soon did you have a
22 conversation with the Attorney General about that referral
23 after you were given it to it -- after it was given to you on
24 the morning of the 16th?

25 A. The first date I recall was July the 6th of 2020.

1 Q. Well, from the time you got it on June 16th to July
2 the what?

3 A. 6th.

4 Q. Had you done anything with it?

5 A. Only talked to David Maxwell about it.

6 Q. All right. What was the occasion for the Attorney
7 General coming to talk to you about it on July the 6th?

8 A. He just knocked on my door and walked in and wanted
9 to talk about the status of the Nate Paul referral.

10 Q. Do you recall what he said?

11 A. He was unhappy that nothing was happening. He said
12 he wanted us to get moving on it. That was basically the
13 gist of the conversation.

14 Q. Well, why was it that nothing had happened on it
15 from June 16th to July 6th? Did I get that date wrong? Was
16 it July 6th or July -- yeah.

17 A. There was -- there was one conversation on July
18 6th.

19 Q. All right.

20 A. And there was another one.

21 Q. All right. Why had nothing happened between the
22 16th or the 6th, or had something happened?

23 A. David Maxwell and I saw no merit to the complaint.
24 We saw no state interest. We saw no evidence of a state
25 crime violation.

1 Q. So what did you do when he -- what did he -- when
2 he came in and talked to you on the 6th, what was your
3 response?

4 A. I told him I had talked to David Maxwell, and we'd
5 get moving and set up a meeting with Mr. Paul and his
6 attorney at some point.

7 Q. Were you opposed to having that meeting?

8 A. I wasn't opposed to having a meeting, no.

9 Q. All right. Well, why hadn't you arranged it before
10 then?

11 A. Again, speaking for myself, I thought it was crazy,
12 and I was hoping the Attorney General would drop it. He
13 didn't.

14 Q. Why did you think it was crazy?

15 A. The idea that the State of Texas Attorney General's
16 Office would go investigate the federal courthouse,
17 investigate federal agents and also state agents that were
18 task force officers on the raid, and that -- those were
19 agents from the DPS and the State Securities Board -- that we
20 would investigate a federal magistrate judge and federal
21 prosecutors was insane. That -- that is something that can
22 be handled by federal authorities. And there's no easy or
23 practical way for state authorities to investigate the type
24 of complaints Mr. Paul was making.

25 Q. Why? What was it about the complaints that would

1 have been difficult or -- or so for you to investigate?

2 A. Well, as the matter developed, their main complaint
3 that -- that could theoretically have been a state criminal
4 violation was that the Assistant United States Attorney who
5 got the search warrants signed by the magistrate judge had
6 then altered the warrant after it had been signed by a
7 federal judge, which was absolute craziness.

8 Q. All right. Why is that craziness?

9 A. Because that would be a felony, that would get you
10 fired, that would get you sent to federal prison.

11 Q. All right. So why was that crazy? People commit
12 felonies all the time.

13 A. They do. I knew the Assistant U.S. Attorney. He
14 used to work in Dallas. He had a stellar reputation. He had
15 very high personal integrity. I had never seen any
16 indication in Dallas that he would even think of doing such
17 an outrageous thing.

18 Q. Well, let me ask you this: Was it just limited to
19 a complaint about federal officials?

20 A. Well, there were state agents involved in the
21 searches. And Mr. Paul at a later date named one of the
22 state agents as being the affiant on the sealed federal
23 search warrant affidavit.

24 Q. I was going to ask you about that. First of all,
25 were there agents from the Texas Security Board involved in

1 the search warrant? Were there?

2 A. Yes, sir, there was at least one.

3 Q. And were those security folks, the Security Board,
4 the same agency that had brought charges against the Attorney
5 General and that were part of the case that was currently
6 pending against him at the time he wanted you to meet with
7 Mr. Paul?

8 MR. LITTLE: Objection, leading,
9 Mr. President.

10 PRESIDING OFFICER: Sustained.

11 Q. (BY MR. HARDIN) Were there -- could you tell us in
12 your observations at the time whether actually the Attorney
13 General was asking you to investigate a matter with Mr. Paul
14 who was being -- he was -- let me put it this way.

15 Were you aware or did you focus on the fact
16 that one of the things they -- one of the groups that they
17 were asking you to investigate was the very agency that had
18 brought the charges that were currently pending against
19 Mr. Paxton?

20 MR. LITTLE: Objection --

21 A. Yes, sir.

22 MR. LITTLE: -- leading, Mr. President.

23 MR. HARDIN: I believe he had a choice there.
24 He could have said --

25 PRESIDING OFFICER: Overruled.

1 MR. HARDIN: Thank you, Your Honor.

2 Q. (BY MR. HARDIN) All right. So was that also an --
3 did that -- did that give you any concern?

4 A. Yes, it did.

5 Q. All right. Into the microphone, what was that
6 concern?

7 A. Well, my concern was not only was he asking us to
8 investigate state agencies, including an agency that was
9 investigating him, but he was asking us to investigate the
10 investigators who were conducting a federal investigation of
11 Nate Paul.

12 Q. All right. Now, once he asked you to do something
13 to get moving on it, what did you do?

14 A. I told him I'd talk to Mr. Maxwell and we would get
15 moving.

16 Q. Did you do so?

17 A. I did. I talked to Mr. Maxwell.

18 Q. I want -- I don't want you to tell us what you told
19 him. But after you talked to Mr. Maxwell, what was the next
20 course of action?

21 A. Well, we had a brief delay. Mr. Maxwell was out of
22 the office for a few days. And after that, the Attorney
23 General spoke to me again on July 16th. But eventually we
24 did schedule a meeting for Mr. Maxwell to meet with Mr. Paul
25 and his attorney Michael Wynne.

1 Q. All right. Hold on a second. You said you had
2 another conversation with the Attorney General before you
3 made your first meeting with Mr. Paul; is that correct?

4 A. That's correct.

5 Q. What was that conversation and when -- when was it?

6 A. That was on July 16th, and that was in a little
7 more detail. He told me that --

8 Q. Wait. Stop. Let's just get this -- set the stage
9 for it. Where was it and about what time of day?

10 A. I don't remember if that was in person or by phone.

11 Q. All right. What did he tell you?

12 A. He told me that he wanted to get things moving. He
13 said there had been a leak to Texas Monthly about issues
14 surrounding the federal raid. And I never saw the story, so
15 I don't know the specifics. But he was concerned that
16 something had gotten out in the press. And then he mentioned
17 that Mr. Paul's sister was his personal counsel. I never
18 spoke to her. But again, he was insisting that we get moving
19 and do something with the referral.

20 MR. LITTLE: Mr. President, just briefly. Can
21 we have the witness clarify for the record that Nate Paul's
22 sister is -- Sheena Paul is Nate Paul's personal counsel and
23 not the Attorney General's.

24 MR. HARDIN: Certainly, I have no objection to
25 that.

1 PRESIDING OFFICER: Would you clarify that,
2 please?

3 THE WITNESS: Yes, sir.

4 A. He was saying that Sheena Paul was Nate Paul's
5 personal counsel.

6 MR. LITTLE: Thank you, Mr. Penley.

7 Q. (BY MR. HARDIN) All right. Now, so then when was
8 the meeting with Mr. Paul?

9 A. The first meeting was on July 21st.

10 Q. And who was at that first meeting?

11 A. That was conducted by David Maxwell on behalf of
12 the OAG. Nate Paul attended along with his personal counsel
13 Michael Wynne.

14 Q. Michael Wynne is spelled do you know how for the
15 court reporter?

16 A. It has an E on the end, W-y-n-n-e.

17 Q. Thank you. Now, were you present or watching this
18 interview or anything?

19 A. I didn't watch it live. I didn't attend it, but I
20 watched later. It was video and audio recorded.

21 Q. Do you recall about how long that lasted?

22 A. It was over an hour. Maybe an hour and 15, 20
23 minutes.

24 MR. HARDIN: Okay. May I have the exhibit
25 number?

1 Your Honor, may I visit the table just for a
2 second?

3 Q. (BY MR. HARDIN) When did you view the video?

4 A. I viewed it on July 23rd.

5 Q. Were you aware of any meetings -- without going
6 into what anybody told you, were you aware of any meetings
7 that the Attorney General had with other members of the
8 executive staff about Mr. Paul just the day before on July
9 22nd?

10 A. No, sir.

11 Q. All right. So when you met -- how is it that you
12 reviewed the interview? The date of the interview was what?

13 A. July 23rd.

14 Q. And then when's the next time you heard from
15 Mr. Paul -- from Mr. Paxton about that matter?

16 A. Mr. Paxton called me on July 23rd and said he
17 wanted me to come to his office and view the video with him.

18 Q. Did you do so?

19 A. I did.

20 Q. So had he ever asked you on any occasion to look at
21 evidence or so, or interviews or so, that -- meetings or so
22 that you were dealing with on criminal justice matters?

23 A. Not as a general matter. There are two exceptions.

24 Q. What are they?

25 A. There was one case up in the Panhandle where

1 someone in a town met him at a political event and asked him
2 for our office to take a look at a cold case.

3 Q. All right. Did your office do that?

4 A. We did.

5 Q. All right. And then what's the other occasion?

6 A. There was an occasion in July of 2020 where a
7 former deputy at the Attorney General's Office, who was in
8 private practice in San Antonio, represented some parents in
9 a drowning case. And he contacted the Attorney General and
10 wanted our office to look at -- at this drowning case down
11 there where Bexar County was not pursuing criminal charges.

12 Q. All right. Now, those are two occasions that
13 previously -- excuse me -- that previously during your
14 service he had asked you to look at, correct?

15 A. Yes. Yes, sir.

16 Q. Now, would you describe the level of involvement
17 that he had in each of those cases compared to the
18 involvement he had with Mr. Paul?

19 A. Vastly different.

20 Q. How? Now, I don't want to really go into the facts
21 of the other two cases.

22 A. All right.

23 Q. I just want to know -- I want to ask you to
24 describe in each of those two other occasions that he had
25 contacted you on behalf of some constituent, describe what

1 his behavior -- what his involvement was in those cases.

2 A. Yes, sir. On the Panhandle case, he asked me to
3 look at it. Our law enforcement division had looked at it.
4 I reviewed what they had done. I reported to him that they
5 had done everything that could be done, and he accepted that
6 and didn't bring it up anymore.

7 Q. What about the Bexar County case?

8 A. On the Bexar County case, I made some phone calls.
9 I looked at some evidence the family's attorney had sent me.
10 I made a report back to the Attorney General that I didn't
11 see any state criminal charges that we should pursue. He
12 accepted that and never brought it up again.

13 Q. In either of those cases, did he have any further
14 involvement after asking you to look at it?

15 A. No, sir, other than asking me to report back to
16 him.

17 Q. And after you reported back to him, did he do
18 anything -- have any further involvement in either of those
19 two cases that you're aware of?

20 A. Not -- not to my knowledge. He didn't with me.

21 Q. By the time July 22nd rolls around, July 23rd rolls
22 around, how many times had the Attorney General talked to you
23 about the Nate Paul case? Just take your time and count back
24 up to that moment.

25 A. I'll count three to that moment -- well, actually

1 five to that moment counting the December phone call.

2 Q. All right. Now, when you -- describe for the jury
3 how -- this review of the video of the initial interview by
4 Mr. Maxwell of Mr. Paul with his attorney present.

5 A. We watched the video together. Mr. Paxton was
6 unhappy with David Maxwell because David Maxwell was not
7 accepting what they were saying at 100 percent face value.

8 Q. Well, let me ask you this: Did you see anything,
9 as an experienced law enforcement professional, that was
10 objectionable about the way Mr. Maxwell was conducting the
11 interview?

12 A. No, sir.

13 MR. HARDIN: Your Honor, at this time -- it's
14 already in, but for the record, I'll say that Exhibit 149 is
15 a video and audio. I'm not going to go into it right now,
16 but it is a video and audio of the initial David Maxwell
17 interview, if the jury later decides they want to look at
18 it.

19 PRESIDING OFFICER: All right. Thank you.

20 MR. HARDIN: 149.

21 Q. (BY MR. HARDIN) Now, after -- after you looked at
22 that interview, do you recall anything else that the Attorney
23 General said about it during the course of watching it with
24 you or after it was completed?

25 A. He made comments that told me he didn't understand

1 the significance of some of the claims they were making.
2 Number one, he didn't recognize the legal difficulties for us
3 to investigate the federal authorities when a search warrant
4 is under seal at the federal courthouse. I didn't see any
5 way we could get that realistically other than by asking the
6 federal judge if he would open up the sealed record and let
7 us examine the issued search warrant and compare it to the
8 returned search warrant.

9 Q. All right. So now at the heart of this thing that
10 you looked into the file, there's been one interview, you've
11 heard from Mr. Paul -- let me back up. In that interview you
12 watched, who does most of the talking in the interview?

13 A. Nate Paul.

14 Q. Does his lawyer also participate some in it?

15 A. He does.

16 Q. And in the case of -- how much does Mr. Maxwell
17 talk in there, if you could just characterize it?

18 A. I'd say Mr. Maxwell spoke 35 to 40 percent of the
19 time. He asked questions, appropriate questions, and then
20 they gave answers.

21 Q. Did you find anything objectionable about the
22 questions or the way Mr. Maxwell was asking them?

23 A. No, sir. In fact, he made some very excellent
24 comments to them about where they should go to get relief.

25 Q. All right. In that particular document,

1 Mr. Maxwell is suggesting they go where for that complaint
2 they had?

3 A. He told them the best place for them to go to get
4 help with their complaints was the Department of Justice
5 Inspector General's Office because that office would have the
6 power to investigate federal authorities.

7 Q. Now, let me ask you something that may perhaps not
8 have been clear in this trial at all. If a defendant -- a
9 search warrant is run in the federal court, where you were
10 for a number of years, and ultimately -- a judge has signed
11 it, the warrant is executed, evidence is gathered, and then
12 ultimately charges are filed and the person -- something
13 happens with them, they're indicted. If they have a pending
14 criminal case, what is your experience as to whether the
15 defendant would then be given access to not just the search
16 warrant but the probable cause affidavit?

17 MR. LITTLE: Objection, Mr. President, leading
18 and calls for speculation.

19 MR. HARDIN: I'm simply asking what his
20 experience is --

21 PRESIDING OFFICER: Overruled.

22 MR. HARDIN: Thank you.

23 A. Well, the way it works is the Assistant U.S.
24 Attorney and the agent go see the federal magistrate judge to
25 ask for a search warrant to be signed, to be approved. And

1 when you go, either beforehand or at time you're talking to
2 the judge, the agent presents a probable cause affidavit
3 which lays out the key facts of their investigation which the
4 AUSA and the agent believe establish probable cause to get
5 the search warrant under Rule 41.

6 Q. (BY MR. HARDIN) Now, let me stop there. At that
7 time, in the affidavit they present to the judge, does it
8 describe what all kind of information would be in there --

9 A. Yes.

10 Q. -- that they might later ask be sealed?

11 A. Yes. There is often confidential law enforcement
12 evidence in there. There is information -- if there's an
13 informant in the case, that information may be in there. The
14 work the agent has done to that point, the investigative
15 steps they've taken, what they've uncovered, the facts
16 they've developed are laid out so that the judge will see
17 probable cause exists. And if the judge rejects it, you
18 don't get the warrant.

19 Q. All right. And in addition to what you just
20 described, is there information in there potentially of other
21 citizens who may have talked to the government and provided
22 information?

23 A. Yes, sir, and other confidential information.

24 Q. So if, in fact, the magistrate or the judge signs
25 the search warrant and it is executed, what happens then in

1 terms of the warrant being given and the affidavit being
2 given? What is the practice?

3 A. Well, the original documents are given to the
4 judge's clerk who files them under seal in the federal
5 district clerk's office. Now, typically there's a motion to
6 seal filed by the Assistant United States Attorney. If
7 that's granted by the judge, and they routinely are, the
8 clerk's office keeps that under seal. So they're not going
9 to give it to anybody except the Court or the government. A
10 target of an investigation is not entitled to see the
11 affidavit which lays out the facts of the investigation until
12 they've actually been indicted and are entitled to discovery.

13 Q. So if the charges are filed against them and
14 they're indicted, then what is the law -- what is the
15 practice as to whether they then get the probable cause
16 affidavit?

17 A. At some point that would be unsealed and the
18 Assistant U.S. Attorney would send a copy of the previously
19 sealed search warrant affidavit to the defense attorney.

20 Q. But if they are not charged as yet and not charged
21 at that time or not charged immediately after, what will
22 happen with the sealed probable cause affidavit and whether
23 or not that target, that you've used the word, is entitled to
24 see it until charges are filed?

25 A. The target is not entitled to see it until charges

1 are filed. And sometimes charges aren't filed, but they
2 don't get to see it. That's confidential law enforcement
3 investigative material. It's very important that not leak
4 out because the target could go destroy evidence. He could
5 go intimidate witnesses and do other things to undermine an
6 investigation.

7 Q. In the case -- did you relay essentially the kind
8 of information you just told the jury to the Attorney
9 General?

10 A. At various points during this entire matter, yes, I
11 did.

12 Q. All right. And at some time, did you express to
13 him the fact that you would not have access -- even you
14 yourself and the Attorney General's Office would not have
15 access to that sealed probable cause affidavit?

16 A. Yes.

17 Q. Now, if, in fact, somebody made a public
18 information request, would what was in the sealed affidavit
19 be -- potentially be provided by the law enforcement
20 authorities for them to decide whether to release it or not?

21 MR. LITTLE: Objection, Mr. President, calls
22 for speculation on the part of this witness.

23 MR. HARDIN: I'll ask this, if it's okay.

24 PRESIDING OFFICER: Sustained.

25 MR. HARDIN: Thank you.

1 PRESIDING OFFICER: Rephrase.

2 MR. HARDIN: Thank you very much.

3 Q. (BY MR. HARDIN) Would you -- do you have any
4 personal knowledge of how the public information requests
5 would work for somebody who wants to see a probable cause
6 affidavit that he has not been given by the federal judge?

7 A. Yes. I have an understanding that there is a law
8 enforcement exception in the public information request laws
9 and that an agency has a right when there's a pending law
10 enforcement investigation to keep that private and not
11 release it to a requestor.

12 Q. So in order for the Attorney General's Office to
13 know what their position to be and whether the law
14 enforcement exception applies, would the agency that is
15 seeking to withhold the information reveal what is in the
16 probable cause affidavit in order for the Attorney General's
17 Office to make the decision?

18 MR. LITTLE: Objection, leading.

19 Q. (BY MR. HARDIN) If you know.

20 A. My understanding is --

21 MR. LITTLE: Hold on. Hold on, Mr. Penley.

22 PRESIDING OFFICER: Sustained.

23 MR. LITTLE: Thank you.

24 Q. (BY MR. HARDIN) All right. Now, let's move on, if
25 we can. After you had that meeting with the Attorney General

1 and when the two of you watched the -- I think you said on
2 July 23rd, what was the next thing you did that was in
3 connection with Mr. Paul's case?

4 A. On July 28th or 29th, I received a phone call from
5 Mr. Wynne requesting a second meeting, which I agreed to.

6 Q. All right. Now, at this meeting -- when did that
7 meeting occur that the lawyer for Mr. Paul requested?

8 By the way, why did you give them another
9 meeting?

10 A. Why did we need another meeting?

11 Q. Yeah.

12 A. Well, I hadn't attended the first one. He was
13 asking for it. I was trying to show the Attorney General we
14 were being accommodating and willing to listen to whatever
15 they had. So I agreed to a second meeting, which we
16 scheduled for August the 5th.

17 Q. All right. Did you do anything in connection -- in
18 preparation for that meeting on August the 5th, the second
19 meeting on Mr. Paul?

20 A. Well, I had reviewed the entire transcript from the
21 first meeting, and I'm sure I had spoken to Director Maxwell.

22 Q. All right. And then what happened on the next
23 meeting? And again, what date was it, the second meeting?

24 A. August the 5th.

25 Q. What happened at that meeting?

1 A. That meeting was also in the law enforcement
2 interview room, so it was audio and video recorded. Mr. Paul
3 and Mr. Wynne came. They had not brought any documents to
4 the first meeting, which surprised me, because normally when
5 a complainant comes in, you expect them to bring their
6 evidence. But this time they brought documents because I had
7 asked Mr. Wynne to do that during our phone call on the 28th
8 or 29th.

9 Q. All right.

10 MR. HARDIN: Your Honor, if I may, just for
11 the record, that interview is Exhibit 156 that is in
12 evidence. And I'm not going to ask the -- at this time it be
13 played. It's a long interview, but it is available during
14 deliberations for the jury to review if they choose to.

15 PRESIDING OFFICER: Thank you.

16 Q. (BY MR. HARDIN) Now, in this second meeting, about
17 how long do you estimate that lasted?

18 A. About an hour and a half.

19 Q. Was it just four people there?

20 A. Yes.

21 Q. And that meeting, how did that conclude?

22 A. Well, it concluded that I told them --

23 Q. Stay with the microphone.

24 A. -- thank you for coming in. We've heard your
25 theories. They had really stressed that their proof of

1 alteration of a federal search warrant was in the metadata of
2 those documents. So we -- I told them that we're going to
3 get with our computer forensic examiners that work for
4 Director Maxwell. We'll review this with them, we'll explain
5 your theory, and I'll get back to you.

6 Q. All right. So now, what was the contention that
7 they were saying that would show that -- let me back up.

8 Were they talking to you in terms of warrant
9 is presented, judge signs it, and then supposedly the law
10 enforcement people changed that affidavit?

11 A. Yes, sir.

12 Q. And what was -- what was, as you understood it, the
13 contention as to why it was changed?

14 A. Their contention was that --

15 Q. Microphone.

16 A. -- the magistrate judge had signed it on August the
17 12th, and they claimed that they had metadata from the
18 documents that showed it had been changed on August the 14th,
19 the day of the first searches. And they claimed that --
20 their theory anyway, which again sounded insane to me, that
21 initially the search warrant had been approved to search for
22 guns and drugs and related items. But after the agents got
23 there and started the search at 9:00 o'clock, by 11:00
24 o'clock the Assistant United States Attorney was changing the
25 search warrant to a white-collar crime type of search warrant

1 seeking documents and computer files, bank statements,
2 financial records, things of that nature. And that just --
3 that was insane.

4 Q. All right. So did they have any reason they would
5 not have gone back to a federal judge and said, Hey, hey,
6 these guys -- these guys changed your warrant?

7 A. I asked them --

8 MR. LITTLE: Again, Mr. President, leading.

9 PRESIDING OFFICER: Sustained.

10 Q. (BY MR. HARDIN) Let me put it this way: What was
11 the reason that they would not go back to a federal judge to
12 complain, these guys changed your warrant?

13 A. Right.

14 MR. LITTLE: Objection, Mr. President,
15 speculation as to what someone else thought.

16 MR. HARDIN: Your Honor --

17 PRESIDING OFFICER: Sustained.

18 MR. HARDIN: Excuse me.

19 Q. (BY MR. HARDIN) Did they give you reasons as to
20 why they wouldn't go back to a federal judge?

21 A. They told me they had done that, and I inquired
22 further.

23 Q. When did they say they had gone back to him?

24 A. They told me they actually had a hearing in late
25 February of 2020. Because I asked Mr. Wynne, who's a former

1 Assistant United States Attorney in Houston and Austin and a
2 graduate of Harvard Law School, Why are you coming here? Why
3 don't you go file a motion with the magistrate here in Austin
4 who signed the warrant? He's got the power to deal with
5 everything.

6 Q. And so instead of doing that, did they then contend
7 the federal magistrate was in on all this?

8 A. At some point, they did.

9 MR. LITTLE: Mr. President, leading.

10 PRESIDING OFFICER: Sustained.

11 Q. (BY MR. HARDIN) Then why would they not go back to
12 the federal magistrate or to the federal district judge?

13 I think everybody in the jury may know this,
14 but just to be sure, the search warrant was entered by a
15 federal magistrate, correct?

16 A. Correct.

17 Q. And that federal magistrate handled matters like
18 that on behalf of a federal district judge, correct?

19 A. Correct.

20 Q. Did they have any explanation as to why they hadn't
21 gone to a federal district judge to complain about this
22 magistrate who must be in on this whole thing?

23 A. No. And in fact, that was one of the giant red
24 flags that was raised in my mind by that --

25 Q. At your microphone, please.

1 A. -- and the --

2 Q. Microphone, please.

3 MR. LITTLE: Mr. President, I'm going to
4 object as nonresponsive to everything after "no." It's a
5 yes-no question.

6 PRESIDING OFFICER: Sustained.

7 Q. (BY MR. HARDIN) All right. Now, please, please
8 remember the microphone --

9 A. Yes, sir.

10 Q. -- to make sure people in the back can get it. All
11 right?

12 Now, at the end of the day, what is it that
13 they wanted you to do?

14 A. They wanted us to agree with them on their metadata
15 theory and agree that an Assistant United States Attorney had
16 illegally, at a felony-level crime, altered search warrants
17 after they were issued by a federal judge and that two
18 Assistant United States Attorneys, a federal judge, and a
19 whole bunch of state and federal agents were in on a grand
20 conspiracy to cover this up and target Nate Paul.

21 Q. So did they want you to investigate all of these
22 people that you've just elicited?

23 A. That was my understanding.

24 Q. Yeah. Well, now, when the meeting was over, what
25 did you do?

1 A. I talked to Director Maxwell. He took the thumb
2 drive. I said -- we both discussed the fact that his
3 computer forensic examiners needed to analyze the documents
4 based on their contention that the metadata had been -- would
5 show an illegal alteration.

6 Q. And what would you need to be able to show an
7 illegal alteration -- address the issue as to whether it had
8 been illegally altered or not?

9 A. You would need the actual computer that the
10 Assistant United States Attorney used to type up the search
11 warrant documents; and you would need his computer files, the
12 original computer files, which only existed at the United
13 States Attorney's Office and would be subject to all kinds of
14 privileges.

15 Q. Well, let me ask you this though: If a search
16 warrant is signed by the magistrate and is taken out and
17 executed, all right, and then ultimately a copy of that
18 search warrant is given to the lawyers of the target -- are
19 you with me?

20 A. Yes, sir.

21 Q. What documents could you potentially compare to see
22 if the original search warrant was altered? What would you
23 need?

24 MR. LITTLE: Objection, calls for speculation,
25 Mr. President.

1 MR. HARDIN: No, this is what --

2 PRESIDING OFFICER: Overruled.

3 MR. HARDIN: Thank you.

4 A. The source material, the Rosetta Stone, if you
5 will, would be the sealed search warrant that was actually
6 signed by the federal magistrate and on the day of signing
7 was placed under seal at the federal district clerk's office.
8 So if I had the original issued search warrant and I got the
9 returned search warrants that were actually served on the
10 defendant, not the affidavit, but just the warrants
11 themselves, and you could put those together and you could
12 see if there were any changes in the original and in the
13 copies that were given to the defendant and the copies that
14 the agents filed back with the clerk's office after the
15 search is concluded. The agents fill out an inventory of all
16 the items that are seized during the search, and they file
17 that back with the district clerk's office and it goes in the
18 file together. So if I had the beginning and the ending, I'd
19 have a bookend.

20 Q. (BY MR. HARDIN) All right. And are those
21 actually -- were those documents the ones that were under
22 seal?

23 A. The originals, the issued sets were under seal, and
24 I had no access to them.

25 Q. All right. So without going into what the -- what

1 your experts told you, did you have these -- these materials
2 or what you had, at least the original warrant, did you have
3 your IT people look at it?

4 A. Yes. In the thumb drive that Mr. Paul and
5 Mr. Wynne gave us on August the 5th --

6 MR. LITTLE: Mr. President, I need to object
7 again as nonresponsive --

8 MR. HARDIN: That's fine. That's fine. We'll
9 do it real quickly.

10 Q. (BY MR. HARDIN) Did you --

11 PRESIDING OFFICER: Sustained.

12 MR. HARDIN: Excuse me. Thank you.

13 Q. (BY MR. HARDIN) Did you, in fact, give the
14 information they gave you to your IT people to look at?

15 A. Yes, sir.

16 Q. Without going into what they said to you, did they
17 come back to you with a recommendation?

18 A. They gave us their opinion, yes.

19 Q. Were they able to find anything that would
20 determine one way or the other with the information they had
21 available?

22 MR. LITTLE: Objection, hearsay.

23 MR. HARDIN: Whether they could find? How is
24 that hearsay? I'm sorry. I'm learning a lot in this case.

25 PRESIDING OFFICER: Overruled.

1 MR. HARDIN: Thank you.

2 A. The metadata theory advanced by Mr. Paul and
3 Mr. Wynne was not validated.

4 Q. (BY MR. HARDIN) And so were you able to tell from
5 your experts one way or the other as to whether there had
6 been any alteration?

7 A. The only alterations were through innocent
8 functions.

9 Q. What do you mean?

10 A. If you redact anything in a search warrant, which
11 is routinely done, that --

12 Q. Let me stop you. The kind of things that might be
13 redacted would be what?

14 A. If there were other targets in the investigation
15 that were listed in the warrant, in the -- in one of the
16 attachments, routinely you redact the name of the other
17 target.

18 Q. All right. And so if there are redactions, what
19 happens?

20 A. That will change the metadata.

21 Q. All right. So ultimately, were the -- were the
22 experts in your -- your office able to answer one way or the
23 other whether or not it had been redacted?

24 A. Yes. They were able to tell it was redacted. We
25 had copies of the warrants, and it showed redactions.

1 Q. All right. Were they able to offer an opinion as
2 to whether or not that meant the document was changed for the
3 basic things that were contended by Mr. Paul's lawyers?

4 A. Well, let me explain it this way.

5 Q. Let's do it shortly. Let's see how you do.

6 A. All right. There are innocent functions that can
7 change metadata that are routinely done. I had evidence
8 those innocent functions were done. Therefore, the metadata
9 theory proved no wrongdoing. It proved no criminal conduct
10 by the federal authorities. There was no evidence of a
11 crime.

12 Q. All right. And then what did you do after you got
13 this report back from your people?

14 A. That was on August the 6th. A couple of days later
15 I saw the Attorney General in the hallway and I said, Ken,
16 there's no evidence of a crime. I recommend we close this
17 investigation.

18 Q. All right. And what was his response?

19 A. His response was, Okay. Fine. All I ask you to do
20 is meet with them and tell them, which I agreed to do.

21 Q. All right. So what happened then?

22 A. I scheduled a meeting. I called Mr. Michael Wynne.
23 We set up a meeting for August the 12th, which I believe was
24 a Wednesday, again here in Austin. And a couple of days
25 after that -- this was before the August 12th meeting -- I

1 saw the Attorney General in the break room, and I told him I
2 had set up the meeting as he had requested.

3 Q. All right. Then what happened?

4 A. Well, he told me he wanted to attend. So I changed
5 the meeting location to the executive conference room so it
6 would be right next to his office for his convenience.

7 Q. Now, was this meeting either videotaped or
8 audiotaped?

9 A. No, sir. There was no video or audio in the
10 executive conference room.

11 Q. All right.

12 A. Not for recording a meeting.

13 Q. Excuse me. So when did this third meeting with
14 Nate Paul -- did Nate Paul attend the second -- the third
15 meeting?

16 A. Yes, sir.

17 Q. So when did this third meeting with Mr. Paul and
18 his attorney occur and who all was there?

19 A. It occurred on August the 12th in the morning. The
20 Attorney General attended; I was there; Director David
21 Maxwell was there; his two forensic examiners that we had met
22 with on August the 6th were there; Drew Wicker, the Attorney
23 General's assistant, attended; and Mr. Paul and his attorney
24 Michael Wynne were there.

25 Q. And during this meeting, did the Attorney General

1 stay -- how much of that meeting did he stay for?

2 A. He stayed for about three-fourths of it.

3 Q. All right. So what happened in this meeting?

4 A. Well, I opened the meeting and announced to
5 Mr. Paul and Mr. Wynne that -- I thanked them for coming and
6 said, We've looked at your metadata theory, but we don't find
7 any evidence of a state crime and we're going to close our
8 investigation.

9 Q. What was their reaction?

10 A. It was very unhappy. They -- they pushed back
11 immediately.

12 Q. How about Mr. Paul? How would you describe his
13 conduct?

14 A. He was angry.

15 Q. So as opposed to being angry, what did he do?

16 A. Well, number one, the Attorney General was also
17 unhappy. And then Mr. Paul demanded that a laptop computer
18 be brought in, because we had discussed what the forensic
19 examiners had told me and Director Maxwell. He disagreed
20 with them; demanded a laptop to be brought in. So the
21 Attorney General told Mr. Wicker, Go get your laptop and
22 bring it in and hook it up. There was a video screen at the
23 end of the room.

24 Q. Did Mr. Wicker do that?

25 A. He did.

1 Q. And then what did Mr. Paul do?

2 A. He got on the keyboard. He pulled up a document,
3 and he said -- he said, What I've just shown you here
4 disproves what your forensic examiners are saying.

5 Q. Did it?

6 A. I'm not a computer expert, but I know that the
7 forensic examiners didn't tell me they were wrong.

8 Q. Yeah. And I'm curious, how was Mr. Paul acting in
9 this meeting in terms of who was in charge and what was going
10 to happen here?

11 A. Mr. Paul acted like we didn't understand who the
12 real boss was. It wasn't the Attorney General; it was him.
13 That was his body language, that was the expression on his
14 face, the way he bowed up. He got very unhappy with us. He
15 got very unhappy when Director Maxwell called him out for
16 leaking our investigation to the media.

17 Q. Let me stop there. What are you talking about
18 there?

19 A. There were two publications that printed reports
20 about Nate Paul and some of his civil litigation issues and
21 bankruptcies. And they reported quotes from --

22 MR. LITTLE: Objection, hearsay.

23 Q. (BY MR. HARDIN) All right. He doesn't want you
24 to report --

25 PRESIDING OFFICER: Sustained.

1 MR. HARDIN: Thank you, Your Honor.

2 Q. (BY MR. HARDIN) He doesn't want you to talk about
3 what their articles were.

4 A. Right.

5 Q. So my question is, what did Mr. Maxwell say to them
6 in the presence of the Attorney General?

7 A. He said, You leaked the fact of our investigation
8 to the media.

9 Q. All right. And what was the import of that? Why
10 was that a concern?

11 A. When you're doing a law enforcement investigation,
12 you don't do it through the media. You keep it confidential.
13 You don't want to alert the target. You don't want people
14 destroying evidence or hiding evidence. You keep it quiet.

15 And secondly, sometimes the targets of your
16 investigation may not have done anything wrong. You don't
17 want to smear people's reputation unnecessarily due to the
18 fact that they've been investigated.

19 Q. What was Mr. Paul's reaction to that?

20 A. Mr. Paul pushed back against Mr. Maxwell and said
21 he had a First Amendment right to talk to whoever he wanted
22 to.

23 Q. And what -- he didn't deny that he had done it, did
24 he?

25 A. Initially he did and then he admitted it, which

1 told me something about his veracity.

2 Q. And then what was the Attorney General's reaction?

3 A. The Attorney General took his side and agreed with
4 him that he had a First Amendment right to talk.

5 Q. So then what happened?

6 A. Shortly thereafter, the Attorney General announced
7 he had to leave. And a few minutes later, the meeting was
8 not productive anymore. Mr. Paul and Mr. Wynne were unhappy,
9 so --

10 Q. All right.

11 A. -- I closed the meeting.

12 Q. Again, this meeting was on what date?

13 A. August the 12th.

14 Q. And then what happened after that?

15 A. The next day we had our weekly deputies meeting on
16 Thursday. Jeff Mateer was there. I met with Jeff after the
17 meeting.

18 Q. I'm confused. Earlier you talked about a weekly
19 deputies meeting on Tuesday.

20 A. I believe -- and I'm trying to remember this. I
21 could be wrong, but I think the deputies meeting was on
22 Thursday, and I think we had a policy and strategy meeting on
23 Tuesday. If I'm mistaken, then reverse it.

24 Q. All right. But are they the same people attending?

25 A. There could be differences. The policy meeting

1 might be a smaller group.

2 Q. All right. So what is this meeting that you had on
3 Thursday after the previous meeting?

4 A. After our regular weekly staff meeting on Thursday,
5 David Maxwell and I stayed behind, and we met Jeff Mateer
6 either in his office or in the executive conference room,
7 just the three of us.

8 Q. Without going into what was said at that time, did
9 you become ultimately aware of anything having to do with an
10 outside counsel being hired?

11 A. Not at that time, but later I did.

12 Q. All right. And then when did you first become
13 aware that the Attorney General was considering or wanted to
14 hire an outside counsel to investigate Mr. Paul's complaint?

15 A. Well, number one --

16 Q. Wait. Let me stop. You mentioned something about
17 this a moment ago. When you're investigating people and
18 wanting to find out information and so, in your years in law
19 enforcement, do you put people that you want to elicit
20 information from under oath?

21 A. No, sir.

22 Q. Have you ever done that?

23 A. Rarely. Sometimes in federal practice we would
24 bring somebody in to the grand jury, but that was not a
25 common practice.

1 Q. Well, let me ask you this: Have you ever put
2 people that you were trying to investigate or get information
3 from an investigation, other than presenting them in a grand
4 jury where they're sworn in, do you ever swear in people that
5 you are trying to get information from, you want to sit and
6 talk to you and inform you?

7 MR. LITTLE: Objection, relevance,
8 Mr. President.

9 MR. HARDIN: Very relevant. This allegation's
10 been made repeatedly by these guys.

11 PRESIDING OFFICER: Overruled.

12 MR. HARDIN: Thank you.

13 A. No, sir.

14 Q. (BY MR. HARDIN) All right. Are you familiar with
15 anybody in law enforcement doing that?

16 A. I don't believe that's a routine practice, no.

17 Q. Well, as a matter of fact, the complaint that
18 Mr. Paul went down and filed -- filled out that started all
19 this with the Travis County District Attorney's Office, have
20 you looked at that complaint form?

21 A. I have. I've read it.

22 Q. And on that complaint form, does it have a place to
23 have the statement and complaint notarized, therefore being
24 sworn under oath?

25 A. It has a place, yes.

1 Q. And the complaint filed by Mr. Paul in that matter,
2 which is called -- we'll call it referral number one. Did he
3 swear to that complaint that he was making all these
4 allegations?

5 A. No.

6 Q. And then there's another referral. Did you become
7 aware later of another referral?

8 A. I did.

9 Q. By Mr. Paul about another group of people he wanted
10 investigated?

11 A. Yes. And that was also to the Travis County DA's
12 Office.

13 Q. And again, is there a place there for it to be
14 notarized so he could swear under oath?

15 A. Yes.

16 Q. On the complaint?

17 A. Yes.

18 Q. Did he do that?

19 A. No.

20 Q. So the two complaints that he wanted you to
21 investigate with all of these allegations about all these
22 people, did a single -- did he swear under oath to a single
23 one of those allegations?

24 A. No, sir.

25 Q. If he had, would that potentially -- and if they

1 were untrue, would that potentially subject him to a charge
2 of perjury?

3 A. I believe so.

4 Q. So if he doesn't swear to it under oath, does it
5 swear -- does it particularly -- potentially open him up to
6 perjury?

7 A. No.

8 Q. All right. Now, let's go to after you have this
9 meeting by outside counsel. When do you become aware, if you
10 do at all, of the possible people that are being considered
11 by the Attorney General to be the outside counsel?

12 A. After the August 12th meeting, the Attorney General
13 did not talk to me about the Paul matter for a number of
14 weeks. I believe --

15 Q. Keep your voice up. I still -- the microphone,
16 when you pull back -- both of us, when we pull back, we get
17 away. So again, keep the mic -- would you tilt it just a
18 little bit?

19 A. Let me turn it down. Is that better?

20 Q. Thank you. That is better.

21 A. All right. I can't --

22 Q. Go ahead.

23 A. I can't move the base, so I'm just trying to
24 stretch it out.

25 Q. All right. That's okay.

1 All right. So when you leave that meeting
2 after we talked about that the Attorney General was there for
3 most of it, when is the next time that you did anything in
4 relation to this particular matter with Nate Paul?

5 A. The next thing I recall hearing was on September
6 the 3rd when -- I had been making phone calls to Michael
7 Wynne trying to get additional documents. I wrote a note to
8 the Attorney General on August 13th, the day after the
9 meeting, and I -- I told him I had reexamined the copies of
10 documents Mr. Paul and Mr. Wynne had given me, and I realized
11 it didn't appear they had given me all the evidence they told
12 us they had.

13 So I started making phone calls to Mr. Wynne,
14 and I told the Attorney General in my August 13 note that
15 there might be further steps I could take if they'd give me
16 all the documents.

17 Q. All right. So if anybody was to suggest that you
18 had refused to investigate or do anything else on this case,
19 would that be an accurate or inaccurate statement?

20 MR. LITTLE: Objection, Your Honor, assumes
21 facts not in evidence.

22 PRESIDING OFFICER: Sustained.

23 MR. HARDIN: I'm sorry, I'm trying to think if
24 that was actually something that wasn't in evidence. Pardon
25 me.

1 Q. (BY MR. HARDIN) Let me ask you this: Would it be
2 an accurate statement today to say one way or the other as to
3 whether you had refused to investigate this matter?

4 A. I did not refuse, and I did investigate this
5 matter, and I continued after August the 12th to attempt to
6 investigate it.

7 Q. In attempting to investigate it, how did you go
8 about attempting to?

9 A. I told the Attorney General I needed all the
10 documents Mr. Paul had, and I made numerous attempts to
11 contact Mr. Wynne and request all the evidence they had been
12 given by the magistrate judge at that February 2020 hearing.

13 Q. Had you ever -- had he ever provided that to you?

14 A. No, sir. He never provided me any further
15 documents after giving us the thumb drive on August the 5th.

16 Q. Did he ever -- did address whether or not the
17 hearing before the magistrate had been on the record back in
18 February of 2020?

19 A. He did not -- I believe he told me it was not on
20 the record, but I'm not absolutely certain.

21 Q. Do you know one way or the other as to whether it
22 was under -- was on the record?

23 A. I don't have personal knowledge.

24 Q. Did he attempt to provide you any information of
25 anything the magistrate said at that hearing?

1 A. He told me a few comments that had been made, and
2 he told me the judge gave him some documents that afternoon,
3 and that's all he said.

4 Q. Did you ask him to provide you those documents?

5 A. I did ask him to provide me those documents.

6 Q. Did he?

7 A. No.

8 Q. All right. How many times would you think -- after
9 the meeting in the Attorney General's Office that you
10 described, the third meeting, how many times would you
11 estimate you reached out to Mr. Wynne in an attempt to get
12 further documents?

13 A. Five to six to seven times.

14 Q. And were you successful?

15 A. No. I never got a single piece of paper or another
16 thumb drive or anything.

17 Q. Do some of those times you reached out, are they
18 voicemails that you left for Mr. Wynne?

19 A. Yes, some were voicemails.

20 Q. How many times were you able to talk to him
21 actually after the meeting in the Attorney General's Office
22 seeking additional information?

23 A. The only record I have of reaching him is one time,
24 and that was on September 14. We had a five-minute phone
25 call.

1 Q. All right. And in that five-minute phone call,
2 were you promised documents?

3 A. No, I wasn't promised documents, but I -- I was
4 promised he was going to talk to Mr. Paul that afternoon and
5 that he would get back to me by the end of the day, and he
6 never did.

7 Q. All right. So did you ever hear from him again
8 about those documents?

9 A. No, sir.

10 Q. All right. Now, what impact did that inability to
11 get documents from have on you?

12 A. It affected my thought process in a major way.

13 Q. Your microphone, please.

14 A. Number one, when you're doing a criminal
15 investigation and you have a complaining witness telling you
16 a story, you have to believe they're being truthful to act on
17 what they're telling you. In other words, I can't just have
18 somebody come in and tell me there's some crime being
19 committed against them if they don't have some proof or if I
20 can't corroborate it. You've got to have some evidence to
21 believe that a crime occurred. And when you've got a
22 complainant like Mr. Paul who's not being cooperative --

23 MR. LITTLE: Mr. President, I need to --

24 MR. HARDIN: I'll do --

25 MR. LITTLE: -- object to narrative.

1 MR. HARDIN: I'll do question and answer.

2 PRESIDING OFFICER: One second, members.

3 MR. HARDIN: I'll do question and answer.

4 PRESIDING OFFICER: State your objection.

5 MR. LITTLE: I need to object to the narrative
6 answer. It needs to be responsive to a question.

7 PRESIDING OFFICER: Sustained.

8 Q. (BY MR. HARDIN) All right. In addition -- by the
9 way, let me ask you something. When you talked about when
10 Nate Paul first came to talk to David Maxwell, do you
11 remember that?

12 A. Yes, sir.

13 Q. And in that interview I believe you said that it
14 was just Mr. Maxwell, Nate Paul, and his lawyer, correct?

15 A. Correct.

16 Q. Now, did Mr. Nate Paul in that interview provide
17 his oral recitation of what he contended happened?

18 A. Yes.

19 Q. What is your testimony as to whether if a person
20 comes in, is orally talking to you about what they contend
21 happened, do you consider oral statements as evidence?

22 A. I do.

23 Q. All right.

24 A. It's some evidence, yes.

25 Q. All right. So in evidence -- what types of

1 evidence do you, as a law enforcement professional, want and
2 consider?

3 A. Well, there are many types of evidence. There's
4 physical evidence. You could have tire tracks or something
5 like that, fingerprints, DNA. That's physical evidence. You
6 can have direct eyewitness testimony. That is evidence.
7 That is powerful evidence. You can have circumstantial
8 evidence.

9 Q. Was Mr. Paul providing you eyewitness testimony as
10 to what happened at his search?

11 A. He was in part.

12 Q. And is that evidence?

13 A. Yes, sir.

14 Q. All right. Now, when somebody comes in, are they
15 supposed to bring you a wrapped up, beyond a reasonable doubt
16 case or do they -- tell me what you expect them to be doing.

17 A. No, that's not the way an investigation works. You
18 get an initial report by a complaining witness or by a police
19 officer who's met with a crime victim or complaining witness,
20 and then you work from there.

21 Q. Do you consider that information -- that initial
22 information as evidence?

23 A. Absolutely.

24 Q. And then what are you supposed to do as an
25 investigator with that?

1 A. You follow leads suggested by that initial
2 evidence, and you see if you can corroborate it, and you see
3 where it takes you. You follow the road. You follow further
4 evidence that you can get.

5 Q. So when -- when Mr. Paul and his lawyer came to you
6 in that initial interview, or came to Mr. Maxwell, and gave
7 their version of what happened, do you consider that evidence
8 that's to be considered as part of your investigation?

9 A. Yes, we did, and we treated it accordingly.

10 Q. Now, now we move forward to sometime in -- I
11 believe you said into September?

12 A. Yes, sir. Now we -- we're in early September, I
13 believe.

14 Q. All right. And what was happening then in early
15 September?

16 A. Well, the first thing that happened was on
17 September the 3rd, Ryan Vassar told me that the --

18 MR. LITTLE: Objection, hearsay.

19 Q. (BY MR. HARDIN) Without going into what he told
20 you.

21 A. All right.

22 PRESIDING OFFICER: Sustained.

23 Q. (BY MR. HARDIN) On September the 3rd --

24 MR. HARDIN: Thank you, Your Honor. I'm
25 sorry.

1 Q. (BY MR. HARDIN) On September the 3rd, did you
2 have -- did you become aware of an outstanding proposed
3 contract?

4 MR. LITTLE: Objection --

5 A. Yes.

6 MR. LITTLE: -- hearsay, same situation. It's
7 derivative of the hearsay.

8 PRESIDING OFFICER: Sustained.

9 Q. (BY MR. HARDIN) At some -- let me ask you this:
10 Did you see the contract at that time?

11 A. No.

12 Q. Were you aware -- did you become aware of people
13 that the Attorney General was considering to be appointed as
14 outside counsel?

15 A. Sometime in late August or early September, yes.

16 Q. Did you -- did you have names of people he was
17 considering?

18 A. I got those names on September the 14th.

19 Q. Whom did you get those names from?

20 A. Jeff Mateer.

21 Q. All right. The two names that you --

22 MR. LITTLE: Mr. President, objection,
23 hearsay. Move to strike. This was a backdoor attempt at
24 getting hearsay in.

25 MR. HARDIN: Your Honor, he's not testified to

1 any statement. He's talked about information he obtained.
2 Whether or not that is true or not, we don't know. We're not
3 offering it to show that those were the actual two, but what
4 he acted on.

5 PRESIDING OFFICER: Overruled.

6 MR. HARDIN: Thank you.

7 Q. (BY MR. HARDIN) Now, when you became aware of
8 these two names that you understood to be, did you do
9 anything in connection with either one of them?

10 A. Well, that was on --

11 Q. Just yes or no.

12 A. Yes.

13 Q. All right. When?

14 A. Well, did I do anything with those two names?

15 Q. Yeah.

16 A. No, I didn't.

17 Q. All right. Had you met either one of the two men
18 that you understood were under consideration?

19 A. No, sir.

20 Q. The two names you were acting on were who?

21 A. The names were Joe Brown, a former United States
22 Attorney in the Eastern District of Texas, and Brandon
23 Cammack.

24 Q. Now, did you know anything about the career or past
25 of either one of those two men?

1 A. I knew about Joe Brown's career.

2 Q. What did you know about Joe Brown?

3 A. That he'd been a long-time District Attorney in
4 Grayson County and Sherman and had then become the United
5 States Attorney for the Eastern District of Texas under
6 President Trump.

7 Q. So you knew that he was an appointee of President
8 Trump, correct?

9 A. Yes, sir.

10 Q. And did you know what party he belonged to when he
11 was the District Attorney in Grayson County?

12 A. Well, I didn't know that. I could make an
13 assumption --

14 Q. Oh, if you didn't know it, that's okay.

15 A. But I do know now.

16 Q. That's all I'm asking you.

17 All right. Now, did you do anything as it
18 applied to either one of those applicants?

19 A. No.

20 Q. When you found out after that those two were being
21 considered, did you -- in between that early part of
22 September and what date did you find out?

23 A. Well, I found out on September the 14th those two
24 names.

25 Q. You found out. Did you do anything in response to

1 getting that information?

2 A. I did on the 16th.

3 Q. What did you do?

4 A. Well, on the 14th I had spoken to Michael Wynne
5 asking for documents. On the 15th, I called him and
6 voicemailled him again, with no response, to request the
7 documents. On the morning of the 16th, the Attorney General
8 called me into his office.

9 Q. And what did he want?

10 A. He said, What documents are you trying to get from
11 Nate Paul? Write them down on a piece of paper. Give me
12 Michael Wynne's phone number. They're not going to give you
13 the documents because they don't trust you. I'll try to get
14 the documents for you.

15 Q. I'll try to get the documents?

16 A. That's what he said. He said he would try.

17 Q. Well, let me back up a second. When the Attorney
18 General comes to you, why had you reached out to Michael
19 Wynne before that?

20 A. Why had I reached out to Mr. Wynne previously?

21 Q. In September.

22 A. The reason I was reaching out to him --

23 Q. Microphone.

24 A. -- is I was still trying to get all the documents I
25 believed they had, and he would not give me a definitive

1 answer as to whether he had given me all his evidence.

2 Q. Were you -- were you -- had you refused to do
3 anything further in the investigation?

4 A. No, sir.

5 Q. Were you willing to continue the investigation?

6 A. Yes.

7 Q. And so when you hear that they're about to hire an
8 outside counsel, what was your concern and your position?

9 A. My concern was that if Nate Paul wasn't going to
10 cooperate, we shouldn't be doing the investigation. As I
11 said earlier, I thought the whole idea of investigating the
12 federal and state authorities doing this federal
13 investigation on Nate Paul and essentially mounting a
14 counterattack was ridiculous, was highly out of the ordinary,
15 and was completely improper unless there was solid proof of a
16 criminal act. And I didn't have that.

17 Q. So what -- what were you going to do by trying to
18 get additional arguments as it applied to hiring of an
19 outside counsel?

20 A. Starting on August 12th when I realized the
21 Attorney General, who initially told me he agreed with me and
22 then did a 180 and came at me in opposition to my idea to
23 close the investigation --

24 Q. You mean -- are you referring to the third meeting?

25 A. The third meeting on August 12th.

1 Q. Okay.

2 A. I was concerned the Attorney General was turning
3 against me, that he might fire me because I wouldn't agree
4 with what he wanted. And I was trying to find a way to prove
5 to him that Mr. Paul's theories had no merit and we had no
6 business taking Mr. Paul's side against the federal
7 authorities who were investigating him for criminal activity.

8 Q. What was your attitude at that time, Mr. Penley,
9 about the Attorney General in terms of what was motivating
10 you here?

11 A. Well, I felt like he was under Mr. Paul's
12 influence. I didn't know to what extent. That became clear
13 to me as things unroll and as we go forward in time. My
14 concerns that he was -- either had been bribed or been
15 blackmailed or somehow was being controlled by Nate Paul
16 increased over time.

17 Q. Well, let's talk about -- let's talk about in terms
18 of how you felt about him. Have you ever said anything
19 about -- in terms of the subject of trying to protect him
20 against himself?

21 A. I did tell him that. We had a very long
22 conversation about that.

23 Q. All right. I'll get to that conversation in a
24 moment, but at the --

25 PRESIDING OFFICER: Counsel, excuse me. We're

1 a little past our juror break.

2 MR. HARDIN: This would be a good --

3 PRESIDING OFFICER: Is this a good time to
4 break?

5 MR. HARDIN: It is. Thank you.

6 PRESIDING OFFICER: We'll take a break until
7 10:50. So ten minutes before 11:00 be back. Thank you.

8 (Break was taken at 10:31 a.m. to 10:54 a.m.)

9 PRESIDING OFFICER: You may continue,
10 Mr. Hardin.

11 Not yet. We need a witness. Bailiff, get the
12 witness.

13 I made sure all the jurors were there and you
14 were there. I missed him.

15 (Witness retakes the stand)

16 PRESIDING OFFICER: Mr. Hardin.

17 MR. HARDIN: Thank you, Your Honor.

18 Q. (BY MR. HARDIN) Now, Mr. Penley, by the way, as we
19 move into the things that happened in the month of September
20 of 2020, did you, yourself, ever reduce -- produce any real
21 extensive notes as to what you remember about the events that
22 occurred during that time?

23 A. Yes, sir, I did.

24 Q. Oh, well -- oh, not only turn it on, but lean up.
25 Okay.

1 A. Yes. The answer is yes, I did write notes, and I
2 produced a seven-page memo.

3 Q. And have you asked, and therefore have with you --
4 if you could have those notes available to you as we talk
5 about matters that go forward.

6 A. Yes, sir, I have them right here.

7 Q. All right. Now, what I'm going to instruct you and
8 suggest to you is if at any time you think you need to refer
9 to them to refresh your memory, you can refer to them, but
10 then testify from what you believe at the time. If you --
11 your notes tell you something that you can't remember
12 exactly, certainly you want to be telling the judge and the
13 other side that. Okay?

14 A. Yes, sir.

15 Q. Now, let's go forward. I believe you were at the
16 stage of talking in terms of trying to assure the Attorney
17 General you were willing to continue to investigate, correct?

18 A. Yes.

19 Q. And what was your hope -- that if you continued to
20 investigate, what was your hope that would accomplish?

21 A. My hope was I could dissuade him from believing
22 that this investigation had any merit and should be
23 continued.

24 Q. All right. Now, at that time, were you personally
25 upset with the Attorney General?

1 A. No, sir.

2 Q. What was your mindset as to what you wanted to try
3 to do for him?

4 A. I thought he was misguided. I thought he was
5 biased against law enforcement to his detriment. I thought
6 he was too aligned with Nate Paul, whether through friendship
7 or -- as time went on, I began to believe other things --

8 Q. I don't want -- I don't want the "as time went on."
9 Okay? So having said that -- we'll get to that. My point is
10 when -- when -- we're in the narrative.

11 At the end of the day when you reached out to
12 the Attorney General, can you tell me -- after you found out
13 about the fact that he wanted to appoint outside counsel, did
14 you -- if we get to the middle of August, at that time were
15 you aware as who he had decided that he wanted to retain?

16 A. Not in the middle of August, but in the middle of
17 September, yes.

18 Q. All right. Approximately when did you become aware
19 of whom he wanted to do the investigation?

20 A. That would have been on the September 14th meeting
21 with Jeff Mateer.

22 Q. All right. And then once you found out who it was,
23 what was the -- that he wanted to hire, what was the next
24 thing you did in your involvement?

25 A. Well, I found that out on the 14th. On the 14th, I

1 also spoke to Michael Wynne and kept trying to get documents.
2 Then the next day, the 15th, I emailed Michael Wynne and left
3 him a voicemail; no response. On the 16th, the Attorney
4 General called me to his office.

5 Q. All right. Now, when he called you to the office,
6 were you still -- had you for two straight days been trying
7 to get documents from Michael Wynne?

8 A. Yes.

9 Q. And did you personally talk to Michael Wynne either
10 of those two occasions?

11 A. I spoke to him on the phone for five minutes on the
12 14th.

13 Q. What did you tell him?

14 A. I told him I needed the rest of their documents. I
15 said, I've realized I don't think I have everything you got
16 from the judge. Would you please give me the documents? And
17 then he promised to get back to me; he never did.

18 Q. So the next thing you heard about it was on the
19 16th?

20 A. From the Attorney General, the next conversation
21 was the 16th.

22 Q. And -- and where did you have this conversation?
23 Do you recall whether it was in person or over the phone?

24 A. It was in person in his office.

25 Q. And how did it come about? I mean, how was it?

1 Did he call you? You call him? What?

2 A. He called me.

3 Q. All right. When he called you, what did he say?

4 A. He said, Come to my office. I want to talk to you.

5 Q. When he did -- when you did come to his office,
6 what happened?

7 A. He said, What are these documents you're asking
8 Michael Wynne and Nate Paul for? I want you to write down a
9 list of the documents on a piece of paper.

10 Q. Stop. Stop for a second. How would he know that
11 you were ask -- still asking Michael Wynne for documents?

12 A. Well, I only know of one way, and that would be
13 Nate Paul was calling him.

14 MR. LITTLE: Objection, calls for
15 speculation.

16 Q. (BY MR. HARDIN) Well, let me ask you this: Do you
17 know --

18 PRESIDING OFFICER: Sustained.

19 MR. HARDIN: Excuse me. I'm sorry, Judge.

20 Q. (BY MR. HARDIN) Do you know of any way else that
21 was part of your conversation on the 16th or really -- what
22 was it? Was it the 16th with Michael Wynne?

23 A. My conversation with Wynne prior to that was the
24 14th.

25 Q. All right. Do you know of anybody else besides you

1 and Michael Wynne that was involved in your conversation
2 asking him for additional documents?

3 A. The only other party would be Nate Paul because he
4 told me he was going to meet with Nate Paul.

5 MR. LITTLE: Objection, hearsay.

6 PRESIDING OFFICER: Sustained.

7 Q. (BY MR. HARDIN) All right. So other than Michael
8 Wynne --

9 MR. LITTLE: Mr. Hardin, hold on. Hold on.

10 MR. HARDIN: Excuse me.

11 MR. LITTLE: Hold on. The objection was
12 hearsay as to what Mr. Nate Paul told Mike Wynne.

13 PRESIDING OFFICER: I sustained it.

14 MR. LITTLE: Thank you.

15 PRESIDING OFFICER: Sorry, I think we were
16 three talking over each other.

17 MR. HARDIN: Thank you. Thank you very much,
18 Your Honor.

19 Q. (BY MR. HARDIN) Now, let me ask you this: When
20 the Attorney General asked you to write down the names, did
21 he tell you what -- and the documents -- was it the documents
22 he said -- he asked you to write down?

23 A. Yes.

24 Q. Did he -- go ahead with the rest of that
25 conversation.

1 A. He asked me to write down the documents. He asked
2 me for Michael Wynne's phone number. Then the Attorney
3 General told me that they weren't likely to give me any more
4 documents because they didn't trust me. They didn't like the
5 way the August 12th meeting had gone. They felt I was too
6 aligned with Director David Maxwell. And then he said, I'll
7 try to get the documents for you.

8 Q. Well, have you ever experienced a supervisor
9 telling you that since the person who is asking you to do the
10 investigation doesn't trust you, he wants you to get out of
11 it and he'll try -- and then he'll go get the documents?

12 MR. LITTLE: Objection, leading.

13 PRESIDING OFFICER: Sustained.

14 Q. (BY MR. HARDIN) Let me ask you this: Have you
15 ever had an experience like that?

16 A. No, sir, never before.

17 Q. Well, did he say why he was going to go get the
18 documents instead of you?

19 A. He did not say.

20 Q. Did he offer any support for you in their
21 allegation that they didn't trust you?

22 A. No. And, in fact, starting on August 12th, he had
23 not supported me.

24 Q. So now you've got your Attorney General is against
25 you on this issue.

1 A. Yes.

2 Q. And you're still -- what was your policy or
3 procedure as you were advancing, trying to still continue to
4 find out if you could head off the special -- not the
5 special, but head off the outside counsel?

6 A. Well, number one, I was keeping Jeff Mateer
7 informed of everything that was going on. I was sharing my
8 views with him. He was my immediate supervisor, and so I
9 frequently talked to Jeff in person or on the phone and
10 updated him on everything I was thinking and doing.

11 Q. All right. So were you effectively taken out of
12 the Nate Paul investigation after the call on the 14th?

13 A. Yes. Later I realized the Attorney General had cut
14 me completely out of the loop.

15 Q. All right. But even at the time he did, had you
16 ever indicated to him in any way that you were not willing to
17 continue to look into the matter if they would provide you
18 the documents they claimed to have?

19 MR. LITTLE: Objection, leading.

20 MR. HARDIN: That is not leading.

21 A. No, sir.

22 PRESIDING OFFICER: Overruled.

23 Q. (BY MR. HARDIN) Pardon me?

24 A. No. I never told the Attorney General I would
25 refuse to investigate if they would cooperate.

1 Q. All right. Had you ever experienced before
2 anything concerning continuing getting off of an
3 investigation because you -- or in spite of -- let me put it
4 another way: Have you ever had an experience in which an
5 investigation continues to try to help somebody who won't
6 cooperate with you?

7 A. No, sir. If someone won't cooperate, that's a
8 giant stop sign.

9 Q. All right. Now, for one, after the 16th in your
10 conversation with the Attorney General, when was the next
11 time you had any involvement in this case?

12 A. The next time was on the 23rd.

13 Q. 23rd of September?

14 A. Actually, let me back up. I had the meeting with
15 the Attorney General on the 16th. One other significant
16 matter occurred on this case that day that related to me, and
17 that was in my email I received a DocuSign email requesting
18 approval or declination for an executive approval memorandum
19 for an outside counsel contract for Brandon Cammack.

20 Q. All right. Can I --

21 MR. HARDIN: Your Honor, at this time I'll
22 move to introduce Exhibit 236. I believe it is not in
23 evidence.

24 PRESIDING OFFICER: It is not.

25 MR. HARDIN: I show it's not. Let me check

1 with the true person.

2 PRESIDING OFFICER: Any objection?

3 MR. LITTLE: Briefly, if I may, Your Honor.

4 This document isn't a complete -- if Your Honor will take a
5 look at House Managers' 236, it is a partial image of a
6 DocuSign report, what I'll call a completion report, but it
7 doesn't go to the bottom and include Mark Penley.

8 MR. HARDIN: Your Honor, if I may, this is the
9 cover page -- or one of the pages that will reflect what was
10 happening with the document. It was already -- there is a
11 draft of it in evidence. I'll get that. If they object to
12 this, then --

13 MR. LITTLE: It's just simply incomplete. We
14 can't see what Mark Penley did and the dates at the bottom of
15 236.

16 MR. HARDIN: That's fine. In the interest of
17 time, let me -- I'll --

18 PRESIDING OFFICER: Sustained.

19 MR. HARDIN: Thank you.

20 Q. (BY MR. HARDIN) Now, in the conversation that you
21 had with him on the 16th, the other matter you said that you
22 didn't complete was what?

23 A. The other matter on the 16th was I received a
24 DocuSign email.

25 Q. Right. And what was the significant of you

1 receiving that?

2 A. The significance was the -- it was office practice
3 for certain contracts to be approved by a number of people in
4 the chain of command. And since this matter involved a
5 criminal investigation, it was routed through me. And it was
6 to go on to other people. The last signer was to be Jeff
7 Mateer, the first assistant.

8 Q. Did you sign off and agree to this contract for
9 Mr. Cammack?

10 A. I did not.

11 Q. And on the 16th of September, did you do anything
12 in relation to it?

13 A. No. I saw it was there. I knew I wasn't going to
14 approve it. I didn't touch it.

15 Q. And if you didn't touch it, does anything happen
16 with the contract until you, the division involved, sign off
17 on it?

18 A. It should not have.

19 Q. All right. And then when is the next time you had
20 any contact with anyone about it?

21 A. The next time I had any news about the Nate Paul
22 matter was on the 23rd.

23 Q. And what happened on the 23rd and what was your
24 contact and with whom?

25 A. I had contact with Ryan Vassar. I got word that

1 the Attorney General was asking where --

2 MR. LITTLE: Objection, hearsay.

3 MR. HARDIN: It is. You're absolutely
4 right.

5 PRESIDING OFFICER: Sustained.

6 MR. HARDIN: You're absolutely right.

7 PRESIDING OFFICER: Thank you, Counselor, for
8 that help.

9 MR. HARDIN: Thank you. Thank you, Your
10 Honor.

11 Q. (BY MR. HARDIN) So when you -- did you get to talk
12 at all to the Attorney General during this time frame?

13 A. Not on -- not between the 16th and 23rd, but I did
14 on the 24th.

15 Q. All right. On the 24th, where did you talk to him?

16 A. He called me on the phone. He told me he was at
17 the White House. He said he had just left a meeting in the
18 Oval Office, and he wanted me to approve the DocuSign
19 executive approval memo for the outside-counsel contract.

20 Q. What -- what do you remember about that
21 conversation?

22 A. I remember we talked for about ten minutes. And
23 that was the day that I drew the line with the Attorney
24 General that I would not cross, and I never did. I said I
25 would not approve the contract. I said --

1 Q. Hold on.

2 MR. LITTLE: Object to nonresponsive, move to
3 strike.

4 PRESIDING OFFICER: Sustained.

5 Q. (BY MR. HARDIN) Hold on. What -- just as best as
6 you can remember, tell us exactly what and how he said, what
7 he did, and then tell me your response to it.

8 A. He said, Mark, I'm at the White House. I just left
9 a meeting in the Oval Office. I understand that the
10 executive approval memo is with you. I need you to approve
11 that contract.

12 Q. At that time, were you aware one way or the other
13 whether the contract had been signed by the Attorney General?

14 A. No. I wouldn't expect --

15 Q. Just -- there you go. Did you know?

16 A. I didn't know.

17 Q. All right. And so at that time, what was your
18 level of knowledge of the status of the contract?

19 A. That it was stuck in my email inbox, and it
20 hasn't -- had not been approved through the normal office
21 procedure because I wouldn't approve it.

22 Q. All right. What did you respond to the Attorney
23 General?

24 A. I said, Ken, I cannot approve this and respectfully
25 I will not, and I told him why.

1 Q. All right. Would you articulate for the jury
2 exactly what you told him as to why you were not willing to
3 approve that contract?

4 A. I told him that Nate Paul and his attorney were not
5 being cooperative with us by giving us all the documents that
6 I believed they had. They had gone to the media.
7 Furthermore, there was no evidence of any crime. We had
8 absolutely no scintilla of evidence that any criminal
9 activity had occurred on the part of the federal agents, the
10 state agents, the federal prosecutor, or the federal judge.

11 And I said, Ethically, Ken, I can't proceed
12 with this investigation. And I'm the senior prosecutor in
13 the agency; and if it's not right for me to do it, it's not
14 right for me to delegate it to anybody else. I won't sign
15 this.

16 Q. What was his response?

17 A. He said, Well, we'll have to disagree on this.
18 I've got to go to a press conference. We'll talk later.

19 Q. What was your history with the Attorney General as
20 to how he would handle or respond to areas of disagreement
21 with you and the staff?

22 A. Well, by this time, I had realized he was very
23 passive-aggressive.

24 Q. And what do you mean?

25 A. I mean he'd say something was okay or indicate he

1 accepted your opinion one day, and then you would find out
2 later he had gone around you or he was disagreeing with you,
3 but he wouldn't come and tell me that.

4 Q. Over the months that this had been going on, had
5 you become aware of anything involving Mr. Paul and the
6 Attorney General -- and this is as -- I'm really at the day
7 of the 24th of September. Had you at that stage become aware
8 of other incidents that were occurring, or were you pretty
9 much just knowledgeable of what -- about the events that were
10 affecting you?

11 A. I had heard a little bit about --

12 Q. I don't want to hear what you heard.

13 MR. LITTLE: Objection, hearsay.

14 Q. (BY MR. HARDIN) Only that if you had heard things.

15 A. Yes, I had heard some things, not much.

16 Q. But as a practical matter day by day, was your
17 knowledge of things with the Attorney General and Mr. Paul
18 pretty much generally restricted to the things that you've
19 been telling the jury about that involved you?

20 A. Yes. My knowledge was siloed.

21 Q. All right.

22 A. I didn't know about these other issues until later.

23 Q. All right. Now, on the 24th when you told him that
24 and he said, We'll just have to disagree --

25 A. Yes.

1 Q. -- when was the next time you heard from him?

2 A. He called me again on the next day, Friday,
3 September 25th.

4 Q. And what was -- and do you know where he was at
5 that time?

6 A. I don't know.

7 Q. And what did he say then?

8 A. He said, Are you available to meet with me
9 tomorrow?

10 Q. What did you tell him?

11 A. I said yes.

12 Q. What happened? So what happened?

13 A. I said, Can I assume it's about the matter we
14 discussed yesterday? And he said it was, and then we talked
15 about scheduling.

16 Q. Where did he want to meet and when?

17 A. He wanted me to come to McKinney. I told him I had
18 an event to go to in Denton in the middle of the day. I
19 said, I'll meet you before or after. He asked me to meet
20 with him at 2:00 o'clock in McKinney. He said he would text
21 me a location, which he did later that day.

22 Q. All right. So then did you meet with the Attorney
23 General of the State of Texas regarding Nate Paul and the
24 contract for an outside lawyer to investigate? Did you meet
25 with him about that matter on Saturday, September the 26th?

1 A. Yes, sir.

2 Q. What time of day and where did you meet?

3 A. The meeting was scheduled to begin at 2:00 o'clock.
4 I was there before 2:00. He arrived about 2:20 or 2:15. We
5 met until -- for an hour and 45 minutes.

6 Q. And when he got there, where did you go? Where did
7 you meet?

8 A. Well, he asked me to meet in one coffee shop, a
9 Panera Bread; and I was there. He came inside and let's go
10 sit outside, and he crossed the driveway. There was a
11 Dunkin' Donuts across the driveway that had an outside table
12 with an umbrella, and he wanted to sit there.

13 Q. So unlike what we're experiencing so far right now
14 in September, was it a September day with more normal weather
15 that was cool enough to comfortably sit outside?

16 A. Yes, sir.

17 Q. All right. And then who began the conversation?

18 A. He did.

19 Q. What did he say?

20 A. He said he was frustrated. He said, I felt like I
21 did when I couldn't get Chip Roy to do what I wanted him to
22 do. My staff's not doing what I'm telling them.

23 Q. Chip Roy was the previous first assistant; is that
24 correct?

25 A. That's correct.

1 Q. All right. Now, when he -- what did you respond to
2 that?

3 A. Well, he then went on to talk about he wanted me to
4 approve the contract. He was upset that I hadn't approved it
5 or that Jeff Mateer hadn't approved it.

6 Q. I want to go back, if I can, to whether or not you
7 did any preparation for this meeting.

8 A. Yes, sir, I did.

9 Q. Tell the jury what you did in anticipation of this
10 meeting.

11 A. Well, in all honesty, I woke up at 5:00 o'clock in
12 the morning, and I felt like the Lord woke me up and
13 impressed upon me that I needed to get ready; this was a
14 serious situation. Again, I felt like my job was in
15 jeopardy. I didn't want to get fired. And I was hoping that
16 I could get Ken Paxton to listen to reason.

17 And so I -- I did my morning Bible reading.
18 There was a verse in there. It said, Do true justice,
19 Zechariah 7:9. And I wrote that on the top of my notes, and
20 then I proceeded to write out a bullet point outline with all
21 the problems with proceeding with the investigation of the
22 Nate Paul matter, and I wrote down things that I felt like he
23 needed to understand that were a danger to him personally and
24 careerwise.

25 MR. HARDIN: So if I may, I -- I'm going to

1 ask if we can show him a copy of the first page -- I mean, of
2 the first -- the notes that he prepared before the meeting.

3 I have marked this as Exhibit 214. It's not in evidence, but
4 I wonder if we have a copy we can show him that's clean.

5 Mine's got all kind of markings on it.

6 A. Sir, I have a copy here.

7 Q. (BY MR. HARDIN) Pardon me?

8 A. I have a copy.

9 Q. I know, but I want to show you one that's got the
10 exhibit. I want you to look at it, identify it, but I don't
11 want you to testify about what's in it yet. I want you to
12 look and see if that is a true and accurate copy of the notes
13 you prepared in anticipation of meeting with the Attorney
14 General.

15 A. Yes, sir.

16 Q. All right. Would you look -- it's a two-page
17 notes -- well, it's three pages really, isn't it?

18 A. It's -- it's front and back copies.

19 Q. All right.

20 A. There are three pages.

21 Q. All right. You went away from your microphone
22 again.

23 A. I'm sorry. There are three pages.

24 Q. I've done it much more times than you have.

25 All right. And in those -- do those notes

1 accurately reflect your thoughts that you were reducing to
2 writing in anticipation of discussing this subject with the
3 Attorney General?

4 A. Yes, sir.

5 MR. HARDIN: Your Honor, I'll move to
6 introduce. These have been produced. Both sides have these.
7 Actually, I think we received these notes from the Attorney
8 General's Office in the production. Or actually we got them
9 from Mr. Penley, excuse me.

10 PRESIDING OFFICER: Any objection?

11 MR. LITTLE: Yes, Mr. President. These --
12 Mr. Hardin has not provided me a copy of the document, but
13 I'm extensively familiar with it. It's hearsay. It was
14 not -- these were not notes from a meeting with the Attorney
15 General. These were the out-of-court statements of
16 Mr. Penley expressed in an outline prior to the meeting. And
17 hence, they are inadmissible hearsay.

18 MR. HARDIN: Do we have a copy for the
19 attorney -- for the Court? Does the Court have a copy? Oh,
20 thank you.

21 PRESIDING OFFICER: I'm going to sustain the
22 objection.

23 MR. HARDIN: Thank you.

24 Q. (BY MR. HARDIN) Now, these notes that you have --
25 are these -- a copy of these same notes that we've talked

1 about, Exhibit 214, do you have them up there with you?

2 A. I do.

3 Q. Can you tell the jury in general, from your own
4 memory, all the things that you planned you were going to
5 tell him?

6 A. Yes.

7 MR. LITTLE: Hold on. I believe that Your
8 Honor sustained my objection to hearsay, and so any testimony
9 from this document would also be hearsay.

10 MR. HARDIN: I didn't ask him to testify from
11 it. In fact, I asked him the exact opposite.

12 Q. (BY MR. HARDIN) I said simply put them down. Now
13 tell us in your own mind, and if you need to refer to them to
14 remind yourself or something, but my questions to you are
15 directed to what you told the -- what you planned to tell the
16 Attorney General --

17 A. Right.

18 Q. -- in both tone and content for this meeting of the
19 26th.

20 PRESIDING OFFICER: Overruled. Continue.
21 Continue.

22 A. Sir, what I planned to tell the Attorney General
23 was, number one, this was a very dangerous investigation for
24 him to continue. He was a friend of Nate Paul's. Nate Paul
25 is a campaign donor to him. There was no evidence of any

1 criminal wrongdoing. There was no legal basis to continue
2 the investigation. There was no ethical basis to continue
3 the investigation. In fact, I felt it was unethical to
4 continue. I felt that Nate Paul was trying to manipulate me
5 and Director Maxwell and the Attorney General to do an
6 investigation that had no merit, and we shouldn't be doing
7 it.

8 And then I also told him there was great risk
9 to him. This could look like bribery. This could turn into
10 a criminal charge against him. I told him this could turn
11 into a media scandal if it got out. I said, You should not
12 be doing this. Please back away from this. Let me handle
13 this my way.

14 And then I -- I had a section where I wanted
15 to go over with him the practical difficulties of doing the
16 investigation that he wanted us to do. As I explained
17 previously, the issued set of search warrants were still
18 under seal at the federal district clerk's office by federal
19 court order. I had no way to get access to those. The
20 original computer that the forensic experts --

21 MR. LITTLE: Mr. President, I need to object
22 to the narrative testimony. This needs to be a response to a
23 question.

24 PRESIDING OFFICER: Sustained.

25 Q. (BY MR. HARDIN) All right. So you're telling us

1 what you planned to do. My next question is, did you tell
2 him what you have just testified to the jury?

3 A. Yes. I told him all of those things and many
4 others.

5 Q. And I'm about to ask you about the many others. So
6 let's go now to the 26th itself. You get up at the morning;
7 you write all these things out that you've been testifying
8 about. What else did you tell him in an attempt to persuade
9 him to drop the Nate Paul matter?

10 A. Number one, I told him I don't know Mr. Cammack. I
11 don't know his experience level. It's my understanding he's
12 never been a prosecutor. I'm not going to supervise him.

13 He told me at that meeting for the first time
14 that Mr. Cammack had already been hired and was working and
15 had been working on this for at least two weeks. I did not
16 know that.

17 Q. What did you say in response to that?

18 A. Well, I said, I won't supervise him. And he said,
19 Don't worry, I will.

20 Q. Well, did you know anything in the background of
21 the Attorney General that would have qualified him to
22 supervise a federal -- or not a federal, but a state
23 prosecution investigation?

24 A. Nothing whatsoever.

25 Q. So when you said you wouldn't supervise him and he

1 said, Don't worry, I will, what did he say then?

2 A. Well, I think the conversation shifted at that
3 point, and I was trying to tell him, Stop Mr. Cammack -- in
4 fact, this was at the end of the meeting. I had two
5 recommendations for him. Stop Mr. Cammack and talk to Jeff
6 Mateer about a way to get Mr. Cammack paid for whatever he's
7 already done.

8 That was one of the Attorney General's big
9 issues in the conversation. This guy's working, and I've got
10 to pay him. And you won't sign the executive approval memo,
11 so I don't have money in the budget to pay him with.

12 And then he threw out, I spent \$50,000 on my
13 personal lawsuit last month. And then he made comments about
14 his distrust of law enforcement and his concern about --

15 Q. What did he say about law enforcement?

16 A. He said -- he said, You don't know what it feels
17 like to be the target of a corrupt law enforcement
18 investigation. I've spent \$50,000 on my case, things of that
19 nature. He made many comments to me -- or several, I'll say
20 several -- during the course of these months that indicated
21 he had a negative attitude and a distrust of law enforcement.

22 Q. Did he particularly ever focus on DPS in his
23 negative attitude?

24 A. Yes, I've heard him make negative comments about
25 DPS.

1 Q. Like what?

2 A. He doesn't trust the director, and he feels like
3 the DPS ran a corrupt investigation on him in the securities
4 fraud matter.

5 Q. Did he have the same feeling about the Securities
6 Board?

7 A. I did not hear him talk about the Securities Board.

8 Q. All right. Were you aware of one other -- one way
9 or the other as to whether a representative of the Securities
10 Board had been involved in a search warrant?

11 A. Yes, I knew at least one of their agents was a task
12 force officer with the FBI on the searches.

13 Q. And do you know who that officer was?

14 A. Yes.

15 Q. Who?

16 A. His name is Rani Sabban or Sabban.

17 Q. Will you spell Sabban or Sabban for the court
18 reporter?

19 A. S-a-b-b-a-n.

20 Q. How would he know -- do you know who -- let me back
21 up.

22 In your meetings with him back starting in
23 July and into August, in one of those meetings, was there a
24 conversation with him and Mr. -- these are the three meetings
25 we talked about.

1 A. Yes, sir.

2 Q. In which he specifically addressed the issue as to
3 whether Agent Sabban was actually the applicant for the
4 search warrant?

5 MR. LITTLE: Objection, leading.

6 Q. (BY MR. HARDIN) Did you ever hear --

7 PRESIDING OFFICER: Sustained.

8 Q. (BY MR. HARDIN) Did you ever hear anything from
9 him during those meetings with you about Agent Sabban?

10 A. Yes, sir. You're talking about Nate Paul's
11 comments?

12 Q. Yes.

13 A. Yes, I did.

14 Q. And in the meetings, did you ever hear him say that
15 Agent Sabban was the affiant in the application for the
16 search warrant?

17 MR. LITTLE: Objection, hearsay as I
18 understand this to be Mr. Paul's comments offered for their
19 truth.

20 PRESIDING OFFICER: Sustained.

21 Q. (BY MR. HARDIN) Did you discover at any time that
22 Mr. Wynne and Mr. Paul knew the identity of the agent that
23 signed the application for the search warrant?

24 MR. LITTLE: Objection, hearsay. If
25 necessary, I will take this witness on voir dire to establish

1 that the basis for his knowledge is hearsay.

2 PRESIDING OFFICER: Sustained.

3 Q. (BY MR. HARDIN) Did you ultimately discover that
4 these folks in your meetings knew who had been the applicant
5 in a search warrant that was sealed -- application that was
6 sealed?

7 MR. LITTLE: Same objection, hearsay. And I'm
8 happy to take this witness on voir dire --

9 MR. HARDIN: I asked --

10 MR. LITTLE: -- to establish that.

11 MR. HARDIN: I asked if he ever became
12 aware.

13 PRESIDING OFFICER: It's sustained.

14 Q. (BY MR. HARDIN) All right. Now, would anyone be
15 able to know the identity of the agent that signed the search
16 warrant -- the application for the search warrant if they had
17 not had access to a sealed document?

18 MR. LITTLE: Objection, assumes facts not in
19 this evidence and calls for this witness to speculate on that
20 topic.

21 Q. (BY MR. HARDIN) Let me ask --

22 PRESIDING OFFICER: Sustained.

23 Q. (BY MR. HARDIN) Let me ask you this: Did you
24 review the grand jury subpoenas that were ultimately served
25 by Mr. Cammack?

1 A. Yes.

2 Q. Did you see the name of Agent Sabban on there?

3 A. Yes.

4 Q. Would Agent Sabban's identity be known to anybody
5 that had not seen the sealed document?

6 MR. LITTLE: Objection, calls for speculation
7 again.

8 Q. (BY MR. HARDIN) To your knowledge?

9 PRESIDING OFFICER: Sustained.

10 Q. (BY MR. HARDIN) Now, do you remember back when the
11 presentations -- they were making a PowerPoint presentation
12 they brought to that meeting?

13 A. Yes.

14 Q. And do you recall what that PowerPoint presentation
15 was called?

16 A. Yes, sir, I do. It was called the Operation
17 Longhorn.

18 Q. Was that PowerPoint presented to you by Mr. Wynne
19 and Mr. Paul?

20 A. Yes, Mr. Paul specifically.

21 Q. All right.

22 MR. HARDIN: Can I have the exhibit number,
23 please, of the PowerPoint? It's in evidence. In fact, I
24 think it was introduced by the other side.

25 PRESIDING OFFICER: It's in evidence.

1 MR. HARDIN: Could you put up Exhibit 152,
2 please? Now, go to the next page, please.

3 Q. (BY MR. HARDIN) Do you recognize this exhibit,
4 please?

5 A. I do. That's the document Mr. Paul gave me at the
6 August 5th meeting.

7 Q. Fine.

8 PRESIDING OFFICER: One moment, please. Can
9 you confirm, Mr. Hardin, that everything has been redacted
10 from -- this was the --

11 MR. HARDIN: Thank you very much. No, thank
12 you very much.

13 PRESIDING OFFICER: This was the piece of
14 evidence that we paused to redact information. Can you
15 confirm that?

16 MR. HARDIN: I want to make sure.

17 PRESIDING OFFICER: I saw two thumbs up from
18 Stacey.

19 MR. HARDIN: Two thumbs up says it has been,
20 Judge. And I -- we've done that in light of the other
21 presentation. Thank you very much.

22 Q. (BY MR. HARDIN) In this search warrant, if we
23 could -- the search warrant discussion, rather, it talks
24 about when it was executed, all right? And it says down at
25 the bottom, I'll publish -- I'll read that to you: According

1 to the filings with the court in the Western District of
2 Texas, each of these forms was signed and issued by Judge
3 Mark Lane at 10:00 a.m.

4 Is Judge Mark Lane one of the officials they
5 wanted investigated?

6 A. Yes. He's a federal magistrate judge in Austin,
7 and they wanted me to do a criminal investigation on him.

8 Q. All right.

9 MR. HARDIN: Next page, please.

10 Q. (BY MR. HARDIN) Now, this sets out, does it not,
11 that they -- they have discovered through their forensic
12 analysis of the metadata and what we've been talking about
13 before. And it was emailed and given them by Alan Buie to
14 the counsels Chuck Meadows and Aaron Borden. Those people
15 were -- back in August 14th of '19 were representing Nate
16 Paul, correct?

17 A. Yes. My understanding was at that time he was
18 represented by Austin attorney Gerry Morris and the Dallas
19 law firm of Meadows & Collier.

20 MR. HARDIN: Next. Next page.

21 Q. (BY MR. HARDIN) Now, they point out to you that
22 below is pertinent to how we discovered through forensic
23 analysis and the document had been mailed by the federal
24 prosecutor.

25 Alan Buie is the federal prosecutor, right?

1 A. Yes, he is.

2 Q. Okay. Then they give us the data that they've got
3 there as to where this server is located.

4 MR. HARDIN: Can I have the next page, please?

5 Q. (BY MR. HARDIN) They have the addresses where the
6 search warrant was to be executed on, right?

7 A. Yes.

8 MR. HARDIN: Next page.

9 Q. (BY MR. HARDIN) Now, do you have any idea how they
10 would have all this information? Now, answer yes or no
11 first.

12 MR. LITTLE: Objection, calls for speculation.

13 A. Do I have any idea?

14 MR. LITTLE: Hold on, Mr. Penley.

15 MR. HARDIN: I asked -- the question was
16 knowledge. I just asked if he had any knowledge of it.

17 PRESIDING OFFICER: If you can, answer yes or
18 no.

19 A. Yes, I have some knowledge.

20 MR. HARDIN: Can I have --

21 Q. (BY MR. HARDIN) It talks, does it not, about
22 Mr. Sabban, does it not?

23 A. It does. It mentions his name at the top.

24 Q. All right. Do you know if he -- if he appears in
25 any of the document of the original search warrant itself?

1 Have you looked at that to see of the part that was public if
2 his name appears at all?

3 MR. LITTLE: Objection, lack of foundation for
4 this witness's personal knowledge of that.

5 MR. HARDIN: I asked if he has read the search
6 warrant --

7 PRESIDING OFFICER: Sustained.

8 MR. HARDIN: -- that was public. Let me try
9 again, Your Honor.

10 Q. (BY MR. HARDIN) Have you looked at and reviewed
11 the search warrant that was public information is and was the
12 search warrant that was ultimately given to the attorneys of
13 Mr. Paul after the search?

14 A. Yes, sir.

15 Q. On -- anywhere on that search warrant does it
16 mention the name of Mr. Sabban?

17 A. No, sir, it does not.

18 MR. HARDIN: Next page.

19 Q. (BY MR. HARDIN) It lays out, does it not, the
20 things that they're complaining about, right?

21 A. It does. And these were things we told them we had
22 no jurisdiction over.

23 MR. HARDIN: Next page.

24 Q. (BY MR. HARDIN) Now, it has people of interest.
25 And are these people that they wanted you to investigate?

1 A. Yes, they wanted us to investigate each of these
2 people.

3 Q. Would you go down the list and see why -- and tell
4 us what they told you or what -- what these people they were
5 requesting to be investigated's roles were?

6 A. Yes. Rani Sabban was on the task force. He was at
7 the search warrant that was executed at Mr. Paul's residence.
8 Mr. Paul stated he had personal conversations with him during
9 that search.

10 Agent Joy of the FBI, he was mentioned. I
11 don't know which location he searched.

12 They represented that Ms. Sobrevilla-Dent was
13 a courtroom deputy clerk to a United States magistrate
14 judge.

15 Q. Yeah, can you explain to us why in the world you
16 were supposed to investigate a courtroom deputy clerk of a
17 federal magistrate?

18 A. I have no idea how there's a state interest in
19 doing that. The federal authorities have full control over
20 the federal district clerk's office, and their law
21 enforcement and their Inspector General's Office has the full
22 ability to go in and get all the documents needed to do such
23 an investigation. We did not.

24 Q. All right.

25 MR. HARDIN: Now, if I can have the next page

1 real quickly and let's move through this.

2 Q. (BY MR. HARDIN) They give you information. This
3 man that they want you to investigate was actually a member
4 of the board of the agency that had brought the charges
5 against the Attorney General, correct?

6 A. Yes, I became aware of that.

7 Q. All right. That's all I need there.

8 I -- did it have personal data about him that
9 has been extracted from this?

10 A. Can I see that page again?

11 Q. Yes.

12 MR. HARDIN: Do you have the page?

13 Q. (BY MR. HARDIN) If you know. If you don't know --

14 A. And I'm sorry, could you ask the question again?

15 Q. Let's move on.

16 MR. HARDIN: You can take that down.

17 Q. (BY MR. HARDIN) But there were code words in this
18 thing, weren't there?

19 A. Yes, there were.

20 Q. Well, did you have any idea what they were or what
21 they were supposed to represent?

22 A. Oh, Operation Longhorn?

23 Q. Hold on. Are there -- we're on top of each other.

24 PRESIDING OFFICER: Excuse me. Try not to
25 talk over each other --

1 MR. HARDIN: Absolutely.

2 PRESIDING OFFICER: -- for the court reporter.

3 MR. HARDIN: Absolutely. Thank you, Judge,
4 Your Honor.

5 Q. (BY MR. HARDIN) Were there different little code
6 names like Longhorn and other things? Do you remember what
7 any of them were?

8 A. Well, the only one I knew at the time was Operation
9 Longhorn. I've learned some since this summer.

10 Q. All right. Now, if I can, at the end of the day on
11 the 26th when you were talking to him, that Saturday, you've
12 talked about an almost two-hour conversation.

13 A. Yes.

14 Q. Do you recall at the end of the conversation -- do
15 you recall anything else that the Attorney General said to
16 you in response to your urgings that you've described to the
17 jury?

18 A. May I review my handwritten notes to refresh my
19 recollection? Because there were many other things
20 discussed.

21 Q. Yes. Don't read from the notes, but you can look
22 at them and see if that refreshes you.

23 A. All right.

24 MR. LITTLE: To be clear, Mr. President, I do
25 not know what notes he possesses up at the stand, and I would

1 like to at least be able to review those.

2 MR. HARDIN: I thought we gave him 214. If we
3 did not, could we, please.

4 MR. LITTLE: 214 are not notes, Mr. Hardin.
5 That is his outline from before the meeting. So if he's
6 using that to refresh his recollection, he will be using a
7 document that has been --

8 MR. HARDIN: Which --

9 MR. LITTLE: -- has been overruled as hearsay.

10 MR. HARDIN: Which, in more years than I'd
11 like to admit, a witness regularly does. So that is not --

12 MR. LITTLE: An expert witness.

13 MR. HARDIN: Excuse me. That's not a
14 legitimate -- this man has brought up his notes. They're not
15 in evidence. They've objected to them. He is certainly
16 allowed to look at documents not in evidence to refresh his
17 memory. He just can't read from them.

18 PRESIDING OFFICER: Would you show counsel
19 these notes?

20 MR. LITTLE: And, Mr. President, what I would
21 like to do is take this witness on voir dire to establish
22 that -- wait, hold on a second. You said 214. This is 216.
23 So you're asking him to review 216? These are his notes, 216
24 is.

25 MR. HARDIN: Pardon me?

1 MR. LITTLE: Okay.

2 MR. HARDIN: I've got a bunch of voices around
3 me.

4 MR. LITTLE: You've got a lot of people
5 talking to you.

6 MR. HARDIN: I'm sorry.

7 MR. LITTLE: Are you asking him to review 216?

8 MR. HARDIN: We've -- you're right. You're
9 right.

10 MR. LITTLE: These are his notes.

11 MR. HARDIN: Excuse me. Just so the Court
12 knows what we're talking about. 214 is the document that he
13 planned -- of what he planned to talk about. He's right.
14 216 is what I'm asking him to look at and what he was about
15 to look at. So I just gave you the wrong number. If you
16 want 216 -- well, you have 216 produced --

17 MR. LITTLE: No objection to 216. I plan to
18 introduce it as well.

19 MR. HARDIN: All right. Neither one of them
20 to answer your question earlier.

21 PRESIDING OFFICER: Have we settled this,
22 Counselors? No objection --

23 MR. LITTLE: I believe we have.

24 PRESIDING OFFICER: -- to what he's going to
25 read from? Okay.

1 Q. (BY MR. HARDIN) All right. Now, have you
2 reviewed -- you've reviewed your notes from the day after.
3 Did you type up those notes -- write those things by hand
4 before or after, during? When did you do it, the meeting?

5 A. I wrote these notes when I got home that evening
6 after the McKinney meeting, and they're handwritten.

7 Q. Have you reviewed them?

8 A. No, sir, if I could have a minute. I wanted to be
9 sure I had permission to.

10 Q. Go ahead.

11 A. (Witness reviews notes.)

12 Yes, sir, I've reviewed the notes.

13 Q. All right. Was there anything else that you
14 recall? Does that help refresh your memory as to whether
15 there was anything else in your discussion that the Attorney
16 General said?

17 A. Yes, there were several things. Number one, I
18 asked him why he was so interested in this investigation when
19 he was not interested in all the other criminal
20 investigations and cases we had pending in the office.

21 Q. All right. And what was his response?

22 A. His response was, I don't know about the other
23 cases, but I know about this one, and I'm concerned about
24 corrupt law enforcement because of what's happened to me.

25 Q. All right. Anything else you recall he said in

1 that conversation on the 26th?

2 A. We discussed the fact that he had taken Nate Paul
3 personally to the Travis County District Attorney's Office.

4 Q. Did you ask him or did he volunteer that?

5 A. I told him I had learned that. By this time I had
6 heard that.

7 Q. And what was his response?

8 A. His response is, Well, I didn't request the
9 investigation from them. They had a conflict, and they asked
10 me if I wanted it, and I said yes.

11 Q. All right. What else?

12 A. I -- I told him there was no state basis for
13 believing there was any state offense. And he kept bringing
14 up Nate Paul and Michael Wynne's complaint that the agents
15 hadn't left a copy of this search warrant at the residence or
16 the office, allegedly. I don't know if that's true or not.

17 Q. Is that something he wanted the Attorney General's
18 Office to investigate about?

19 A. Apparently he did because he told me that the fact
20 that I didn't think that was serious -- which I didn't and I
21 explained to him why. That's a Federal Rule of Criminal
22 Procedure. That's not even a misdemeanor statute. And
23 that's something the magistrate can deal with very easily if
24 it's true. But he said that was a red flag to him that
25 indicated I was too biased in favor of law enforcement.

1 Q. How was the tone of this conversation?

2 A. He was frustrated and that was the most -- it
3 wasn't a hostile conversation, but it was a difficult
4 conversation.

5 Q. How did the conversation end?

6 A. I told him that I was trying to be a loyal
7 subordinate and a friend, and I still considered myself a
8 friend even up to that very day. And I was trying to walk
9 him back from what I thought was a dangerous line he was
10 trying to cross. And I told him all my reasons, that he
11 could face criminal charges, bribery, other things. It could
12 be a media scandal. He could get himself in a lot of
13 trouble. He needed to leave this alone, to back away from
14 it.

15 I explained all the practical investigation
16 difficulties, that we shouldn't be trying to investigate the
17 feds, and there were many things we couldn't investigate. We
18 didn't have the power. We didn't have a way to get at those
19 sealed search warrants. And if I'd called the U.S.
20 Attorney's Office and said, Can I see your file with the
21 original search warrants, they would have laughed and hung up
22 the phone and I would have understood why. All that was
23 under privilege at the U.S. Attorney's Office. They had an
24 active investigation of Mr. Paul.

25 Q. So how did the -- when the conversation was over,

1 what was said between the two of you as you parted?

2 A. The way I left it was I made two recommendations,
3 which he didn't object to and he didn't disagree with, but
4 then I found out later he obviously didn't act on them.

5 Number one, I said, Stop Cammack from working
6 and talk to Jeff Mateer and figure out how to pay his invoice
7 and don't let him work anymore.

8 Number two, Let's you and I meet with Jeff
9 Mateer. I can explain some options we've got. I don't think
10 they're great options. You may want to pursue them, but I
11 think they're a risk to the office. One of those options was
12 calling the United States Attorney's Office, talking to one
13 of the supervisors, see if they would just assuage our
14 curiosity and tell us if there were any changes between the
15 returned version of the search warrant and the issued
16 version.

17 Q. And what did he say?

18 A. He didn't say anything to that. He just said,
19 Well, I've got to go. I've got a dinner to attend.

20 Q. All right.

21 A. But he didn't agree or disagree.

22 Q. After that conversation on the 26th, without going
23 into what you said, did you call Jeff Mateer and update him?

24 A. Yes, immediately after I left the meeting.

25 Q. And then after the 26th, when was your next

1 involvement with anything having to do with Mr. Paul?

2 A. That was on the morning of Tuesday, September 29th.

3 Q. And without going into what people told you at this
4 time, what happened on the 29th?

5 A. Mr. Cammack and Mr. Wynne served a search warrant
6 in the name of Brandon Cammack, Special Prosecutor, Office of
7 the Attorney General of Texas, on Independent Bank in Round
8 Rock.

9 Q. What was your reaction to that?

10 A. I was apoplectic.

11 Q. Why?

12 A. Because it appeared to me that Mr. Cammack was
13 working on behalf of Nate Paul's civil litigation interests
14 and serving a criminal process, a grand jury subpoena on
15 either a bank or a party to one of his civil lawsuits. He
16 was seeking discovery through using criminal process.

17 Q. Had the Attorney General ever said anything to you
18 in his conversations that Mr. Cammack was a special
19 prosecutor?

20 A. No. At this point in time, the only thing he had
21 ever told me was that he was working and beginning to gather
22 information. He never told me a title.

23 Q. All right. What happened on the 29th when you
24 found out that there -- a community bank had been served a
25 grand jury subpoena?

1 A. Well, Jeff Mateer called a meeting in his office at
2 3:00 o'clock for the deputies involved that became the
3 whistleblowers.

4 Q. At the end of y'all's conversations, did y'all make
5 plans to go to the government?

6 A. No, not that day.

7 Q. All right. And then what happened on the 30th?

8 A. On the 30th in the morning, we got another message
9 that a second subpoena had been served, this time on
10 Amplified Credit Union in Austin.

11 Q. And what was -- how -- what was your reaction to
12 that?

13 A. I was even more apoplectic. I was furious that
14 this was going on and the Attorney General was allowing it.

15 Q. And what was wrong with serving a grand jury
16 subpoena on Amplified Credit Union?

17 A. Because, again, this looked like Nate Paul was
18 using the power and authority granted by the people of Texas
19 and this legislature, he had turned it over to Nate Paul for
20 Nate Paul to go after --

21 MR. LITTLE: Object to the narrative.

22 A. -- his business opponents.

23 MR. HARDIN: I asked -- I asked him what was
24 his opinion.

25 PRESIDING OFFICER: Sustained.

1 Q. (BY MR. HARDIN) Did you have -- I believe -- let
2 me ask you this: When you were so concerned, what was
3 wrong -- in a very succinct way, please. What was wrong with
4 what they were doing?

5 A. Number one, these banks had nothing to do with
6 referral number one, which was the only referral we knew
7 about.

8 Number two, you can't use criminal process to
9 conduct civil discovery, and that's what it appeared was
10 going on because Mr. Paul's attorney was with Mr. Cammack at
11 both banks.

12 Q. In all your years -- first of all, have you been
13 involved where the prosecutor was the one serving the grand
14 jury subpoena?

15 A. No, sir, I haven't heard of that.

16 Q. Who was usually the one serving grand jury
17 subpoenas?

18 A. A deputy, a federal marshal, depending.

19 Q. And then have you ever heard of the lawyer for the
20 person bringing the complaint, who's also under a federal
21 investigation, accompanying the prosecutor serving the
22 subpoena?

23 A. No. In fact, the Code of Criminal Procedure does
24 not --

25 MR. LITTLE: Object, nonresponsive.

1 MR. HARDIN: I'll get to that.

2 PRESIDING OFFICER: Sustained.

3 Q. (BY MR. HARDIN) What is -- what is the law in
4 terms as to whether or not a person representing the
5 complainant can be involved in that circumstance?

6 A. The law says you can't. An interested party cannot
7 be involved in serving a grand jury subpoena.

8 Q. Now, after this on the 30th, did you as a group
9 ultimately go to the grand jury -- go to the FBI?

10 A. Yes. After we learned about the second grand jury
11 subpoena being served, we were extremely concerned as a
12 group. I was extremely concerned personally, and we decided
13 we had to go to law enforcement.

14 Q. And why did you go to law enforcement?

15 A. Because this had to be stopped. The Attorney
16 General obviously wasn't listening to anybody. He had turned
17 Mr. Cammack loose. We didn't know what Mr. Cammack was going
18 to do. It appeared that Mr. Paul was controlling
19 this because --

20 MR. LITTLE: Object to the narrative and
21 speculation.

22 MR. HARDIN: I asked him why --

23 PRESIDING OFFICER: Sustained.

24 MR. HARDIN: I asked him why he went, what was
25 in his mind.

1 Q. (BY MR. HARDIN) I -- let me ask you this: What
2 did you expect the consequences being of your going to the
3 FBI?

4 A. I feared we would get fired.

5 Q. And was that the sense and mood of the whole group?

6 A. I think so. I think we all knew this was an
7 incredibly dangerous and unique but outrageous situation. We
8 were the only ones that could stop it, and we had to.

9 Q. When you went to the FBI, did you take any
10 documents?

11 A. Did not take any documents.

12 Q. Would the documents all have been the property of
13 the AG's Office?

14 A. Yes.

15 Q. So is that why you didn't take any documents? Just
16 yes or no.

17 MR. LITTLE: Objection, leading.

18 Q. (BY MR. HARDIN) Why did you not take any
19 documents?

20 PRESIDING OFFICER: Sustained?

21 MR. HARDIN: Excuse me.

22 Q. (BY MR. HARDIN) Why did you not take any
23 documents?

24 A. I didn't take any because I felt like we were
25 making the initial report based on our eyewitness personal

1 knowledge of what we believed at that point to be criminal
2 behavior by the Attorney General.

3 Q. And so when you went, did you take evidence with
4 you?

5 A. I took my personal knowledge and the others took
6 theirs.

7 Q. All right. Is that evidence?

8 A. Absolutely. We were eyewitnesses.

9 Q. So if a person is the victim of an aggravated
10 robbery and reports it to the police, would it quit being
11 evidence if just they report it as opposed to taking
12 documents?

13 MR. LITTLE: Objection, leading and
14 relevance.

15 A. Their personal experience --

16 PRESIDING OFFICER: Hold on. Sustained.

17 Q. (BY MR. HARDIN) What did you take with you that --
18 would you -- first of all, all of y'all going --

19 A. Yes.

20 Q. -- did you take evidence in the meaning of
21 evidence?

22 A. Yes.

23 Q. What did you take with you that was evidence?

24 A. Our personal eyewitness knowledge, our personal
25 experiences, our personal conversations with the Attorney

1 General, our personal -- personal experience of him being --
2 of him pressuring us to do things that were improper,
3 unethical, and illegal.

4 Q. In your experience, how often is the initial report
5 by a citizen of something that they consider criminal
6 conduct, how often is -- is that where the witnesses come in
7 without any documents just to tell you what they believe they
8 saw, they know that they think is improper? How -- how often
9 is that the way it gets to your desk?

10 MR. LITTLE: Objection, relevance.

11 MR. HARDIN: It's very relevant.

12 PRESIDING OFFICER: Overruled.

13 MR. HARDIN: Thank you.

14 A. That is very common.

15 Q. (BY MR. HARDIN) So if a person walks in to report
16 what they believe is a criminal offense or improper conduct
17 that should be investigated, do you send them away if they
18 don't have paper?

19 A. No, sir.

20 Q. So what is your testimony as to whether or not how
21 much from how many people evidence was presented to the FBI
22 with a request for them to investigate?

23 A. The meeting lasted almost four hours. It consisted
24 of us sitting around the conference table with two FBI
25 agents, and our attorney Johnny Sutton was present. The FBI

1 agents asked us to go around the table in turn starting with
2 Jeff Mateer and tell our entire story. And as I said, it
3 took almost four hours. That was four hours of eyewitness,
4 personal knowledge from people directly involved with the
5 Attorney General, the events I've described and the events
6 the others were involved in, the others being the
7 whistleblowers.

8 Q. Mr. Penley, after that meeting, did you, yourself,
9 file any documents to attempt to or to quash the subpoenas
10 that you had learned had been filed?

11 A. Yes.

12 Q. Yes or no. That's all I'm asking you.

13 A. Yes.

14 Q. And why was it that you filed a motion to quash
15 those subpoenas?

16 A. Because those subpoenas were improper and they had
17 to be stopped.

18 Q. All right. And what was improper about those
19 subpoenas?

20 A. Number one, Brandon Cammack was not a special
21 prosecutor, yet that's how he represented himself to the
22 Travis County DA's Office.

23 Q. Now, at the end of the day after those subpoenas
24 were quashed, what happened for -- with you in terms of
25 whether or not you went to the media or anything else? Did

1 you?

2 A. I've never gone to the media, other than I think
3 our attorneys filed -- may have written an editorial sometime
4 earlier this year.

5 Q. Was -- at that time, what was the Attorney
6 General's response in the media that you folks felt obligated
7 to respond to?

8 A. The following week, the week of October the 5th,
9 the Attorney General's Office issued two press releases that
10 made negative comments about the group of whistleblowers,
11 claiming that we had impeded an investigation, claimed that
12 we were rogue employees, and later the Attorney General
13 claimed we had even committed crimes.

14 Q. What was your -- your group's response to that?

15 A. Well, everybody was outraged.

16 Q. All right. Let me ask you this: Did y'all -- are
17 you one of the plaintiffs in the whistleblower lawsuit?

18 A. Yes, sir. I'm one of four plaintiffs.

19 Q. Why did you decide to sue?

20 A. I sued because I was damaged by the Office's
21 actions in violation of the whistleblower statute.

22 Q. And what financial impact did this all have on you?

23 A. It had a big impact. After -- number one, I was
24 put on investigative leave on October the 2nd by order of the
25 Attorney General. On November 2nd, a month later, I was

1 fired illegally under the Whistleblower Act. I was given
2 ridiculous reasons for the firing.

3 Q. What were the reasons you were given?

4 A. The reasons I recall -- and these came from the new
5 first assistant who got rid of all eight of us within 45
6 days. He said I had lost the Attorney General's trust. I
7 had violated --

8 MR. LITTLE: Objection, hearsay.

9 MR. HARDIN: I asked for the reasons he was
10 given for firing.

11 PRESIDING OFFICER: Overruled.

12 A. He said I had lost the Attorney General's trust,
13 number one. Number two, he claimed I used an insubordinate
14 tone when he demanded to have my cell phone handed over to
15 him so he could examine it without a search warrant.

16 Q. (BY MR. HARDIN) What -- what is that? What is
17 that about?

18 A. He claimed there were public information requests
19 to the Office of the Attorney General, and he demanded to see
20 my text messages.

21 Q. All right. Now, does that all become part of
22 litigation later?

23 A. It became part of the litigation.

24 Q. All right.

25 A. And then the third reason was --

1 Q. What was -- yeah, what was the third reason?

2 A. Yeah. Reason number three, he claimed that I had
3 violated a direct instruction from the Attorney General when
4 I filed the motion to quash and when I sent a cease and
5 desist letter to Brandon Cammack, and that is untrue. He
6 claimed that on September 16th when the Attorney General
7 asked me for information about the documents I wanted from
8 Michael Wynne and Nate Paul, at the end of that meeting, the
9 Attorney General said, Don't do anymore on this. The context
10 was, don't ask --

11 Q. That's okay. Hold on. I really, really want to
12 finish up here with you to ask you this: After all you've
13 been telling the jury about, after all you've been doing
14 differently, would you do anything differently?

15 A. No, sir. I'd do the same thing all over again
16 because it was the right thing to do and the only thing we
17 could do, other than stand by silently and let crimes be
18 committed. The agency was being abused; the laws were being
19 abused. The behavior and the conduct of the Attorney General
20 of Texas --

21 MR. LITTLE: Object to the narrative.

22 A. -- was outrageous.

23 MR. LITTLE: Object to the narrative.

24 PRESIDING OFFICER: Sustained. Sustained.

25 MR. HARDIN: I'll pass the witness.

1 PRESIDING OFFICER: Mr. Little?

2 MR. LITTLE: Thank you, Mr. President. Just
3 for planning purposes, when do you intend to break? I
4 believe it's 11:55.

5 PRESIDING OFFICER: Take a break at 12:15.

6 MR. LITTLE: Wonderful.

7 PRESIDING OFFICER: Does that work? Or
8 would you prefer to take the break now and start anew after
9 lunch?

10 MR. LITTLE: I'd like to take a few minutes
11 and get started, if we might.

12 PRESIDING OFFICER: Your witness.

13 CROSS-EXAMINATION

14 BY MR. LITTLE:

15 Q. Mr. Penley, I'm going to hand you some of your
16 notes here so that you've got them.

17 MR. LITTLE: You need something, Rusty? You
18 left your cup of water? All right. Documents for you.

19 At this time, Mr. President, I'm tendering to
20 the witness Exhibits 1009 to 1021. This is a series of notes
21 in Mr. Penley's hand. May I approach?

22 PRESIDING OFFICER: Yes. Have they already
23 been admitted or you're admitting them? Okay.

24 Q. (BY MR. LITTLE) Now, Mr. Penley --

25 PRESIDING OFFICER: Do they have a copy?

1 MR. LITTLE: They do. I've handed them to
2 Mr. Hardin. We move for admission of Exhibits AG 1009 to
3 1021.

4 PRESIDING OFFICER: Any objection?

5 MR. HARDIN: Yes. I think these are -- to
6 repeat a famous objection, these are all hearsay, every one
7 of them. They're the same kind of thing we offered to
8 introduce through him and he objected to as hearsay. If he
9 withdraws his objection to the notes of our witness, then
10 I'll withdraw my objection to these. Otherwise, sauce for
11 the goose and the gander and all that jazz works.

12 MR. LITTLE: Mr. President, may I respond?

13 PRESIDING OFFICER: Yes, you may.

14 MR. LITTLE: These notes -- these notes that
15 I've handed to Mr. Penley are notes of his present recorded
16 recollection from the meetings with the Attorney General in
17 various formats. Mr. Hardin has already offered House 216,
18 which is his notes from September 26th. These are all of
19 Mr. Penley's notes, and they are extensive.

20 MR. HARDIN: I'm sorry, I don't know how
21 that's any different than what we just talked about.

22 PRESIDING OFFICER: I'm not sure I understood
23 your reply.

24 MR. LITTLE: Recorded recollection is an
25 exception to hearsay, and these are his notes just like House

1 216 which was admitted and offered earlier.

2 MR. HARDIN: If I may be heard. I think his
3 memory is incorrect. 216 was not admitted. I asked and he
4 objected to hearsay.

5 PRESIDING OFFICER: I remember he did not
6 object. He said they were going to use those notes is my
7 recollection. We can check the record.

8 MR. LITTLE: That's right, and it was offered
9 and admitted.

10 PRESIDING OFFICER: Offered and admitted. He
11 did not object.

12 MR. HARDIN: I think that was 214.

13 PRESIDING OFFICER: No. That's when there was
14 confusion between 214 and 216.

15 MR. HARDIN: Yes.

16 PRESIDING OFFICER: So the 214, if my
17 recollection is correct, were the outline before the meeting
18 and 216 is the recollection after the meeting. And he did
19 not object to that.

20 MR. HARDIN: I --

21 PRESIDING OFFICER: I may have not -- maybe
22 the clerk did not admit them into evidence, but you did not
23 object. I remember you saying you were going to use those --

24 MR. LITTLE: That's right.

25 PRESIDING OFFICER: -- in cross.

1 MR. HARDIN: That's fine. If it's admitted,
2 then that's great. If he wants to admit these under the same
3 theory, then I have no objection.

4 MR. LITTLE: Great.

5 PRESIDING OFFICER: Okay. These notes are
6 admitted under evidence, which the numbers are?

7 MR. LITTLE: 1009 to 1021.

8 PRESIDING OFFICER: 1009 through 1021.

9 (AG Exhibit Nos. 1009 through 1021 were
10 admitted.)

11 MR. LITTLE: Thank you.

12 Q. (BY MR. LITTLE) Now, Mr. Penley, just to be clear,
13 we need to clarify something for the ladies and gentlemen of
14 the jury, and I -- I'm almost positive you have the answer.
15 You conducted an investigation, right?

16 A. Yes, I did.

17 Q. And it wasn't a review, right? It was an
18 investigation.

19 A. Technically the office called it a review. I'm
20 using the term "investigation" the way I mean the term
21 "investigation." We met with the witness. We looked at the
22 evidence they gave us. We drew a conclusion, and that was
23 the end of it.

24 Q. That sounds like an investigation to me. Don't you
25 agree?

1 A. I do. It's semantics.

2 Q. You just never opened a file, right?

3 A. No, I didn't open a file. There was no basis to
4 open a file and pursue any charges.

5 Q. David Maxwell -- well, you don't -- hold on a
6 second. Let's be super clear for the jury. You don't --

7 MR. LITTLE: If you could, Mr. Hardin. He's
8 beeping over there.

9 Q. (BY MR. LITTLE) Let's be clear for the jury. You
10 do not need to bring charges to open an investigative file at
11 the Office of Attorney General, right?

12 A. No.

13 Q. And you didn't open a file and David Maxwell did
14 not either, did you?

15 A. I know I didn't open a file.

16 Q. Well, you know David Maxwell didn't open a file
17 either, did you?

18 A. I've heard that.

19 Q. Yes. And to be clear, this was not an inquiry; it
20 was not a review. You call it an investigation, yes?

21 A. That's my term. David Maxwell's term was review.

22 Q. There was nothing illegal about conducting the
23 investigation that you conducted, was there?

24 A. We didn't take any illegal actions, no.

25 MR. LITTLE: Object, nonresponsive, just so I

1 can get a yes, no.

2 PRESIDING OFFICER: Sustained.

3 Q. (BY MR. LITTLE) There was nothing illegal about
4 the investigation you conducted, true?

5 A. That I conducted, that's true.

6 Q. That anyone at the OAG's office conducted, true?

7 A. No.

8 Q. Let's be clear about this. Did you see Mr. Maxwell
9 break any laws in conducting this investigation?

10 A. No, I did not.

11 Q. Did you break any laws in conducting this
12 investigation?

13 A. Absolutely not.

14 Q. Were you asked to do anything illegal?

15 A. Yes.

16 Q. Tell the ladies and gentlemen of the jury about
17 that.

18 A. We were asked to obstruct a federal investigation.
19 That's a federal felony.

20 Q. Interesting. Are you aware of Fifth Circuit and
21 Ninth Circuit precedent that says you cannot obstruct an FBI
22 investigation because it is not an official proceeding,
23 Mr. Penley? You're familiar with that authority, aren't you?

24 A. No, I'm not familiar with that authority.

25 Q. Well, you worked at the U.S. Attorney's Office for

1 17 years. Surely you came across the fact that you cannot
2 obstruct an FBI investigation as it is not an official
3 proceeding, right?

4 A. I'm sorry, I lost your question there. What are
5 you asking me?

6 Q. Yeah. In your 17 years working at the office of
7 the U.S. Attorney in the Northern District of Texas, did you
8 ever come across the precedent -- the legal precedent that
9 one cannot obstruct an FBI investigation because it is not an
10 official proceeding?

11 A. I was never presented with that issue. And I was
12 there 16 years, not 17, just to be correct.

13 Q. Did you ever once, in your 16 years, prosecute
14 obstruction of justice relative to an FBI investigation?

15 A. No. That was never presented to me as a case.

16 Q. Not one time, true?

17 A. No. No, I mean, your statement is true. I did not
18 do that.

19 Q. I want to be clear. You gave us a time line.
20 We're going to go back through the time line in detail in a
21 minute. But in September, you became concerned that the
22 Attorney General might fire you, correct?

23 A. I think I became concerned after the August 12th
24 meeting when he did a total --

25 MR. LITTLE: Objection, nonresponsive.

1 A. -- reversal on me.

2 PRESIDING OFFICER: Sustained.

3 Q. (BY MR. LITTLE) You testified on direct that in
4 September of 2020 you became concerned that the Attorney
5 General was going to fire you, true?

6 A. I don't agree with the way you're wording the
7 question. I was concerned in August and September.

8 Q. I'm only asking you about September.

9 A. Okay.

10 Q. I'm going to ask you about August in a minute.

11 In September of 2020, were you concerned the
12 Attorney General was going to fire you?

13 A. Yes.

14 Q. And isn't it interesting that you came up with
15 these theories of your boss's criminal escapades after you
16 thought he was going to fire you, right?

17 A. What theories are you talking about, sir?

18 Q. Well, you and David Maxwell got together and you
19 asked a series of questions, right? Is Ken Paxton being
20 bribed was one of them, true?

21 A. Yes, we wondered about that.

22 Q. Is Ken Paxton being blackmailed, that was one of
23 them, true?

24 A. Yes, we discussed that.

25 Q. Does Ken Paxton owe Nate Paul any money, true?

1 A. I'm sure that's something that came into my mind.

2 Q. Does Ken Paxton have -- or does Nate Paul have some
3 kind of information on Ken Paxton, that was one of the things
4 you talked about, right?

5 A. It's certainly something I thought about.

6 Q. But you only started talking about those things
7 with David Maxwell when you became -- after you became
8 concerned that Ken Paxton was going to fire you, true?

9 A. No, that's not true.

10 PRESIDING OFFICER: Counsel -- do we know
11 where this music is coming from, Bailiff?

12 MR. LITTLE: The bagpipes?

13 PRESIDING OFFICER: Yes.

14 MR. LITTLE: It's coming from the rotunda. I
15 think now probably would be a good time for a break,
16 Mr. President.

17 PRESIDING OFFICER: We will take a break now.
18 We will return here at 1:00 p.m. sharp.

19 (Lunch break recessed at 12:04 p.m.)
20
21
22
23
24
25

C E R T I F I C A T E

THE STATE OF TEXAS) (

COUNTY OF TRAVIS) (

I, Kim Cherry, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 11th day of September, 2023.

/s/ Kim Cherry
KIM CHERRY, CSR, RMR
Texas Certified Shorthand Reporter
CSR No. #4650 Expires: 7/31/24
kcherry.csr@gmail.com