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

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

TRIAL
VOLUME 5 - PM 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
Lorrie A. Schnoor, CSR, RDR, CRR

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22 Representative Briscoe Cain
23 Representative Terry Canales
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Representative Jeff Leach
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VOLUME 5 - PM SESSION

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1 P R O C E E D I N G S

2 MONDAY, SEPTEMBER 11, 2023

3 (1:00 p.m.)

4 THE BAILIFF: All rise. The Court of
5 Impeachment of the Texas Senate is now in session.6 PRESIDING OFFICER: You may be seated.
7 Court is back in session.

8 Bailiff, call in the witness, please.

9 Mr. Little, that's blocking a little bit
10 of their view. If you put it more in the -- do you want
11 the jurors to see it?12 MR. LITTLE: I think that would be -- I
13 think probably the best place would be behind the
14 witness stand.15 PRESIDING OFFICER: Okay. I don't know if
16 they can see it from there, so you may have to point it
17 out.18 Are you going to be referring to it from
19 the podium to here?

20 MR. LITTLE: I might write on it.

21 PRESIDING OFFICER: Okay. Can you see
22 from that side?

23 They cannot see.

24 MR. LITTLE: Well, then maybe we'll just
25 ditch it.

1 PRESIDING OFFICER: I think you can put
2 it -- oh.

3 Mr. Little.

4 MR. LITTLE: Thank you, Mr. President.

5 MARK PENLEY,

6 having been first duly sworn, testified as follows:

7 CROSS-EXAMINATION (CONTINUED)

8 BY MR. LITTLE:

9 Q. Mr. Penley, have you ever testified under oath
10 before today?

11 A. Yes, I have.

12 Q. And --

13 A. Excuse me, I'm sorry.

14 Yes, I've testified under oath.

15 Q. Did you testify under oath before the House
16 Board of Managers?

17 A. No.

18 Q. Did any of the House Board of Managers
19 Andrew Murr, Jeff Leach, Charlie Geren, any of them put
20 you under oath to provide testimony in connection with
21 the impeachment proceedings in the House?

22 A. No, I did not testify in the House.

23 Q. In fact, when you --

24 A. Not in a proceeding in the House. I did speak
25 with their investigators.

1 Q. Did you review the video of your meeting with
2 the investigators before testifying here today?

3 A. No.

4 Q. And during that proceeding, isn't it true that
5 Ms. Terese Buess, who was hired as one of the
6 investigators, told you that there was a legislative
7 privilege that covered your testimony in that
8 proceeding?

9 A. I don't know that she told me that. It was my
10 understanding there was a legislative privilege.

11 Q. Just to be clear, when you testified there on
12 video, did you tell the truth, the whole truth and
13 nothing but the truth, so help you God?

14 A. Yes, that was my intent.

15 Q. Yes, and -- it was your intent?

16 A. Yeah. I mean, I may have gotten a date wrong.
17 I may have gotten an event occurred one day instead of
18 another day, but it was my intention to tell the truth,
19 the whole truth and nothing but the truth, yes, sir.

20 Q. Of course.

21 So if we have your statement from that
22 interview that was conducted by the House Board of
23 Managers and their investigators, we can rely on it as
24 being true, correct?

25 A. I believe so. That was my intention.

1 Q. Okay. All right.

2 MR. LITTLE: At this time, Your Honor, I'm
3 going to introduce AG Exhibit 68. May I approach the
4 witness?

5 PRESIDING OFFICER: Yes, you may.

6 MR. LITTLE: Thank you.

7 PRESIDING OFFICER: It's not on our list,
8 so you'll have to submit it at the right time.

9 MR. LITTLE: And we move for admission of
10 AG Exhibit 68.

11 PRESIDING OFFICER: Any objection?

12 MR. HARDIN: No objection, Your Honor.

13 PRESIDING OFFICER: Admit AG 68 to
14 evidence.

15 (AG Exhibit 68 admitted)

16 MR. LITTLE: Erick, Exhibit 68, if you
17 would. Thank you so much.

18 Q. (BY MR. LITTLE) All right. To be clear,
19 Mr. Penley, this is the referral that came to your
20 office from the Travis County District Attorney's Office
21 and it was dated June 10 of 2020, correct?

22 A. That's correct.

23 Q. It was received in your office sometime around
24 June 17 of 2020, correct?

25 A. That's my understanding, yes.

1 Q. And when you got there, neither David Maxwell
2 nor you were excited about the assignment at all and
3 neither one of you really wanted to move forward with
4 it, correct?

5 A. That's true.

6 Q. And what Nate Paul was accusing these people
7 here, or at least complaining about, if true it was a
8 20-year felony. You would agree with that, correct?

9 A. An alteration of a federal or a document, yes,
10 it would be a 20-year felony.

11 Q. And there's a state analogue to the federal
12 statute concerning alteration of government documents,
13 true?

14 A. Yes, I believe that's 37.10.

15 Q. So there was a state offense that had been
16 alleged in this referral, true?

17 A. He was claiming there were state law offenses,
18 yes.

19 Q. Yes. That's what I said. There is a state
20 offense alleged in this referral, true?

21 A. Yes, if you believe what Nate Paul was saying.

22 Q. Yes. And it wasn't a crime to follow up on
23 this. It wasn't obstruction of justice, it wasn't
24 interference with an FBI investigation, true?

25 A. To a certain point, I agree.

1 Q. Very good.

2 In fact, when you were working at the U.S.
3 Attorney's Office there was an FBI employee in the U.S.
4 Attorney's Office -- or I'm sorry, in the Northern
5 District of Texas. His name was Jeffrey Fudge. Do you
6 remember that person?

7 A. I don't.

8 Q. He was an FBI employee who was accused,
9 indicted, and convicted of plugging other people's
10 information into government databases and letting them
11 know if there were investigations about them. You
12 familiar with that?

13 A. I'm not.

14 Q. It happened your first year at the U.S.
15 Attorney's Office.

16 MR. HARDIN: Pardon -- pardon me, Your
17 Honor. We're talking about something he doesn't know
18 anything about. Now he's testifying about it, and I
19 object to that.

20 PRESIDING OFFICER: Overruled. He can ask
21 the question, but be careful of your line of
22 questioning.

23 MR. LITTLE: I certainly will.

24 Q. (BY MR. LITTLE) Have you ever heard of an FBI
25 employee named Kevin Clinesmith?

1 A. I believe so.

2 Q. Yes. At the same time that you were doing this
3 investigation, an FBI employee was being investigated
4 and subsequently indicted for providing false
5 information in pursuit of a FISA warrant, correct?

6 A. I've heard that.

7 Q. Operation Crossfire Hurricane. You've heard of
8 that before, correct?

9 A. I have.

10 Q. Yes. And so the allegations that are being
11 made here, it's not a crime to follow-up on them and a
12 state offense is alleged. True?

13 A. I felt it was appropriate to do an initial
14 review.

15 MR. LITTLE: Object. Nonresponsive.

16 PRESIDING OFFICER: Sustained.

17 Q. (BY MR. LITTLE) True?

18 A. Could you ask the question again, please?

19 Q. Yes.

20 The state offenses that are alleged here,
21 it wasn't a crime to follow-up on them, was it?

22 A. No, it wasn't a crime to follow-up.

23 Q. No. But your testimony earlier was you hoped
24 to slow walk it?

25 A. Yes.

1 Q. Did you tell Michael Wynne that?

2 A. No.

3 Q. Did you tell Nate Paul that?

4 A. No.

5 Q. Did you tell your boss Ken Paxton that?

6 A. No.

7 Q. And, in fact, between June 17 and July 6, 2020,
8 you only talked to David Maxwell about it, right?

9 A. Between what dates?

10 Q. June 17 and July 6 of 2020, you only talked to
11 David Maxwell about it?

12 A. That's not correct.

13 Q. That was your testimony on direct. Would you
14 like to correct it?

15 A. I would, if I may.

16 Q. Please.

17 A. I'm sure I talked to Jeff Mateer as well. In
18 fact, we talked to Jeff Mateer when he handed us the
19 referral on June the 18th probably.

20 Q. We may be talking past one another. You did no
21 investigation between June 17 and July 6, true?

22 A. We didn't do any, no.

23 Q. Didn't do any work, true?

24 A. That's true.

25 Q. Okay. I'm going show you what's been marked as

1 AG Exhibit 88, or at least a portion of it.

2 MR. LITTLE: We move for admission of
3 AG 88.

4 PRESIDING OFFICER: Any objection,
5 Mr. Hardin?

6 MR. HARDIN: No, Your Honor.

7 PRESIDING OFFICER: It's admitted into
8 evidence, AG 88 -- 68 -- I'm sorry. Say that number.

9 MR. LITTLE: 88.

10 PRESIDING OFFICER: 88. I see it. Thank
11 you.

12 (AG Exhibit 88 admitted)

13 MR. LITTLE: Mr. Arroyo, if you could
14 publish AG 88 on Bates page HBOM 181004. And move ahead
15 three pages from there. And blow up all the text in
16 writing at the top, please.

17 Q. (BY MR. LITTLE) These are your notes,
18 Mr. Penley, from your meeting with Ken Paxton on July 6
19 of 2020, true?

20 A. Yes.

21 Q. And in that meeting, at the top you write:
22 Tampering with docs is a state issue per Mindy of Travis
23 County.

24 Who is Mindy?

25 A. Mindy Montford, the first assistant at the

1 Travis County District Attorney's Office.

2 Q. Did she tell you that?

3 A. No.

4 Q. You didn't know enough state law to know that
5 there was a state offense alleged at this point in time,
6 did you?

7 A. That's incorrect.

8 Q. So you knew there was a state offense alleged.
9 You didn't need Ken Paxton or Mindy Montford to tell you
10 that, true?

11 A. I believe I had discussed that with David
12 Maxwell.

13 Q. You learned it from David Maxwell, right?

14 A. I believe so.

15 Q. Did you look up the law yourself?

16 A. I did.

17 Q. Good.

18 Next line says: He alleged they changed
19 the search warrant.

20 The next line after that, if you would,
21 read that to the ladies and gentlemen of the jury,
22 please.

23 A. Ken just wants the truth, period.

24 Q. Ken just wants the truth.

25 And to be clear, for the ladies and

1 gentlemen of the jury, who is Ken?

2 A. That's attorney general Ken Paxton.

3 Q. He told you he just wanted the truth, true?

4 A. He said he did.

5 Q. Yeah. And you believed him at the time, true?

6 True?

7 A. At the time I believed him, yes.

8 Q. Yes. At the time you believed him?

9 A. That's right.

10 Q. Okay.

11 A. Not later.

12 Q. And so when you made these notes, you were
13 making notes of what Ken Paxton was saying, and he was
14 telling you he just wanted the truth?

15 A. That's right. I wrote down what he said.

16 Q. The truth about what?

17 A. About what happened with Nate Paul.

18 Q. And did you tell him you would get right on it?

19 A. We did. We started trying to schedule a
20 meeting.

21 Q. I don't think so. Let's move on to our next --

22 MR. HARDIN: Object to the sidebar.

23 MR. LITTLE: Withdrawn.

24 PRESIDING OFFICER: Sustained.

25 Q. (BY MR. LITTLE) This is another -- this is

1 another portion of Exhibit AG 88.

2 MR. LITTLE: Mr. Arroyo, if you could move
3 to the next page 005.

4 Q. (BY MR. LITTLE) Mr. Penley, these are your
5 notes of a subsequent meeting with your boss Ken Paxton,
6 true?

7 A. Yes.

8 MR. LITTLE: And if you could, Mr. Arroyo,
9 blow up the bottom half of that page, please.

10 Q. (BY MR. LITTLE) The date of this meeting is on
11 or around July 16. Yes?

12 A. Well, that's my best belief. I didn't date
13 this page, and I don't know specifically when it was.
14 But from looking at other information, that's my belief,
15 this happened on July 16th.

16 Q. And how long had you been working at the
17 attorney general's office at this point?

18 A. About nine months.

19 Q. About nine months. Less than a year certainly,
20 true?

21 A. Yes, I only worked there a year.

22 Q. And you weren't -- you wrote the word "Ken,"
23 and you bolded it, correct?

24 A. Yes.

25 MR. LITTLE: Mr. Arroyo, can you bold

1 that -- can you highlight that for me?

2 Q. (BY MR. LITTLE) And to the right of it, you've
3 wrote an asterisk. And it says: He's embarrassed?

4 A. That's what he said.

5 Q. He was embarrassed with you and David Maxwell,
6 true?

7 A. He was embarrassed at the lack of progress on
8 the Nate Paul matter.

9 Q. Because you hadn't done anything, true?

10 A. That's true.

11 Q. Below it says: We've had this for six weeks,
12 exclamation point.

13 And Ken Paxton was upset with you that in
14 six weeks, you and David Maxwell had done donut,
15 nothing, true?

16 A. Which part of the question --

17 Q. Nothing?

18 A. -- do you want me to answer first? You asked
19 me if we had it for six weeks. That is true. And it's
20 also true we had done no investigating in that six
21 weeks.

22 Q. Ken Paxton was upset that you had done nothing
23 for six weeks on a referral from Travis County that he
24 was aware of, true?

25 A. That's true.

1 Q. Down, if you would, there's some discussion
2 about Texas Monthly. Do you see the all caps statement
3 that you wrote in your notes?

4 A. I do.

5 MR. LITTLE: And, Mr. Arroyo, if you would
6 highlight that portion. And the portion below it and
7 the line below it. You're on it. And below it.

8 Q. (BY MR. LITTLE) It says: Seek the truth, two
9 exclamation points.

10 And that's what your boss Ken Paxton told
11 you to do, true?

12 A. That's what he said. I wrote down what he
13 said.

14 Q. And what he said was to tell you to seek the
15 truth, yes?

16 A. Yes, that's what he said. And that's what we
17 did.

18 Q. And below that it says: Let results be what
19 they are.

20 True?

21 A. That's what he said, and that's what I wrote
22 down, true.

23 Q. But at that point in time and that day he did
24 not tell you to interfere with an FBI investigation, did
25 he?

1 A. Not that day, no.

2 Q. He did not tell you to obstruct justice, did
3 he?

4 A. Not that day, no.

5 Q. No, he didn't.

6 MR. LITTLE: Mr. Arroyo, if you would,
7 please bring up Exhibit 1 -- AG 1009.

8 This has already been entered into
9 evidence, Mr. President, before the break.

10 Q. (BY MR. LITTLE) Exhibit AG 1009 is on the
11 screen here, and these are your notes from July 23,
12 2020, true?

13 A. Correct.

14 Q. And these are notes from your review of Nate
15 Paul's earlier meeting with David Maxwell of which you
16 were not a participant, true?

17 A. That's true.

18 Q. Yes.

19 MR. LITTLE: And in the middle,
20 Mr. Arroyo, it says: The agents didn't.

21 If you can highlight that portion.

22 Q. (BY MR. LITTLE) It says: The agents didn't
23 leave search warrants behind.

24 Violation of the law, true?

25 A. No, it's not a violation of the law.

1 Q. Is the Federal Code of Criminal Procedure the
2 law or not?

3 A. It's a procedural code. It's not a statute.

4 Q. Okay. They broke the law as expressed in the
5 Code of Criminal Procedure, true?

6 A. They broke the procedural rules, the Federal
7 Code of Criminal Procedure, if that was true.

8 Q. Let's turn the page.

9 MR. LITTLE: Next page, Mr. Arroyo.

10 In the middle of the page there's a
11 section that says: Metadata on PDF. If you could zoom
12 in on that. It says -- actually, don't zoom in on that
13 whole thing. Just get the line below that as well --
14 was created on 9-6.

15 Q. (BY MR. LITTLE) Can you read that okay,
16 Mr. Penley?

17 A. I can. Thank you.

18 Q. All right. Very good.

19 It says: Metadata on PDF was created on
20 9-6?

21 A. Yes.

22 Q. If some -- you would agree with me if someone
23 was manipulating federal search warrants after they had
24 already been served or after they had already been
25 created, that is a problem, yes?

1 A. Could you repeat the question? You said
2 "manipulated." I don't understand what you mean.

3 Q. If someone were changing search warrants after
4 a judge signed them, that would be bad, true?

5 A. I'd agree if they were changing the text.

6 Q. Yes. Not just redactions, but changing the
7 actual text, right?

8 A. If they were changing the text that the
9 magistrate judge had approved, that would be a crime.

10 MR. LITTLE: And the next page, if you
11 would, Mr. Arroyo. About three-quarters of the way down
12 there's a paragraph that says "claim" above an asterisk,
13 if you could zoom in on that for us.

14 No, above that, please. The next
15 paragraph above.

16 Q. (BY MR. LITTLE) Yeah, the allegation here is
17 that the search warrant for the file storage company
18 Contego was fabricated after the fact, yes?

19 A. That was Mr. Paul's allegation, yes.

20 Q. All right.

21 MR. LITTLE: Next page, please.

22 Q. (BY MR. LITTLE) And on the last page you wrote
23 the notes: Rani Sabban, TFO.

24 That stands for task force officer, yes?

25 A. Yes.

1 Q. State Securities Board, yes?

2 A. Yes.

3 Q. How did he get the name Rani Sabban?

4 A. Well, I know that he met Rani Sabban because he
5 claimed that Rani Sabban had been executing the search
6 at his residence, and they spoke to each other.

7 Q. So what you're saying is -- I don't want to put
8 words in your mouth -- Nate Paul knew Rani Sabban was
9 involved with the search warrant because he met him
10 during the execution of the search warrant, correct?

11 A. Yes, he had personal knowledge of Rani Sabban
12 because he met him during the search.

13 Q. Not because Nate Paul got some secret document
14 from someone else, true?

15 A. No, that's absolutely false. And you've
16 misstated my testimony.

17 MR. LITTLE: I'll object as nonresponsive
18 to everything after "no."

19 PRESIDING OFFICER: Sustained.

20 Q. (BY MR. LITTLE) Now, we're going to look at AG
21 Exhibit 110.

22 MR. LITTLE: Mr. Arroyo, if you would, AG
23 Exhibit -- I'm sorry not 110, 1010. There we go.

24 Q. (BY MR. LITTLE) All right. These are your
25 notes from a meeting with Michael Wynne on July 28th of

1 2020, true?

2 A. Those are my notes from a phone call with
3 Michael Wynne, that's correct.

4 Q. Yes. A phone call.

5 And at the top it says: Wants to come to
6 Austin to explain papers.

7 Yes?

8 A. Yes.

9 Q. And below that, it says: The agents didn't
10 leave copies at the premises.

11 But you already knew that, true?

12 A. I knew that from reviewing the first meeting,
13 the July 21st meeting video, yes.

14 Q. Next line down says: Inconsistent signatures
15 and stamps.

16 Yes?

17 A. That's what I wrote down because that's what
18 Mr. Wynne told me, yes.

19 Q. Yeah. And these notes are from a phone call in
20 advance of an August 5, 2020 meeting with Mr. Wynne
21 (sic) and his lawyer, yes?

22 A. Correct. We set that meeting date during this
23 call.

24 Q. Yes. And by this point in time, Mr. Penley,
25 had you done any investigating at all?

1 A. Yes.

2 Q. And what did that include?

3 A. Well, it included watching the video of the
4 July 21st meeting where Mr. Maxwell met with Mr. Wynne
5 and Mr. Paul, listened to their complaints, listened to
6 their theories, so I had reviewed all that. And he
7 wanted to come have a second meeting, and I agreed to
8 it.

9 Q. All you did was listen to them at this point in
10 time, true?

11 A. Yes, that was an initial report by --

12 MR. LITTLE: Object, nonresponsive to
13 everything after "yes."

14 MR. HARDIN: Can the witness finish his
15 answer, please?

16 PRESIDING OFFICER: Sustain the
17 objection -- earlier objection.

18 Q. (BY MR. LITTLE) I'm going to show you what --

19 PRESIDING OFFICER: Please let him have
20 time to finish.

21 MR. LITTLE: I will do my best.

22 Q. (BY MR. LITTLE) Now we're going to look at
23 Exhibit 1011, AG Exhibit 1011. And these are your notes
24 from a meeting with Nate Paul and Michael Wynne, true?

25 A. Yes, that's the August 5th meeting.

1 Q. And you can see there by your first asterisk --
2 hold on -- it says: Thumb drive of docs produced?

3 A. That's true.

4 Q. They gave you a thumb drive, yes?

5 A. They did, yes.

6 Q. Now I want you to scroll down. Do you see the
7 line that says J. Lane?

8 A. Yes, I see that.

9 Q. It says: J. Lane said he didn't have the
10 original search warrant.

11 Yes?

12 A. Well, I don't know if he did or he didn't.
13 That's what Michael Wynne told me.

14 Q. Yes. And so what Michael Wynne told you in
15 this meeting is that the magistrate, the federal
16 magistrate judge informed them that he did not have the
17 original search warrant, true?

18 A. That's what Michael Wynne said, true.

19 Q. And if that were true, that would be really
20 surprising if a federal magistrate, for whatever reason,
21 did not have the original search warrant, yes?

22 A. Yes, that would surprise me.

23 Q. Did you ever look for the original search
24 warrant?

25 A. How would I do that, sir?

1 Q. Did you call anyone?

2 A. I raised that with the attorney general and the
3 first assistant that that was an option.

4 MR. LITTLE: Object, nonresponsive.

5 Q. (BY MR. LITTLE) That was not my question.

6 PRESIDING OFFICER: Sustained.

7 Q. (BY MR. LITTLE) Did you call anyone at the
8 magistrate's office, a clerk, a deputy clerk, the
9 magistrate himself, yes or no?

10 A. No, I never called the federal magistrate or
11 his staff.

12 Q. Did you call Alan Buie, perhaps?

13 A. No, I did not.

14 Q. Did you call any of his deputies at the U.S.
15 Attorney's Office?

16 A. I did not.

17 Q. How hard would that have been to do?

18 A. It would have been problematic, in my view.

19 Q. It would have damaged your reputation and the
20 office's reputation potentially, true?

21 A. Not my reputation. I wasn't concerned about
22 that. I was concerned about the reputation of the
23 office and our work with the federal authorities in the
24 state of Texas.

25 Q. For you to call the feds, you would have

1 worried that that would have harmed the reputation of
2 the office?

3 A. Not to make a phone call but --

4 Q. Then why didn't you do it?

5 A. Because a phone call about this seemed to be
6 high risk to the functioning of the Office of the
7 Attorney General when we needed to work with federal
8 authorities or appear in federal court, which our
9 attorneys did all the time.

10 Q. That would have been high risk to make a phone
11 call. You're going to tell these senators it was high
12 risk for the Office of the Attorney General, for you to
13 pick up the phone and make a phone call, yes?

14 A. Not to make a phone call, no. But to make a
15 phone call about this, yes.

16 Q. Well, why didn't you do it?

17 A. The reason I didn't do it is because Nate Paul
18 was claiming there was a grand conspiracy between a
19 federal judge, two federal prosecutors, at least two
20 State Agencies represented as task force officers, and a
21 number of FBI agents. Nate Paul filed a civil suit
22 against a hundred law enforcement agents in federal
23 court in Austin over this, and I thought to call the
24 U.S. Attorney's Office and say we have any belief that
25 career AUSAs would be altering search warrants is crazy,

1 especially when they have an ongoing investigation
2 that's privileged.

3 Q. In any event, you didn't make the phone call,
4 true?

5 A. I did not. For the reasons state.

6 Q. Yeah. Isn't it true that in these videos,
7 first in the meeting with David Maxwell and Nate Paul
8 and his lawyer and then with you also, Nate Paul's own
9 lawyer said: We're not trying to interfere with the FBI
10 investigation?

11 Didn't he say that?

12 A. He may have. I don't have a specific
13 recollection.

14 Q. Isn't it true that Nate Paul's lawyer Michael
15 Wynne also told you: We don't necessarily think that
16 these are evil people. It may have been a comedy of
17 errors or they may have just made some bad choices and
18 not been able to get out of it?

19 A. I remember him saying --

20 MR. HARDIN: Pardon -- pardon me. Is he
21 soliciting hearsay? Surely not.

22 MR. LITTLE: If this -- it's testimony
23 from the video that you put in evidence about two hours
24 ago, Rusty.

25 MR. HARDIN: Doesn't matter. I just

1 simply asked: Are you asking what somebody else said
2 out of court? Isn't that what you've been arguing about
3 with me for the last week?

4 MR. LITTLE: Do you remember the videos
5 you put in this morning and the transcripts? It's from
6 there. I hope that clarifies it.

7 PRESIDING OFFICER: Overruled.

8 Q. (BY MR. LITTLE) All right. Now, let's go back
9 to Exhibit -- so just to be clear -- hold on.

10 A. Which exhibit?

11 Q. We're going to go to AG 1012, please.

12 MR. LITTLE: If you could, Mr. Arroyo.

13 Q. (BY MR. LITTLE) This is a meeting -- and you
14 are in this meeting with the criminal investigation
15 divisions forensics team, true?

16 A. Correct. And David Maxwell.

17 Q. And these are your notes, yes?

18 A. Yes.

19 Q. And you're talking about metadata, true?

20 A. Yes.

21 Q. And they told you that the results were
22 inconclusive, true?

23 A. That was their words, yes.

24 Q. Yes. They didn't tell you that there was no
25 proof of a crime or that no crime had been committed or

1 that a crime had been committed. They didn't tell you
2 any of those things, did they?

3 A. They said the metadata was inconclusive.

4 Q. And they didn't tell you that a crime had or
5 had not been committed, true?

6 A. That's right. And I wasn't asking --

7 MR. LITTLE: Object, nonresponsive to
8 everything after "that's right."

9 PRESIDING OFFICER: Sustained.

10 Q. (BY MR. LITTLE) Mr. Penley, focus with me.
11 Inconclusive means we don't know, doesn't it?

12 A. It means it doesn't prove anything. That's
13 what it means.

14 Q. It doesn't disprove anything either, does it?

15 A. That's right.

16 Q. It seems like if something is inconclusive it
17 might require further investigation, right?

18 A. It's possible.

19 Q. I'm going to show you what's been marked as
20 exhibit AG 88.

21 MR. LITTLE: Erick, if you can go back to
22 that. I'm going to bring the page to you so you can see
23 it.

24 If you would, Erick, go to the page ending
25 in 7, 007. That -- there, stop right there. Go back.

1 All right. Blow up all the text at the
2 top.

3 Q. (BY MR. LITTLE) Mr. Penley, you got out of the
4 meeting and you had Tina McCleod who works in IT said
5 she sent you an email: Metadata is, quote, data that
6 provides information about other data?

7 A. Yes. She sent me this email and -- because I
8 had sent her one.

9 Q. And at the bottom she said: Hope this helps.
10 Yes?

11 A. That's what she wrote.

12 Q. You asked her to send this to you, yes?

13 A. I did.

14 Q. Because you didn't know what the heck metadata
15 was before you walked in to that meeting, right?

16 A. That's not correct. I had a general impression
17 of what metadata was. Nate Paul is making specific
18 allegations that he could understand the metadata, and
19 he claimed it proved the search warrants have been
20 altered. And I was trying to go to our IT director who
21 was at the deputy level and see if I could get a more
22 definitive definition of metadata that would help me
23 analyze his claim.

24 Q. Of course. And so what had happened was on
25 this same day you had met with Nate Paul, his lawyers,

1 and your -- no?

2 A. No.

3 Q. Okay.

4 A. This was August the 6th.

5 Q. Yes.

6 A. This was the day after the meeting.

7 Q. Yes. So you met with your team, your forensic
8 team?

9 A. On August 6, yes.

10 Q. And then you got out of the meeting and said,
11 hey, Tina, can you send me a definition of metadata,
12 please?

13 A. I don't remember if I sent the email before we
14 met with the forensics team or after. Metadata was the
15 central core of Nate Paul's complaints about the search
16 warrant. That was the evidence that he and Mr. Wynne
17 pointed to that would prove that state violations had
18 occurred in the alleged alteration of a court document.

19 Q. And in order for you to assess those claims,
20 you needed to know what metadata was, right?

21 A. Of course, yes.

22 MR. LITTLE: May I approach the witness?

23 PRESIDING OFFICER: You may.

24 MR. LITTLE: Mr. Arroyo, back to Exhibit
25 AG 88, the page ending in 003, please.

1 Q. (BY MR. LITTLE) What is this list Mr. Penley?

2 A. Well, it's a document that apparently --

3 PRESIDING OFFICER: Excuse me. We're on
4 the wrong page up on the screen.

5 MR. LITTLE: Oh, wrong page.

6 Mr. Arroyo, 003, please. Other way.

7 Q. (BY MR. LITTLE) Okay. What's this list?

8 MR. HARDIN: Your Honor, may I inquire if
9 he's -- asks the witness if these are his notes or his
10 typing.

11 MR. LITTLE: No, it's in evidence. It was
12 offered, admitted over your objection. No objection,
13 actually.

14 MR. HARDIN: I don't believe this was
15 prepared by him, so I don't know -- if he is going to
16 ask him about it, I'd like the record to reflect he's
17 not talking to him about something he did not prepare.

18 MR. LITTLE: He produced it in response
19 to --

20 MR. HARDIN: It doesn't matter whether he
21 produced it. It matters as to whether this witness had
22 anything to do with it.

23 MR. LITTLE: I'll try to lay a proper
24 predicate.

25 MR. HARDIN: It looks to me like we

1 received it from the attorney general's office.

2 PRESIDING OFFICER: Mr. Hardin, you can
3 take the witness on voir dire and ask him.

4 MR. HARDIN: Yes.

5 VOIR DIRE EXAMINATION

6 BY MR. HARDIN:

7 Q. Mr. Penley, this particular exhibit, did you
8 have anything to do with preparing it?

9 A. I don't recognize this document. I don't
10 recall preparing this. I don't believe it's mine.

11 Q. Okay.

12 MR. HARDIN: That's all I have, Judge.

13 CROSS-EXAMINATION (CONTINUED)

14 BY MR. LITTLE:

15 Q. Do you remember ever seeing it?

16 A. I've seen it in the documents for this trial.
17 I've seen it in the discovery.

18 Q. You produced it in response to your subpoena,
19 yes?

20 A. I don't know that --

21 MR. HARDIN: He didn't -- he didn't
22 produce --

23 MR. LITTLE: Hold on. I'm asking the
24 question.

25 A. I don't know that I did.

1 Q. (BY MR. LITTLE) Okay. We can go back and
2 look.

3 A. And if I did, I don't know that I prepared it.
4 Perhaps I received it some other way.

5 Q. The suggestions on this list are suggestions of
6 things that the office might do. Questions it might
7 answer in connection with the investigation, right?

8 A. I agree with that.

9 Q. Yeah. And it says: Can we talk to the AUSA
10 Alan Buie.

11 Right?

12 A. Correct.

13 Q. And you've already testified you didn't do
14 that, yes?

15 A. Right. I did not do that.

16 Q. And none of the other questions, how is the
17 document created, how is the document encrypted, what
18 did he encrypt it with, what application they use, you
19 never got the answers to any of those questions, did
20 you?

21 A. No, I did not.

22 Q. Doesn't that seem like important information
23 you might want to know?

24 A. No, not based on what I learned on August the
25 6th.

1 Q. Okay. So I want to fast forward in your mind
2 now to August 12th. We're going in chronological order,
3 if you couldn't tell.

4 August 12th, you believe, and your
5 testimony on direct was, you believe Ken Paxton had --
6 was no longer supporting you, true?

7 A. That's true.

8 Q. Yeah. And you came to that conclusion after
9 the meeting with Nate Paul and his lawyers in which the
10 attorney general was present, yes?

11 A. Based on what the attorney general said that
12 was opposite of what he had told me three or four days
13 earlier.

14 MR. LITTLE: And now if you would, let's
15 take a look, Mr. Arroyo, at AG 1013.

16 Q. (BY MR. LITTLE) You and the deputies on
17 August 13th, the day after you say you no longer felt
18 supported by Ken Paxton, you got in a circle with your
19 deputies, yes?

20 A. I didn't get in a circle. I briefed Jeff
21 Mateer on what had happen the previous day.

22 Q. When you produced this document in response to
23 a subpoena, you blacked out -- you whited out the top of
24 it, right?

25 A. Yes, because it --

1 Q. I just need an answer to my question.

2 A. Yes, I did. I redacted it.

3 Q. Yes. And we don't know what's under there
4 because you didn't show us, correct?

5 A. That's true.

6 Q. Now we go to the rest of this item. This is --
7 these are your handwritten notes from a meeting, true?

8 A. Yes.

9 MR. LITTLE: And below that, Mr. Arroyo,
10 if you can blow up the text to the right below that.

11 Q. (BY MR. LITTLE) It says: Call Dan Cogdell?

12 A. Yes.

13 Q. That's what you wrote, right?

14 A. Absolutely.

15 Q. We're talking about that guy?

16 A. Yes, the guy in the good-looking sport coat
17 over here.

18 Q. It says: Ask him if Maxwell and I say go no
19 further with this.

20 Did you call Dan Cogdell?

21 A. No, we did not, but we considered it.

22 MR. LITTLE: Object, nonresponsive to
23 anything after "no."

24 PRESIDING OFFICER: Sustained.

25 Q. (BY MR. LITTLE) Below that --

1 MR. LITTLE: Mr. Arroyo, if you could
2 highlight that --

3 Q. (BY MR. LITTLE) -- it says: Possible bribery?

4 A. Yes, I wrote that.

5 Q. On August 13th of 2020, you had absolutely no
6 evidence, physical, documentary, eyewitness, or
7 circumstantial that Ken Paxton was being bribed by
8 anyone, did you?

9 A. I disagree with your statement. I had
10 circumstantial evidence.

11 Q. Oh, you had circumstantial evidence?

12 A. Yes.

13 Q. Well, at some point on August 13th, did you go
14 to your boss Ken Paxton and say, attorney general, I'm
15 concerned. I have circumstantial evidence that you've
16 taken a bribe. Did you do that?

17 A. Not on the 13th of August. I did it later.

18 Q. You didn't do that because you knew you would
19 get fired, right?

20 A. I said possible bribery. I didn't have
21 evidence to confront him with. Not at that time.

22 Q. Oh, but you just told the ladies and gentlemen
23 of the jury you had circumstantial evidence?

24 A. Yeah.

25 Q. So did you confront him with the circumstantial

1 evidence?

2 A. No. The circumstantial evidence --

3 MR. LITTLE: Object, nonresponsive to
4 everything after "no."

5 MR. HARDIN: Please be allowed to respond.

6 PRESIDING OFFICER: Sustained, your
7 objections.

8 MR. LITTLE: Thank you.

9 Q. (BY MR. LITTLE) Mr. Penley, below that it
10 says --

11 MR. LITTLE: If you can zoom back out,
12 Mr. Arroyo.

13 Q. (BY MR. LITTLE) -- he's using OAG/playing KP.
14 Did you tell your boss you thought that
15 Nate Paul was playing him?

16 A. Not on August the 13th.

17 Q. Why not on that day?

18 You had his phone number, right?

19 A. I'm sorry?

20 Q. You had Ken Paxton's phone number, right?

21 A. Yes, I did.

22 Q. Why didn't you confront Ken Paxton with your
23 circumstantial evidence of bribery and the idea that
24 Nate Paul was playing him on August 13?

25 A. Because I was trying to find a way to convince

1 him to listen to reason and get away from this
2 investigation which I thought was highly dangerous to
3 him and harmful to the office and injurious to the
4 respect for the law in the state of Texas.

5 Q. But also because if you had done that you
6 should expect to get fired, don't you think?

7 A. I could have been. And I was concerned about
8 getting fired ever since Ken Paxton did a 180 and turned
9 against me in the August 12th meeting all the way to the
10 end.

11 Q. Okay. So just to be clear, for the ladies and
12 gentlemen of the jury, your concerns about bribery did
13 not arrive until you thought Ken Paxton might fire you,
14 yes?

15 A. No, that's not correct. You're misstating what
16 I thought.

17 Q. I have your notes here.

18 A. Yes.

19 Q. This is the first document I've ever seen where
20 you've written the words "possible bribery." Will you
21 agree?

22 A. I don't have all the documents I've written.
23 I've written a lot, so I can't agree to that unless you
24 want to show me all the documents.

25 I began to be very concerned about what

1 was going on in his mind when on about August the 8th,
2 more or less, I told him I recommended closing the
3 investigation. He looked me in the eye and said, okay,
4 fine, all I ask you to do is meet with them and tell
5 them. And then two days later he told me he wanted to
6 attend the meeting. And then in the meeting when I
7 announced to Mr. Paul and Mr. Wynne, I recommended we
8 close the investigation because the metadata theory
9 didn't prove a crime, Ken Paxton began making negative
10 comments to me.

11 MR. LITTLE: I'm going to object to the
12 narrative.

13 PRESIDING OFFICER: Sustained.

14 Q. (BY MR. LITTLE) Appreciate your answer,
15 Mr. Penley, but my question was a little bit different.

16 On August -- by August 12, you thought,
17 This guy might fire me, yeah?

18 A. I did.

19 Q. On August 13th, you wrote down, Maybe he's
20 being bribed, yeah?

21 A. Yes, because I thought that.

22 Q. And you didn't confront him that day because to
23 do so probably would have resulted in you being fired,
24 yes?

25 A. Could be.

1 Q. The safer strategy is to wait a month and go to
2 the FBI with whatever circumstantial evidence you have
3 and adopt whistleblower status for the same information,
4 right?

5 A. No, I don't agree with your characterization.

6 Q. Okay. In any event, in this memo, you say that
7 the metadata is inconclusive, right?

8 A. I'm sorry. Where are you pointing me to?

9 MR. LITTLE: Zoom back out, Erick, if you
10 would, please.

11 Q. (BY MR. LITTLE) Yeah, metadata is
12 inconclusive. No proof of crime. No disproof of crime
13 either. Right?

14 A. I wrote down: Metadata is inconclusive. No
15 proof of crime.

16 And that was my belief at that time, and
17 it still is.

18 Q. In any event, I think you can tell the jury,
19 and they will agree, you didn't do any investigating
20 after that, right?

21 A. No, that's not true. I tried to investigate.
22 I tried to get the rest of the documents that Nate Paul
23 and Michael Wynne had told me they had on August 5th.
24 They told me they had gotten a bunch of documents from
25 Judge Lane, and I never felt like they'd given me all

1 the documents.

2 Q. You had already told Nate Paul and his lawyer
3 the day before that you were going to close the
4 investigation before you had those documents, true?

5 A. That's true.

6 And the attorney general didn't accept it.

7 MR. LITTLE: Object, nonresponsive to
8 anything after "true."

9 PRESIDING OFFICER: Sustained.

10 Q. (BY MR. LITTLE) All right. I'm going to show
11 you what's marked as Exhibit AG 1014, please.

12 We're going to move ahead in time from
13 August 13th of 2020 to September 4th of 2020. Can you
14 see this document in front of you on the screen or in
15 your hand, you've got a copy of it physically?

16 A. Yes, I think I can see it better on the screen
17 if you'll blow it up. Thank you.

18 Q. This is an email from general counsel -- this
19 is Lesley French at the OAG. And she's sending it to
20 FLD contracts. It says: FLD, please see the
21 attached -- please see the attached partially executed
22 contract and disclosures for Mr. Cammack. I have
23 reviewed the disclosure statement of Brandon Cammack and
24 am satisfied with the choice of outside counsel for this
25 matter.

1 Do you see that?

2 A. I do see that.

3 Q. Okay. And on September 4th, you got the
4 DocuSign that day. Yes?

5 A. I've said in writing that I got it that day,
6 but now that I've reviewed a lot more evidence, I think
7 I made a mistake, and I believe I've got it for the
8 first time on September the 16th is when it reached my
9 email inbox.

10 Q. Well, that's not what you testified to under
11 oath before the House Board of Managers, is it?

12 A. That's why I said I made a mistake.

13 Q. Yeah.

14 A. You're correct.

15 Q. And when you -- and I think you'll agree -- I'm
16 not going to have to pull your transcript out -- you
17 testified to the House Board of Managers and their
18 investigators that you got it on September 4th and then
19 you went on vacation and said, I'll take care of that
20 when I get back. That's what you told them, yes? And
21 now you're telling a different story, yes?

22 A. Well, you've asked two questions at least.
23 I'll answer it this way, if I may.

24 Yes, I told the house managers I thought
25 the date I first received the executive approval

1 memorandum was on September the 3rd or 4th, whatever
2 date is in the transcript. I don't argue with that. I
3 now believe I first received it on September the 16th,
4 so I'm correcting my testimony.

5 Q. You're correcting your testimony that you gave
6 to the house impeachment board's investigators, yes?

7 A. Yes, that's true.

8 Q. We should believe what you're saying today and
9 not then, yes?

10 A. Yes.

11 Q. Okay. Our next exhibit in time, if you would,
12 we're going to go back to Exhibit AG 88. And I'm going
13 to show you the next page.

14 MR. HARDIN: Your Honor, and because it
15 was -- if I may, because this was a group offer, they're
16 all, of course, Exhibit 88. If counsel could on each
17 one of those pages where he does it for us, give it some
18 type of identifying so we can know and be able to pull
19 back up later.

20 MR. LITTLE: Well, they're already in.
21 I'll identify by Bates number, if that's okay.

22 So, Mr. Arroyo, if you'll go to the Bates
23 ending in 008.

24 MR. HARDIN: I realize they're in
25 evidence. What I would like is a Bates number each time

1 so I know which one to look for.

2 PRESIDING OFFICER: Would you accommodate
3 him, please?

4 MR. LITTLE: We'll do our best, yes.

5 Mr. Arroyo, go to page ending in 008.

6 Give me all the text, Erick, if you would.

7 Q. (BY MR. LITTLE) This email is sent from Mark
8 Penley to Brittany Hornsey copying Drew Wicker.

9 Hi Brittany, I received a voice mail from
10 the General today. He's requesting that all documents I
11 have on the Nathan Paul matter be copied and given to
12 Elise.

13 Did I read that correctly?

14 A. You did.

15 Q. The attorney general just sent you to the
16 showers, didn't he?

17 A. I'm sorry?

18 Q. He just came to the mound and took the ball out
19 of your hand, said, "Give me the file. I'll take it
20 from here," yes?

21 A. He didn't say that.

22 Q. That's what you should have inferred from that,
23 right? The attorney general came and got the file from
24 you, yes?

25 A. You're asking me to speculate. I don't know

1 what was in his mind. I know I got a voice mail from
2 him while I was on vacation asking me to get the file to
3 one of the executive assistants on the executive floor,
4 which I did.

5 Q. You knew that was not a good sign, right?

6 A. No. I had been given a warning that he was
7 working up an outside counsel contract, and that was
8 consistent with the idea that he was going around me and
9 David Maxwell and trying to hire outside counsel.

10 Q. He's taken the ball out of your hands, yes?

11 A. That's your phrase. I'll accept it if you want
12 me to.

13 Q. Okay. I do. You going to accept it? I --

14 A. I'll accept that he was trying to take the case
15 out of my hands. There was no ball.

16 Q. Very good.

17 Let's move to Exhibit AG 1015, if you
18 would.

19 And these are your notes from a side
20 huddle with Jeff Mateer, Blake Brickman, and Ryan
21 Bangert, yes?

22 A. Yes, that's correct.

23 Q. And at the bottom you -- we've got more
24 redactions, yes?

25 A. Yes. They were irrelevant topics that came up

1 in a meeting that had nothing to do with this case.

2 Q. Well, I guess we'll have to take your word for
3 it, won't we?

4 A. Well, yeah.

5 Q. Below that it says: NP file returned Joe
6 Brown, Cliff Stricklin, outside counsel contract.

7 So you knew about it?

8 A. Yes. The purpose of the meeting with Jeff was
9 so he could update me on things that had gone on during
10 the week I was gone. And he told me that the attorney
11 general had considered hiring Joe Brown, a former United
12 States attorney and former district attorney in Sherman,
13 he'd been the U.S. attorney in the Eastern District of
14 Texas. He also, I believe, had conducted a phone
15 interview with Cliff Stricklin, an attorney in Denver.

16 Q. All right. Let's move ahead in time a little
17 bit.

18 MR. LITTLE: May I approach the witness,
19 Your Honor?

20 Q. (BY MR. LITTLE) Mr. Penley, I'm showing you
21 what's been marked as Exhibit AG 124.

22 MR. LITTLE: Erick, would you bring that
23 up, please.

24 Q. (BY MR. LITTLE) This is the second referral
25 from the Travis County District Attorney's Office to

1 Brandon Cammack on September 23rd of 2020, yes?

2 A. Yes.

3 Q. And when you made your report to the FBI, you
4 didn't know about this, true?

5 A. That's true.

6 Q. And when you -- I believe the word you used on
7 direct was "apoplectic"?

8 A. Yes.

9 Q. When you were apoplectic about the grand jury
10 subpoenas being served by Brandon Cammack, it was
11 because you believed they were being used for civil
12 discovery in a criminal matter, true?

13 A. That's true.

14 Q. But, in fact, they were related to this second
15 referral in a bid rigging investigation that had been
16 referred to the Travis County DA's Office over to
17 Brandon Cammack?

18 A. You lost me on the second question. Could you
19 repeat that, please?

20 Q. Yeah, let me try again.

21 The grand jury subpoenas Mr. Cammack was
22 serving were relating to this referral in a bid rigging
23 investigation that had been made from Travis County
24 District Attorney's Office to Brandon Cammack, true?

25 A. That's not completely true. It's partially

1 true.

2 Q. It's a lot true, isn't it?

3 A. It's partially true. I'll explain if you want
4 me to.

5 Q. You can do that on redirect, I bet. We'll try.
6 But here's what I want you to understand and want you to
7 appreciate and agree with me on. You didn't know about
8 this and the subpoenas that Mr. Cammack was serving were
9 related to this referral, yes?

10 A. A, I didn't know about this. I agree.

11 B, all of the 39 grand jury subpoenas he
12 obtained from Travis County did not relate to referral
13 No. 2. Part of them referred to referral No. 1.

14 Q. Thank you.

15 Going to move to Exhibit AG 92.

16 PRESIDING OFFICER: I do not believe 124
17 was admitted previously.

18 MR. LITTLE: We move for admission of
19 AG 124.

20 PRESIDING OFFICER: Any objection?

21 That's the document, Mr. Hardin, he had
22 been working from before that one you were just handed.

23 MR. LITTLE: He has seen 124, and this is
24 92.

25 MR. HARDIN: I have no objection.

1 PRESIDING OFFICER: I show that
2 Exhibit 124 is admitted into evidence.

3 (AG Exhibit 124 admitted)

4 PRESIDING OFFICER: Now are you offering
5 another?

6 MR. LITTLE: AG 92, Mr. President.

7 PRESIDING OFFICER: Any objection on this
8 one, Mr. Hardin?

9 MR. HARDIN: No, Your Honor.

10 PRESIDING OFFICER: I show that Exhibit 92
11 be admitted into evidence.

12 (AG Exhibit 92 admitted)

13 PRESIDING OFFICER: Continue.

14 Q. (BY MR. LITTLE) Mr. Penley, after ten days
15 here in Exhibit AG 92, you admit -- or you finally
16 state: I'm not signing the outside counsel contract.

17 Yeah?

18 A. You said after ten days? What -- you lost me
19 at ten days.

20 Q. Well, your testimony today was that you got the
21 outside counsel contract DocuSign on September 14th.
22 You told them you got it on September 4th. Whether
23 you've had it for ten days or 20 days, you are now
24 finally telling someone I'm not signing it, yes?

25 A. I received it on September the 16th, as I

1 previously stated, so eight days later. After the
2 attorney general called me and asked me to sign the
3 outside counsel contract, I told him I could not and I
4 would not, and I gave him all the reasons why. He told
5 me to talk to Jeff Mateer and to forward this contract
6 to Jeff Mateer.

7 Q. All right.

8 A. Which I did.

9 MR. LITTLE: Let's move to Exhibit AG
10 1017, Erick.

11 Q. (BY MR. LITTLE) These are the notes that have
12 already been entered into evidence, I guess on both
13 sides, but these are your notes from September 26,
14 right?

15 A. Yes, these are my after meeting notes on
16 September 26 from McKinney.

17 Q. Okay. This is discussion about hiring outside
18 counsel, at least in part, yes?

19 A. Yes, that was discussed.

20 Q. Okay.

21 MR. LITTLE: Erick, about -- give me
22 the -- zoom in on the last half of the page, please.
23 Higher. There you go, stop.

24 Q. (BY MR. LITTLE) Do you see the line about four
25 lines down it says: I said.

1 Do you see that?

2 A. Yes.

3 Q. It says: I said I don't need him, and we
4 shouldn't be spending money on him when we can't give
5 raises to our employees?

6 A. Yes, I see that.

7 Q. You said that, didn't you?

8 A. I did.

9 Q. None of that is your business or decision or
10 authority at the Office of the Attorney General, is it?

11 A. I don't totally agree with you. I don't have
12 the ultimate authority, but I have a duty to tell him
13 about things going on in my area of responsibility. We
14 couldn't give raises to our people. I felt like he was
15 wasting money on outside counsel on an improper
16 investigation, and I was trying to express that to him.

17 Q. Do you understand that there are 900 outside
18 counsel contracts every two years at the Office of the
19 Attorney General?

20 A. I didn't know that, but I'll take your word for
21 it.

22 Q. And your explanation here for one reason Ken
23 Paxton shouldn't hire Brandon Cammack is I don't need
24 him, we shouldn't be spending money on him when we can't
25 give raises to our employees. That was what you said,

1 yeah?

2 A. That's what I said.

3 Q. And Ken Paxton got upset and he said: So
4 you're going to exercise veto powers over the budget for
5 the agency?

6 A. He said that, yes.

7 Q. That was his response to you, yes?

8 A. Yes, it was.

9 Q. At the bottom, it says there's a chance of
10 media exposure, second line from the bottom?

11 A. Yeah.

12 Q. You expressed you were worried about that,
13 right?

14 A. I was worried for his sake, yes. And I warned
15 him.

16 MR. LITTLE: Go to the third page, if you
17 would, Erick.

18 Q. (BY MR. LITTLE) Again, we see on the third
19 page the word "inconclusive." The theory advanced by NP
20 was inconclusive, yes?

21 A. I'm sorry. Could you tell me -- can you direct
22 me to the part of the page you're looking at?

23 PRESIDING OFFICER: Yes. Can you
24 highlight that for the jurors?

25 MR. LITTLE: Yes, it's about

1 three-quarters of the way down. You see the word
2 "inconclusive"? Says "theory advanced by" at the
3 beginning of the line.

4 Lower, Erick. Right there.

5 Q. (BY MR. LITTLE) About third of the way down
6 the --

7 A. Yes.

8 Q. -- theory advanced by NP was inconclusive, yes?
9 You see that?

10 A. Give me -- if I may have just a moment to read
11 the paper.

12 Q. Yeah, take your time.

13 A. Yes, I wrote that.

14 Q. And toward the bottom of the page --

15 MR. LITTLE: And just leave it there,
16 Erick.

17 Q. (BY MR. LITTLE) -- it says: I'm willing to
18 hit the reset button and start fresh if they will
19 produce docs, right?

20 A. Yes, I told him that.

21 Q. You're three months into this referral, yes,
22 and you're now telling your boss I'm willing to hit the
23 reset button, General Paxton?

24 A. That's what I told him on September the 26th,
25 yes. After repeated requests for all the documents.

1 Q. Turn the page, if you would.

2 MR. LITTLE: Erick, give me the bottom
3 half.

4 Q. (BY MR. LITTLE) You said: I told him this is
5 a dangerous case, a dim DA or U.S. attorney could charge
6 him with a play-for-pay scheme if they learned about the
7 investigation since Nate Paul is a campaign donor.

8 Yes?

9 A. Yes, I wrote that.

10 Q. Okay. You don't have any evidence that Nate
11 Paul ever paid any type of bribe to Ken Paxton, do you?

12 A. I disagree with your statement.

13 Q. Tell the ladies and gentlemen of the jury what
14 evidence you have that Nate Paul paid Ken Paxton any
15 type of bribe. Go.

16 A. I've read the evidence that was filed in
17 response to the motion for summary judgment that your
18 team filed. I've read --

19 Q. Hold on a second. This is legal analysis based
20 on what you've read, is that right?

21 A. You asked me if I had any evidence. I'm trying
22 to answer the question, sir, yes.

23 Q. You're analyzing what's -- evidence other
24 people are offering in this case.

25 On September 26, did you have any physical

1 evidence, documentary evidence, eyewitness evidence, or
2 circumstantial evidence that Ken Paxton had committed or
3 been bribed by Nate Paul?

4 A. I had circumstantial evidence.

5 Q. Anything else?

6 A. I had his behavior.

7 Q. Anything else?

8 A. The campaign donation.

9 Q. Anything else?

10 A. His absolute refusal to listen to common sense
11 and reasoned legal positions. He wouldn't listen to
12 anybody on the executive staff.

13 Q. Anything else?

14 A. There's 4,000 pages filed in response to the
15 summary judgment. There's stuff in there.

16 Q. Did you have any of them?

17 A. I didn't have it on September 26. I know about
18 it today.

19 Q. The bottom portion of that bottom paragraph
20 says: I gave him the scenario that NP, if indicted,
21 could make up a story and throw him under the bus to the
22 feds.

23 That's what you told him, right?

24 A. I did.

25 Q. You told him the risk was Nate Paul would

1 manufacture false information that could harm Ken
2 Paxton, yes?

3 A. That's the way I phrased it, yes.

4 Q. That's what you said, and that's what you
5 wrote, yes?

6 A. Yes.

7 Q. We get to September 30th -- or 29th and 30th
8 your head explodes, yes?

9 A. That's true. Figuratively speaking, I hope.

10 Q. That's what you said under the -- that's what
11 you said to the House Board of Managers, right?

12 A. I did. And I was extremely upset when I found
13 out about the grand jury subpoenas, yes.

14 Q. I'm going to show you what's marked as Exhibit
15 AG 50.

16 MR. LITTLE: May I approach,
17 Mr. President?

18 PRESIDING OFFICER: Yes.

19 MR. LITTLE: Mr. President, we move for
20 admission of AG 50.

21 PRESIDING OFFICER: Any objection,
22 Mr. Hardin?

23 MR. HARDIN: No objection.

24 MR. LITTLE: Erick, if you would put
25 that --

1 PRESIDING OFFICER: Admitted to evidence,
2 please, AG 50.

3 (AG Exhibit 50 admitted)

4 Q. (BY MR. LITTLE) You signed this, yes?

5 A. I did, yes.

6 Q. It says: We have a good-faith belief that the
7 attorney general is violating federal and/or state law.

8 Yes?

9 A. Correct.

10 Q. You had a good-faith belief on October 1st,
11 2020, yes?

12 A. Yes.

13 Q. Did you bring any documentary evidence or
14 physical evidence to the FBI?

15 A. No documents, no physical evidence.

16 Q. And just to be clear, your testimony on direct
17 was one of the reasons you thought Nate Paul had no
18 credibility was he didn't give you any documentary
19 evidence, true?

20 A. Based on his theory, there was nothing to back
21 up his theory, correct.

22 Q. Yeah. And so it's fair to say if you had had
23 documentary evidence of any crimes by Ken Paxton, you
24 would have brought them to the FBI when you visited with
25 them prior to this letter, true?

1 A. I disagree with you.

2 Q. Oh so, you would have sat on it?

3 A. No.

4 Q. If you had any documentary evidence of a crime
5 by Ken Paxton, you would have brought it to the FBI,
6 yes?

7 A. No.

8 Q. No, you wouldn't have?

9 A. No. This was an initial report by
10 eyewitnesses. And it happened in a hurry.

11 Q. I agree with that. How much of a hurry did it
12 happen in?

13 A. Well, in one sense it had gone on for three
14 months, but what really took this to a crisis level was
15 learning that Brandon Cammack -- or Cammack, I don't
16 know the exact pronunciation -- was serving grand jury
17 subpoenas --

18 Q. You've --

19 A. -- that were designed to help Nate Paul in his
20 civil litigation against his business adversaries.

21 Q. You've testified about that.

22 MR. LITTLE: May I approach, Your Honor?

23 PRESIDING OFFICER: Yes.

24 MR. LITTLE: We move for admission of
25 Exhibit AG 97, please.

1 PRESIDING OFFICER: When you have time to
2 respond, Mr. Hardin.

3 MR. HARDIN: No objection, Your Honor.

4 PRESIDING OFFICER: Admit AG Exhibit 97
5 into evidence.

6 (AG Exhibit 97 admitted)

7 Q. (BY MR. LITTLE) From your office email you
8 forwarded grand jury subpoenas that were supposed to be
9 secret to your counsel Johnny Sutton, correct?

10 A. That's partially correct, yes.

11 Q. And to be clear, you've never paid Johnny
12 Sutton a dime, have you?

13 A. Not yet.

14 Q. You have some type of pro bono deal with him?

15 A. No.

16 Q. Who's paying for him?

17 A. We haven't agreed on a fee arrangement yet.
18 We've agreed to discuss that in the future.

19 Q. Let's let that sink in for a second. This man
20 who's a former assistant U.S. attorney with the Ashcroft
21 Law Firm, I believe, it's in multiple states, he's
22 represented you for three years and you haven't agreed
23 on a fee arrangement yet? I want to make sure I
24 understand.

25 A. That's right.

1 Q. Haven't paid him anything?

2 A. Haven't paid him anything.

3 Q. He's never sent you a bill?

4 A. No, sir.

5 Q. Sounds like a great guy.

6 A. He is. And he's a former United States
7 attorney, not an AUSA.

8 Q. Some point in time you get placed on
9 investigative leave, true?

10 A. On October the 2nd, correct, by the attorney
11 general himself.

12 Q. And by that point in time, there was still no
13 file related to your investigation at the OAG, yes?

14 A. I'm sorry. I didn't hear the full question.
15 Could you repeat?

16 Q. There was no file at the time that you were
17 placed on investigative leave in the OAG system related
18 to the Nate Paul investigation, true?

19 A. I had a file with my personal notes on the
20 case, but we had not officially opened an investigation
21 file.

22 MR. LITTLE: If you would, Mr. Arroyo,
23 bring up Exhibit AG 1020, please.

24 Q. (BY MR. LITTLE) October 10 of 2020, these are
25 your notes from a conversation with David Maxwell,

1 correct?

2 A. Yes.

3 MR. LITTLE: Blow up the bottom portion
4 and highlight it, Mr. Arroyo. Highlight that bottom
5 asterisk.

6 Q. (BY MR. LITTLE) Your plan while you were still
7 at the Office of the Attorney General on
8 investigative -- you're on investigative leave on
9 October 10, right?

10 A. That's true.

11 Q. Your plan is to cook up bar complaints on
12 Brandon Cammack, Michael Wynne, and Ken Paxton, isn't
13 it?

14 A. That was not my plan.

15 Q. It was David Maxwell's plan?

16 A. I wrote down -- I write down what people say --
17 (Simultaneous discussion)

18 MR. LITTLE: Object, nonresponsive.

19 A. I wrote that down.

20 MR. HARDIN: Pardon me, Your Honor. He
21 can't --

22 PRESIDING OFFICER: Let's back up. Let's
23 slow down. Let him finish his answer, then you can
24 object.

25 Go ahead.

1 Q. (BY MR. LITTLE) Time is at a premium,
2 Mr. Penley.

3 It was David Maxwell's plan as of
4 October 10 of 2020 to cook up bar complaints against
5 Brandon Cammack and Mike Wynne and Ken Paxton, yes?

6 A. No, I don't agree with that. He said that. I
7 wrote it down. That's what it means.

8 Q. And you wrote it down because -- well, why
9 don't you tell these people what he actually said?

10 A. The best recollection -- well, I have no
11 independent recollection of these notes, so I wrote down
12 the word "cook up." We never did anything with it. We
13 never even called the bar.

14 Q. But the two of you talked about it, yes?

15 A. That comment was made on that date, and I wrote
16 it down on October the 10th. Yes, I wrote that down.

17 Q. And at -- toward the top it says: Look at the
18 defense fund. May need a grand jury subpoena. Right?

19 A. Right.

20 Q. That was part of your plan, wasn't it?

21 A. No, that was part of our conversation, and we
22 were trying to find more links between Nate Paul and Ken
23 Paxton.

24 MR. LITTLE: If you would, Mr. Arroyo,
25 Exhibit AG 1021.

1 Q. (BY MR. LITTLE) These are your notes. Let's
2 work from the top.

3 When did you write this?

4 A. Hold on just a second. I guess I don't have a
5 paper copy.

6 It was sometime after I was placed on
7 investigative leave. I don't know the exact date.

8 Q. At the top it says: Google KP's defense funds?

9 MR. LITTLE: Erick, if you could zoom in
10 on that. See if we can access that document.

11 Q. (BY MR. LITTLE) Who is "we," by the way?

12 A. Some of the whistleblowers. I can't name
13 anybody other than myself.

14 Q. You guys are trying to dig for dirt on Ken
15 Paxton, right?

16 A. We're trying to find evidence to defend
17 ourselves because we were being unjustly treated.

18 MR. LITTLE: Next paragraph, Mr. Arroyo.

19 Q. (BY MR. LITTLE) At the top you write: Missy
20 told him he could sign the contract and hire outside
21 counsel.

22 Yes?

23 A. I wrote that down, yes.

24 Q. That's Missy Cary, the chief of staff of the
25 Office of the Attorney General, yes?

1 A. That's correct.

2 Q. And your notes, your recollections from this
3 meeting, were that you were all discussing it and the
4 chief of staff said: Ken, you can sign that contract.

5 Yes?

6 A. Well, I don't know this was from a meeting. I
7 believe it was from a phone call.

8 MR. LITTLE: Let's go to the bottom two
9 lines on that page, if you would, Mr. Arroyo.

10 Q. (BY MR. LITTLE) The bottom you wrote: KP must
11 be indicted by spring break.

12 You wrote that, right?

13 A. Yes.

14 Q. That was what you wanted, wasn't it?

15 A. At that point, yes, because I believed he'd
16 broken the law.

17 Q. Of what year?

18 A. I'm sorry?

19 Q. Of what year?

20 A. The law of what year?

21 MR. LITTLE: I'll pass the witness.

22 PRESIDING OFFICER: Mr. Hardin, redirect.

23 MR. HARDIN: Thank you, Your Honor.

24 Thank you. Thanks a lot.

25

1 REDIRECT EXAMINATION

2 BY MR. HARDIN:

3 Q. Mr. Penley, I'll just take a few minutes with
4 you. Just a few things I want to mention real quickly.5 But what is your testimony as to whether
6 or not at the time all of this was happening, you had
7 seen the referral that is called the second referral.8 MR. HARDIN: And if we could, put up the
9 front page of AG Exhibit 124, please, Stacey.

10 That's okay. Thanks a lot.

11 Now, Stacey, if we could, put the --
12 isolate the date there.13 Q. (BY MR. HARDIN) So September the 23rd,
14 correct?

15 A. Correct.

16 Q. But you're really -- only everything blew up,
17 we can all agree, can we not, on September the 30th,
18 with y'all going to the FBI and so?19 A. I'd say September 29th, the day before with the
20 first grand jury subpoena being reported.21 Q. Okay. But you went to the FBI on the -- on
22 what date?

23 A. On the 30th.

24 Q. All right. Now, this is just one week before
25 that is my point, is it not?

1 A. Yes, sir.

2 Q. And had -- were you ever -- during any of the
3 time this was going on, were you informed that after
4 filing the complaint back in June, the referral, that
5 Mr. -- now after things are -- you've been looking at
6 one referral?

7 A. Yes.

8 Q. Is your testimony throughout this case y'all
9 were only concerned with one referral?

10 A. Right. I only knew of one referral all the way
11 to the point when I got put on investigative leave.

12 Q. All right. Did -- have you since reviewed
13 after this was all over, after you were terminated --
14 well, back up.

15 Had you seen this referral number two from
16 this gentleman before you were terminated?

17 A. I think I saw it between the time I was put on
18 leave and terminated, which was a month. I think I saw
19 it in between that time.

20 Q. And at the time -- now did that -- that lessen
21 your view or change your view of Mr. Paul or did it
22 increase the view you already had reached?

23 A. It increased my anger at the attorney general.

24 Q. All right. Hold on a second.

25 A. For doing all this.

1 Q. Hold on a second.

2 I want to move you now to --

3 MR. HARDIN: Stacey, Bates stamp -- I
4 think it's one -- yes, Bates stamp 2443, please, Stacey.

5 Q. (BY MR. HARDIN) Now, you've heard on cross,
6 you've been asked questions about when y'all met with
7 the investigative committee that you weren't under oath,
8 right?

9 A. Yes, I recall that.

10 Q. And I'm going to look at this. Does this page
11 show -- or -- all right.

12 Do you see whether or not Mr. Paul, once
13 again, had a choice of whether or not to swear to the
14 allegations he was making?

15 A. Yes, I know that on both referral number one
16 and number two, those forms from Travis County have a
17 line for a Notary signature and a swearing that
18 everything is true.

19 Q. Now, what is your opinion as to whether when he
20 goes to the district attorney's office to file a
21 complaint and has a chance to make his allegations, did
22 he swear to those allegations?

23 A. He did not swear to either complaint in
24 referral one or referral two.

25 Q. And when he didn't swear to the complaint, did

1 you -- once you found out about it, while you were, you
2 say, on leave before you officially terminated, did you
3 look at the allegations this guy was making this time?

4 A. I looked at the allegations with that combined
5 with everything else that had occurred, made me look in
6 a highly skeptical way at his claims.

7 Q. Well, let me ask you this: Did you look at
8 this referral number two and say -- and see that now he
9 wants a federal bankruptcy judge investigated?

10 A. Right. That makes two federal judges he wants
11 the state of Texas to investigate even though we told
12 him he needed to go to the United States Department of
13 Justice Inspector General's Office to take these claims.

14 Q. And to take him seriously?

15 A. He wanted us to take him seriously, I agree.

16 MR. HARDIN: Go to Bates stamp, if you
17 can, Stacey, 124 -- or that's the exhibit, excuse me.
18 Bates stamp 2445.

19 Q. (BY MR. HARDIN) I want you to look at how many
20 people now does he want an investigation of. For
21 instance, look at -- on Page 2445, let's scroll down.
22 Will you just read out the names of the people he now
23 wants y'all to investigate in addition to the people he
24 wanted you to investigate in the original referral?

25 A. Yes, sir. Bryan Hardeman, Will --

1 Q. Do you know who -- slow down.

2 Do you know who Bryan Hardeman is one way
3 or the other?

4 A. I do not.

5 Q. Next one.

6 A. Will Hardeman.

7 Q. Do you know who he is?

8 A. I've read that's Bryan Hardeman's son.

9 Q. Do you know who Christopher Dodson is?

10 A. No.

11 Q. Are you aware that's opposing counsel in a case
12 that he's in litigation with?

13 A. No, but I'm not surprised.

14 Q. Stephen Benesh, do you know who that is?

15 A. I do not.

16 Q. Do you know who Jason Cohen is?

17 A. I do not.

18 Q. Do you know who Mark Riley is?

19 A. I don't.

20 Q. Do you know that Mark Riley is engaged in a
21 civil lawsuit with him?

22 PRESIDING OFFICER: One moment, Counselor.

23 MR. HARDIN: Yes, sir.

24 PRESIDING OFFICER: Can we take out that
25 information, please, addresses?

1 MR. HARDIN: Pardon me?

2 MR. LITTLE: Just very briefly,
3 Mr. President, assuming facts not in evidence.

4 PRESIDING OFFICER: I didn't hear what you
5 said. I'm sorry.

6 MR. LITTLE: I'm saying assuming facts not
7 in evidence. Mr. Hardin is saying that these people are
8 certain things, and the witness has no knowledge of it.

9 PRESIDING OFFICER: Sustained.

10 Q. (BY MR. HARDIN) Do you know who Justin Bayne
11 is?

12 A. I don't know him.

13 Q. Do you know whether Tony M. Davis is a federal
14 bankruptcy judge?

15 A. Yes, I understand that he is a United States
16 bankruptcy judge in the Western District of Texas in
17 Austin.

18 Q. And do you know who Ray Chester is?

19 A. He is the trustee for the Mitte Foundation,
20 which is involved in a lawsuit with Nate Paul.

21 Q. Is Ray Chester a trustee or is he opposing
22 counsel representing the Mitte Foundation?

23 A. My understanding is he's an attorney, but he's
24 also the trustee represented by counsel.

25 Q. Do you know whether -- who Mr. Milligan is

1 Gregory Milligan?

2 A. I believe he's an attorney in Austin somehow
3 involved in that litigation.

4 Q. At the end of the day when you read this
5 particular referral, is there any way, any way on God's
6 green earth you would ever want to support a criminal
7 investigation based on this guy?

8 A. Absolutely not.

9 MR. HARDIN: I have no further questions.

10 PRESIDING OFFICER: Recross, Mr. Little.

11 MR. LITTLE: No recross, Mr. President.

12 May I have a moment to collect all my
13 goods from up there?

14 PRESIDING OFFICER: You may.

15 Mr. Hardin, Mr. Little, may this witness
16 be excused?

17 MR. HARDIN: I would hope so, Your Honor.

18 MR. LITTLE: Subject to potential recall,
19 of course, but yes.

20 MR. COGDELL: Mr. President, could I have
21 one minute to talk with his counsel?

22 PRESIDING OFFICER: Yes.

23 MR. COGDELL: We're good, Your Honor.

24 Thank you.

25 PRESIDING OFFICER: You may step down.

1 Thank you.

2 Don't take all those. Leave those here
3 for us. Thank you. Thank you, sir.

4 Who's the next witness?

5 MS. BUESS: Mr. President.

6 PRESIDING OFFICER: Yes.

7 MS. BUESS: The House Board of Managers
8 call --

9 PRESIDING OFFICER: Hit that. We can't
10 hear. There you go.

11 MS. BUESS: There we go.

12 Mr. President, the House Board of Managers
13 calls Katherine "Missy" Cary.

14 PRESIDING OFFICER: Bailiff, will you
15 bring in Missy Cary.

16 (The following oath was given to the
17 witness.)

18 PRESIDING OFFICER: Would you raise your
19 right hand, take the following oath: I do solemnly
20 swear that I -- or affirm that the evidence I give upon
21 this hearing by the Senate of Texas of impeachment
22 charges against Warren Kenneth Paxton, Jr. shall be the
23 truth, the whole truth, and nothing but the truth, so
24 help you God.

25 THE WITNESS: I swear.

1 PRESIDING OFFICER: Please be seated.
2 Counsel, will you give your name for the
3 record?

4 MS. BUESS: My name is Terese Buess.

5 PRESIDING OFFICER: You may begin.

6 MS. BUESS: Thank you, Mr. President.

7 KATHERINE "MISSY" CARY,
8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. BUESS:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Would you please state your full name --

14 PRESIDING OFFICER: Hold on. Both of you
15 are going to have to get much closer to the mic and
16 speak a -- speak up a little bit more. Yeah. No, no,
17 it's -- the acoustics are not good in here.

18 THE WITNESS: Yes, sir. Is that better?

19 Q. (BY MS. BUESS) I can hear you. It's a big
20 room. Can you hear me?

21 A. Yes, ma'am.

22 Q. All right. Would you please state your full
23 name?

24 A. My name is Katherine Minter Cary, although I
25 sometimes go by Missy.

1 Q. Is that a name your parents gave you?

2 A. It's a nickname. My sister and I were Missy
3 and Prissy growing up, and, you know, I got the better
4 end of that deal, so...

5 Q. So which name do you go by?

6 A. I think everyone here would know me by Missy.

7 Q. All right. Okay if I call you Missy?

8 A. It is.

9 Q. All right, Missy. Where did you grow up?

10 A. I grew up here in Austin.

11 Q. And what is your mom -- what did your mom do?

12 A. She was a school teacher and a stay-home mom.

13 Q. How about your dad?

14 A. My father is an attorney.

15 Q. And where did he work?

16 A. Actually his first job was he was an assistant
17 attorney general at the attorney general's office from
18 1965 when I was born to 1971. And then he had a private
19 practice in a law firm here in Austin.

20 Q. Was he a role model for you?

21 A. He is a role model for me, yes.

22 Q. Is he why you became a lawyer?

23 A. He is.

24 Q. How about the attorney general's office?

25 A. Just, you know, when I was a kid he would take

1 me up there. I was probably kindergarten or first
2 grade, and it was like the scene from Mad Men, if you
3 know the TV show. It was a cool place, and it was what
4 I always wanted to be.

5 Q. So where did you go for undergrad?

6 A. I started at Hollins College, which is a girls
7 school in Virginia, and then I transferred to Texas A&M
8 where I graduated.

9 Q. What's your degree in?

10 A. In political science.

11 Q. Where did you go after that?

12 A. I went to law school at St. Mary's in San
13 Antonio.

14 Q. And were you licensed to practice law?

15 A. I am. I'm licensed in Texas in 1990.

16 Q. After you got your license, where did you go to
17 work?

18 A. My first job was here at the General Land
19 Office. I was a staff -- first, I started out --
20 because I didn't have my bar results, and I learned
21 quick that the appropriations act says you have to have
22 a license to be a lawyer, so I started actually as a
23 legal secretary or law clerk. And then when I got my
24 results, I became a staff attorney there for five years.

25 Q. And when you got promoted to staff attorney,

1 what kind of things were you handling?

2 A. I did employment law. I wrote legislation. I
3 worked on the Open Beaches Act, the open -- the oil
4 spill response act. I did a little bit of collections
5 for the permanent school fund. Different things like
6 that.

7 Q. At the end of your five years, where did you
8 move to?

9 A. I moved for the first time to the Office of the
10 Attorney General.

11 Q. Okay. And which department were you assigned
12 to work in?

13 A. In the administrative law division.

14 Q. And what kind of things did you handle?

15 A. So I -- part of the time I was a litigator in
16 administrative law, represented the state in court. The
17 other duties were general counsel to various state
18 agencies that didn't have their own general counsels. I
19 did open records, open meetings. I drafted rules, tried
20 cases about the Administrative Procedures Act, did some
21 employment law.

22 Q. Sounds like all kinds of things?

23 A. Kind of the division that does a little bit of
24 everything government oriented.

25 Q. Okay. Did you leave the attorney general's

1 office?

2 A. I did. I left the attorney general's office
3 short -- for a while in 1997, and I was conscripted, so
4 to speak, to work at the Texas Lottery Commission for
5 Harriet Miers, Anthony Sadberry, and Judge Hill, John
6 Hill, to work on a matter with the executive director at
7 the time that was kind of well-known in the press.

8 Q. Okay.

9 A. So...

10 Q. Was there a scandal?

11 A. There was.

12 Q. And did it all have to get cleaned up?

13 A. It did.

14 Q. And did you assist with that?

15 A. I did.

16 Q. All right. After that work got done, where did
17 you go?

18 A. After that work got done, I was asked by
19 incoming attorney general, now senator, John Cornyn to
20 come and be the attorney general's office's public
21 information coordinator, so I came back to the attorney
22 general's office in 1999. And I did the coordinator
23 position for a year, and then I was given the division
24 chief of the open records division next. And I think I
25 held that position about six or seven years.

1 Q. And at the end of that, where did you go?

2 A. I was promoted to the general counsel position
3 for the Office of the Attorney General, I think in 2006.
4 I was the agency's general counsel.

5 Q. And after that?

6 A. After that, I was promoted by Governor Abbott
7 when he was still attorney general to be the deputy for
8 administration for the Office of the Attorney General,
9 and I remained in that position when General Paxton came
10 in. And did the same basic job for both of them.

11 Q. Tell us how many attorney generals you've
12 worked for.

13 A. As attorney general, I've worked for four, and
14 then John Hill at the Lottery Commission.

15 Q. Okay.

16 A. So five.

17 Q. Tell us the names.

18 A. So Dan Morales, John Cornyn, Greg Abbott, Ken
19 Paxton, Attorney General Hill when he was on the Lottery
20 Commission. And I also worked at the land office for
21 Garry Mauro who was a statewide elected official.

22 Q. In 2014 when Ken Paxton became the attorney
23 general, did you receive a promotion?

24 A. I did.

25 Q. And what were you promoted to?

1 A. I was the first female chief of staff of the
2 Office of the Attorney General and the first person that
3 worked their way all the way up from a line lawyer to a
4 position that high in the agency.

5 Q. And who did you report to in that position?

6 A. I reported to Jeff Mateer who was the first
7 assistant -- well, actually, probably it was Chip Roy
8 first -- I can't remember. It was the first assistant,
9 whichever one was there first.

10 Q. And eventually to Jeff Mateer as the first
11 assistant?

12 A. I think Jeff was their chief of staff, yes.

13 Q. Okay.

14 MS. BUESS: May I have Exhibit 553,
15 please?

16 It's not in evidence. It was used, I
17 think, with the very first witness. And I'll offer it
18 into evidence. It's an organizational chart.

19 PRESIDING OFFICER: Any objection?

20 MR. BUZBEE: No objection, Your Honor.

21 PRESIDING OFFICER: Enter -- I don't have
22 a copy, but what's the number?

23 MS. BUESS: It's 553.

24 PRESIDING OFFICER: 553 into evidence.

25 (HBOM Exhibit 553 admitted)

1 PRESIDING OFFICER: In the future, if
2 y'all can give us a copy, thank you.

3 Q. (BY MS. BUESS) Can you see the chart, 553?

4 A. I can.

5 Q. Okay. And what year is this chart reflecting?

6 A. This chart, even though it's dated
7 September 2020, I think reflects the organization as of
8 September of 2019.

9 Q. Okay. And are the names -- have the names
10 changed a little bit during your -- the time that you
11 were there? I'm interested, actually, in the divisions
12 and the deputies, the slots. Can you -- looking at the
13 far left of the line of executives, can you tell us as
14 chief of staff who you worked with during the period of
15 time that you were working with Ken Paxton as your
16 assistant -- as your attorney general? Start at the
17 left, if you would?

18 A. So there's a different org chart that's now
19 come up on the screen. This organizational chart is the
20 chart from 2019, for September 1st, 2019. And I'm happy
21 to answer the question. I'm just not sure which chart
22 you want me to answer the question for.

23 MS. BUESS: Are we on 553?

24 Q. (BY MS. BUESS) I'm interested in the
25 divisions.

1 A. I understand.

2 Q. Can you --

3 A. Which chart are you interested in the divisions
4 on? There's two organizational charts, and there --
5 it's different, actually.

6 Q. How about the one that we're looking at right
7 now. Does that help?

8 A. That helps.

9 Q. Yes?

10 A. Yes.

11 Q. All right. Let's start at the far left of the
12 chart.

13 A. Okay.

14 Q. And can you tell us which divisions you
15 supervised and spent the most time with?

16 A. The first assistant supervised all of the
17 deputies. However, Mr. Starr and I sort of split the
18 deputies by areas of our expertise to assist Jeff in his
19 management of the deputies. So for me, I was most
20 involved with the deputy attorney general for child
21 support and the IV-D director, the chief information
22 officer, which is the IT department, the deputy for
23 administration, the deputy attorney general for criminal
24 justice, the director of law enforcement.

25 And if you could shift it over a little

1 bit.

2 And that would be all there. And then if
3 you look above, directly reporting to me was the
4 agency's public information coordinator who I oversaw.
5 And then I also helped the first assistant with the
6 ombuds person and the internal auditor.

7 Q. When you retired, how many years had you spent
8 with the attorney general's office?

9 A. Just the attorney general's office, somewhere
10 over 20.

11 Q. Okay.

12 A. 25 probably, 20, 20 -- well, probably 20.

13 Q. And during the time that you were there would
14 you say you developed certain areas of expertise?

15 A. I did over my career develop certain areas of
16 expertise, yes.

17 Q. And those particular areas, do you actually
18 teach -- you teach other people about them?

19 A. I have taught other people in the past, yes,
20 about my areas of expertise.

21 Q. What kind of places have you taught at?

22 A. I mean, I've taught at CLEs. I've taught at
23 the National Association of Attorneys General. I was
24 one of their instructor faculty. I've taught about how
25 to run an attorney general's office, how to fund an

1 attorney general's office, what the attorney generals
2 do. I've consulted with other attorney generals across
3 the country about their attorney generals offices, I've
4 taught ethics, I've taught contracting, I've taught
5 administrative law, I've taught open records many times,
6 open meetings. Administrative law in general.

7 Q. And how about writing? Have you published any
8 publications?

9 A. I have. I published law review articles and
10 other writings.

11 Q. Okay.

12 A. Both unemployment law, procurement law,
13 administrative law. I'm board certified in
14 administrative law.

15 Q. I'd like to go forward to 2018, if you would?

16 A. All right.

17 Q. Okay. What building were you officing in at
18 that time?

19 A. My office in 2018 was in the Price Daniel
20 building, which is attached to the Supreme Court on this
21 side of the street.

22 Q. What floor?

23 A. The eighth floor.

24 Q. And who officed around you?

25 A. It -- I mean, my office was directly next to

1 the first assistants, with his assistant in between us.
2 And on the other side was the conference room and then
3 the attorney general.

4 Q. So it would be fair to say the people around
5 you were the executive team?

6 A. Correct.

7 Q. Was it all of the executive team or part of
8 them?

9 A. It was part of the executive team. For
10 example, the trial support division has its own building
11 out on Oltorf, and the child support IV-D director
12 always had an office in each place. The director of law
13 enforcement and the head prosecutor also had two
14 offices, as did the director of IT. But it was intended
15 to be the executive staff on the eighth floor.

16 Q. So in 2018, can you tell us a little bit about
17 the quality of the executives that were around you, who
18 were they and what did you think of them?

19 A. Well, I mean --

20 MR. BUZBEE: Your Honor, objection.

21 Relevance. It doesn't matter what she thinks of them.

22 It has nothing to do with this.

23 PRESIDING OFFICER: Sustained.

24 Q. (BY MS. BUESS) Can you tell us, please, the
25 people that worked with you, did they mirror the policy

1 choices of Attorney General Paxton?

2 MR. BUZBEE: Your Honor, again, relevance.
3 Object.

4 PRESIDING OFFICER: Overrule this time.

5 A. They did. The executive team was created in
6 order to further General Paxton or any attorney
7 general's agenda and desires of where they want the
8 office to go. And they did so.

9 Q. (BY MS. BUESS) And during the period from 2018
10 up to 2020, were you aware of how they were perceived by
11 people outside of the office, other professionals?

12 MR. BUZBEE: Objection, Your Honor. That
13 calls for speculation. How can she know what people
14 outside the office thought about these people?

15 MS. BUESS: I can qualify.

16 PRESIDING OFFICER: Sustained.

17 Q. (BY MS. BUESS) Are you familiar with how the
18 executive group within your office was perceived by
19 people outside of the office, for example, other
20 professionals in Texas and even outside of Texas?

21 MR. BUZBEE: Objection, Your Honor.
22 Personal knowledge. She doesn't have it. And to the
23 extent she has any, it would be hearsay.

24 PRESIDING OFFICER: Sustained.

25 Q. (BY MS. BUESS) Do you know what the general

1 opinion was of the office from 2018 to 2020?

2 MR. BUZBEE: Objection, again, Your Honor.
3 The general opinion of who? I mean, there could be -- I
4 mean, there's almost 30 million Texans. It could be
5 30 million opinions.

6 PRESIDING OFFICER: Sustained.

7 Q. (BY MS. BUESS) Did the executive team meet
8 regularly with Jim Mateer?

9 A. With Jeff Mateer, yes.

10 Q. Sorry.

11 And at those meetings, would y'all catch
12 up on what was going on with each other's departments?

13 A. We had a Thursday executive meeting that
14 included at times General Paxton and Mr. Mateer and the
15 deputies, and we caught each other up on what was going
16 on, yes.

17 Q. Can you tell us what General Paxton's
18 involvement with the day-to-day operation of the office
19 was?

20 A. His involvement was similar to most other
21 attorneys general. Most attorneys general set the high
22 level policy and high level direction of where they want
23 the executive staff to go and then depend on the
24 executive staff to complete those tasks and to follow
25 that direction.

1 Q. So, Missy, you had worked in the office for a
2 very long time at that point. As you looked around you
3 at the people that you were working with, how would you
4 describe them?

5 MR. BUZBEE: Objection, Your Honor. Vague
6 and irrelevant.

7 PRESIDING OFFICER: Sustained.

8 Q. (BY MS. BUESS) What kind of group were they?

9 MR. BUZBEE: Again, I don't -- I have no
10 idea what that means, what kind of group were they. It
11 could be anything. Vague.

12 PRESIDING OFFICER: Could you be more
13 specific? Thank you.

14 MS. BUESS: Yes.

15 Q. (BY MS. BUESS) Was there a description that
16 you used for the people that you were working with? Did
17 you call them something?

18 MR. BUZBEE: I'm sorry to interrupt again,
19 Your Honor. It's the same objection.

20 PRESIDING OFFICER: I have to sustain.

21 Q. (BY MS. BUESS) Of all of the people that you
22 worked with at the attorney general's office -- and,
23 again, I know they're like children, right, we don't
24 like to say which ones are our favorite -- but as a
25 group, can you qualify, quantify them for us from 2018

1 to 2020?

2 MR. BUZBEE: Your Honor, again, I hate to
3 slow this down, but that question is vague and as best I
4 could tell irrelevant.

5 PRESIDING OFFICER: Sustained.

6 Q. (BY MS. BUESS) Describe your office for us in
7 2018.

8 MR. BUZBEE: Is she -- again, vague. Is
9 she talking about the building? I'm not sure what she's
10 talking about. Vague.

11 PRESIDING OFFICER: Yes, Counselor, can
12 you be very specific?

13 MS. BUESS: Yes.

14 Q. (BY MS. BUESS) Can you tell me a little bit
15 about the people who worked around you from 2018 to
16 2020, your executive team?

17 MR. BUZBEE: It's a compound question.
18 Objection. She's asking about multiple people. We
19 don't know who she's talking about, but to the extent
20 it's more than one, compound.

21 MS. BUESS: I can go one by one. If
22 counsel wants me to do that, we can do that.

23 MR. BUZBEE: You're on the clock. Yes, I
24 want you to do that. Ask a specific question.

25 PRESIDING OFFICER: Okay. Sustained. Be

1 specific.

2 Q. (BY MS. BUESS) Did you have an opinion about
3 the people that you were working with, your executive
4 team during that time period?

5 A. Yes.

6 Q. Tell us what that opinion was.

7 MR. BUZBEE: Objection, Your Honor.
8 Vague. Which person is she referring to?

9 MS. BUESS: I'm referring to the entire
10 executive team that we've talked about.

11 MR. BUZBEE: Again, I'm sorry to do this,
12 but she can ask what's your opinion of Mateer to the
13 extent that's even relevant. Probably not. But this is
14 very vague. And to the extent it's not vague, it's
15 compound.

16 PRESIDING OFFICER: I'm going to overrule.
17 You can ask the question.

18 You can answer what your opinion was of
19 the overall team.

20 Q. (BY MS. BUESS) You can answer the question.

21 A. My opinion of the overall executive team was
22 that they were incredibly professional. They were
23 committed to General Paxton's agenda. And it -- all in
24 all, it was a credible set of legal minds.

25 Q. Is part of your responsibilities working with

1 and supervising the security detail group?

2 A. Yes and no.

3 Q. Uh-huh.

4 A. I did not supervise the security detail because
5 they worked for the Department of Public Safety, but I
6 did liaison with the security detail as one of their
7 points of contact myself and Jeff Mateer.

8 Q. Okay. How about the scheduler?

9 A. The scheduler did not report to me, reported to
10 Jeff. But I did help at times with questions and things
11 with the schedule.

12 Q. I want to talk with you specifically about
13 spring of 2018. Okay?

14 A. Yes.

15 Q. All right. Was there an incident that caused
16 you some concern?

17 A. Yes.

18 Q. I want to talk about that. Can you tell us
19 where you were when it happened?

20 A. I believe you're referring to an incident at
21 the Galaxy Cafe.

22 Q. I am.

23 A. In spring of 2018, I was at the Galaxy Cafe on
24 West Lynn eating lunch by myself. They have very small
25 tables that sit two by two. Very close to the person

1 who's sitting next to you.

2 I was alone eating lunch, and there was a
3 man and a woman that's sitting to the table directly
4 next to me. Probably within 3 feet away. And they were
5 having a conversation, and the woman of the group was
6 sharing what I perceived to be --

7 MR. BUZBEE: Objection, I'm sorry. She's
8 about to repeat hearsay. I object to that.

9 PRESIDING OFFICER: Sustained.

10 Q. (BY MS. BUESS) As you sat and listened to the
11 conversation, did you overhear some information that you
12 felt was inappropriate?

13 MR. BUZBEE: This question calls for
14 speculation and also hearsay. I object.

15 PRESIDING OFFICER: Sustained.

16 Q. (BY MS. BUESS) As you sat and listened to the
17 conversation, how did you feel?

18 MR. BUZBEE: Objection, relevance.
19 Doesn't matter how she felt. I mean, it has nothing to
20 do with this case.

21 PRESIDING OFFICER: Sustained.

22 Q. (BY MS. BUESS) As you sat and listened to the
23 conversation, did you decide to do something?

24 MR. BUZBEE: Objection, vague. I'm not
25 sure what that means, Your Honor.

1 PRESIDING OFFICER: Overrule.

2 Q. (BY MS. BUESS) What did you do?

3 A. After listening to the conversation, I took a
4 photograph of this person and took it back directly to
5 Attorney General Paxton.

6 Q. And why did you do that?

7 PRESIDING OFFICER: Excuse me. Can you
8 move closer to the mic?

9 THE WITNESS: Yes.

10 PRESIDING OFFICER: Thank you. Thank you,
11 Ms. Cary.

12 Q. (BY MS. BUESS) And why did you do that?

13 A. Because I felt the conversation was --

14 MR. BUZBEE: Objection, hearsay.

15 Q. (BY MS. BUESS) I'm not asking for hearsay I'm
16 asking what her concern was.

17 MR. BUZBEE: That's not what the question
18 was, Your Honor.

19 MS. BUESS: I asked her --

20 PRESIDING OFFICER: Would you repeat the
21 question?

22 MS. BUESS: Yes.

23 Q. (BY MS. BUESS) You took a picture of the
24 woman. Why did you do that?

25 A. I wanted to talk to General Paxton about the --

1 what I saw.

2 Q. Is security of the attorney general something
3 that you as an employee were very concerned with?

4 A. Always.

5 Q. Was the conversation that you overheard causing
6 you concern about safety for the attorney general?

7 A. No.

8 Q. What was it causing you concern about?

9 MR. BUZBEE: Objection. She hasn't said
10 that she was caused concern. I mean, it assumes that
11 she was concerned, and she hasn't told us that yet.

12 PRESIDING OFFICER: Sustained.

13 You can ask that question.

14 Q. (BY MS. BUESS) Were you concerned?

15 A. Yes.

16 Q. What were you concerned about?

17 A. The level of personal detail being shared in a
18 public space.

19 Q. And was it directed to the Attorney General Ken
20 Paxton?

21 A. No.

22 Q. Who was it directed to?

23 A. It was directed to a man who I did not
24 recognize at her lunch table.

25 Q. Okay. The woman that was speaking, did you

1 recognize her?

2 A. No.

3 Q. Did you do anything further before you left the
4 restaurant?

5 A. No.

6 Q. Did you monitor the woman as she was leaving
7 the restaurant?

8 MR. BUZBEE: Objection, leading.

9 PRESIDING OFFICER: Sustained.

10 Q. (BY MS. BUESS) What did you do?

11 MR. BUZBEE: She's already said she did
12 nothing else, Your Honor. Asked and answered.

13 PRESIDING OFFICER: Can you rephrase that
14 a little bit?

15 MS. BUESS: I can.

16 Q. (BY MS. BUESS) Before you left the restaurant
17 did you try to get any additional information about the
18 woman?

19 A. I looked at the car she was driving when we
20 were leaving at the same time.

21 Q. And what kind of information did you get about
22 the car?

23 A. I noticed that the car -- I noticed the kind of
24 car it was, the color and that it was a car purchased in
25 San Antonio.

1 Q. Okay. You had the picture in your phone, you
2 had the car information. What did you do with that?

3 A. I waited for a time when I could talk to
4 General Paxton privately, and I talked to him privately
5 about what I had witnessed.

6 Q. Okay. Tell us what you told him.

7 MR. BUZBEE: Objection, hearsay.

8 MS. BUESS: It's not offered for the truth
9 of the matter asserted, Mr. President. It's to show the
10 effect on this witness and the actions that she took as
11 a result of it.

12 PRESIDING OFFICER: Overruled.

13 Q. (BY MS. BUESS) What did you tell General
14 Paxton about what you heard?

15 A. Basically what I just told the Court. And I
16 asked him if he knew who she was.

17 Q. What information did you relay to him about
18 what you had heard?

19 A. I relayed to him that I was sitting at lunch
20 alone in the Galaxy Cafe, and I overheard loudly a
21 conversation between two people and that the details
22 that were provided by this person were surprising to me
23 and of concern, and I wanted him to know about it.

24 Q. Specifically what details were you concerned
25 about?

1 MR. BUZBEE: This is hearsay, Your Honor.
2 You've already ruled on that.

3 PRESIDING OFFICER: Sustain.

4 MS. BUESS: I'm not offering it for the
5 truth of the matter asserted. I'm trying to show why
6 she's doing what she's doing.

7 MR. BUZBEE: If it's not offered for the
8 truth, then it's irrelevant.

9 PRESIDING OFFICER: Sustained.

10 Q. (BY MS. BUESS) When you talked with General
11 Paxton, what -- how did he respond?

12 A. Told me that I had taken a picture of his
13 realtor who was trying to sell his condo on Enfield and
14 that he would talk to her.

15 Q. Did you believe that?

16 A. Absolutely.

17 Q. Was he concerned that someone was talking about
18 his personal business in a restaurant out loud?

19 A. No.

20 Q. Did you believe him when he said it was his
21 realtor?

22 A. Yes.

23 MR. BUZBEE: Objection. Asked and
24 answered.

25 PRESIDING OFFICER: Overruled.

1 Q. (BY MS. BUESS) Did he provide a name for that
2 person?

3 A. No, he did not.

4 Q. All right. Let's come forward now to May of
5 2018.

6 Did you have an occasion to go to an
7 official function in San Antonio?

8 A. Yes.

9 Q. And did you see someone there that you
10 recognized?

11 A. Yes.

12 Q. And who was -- who was it that you recognized?

13 A. Same lady I had seen in Galaxy Cafe.

14 Q. Okay. A realtor at an official function. What
15 kind of function were you at?

16 A. I was at a National Association of Attorney
17 Generals' reception, a happy hour cocktail hour.

18 Q. Okay. Did you get the name of that person?

19 A. She was wearing a nametag.

20 Q. And what was the name?

21 A. Laura Olson.

22 Q. Okay. During the course of the spring and
23 summer of 2018, did you come to learn what the
24 relationship was between Laura Olson and the attorney
25 general?

1 A. I did.

2 MR. BUZBEE: Objection, Your Honor. I'd
3 like to lay a predicate for that. Otherwise, it's based
4 on hearsay.

5 PRESIDING OFFICER: Sustained.

6 Q. (BY MS. BUESS) How did you come to learn about
7 the relationship?

8 A. The attorney general told me about it. I was
9 also told by the security detail and the travel aides.

10 Q. And did you confirm that it was the named Laura
11 Olson, same person?

12 A. I did.

13 Q. How did that make you feel about him telling
14 you that she was a realtor?

15 A. Surprised.

16 Q. That he had lied to you?

17 A. Yes.

18 MS. BUESS: May I have House Exhibit 623,
19 please.

20 Offer State's Exhibit 623 into evidence,
21 Mr. President. It's a public record.

22 MR. BUZBEE: Your Honor --

23 PRESIDING OFFICER: Do we need to redact
24 any of this?

25 MR. BUZBEE: I would think so, Your Honor.

1 I mean, this is like a speeding ticket or something.

2 MS. BUESS: The information that's going
3 to be put up is going to be redacted. It has been
4 redacted.

5 MR. BUZBEE: Not my copy.

6 PRESIDING OFFICER: Yeah, nor on mine.

7 MR. BUZBEE: I don't think we should be
8 using this private personal information about anybody
9 talked about in this trial.

10 MS. BUESS: The hard copy will be
11 redacted. What's going to be shown has been redacted.

12 MR. BUZBEE: I don't know what they're
13 going to show.

14 PRESIDING OFFICER: Can you show us the
15 redacted copy? Because ours is not redacted, nor
16 counsel.

17 We'll break in 15 minutes. We're going to
18 continue till the top of the hour.

19 MS. BUESS: Thank you.

20 PRESIDING OFFICER: I'm sorry, no, we're
21 not -- I said we're going to break in 15 minutes at the
22 top of the hour. You may stretch your legs if you like,
23 Senators, but we're going till the top of the hour.

24 MS. BUESS: If I may, I'm going to move
25 on, and we'll come back to this exhibit.

1 PRESIDING OFFICER: Okay. We'll come back
2 to that exhibit.

3 Continue.

4 Q. (BY MS. BUESS) During the spring and summer of
5 2018, were there some things that were happening within
6 the office concerning Laura Olson that you were having
7 to deal with?

8 A. Yes.

9 Q. Specifically, were there problems with morale?

10 A. Yes.

11 Q. In which areas of the office were you having
12 difficulty?

13 A. Travel aides, security detail, Mr. Mateer.

14 Q. How about the scheduler?

15 PRESIDING OFFICER: To the witness, can
16 you repeat that? We couldn't hear you clearly.

17 THE WITNESS: The travel aides, the
18 security detail, and Mr. Mateer was my answer, Your
19 Honor.

20 Q. (BY MS. BUESS) Let's talk about the travel
21 detail. What kind of problems were you having to deal
22 with?

23 A. The travel detail was calling about the hours
24 they were working, the places they were being required
25 to go. And they were concerned about the general's

1 behavior.

2 Q. Okay. How about the bag man, what is a bag
3 man?

4 A. It's a travel aide, and the travel aide is the
5 employee of the Office of the Attorney General that's
6 generally assigned to the attorney general, does things
7 like make sure they're on time, has their speeches, make
8 sure you get to the venue on time, keeps time -- sort of
9 time management, holds on to those -- it's a close aide.

10 Q. Were there --

11 A. Personal aide.

12 Q. Were there problems with the bag man as well?

13 A. Yes.

14 Q. What kind of problems?

15 A. Complaining about the hours worked, the hours
16 worked that weren't state business, expressing those
17 concerns to me because I approved their leave or require
18 them to take particular kinds of leave for nonstate
19 business events.

20 Q. What kind of complaints were coming about the
21 hours?

22 A. Too long hours, no vacation, odd hours.

23 Q. Okay. Were there complaints about security
24 concerns?

25 MR. BUZBEE: Your Honor, I'm sorry to

1 interrupt. We're talking about 2018?

2 MS. BUESS: We are.

3 MR. BUZBEE: So complaints in the office
4 from 2018 that have nothing to do with the -- any of the
5 articles of impeachment. I would object to be
6 irrelevant.

7 PRESIDING OFFICER: Overruled.

8 Q. (BY MS. BUESS) Complaints concerning security,
9 what were the worries?

10 A. Similar concerns.

11 Q. Which were what?

12 A. Hours worked, nonstate business,
13 disorganization, and changes to the schedule.

14 Q. Issues concerning not state business, what kind
15 of things?

16 A. I mean, I think the affair was one of the
17 concerns that was not state business. So were some of
18 the different switches in the schedule between campaign
19 events and state business.

20 Q. Who is JB Skees?

21 A. He was General Paxton's travel aide at the
22 time.

23 Q. And for the court reporter, it's S-K-E-E-S, is
24 that correct?

25 A. That's correct.

1 Q. All right. And what kind of problems did you
2 have with him, if any?

3 A. I personally didn't have problems with JB. JB
4 quit unexpectedly and refused to tell me or Mr. Mateer
5 why.

6 Q. You ever had that happen before?

7 A. I have not.

8 Q. Were there issues with the attorney general's
9 wife that you were having to deal with as well?

10 A. Some point in time, Mrs. Paxton was calling the
11 office asking about the schedule or asking where he was,
12 and the staff was uncomfortable sometimes answering
13 those questions. And they were complaining about that.

14 Q. Why would they be uncomfortable?

15 MR. BUZBEE: Objection, speculation.

16 PRESIDING OFFICER: Sustained.

17 Q. (BY MS. BUESS) Do you know what caused them to
18 be uncomfortable?

19 A. Only what I was told.

20 Q. And what was your understanding?

21 MR. BUZBEE: This question is going to be
22 related to hearsay, which she just set it up as hearsay,
23 so I object, hearsay.

24 PRESIDING OFFICER: Sustained.

25 Q. (BY MS. BUESS) With a problem like that --

1 with the problems that you were having concerning
2 morale, what did you do?

3 A. 2018?

4 Q. Yes.

5 A. I talked to Mr. Mateer. He and I talked about
6 it. I also had a conversation with General Paxton
7 directly by myself about it.

8 Q. Okay. Let's stop and talk about that. Do you
9 recall when that was?

10 A. I cannot be precise, no.

11 Q. Do you recall what time of year it was?

12 A. It would have been the summer of 2018.

13 Q. All right. Where did you have that
14 conversation?

15 A. In my office.

16 Q. Okay. And what did you talk about?

17 MR. BUZBEE: Objection to the extent she's
18 going to relate what she said. That would be hearsay.

19 MS. BUESS: She's here for
20 cross-examination.

21 PRESIDING OFFICER: Sustained. Sustained.

22 Q. (BY MS. BUESS) What was the topic of
23 conversation?

24 MR. BUZBEE: Objection, asked and
25 answered. She's already told us what the topic was.

1 PRESIDING OFFICER: Overruled.

2 Q. (BY MS. BUESS) What was the topic?

3 A. The topic was the ethical implications of a
4 secret affair.

5 Q. Were you able to relay your concerns?

6 A. Yes.

7 Q. Did he confirm that he, in fact, was having an
8 extramarital affair?

9 A. Yes.

10 Q. And did he tell you that that was with Laura
11 Olson?

12 A. No.

13 Q. Not at that time?

14 A. No.

15 Q. All right. What was his attitude when you told
16 him that things were not good within the office because
17 of that?

18 A. He was contrite, and he listened to what I had
19 to say very carefully.

20 Q. Did you get the feeling that he thought it was
21 none of your business?

22 A. Maybe. But we had a good conversation.

23 Q. Okay.

24 A. A productive conversation.

25 Q. Were you able to help him understand why it was

1 affecting the life of the office itself?

2 A. I tried to do that.

3 Q. How did you do that?

4 A. We talked about what had happened, previous
5 public officials that I had counseled in similar
6 situations. We talked about previous public officials
7 and what happened to them in similar situations. We
8 talked about the risk involved in secrets of this
9 magnitude that began to bleed over into the work of the
10 Office of the Attorney General.

11 Q. What kind of risks are there?

12 A. I mean, there's ethical risks. There's
13 political risks. There's legal risks.

14 Q. What kind of legal?

15 A. These things can open one up to bribery, misuse
16 of office, misuse of state time, things like that.

17 Q. How did he receive that information?

18 A. Well --

19 Q. Okay. Did you make a request of him to tell
20 his wife Angela?

21 A. I did.

22 Q. How did that conversation end?

23 A. Contemplatively. And he -- and then he left my
24 office.

25 Q. Were voices ever raised during this

1 conversation?

2 A. Not in this conversation, no.

3 Q. All right. Based on what you know of him in
4 your experience working with him, how does Attorney
5 General Paxton react to confrontation?

6 A. Generally very patient. And he listens well,
7 and he takes in information. So I would say he reacts
8 well to confrontation.

9 Q. Let's come forward to October of 2018. Was
10 there an occasion that you went to the campaign
11 headquarters?

12 A. I did.

13 Q. All right.

14 A. I think that was actually September of 2018.

15 Q. Okay. And who is -- who is present at that
16 time?

17 A. Jordan Berry, Jeff Mateer, Brantley Starr, Ben
18 Williams, Marc Rylander, I think perhaps, myself. And
19 I'm not sure, I could be leaving somebody out, but
20 that's the ones that stand out.

21 Q. Okay. And what was the occasion?

22 A. We were invited to meet with General Paxton and
23 Senator Paxton to talk about this matter.

24 Q. "This matter" being what?

25 A. The -- the affair.

1 Q. Okay. Would it be fair to say that General
2 Paxton confessed the affair to all of you?

3 A. I think that would be a fair characterization.

4 Q. Okay. Did he apologize to all of you as a
5 group?

6 A. He did.

7 Q. Okay. Describe that experience very briefly,
8 if you would, please.

9 A. It's an uncomfortable experience. It's an
10 experience I had not had before in my life. Somber.

11 Q. Okay.

12 A. Be a word I'd use.

13 Q. How did General Paxton's wife take it? How was
14 she responding?

15 A. She was sad and embarrassed, I believe. That
16 was my impression.

17 Q. Was she crying?

18 A. She was.

19 Q. All right. When you saw that, what did you do?

20 A. My heart broke for her.

21 Q. And what did you do?

22 A. After the meeting had concluded, I think I
23 hugged her, and I think I told her that I was sorry this
24 had happened to her.

25 Q. And what happened after that?

1 A. We broke up and went home.

2 Q. Okay.

3 A. Went back to work.

4 Q. In September of 2018 after that meeting, did
5 you believe that Laura Olson was out of his life for
6 good?

7 A. Again, at that point, I didn't know her name,
8 but I thought that this type of behavior was out of his
9 life for good, yes.

10 Q. Let's talk about August 1st of 2019 coming
11 forward now in time. Was there a change in your duties?

12 A. Yes.

13 Q. What happened?

14 A. Judge Starr was being promoted to the federal
15 bench, so there was a vacancy. And the deputy first
16 assistant position, which was equal to mine, both
17 reporting to Jeff and helping manage the deputies and
18 the way I described in the exhibit.

19 I -- I was told that that was going to
20 change. And when the new deputy first assistant came
21 in, who was Ryan Bangert, that my duties would be
22 changed and I would be reporting only directly to
23 Mr. Mateer.

24 Q. Okay. Did you receive an explanation as to why
25 those changes were being made?

1 A. It was my understanding that those changes were
2 being made at the general's request because I had said
3 no to him too many times is what I was led to believe.

4 Q. Let's talk about that. What kind of things
5 would you say --

6 PRESIDING OFFICER: Counselor, excuse me.
7 I -- the jurors have been here for two hours. Can we
8 break?

9 MS. BUESS: Yes.

10 PRESIDING OFFICER: That's fine.

11 MS. BUESS: Certainly.

12 PRESIDING OFFICER: Members, come back at
13 3:20, 20-minute break.

14 (Recess: 2:58 p.m. to 3:22 p.m.)

15 PRESIDING OFFICER: Bailiff, will you
16 bring the witness back, please.

17 (Witness enters)

18 PRESIDING OFFICER: You have the witness.

19 MS. BUESS: Thank you, Mr. President.

20 Q. (BY MS. BUESS) Are you ready, Lacey (sic)?

21 A. I -- can you hear me?

22 Q. I can hear you.

23 A. Okay.

24 Q. Do you have an exhibit in front of you, Lacey?

25 A. I do not have an exhibit in front of me. The

1 screen is blank.

2 Q. Defense has it.

3 MS. BUESS: 623.

4 Q. (BY MS. BUESS) Missy, can you give me the
5 number on there, please?

6 A. Exhibit No. 623.

7 Q. Do you recognize the person on there?

8 A. I recognize the name, yes.

9 Q. Do you recognize the photograph that's on that
10 exhibit?

11 A. I recognize the photograph to be Ms. Laura
12 Olson, yes.

13 Q. Is that the person you saw at the Galaxy Cafe?

14 A. To the best of my belief, yes.

15 Q. Is that the person that you know to have been
16 having an affair with Ken Paxton?

17 A. Yes.

18 Q. All right.

19 MS. BUESS: Your Honor, at this time I
20 would offer into evidence No. 623.

21 PRESIDING OFFICER: I don't have a copy of
22 the redacted one. Or do we? No. I'm not sure if we --
23 is it four pages?

24 MR. DONNELLY: Yes, Your Honor, the
25 section is redacted on there.

1 PRESIDING OFFICER: Okay, thank you.

2 Is there any objection?

3 MR. BUZBEE: No, Your Honor.

4 PRESIDING OFFICER: Admit Exhibit No. 623
5 into evidence.

6 (HBOM Exhibit 623 admitted)

7 MS. BUESS: Thank you.

8 Q. (BY MS. BUESS) The photograph that you took in
9 your phone of the woman at the Galaxy that we now know
10 to be Laura Olson, what did you do with it?

11 A. I deleted the photograph at the general's
12 request.

13 Q. Did he ask you to do that when you first talked
14 with him about the woman?

15 A. He did.

16 Q. When he told you it was his realtor?

17 A. He did.

18 Q. All right. I want to come forward now to the
19 summer of 2019.

20 Were there continuing to be problems
21 within the office, the type that we had talked about
22 already?

23 A. Those problems began again, yes.

24 Q. Okay. Who were you hearing from? I'm not
25 asking you what they told you, but what people within

1 the office were talking with you?

2 A. Travel aides, Mr. Mateer, the security detail.

3 Q. Were there problems that were happening outside
4 of Austin?

5 A. Yes.

6 Q. All right. Was there a further conversation
7 that you had with Ken Paxton concerning the affair?

8 A. Yes.

9 Q. Did you learn that the affair was continuing?

10 A. From --

11 MR. BUZBEE: Objection. Speculation, Your
12 Honor.

13 PRESIDING OFFICER: Sustained.

14 MS. BUESS: She can -- thank you.

15 Q. (BY MS. BUESS) Did you learn that it was
16 continuing?

17 MR. BUZBEE: Objection. Speculation, Your
18 Honor. Anything that she has learned let --

19 MS. BUESS: It's been ruled.

20 MR. BUZBEE: Let me finish, please.

21 MS. BUESS: It's been ruled.

22 PRESIDING OFFICER: Excuse me.

23 MR. BUZBEE: Anything she might have
24 learned would be based on hearsay or speculation.

25 PRESIDING OFFICER: Sustained.

1 Q. (BY MS. BUESS) Did you have a conversation
2 with Ken Paxton during that time period?

3 A. I did.

4 Q. That would be the summer of 2019?

5 A. Correct.

6 Q. Let's talk about that conversation. Where did
7 it happen?

8 A. In my office on the eighth floor.

9 Q. Did you initiate it or did he?

10 A. He did.

11 Q. And what did y'all talk about?

12 A. We talked about Ms. Olson again.

13 Q. And did you learn that the affair was
14 continuing?

15 A. Yes.

16 Q. Did he tell you that?

17 A. Yes.

18 Q. How did he tell you that? What kind of voice
19 was he using?

20 A. He was frantically upset.

21 Q. At who?

22 A. I think he was frustrated, and he wanted to
23 express to me that he was frustrated with me and that
24 he -- I didn't understand what he was trying to tell me.
25 And he was trying to tell me -- he came in and said he

1 was frustrated and that he -- I didn't understand he
2 still loved Ms. Olson, and I -- you know, he wanted --
3 he wanted to work it out with me.

4 Q. What did you take that to mean?

5 A. For me to be more accommodating as far as the
6 security detail, the travel aides, the -- any of his
7 requests.

8 Q. So in your very first conversation when he
9 first told you he was having an affair, had you given
10 him some advice, some professional advice?

11 A. I did. I gave him ethics advice.

12 Q. And what was that advice?

13 A. The ethics advice in 2018 was that when you try
14 to keep things secret and you're a statewide elected
15 official who is running for office, that it could be
16 both ethically, legally, and morally challenging and
17 that it was beginning to bleed over into the office.

18 Q. And is that what you were seeing?

19 A. Yes.

20 Q. All right. Your second conversation in the
21 summer of 2019, did you give him some similar advice?

22 A. I gave him identical advice.

23 Q. All right. Did you tell him that he needed to
24 get his life in order so that the office could get back
25 on track?

1 MR. BUZBEE: Objection.

2 A. I did.

3 MR. BUZBEE: Leading and hearsay.

4 PRESIDING OFFICER: Sustained.

5 Q. (BY MS. BUESS) What did you tell him he should
6 do?

7 MR. BUZBEE: Objection, hearsay.

8 MS. BUESS: It's not hearsay, Your Honor.
9 She's the declarant, and Mr. Buzbee knows she's
10 available for cross. He can have time with her when I'm
11 done.

12 PRESIDING OFFICER: Overruled.

13 Q. (BY MS. BUESS) You can answer.

14 A. I told General Paxton quite bluntly that it
15 wasn't my business who he was sleeping with but that
16 when things boiled over into the office and into the
17 state work that it become my business and that I was
18 having concerns about how the time and the effort of
19 the -- of the travel aides, the security detail, and
20 myself was being spent.

21 Q. And I want you to tell us what his demeanor was
22 when you told him that.

23 A. He was angry with me.

24 Q. How could you tell?

25 A. He raised his voice loud enough that it was

1 heard outside my office even though the door was shut.
2 He was -- you know, his hands were waving, he was red in
3 the face. He was upset with me.

4 Q. How did that conversation end?

5 A. He stormed off out of my office. He ended the
6 conversation.

7 Q. And you mentioned that your duties had changed.
8 Were you still managing all those different departments?

9 A. I was until September 1st of 2019. So at that
10 time of the conversation I did -- was still helping
11 manage those departments.

12 Q. Okay. I want to talk a little bit now about
13 outside counsel contracts. Is that an area of your
14 expertise?

15 A. It is. When I was the general counsel of the
16 Office of Attorney General it was my duty to process
17 those, read them, approve them. I wrote the
18 administrative rules regarding those contracts. I wrote
19 the contract form, so I'm very familiar with the outside
20 counsel contract process.

21 Q. In your time at the attorney general's office,
22 have you approved and actually evaluated a few or many
23 of those contracts?

24 A. Thousands of those contracts.

25 Q. All right. So you're very familiar with them?

1 A. I am.

2 Q. Do people come and talk to you and ask
3 questions about outside counsel contracts?

4 A. They do.

5 Q. They ask you about a lot of things in that
6 office, don't they?

7 A. They do.

8 Q. All right. All right. Want to talk a little
9 bit about the rules because there are rules within the
10 Office of Attorney General, are there not, for approving
11 those contracts?

12 A. There's a procedure that's published on the
13 agency's website, and there's also the administrative
14 code, Texas Administrative Code 1 TAC Chapter 57 is
15 related to outside counsel.

16 Q. Let's talk just a minute about the procedure.

17 Within the Office of Attorney General when
18 one of those contracts is being drafted up, how --
19 what's the approval process? Very quickly.

20 A. For the -- for a contract for the Office of the
21 Attorney General?

22 Q. Yes.

23 A. Those contracts are generally initiated by the
24 deputy that's interested in having the contract. It's
25 routed through a -- sort of an audit procedure, which is

1 called executive approval memo. Down in the general
2 counsel division, the form is filled out with
3 appurtenant information. There's a contract number
4 that's established, it's put into a computer system, and
5 its reviewed for the requirements of the appropriations
6 act and the rules.

7 Q. Is there a requirement that there's some kind
8 of finding concerning the best interest of the state?

9 A. I think what you're referring to is in the
10 appropriations act, Article IX, Section 16.01(a).
11 There's a requirement before you can spend appropriated
12 funds on an outside counsel for the state, a
13 determination needs to be sent in writing to the
14 controller that the contract is in the best interest of
15 the state and it can be paid.

16 Q. Is there also a requirement that the attorney
17 who's being hired be qualified?

18 A. There is.

19 Q. For the particular job at hand?

20 A. There is.

21 Q. And do you have to have money allotted for the
22 contract?

23 A. Yes. It's --

24 Q. That's the procedure --

25 A. It helps to have money allotted for the

1 contract, yes.

2 Q. All right. So --

3 A. Unless the attorney is working for free, but...

4 Q. The forms that were used within the attorney
5 general's office during this time period, are they the
6 forms that you designed?

7 A. They are.

8 Q. And the procedure where everyone has to sign
9 off all the different levels, was that something that
10 you worked up?

11 A. It's something I was involved in working up,
12 yes.

13 Q. Okay. And it's computerized now. Is it always
14 that way?

15 A. It was not. It used to be in paper with a
16 routing sheet on top.

17 Q. All right. Are applications for those types of
18 contracts given identifying numbers when they're going
19 through the process?

20 A. They are.

21 Q. And is that important?

22 A. It's an important tracking mechanism to track
23 the contract, and it's in the system, and then it's
24 approved. And it also allows the accounting division
25 and the budget division to know which funds to pay that

1 contract -- which funds to direct the controller to pay
2 the contract out of.

3 Q. Missy, can you tell us when you first heard the
4 name Nate Paul?

5 A. Not with precision.

6 Q. Ballpark?

7 A. Probably 2019. And I heard that name come up
8 in the weekly updates from David Maxwell and Mark
9 Penley.

10 Q. Were those at the meetings of all the deputy
11 chiefs?

12 A. At times. And there were also private meetings
13 at a regularly scheduled time with Mr. Mateer and myself
14 and that particular deputy.

15 Q. And what was the context of hearing that name?
16 What was going on?

17 A. I was aware that at first --

18 MR. BUZBEE: Objection. I'm sorry, Your
19 Honor, to interrupt. This is based on hearsay.
20 Objection, hearsay.

21 MS. BUESS: I'm not offering it for the
22 truth of the --

23 PRESIDING OFFICER: Sustained.

24 Q. (BY MS. BUESS) Missy, when you heard the name
25 Nate Paul, what was it in context to? Was it --

1 MR. BUZBEE: Your Honor --

2 Q. (BY MS. BUESS) -- related to?

3 MR. BUZBEE: Can I finish, please?

4 It's the same question, hearsay.

5 Objection.

6 MS. BUESS: I'm not offering it for the
7 truth of the matter asserted. I'm trying to show the
8 context in which she's known that name.

9 MR. BUZBEE: That's not an exception to
10 the hearsay rule, Your Honor.

11 PRESIDING OFFICER: Sustained.

12 Q. (BY MS. BUESS) When you heard the name of Nate
13 Paul, did you do anything? Were you involved at all?

14 A. No, I was just listening.

15 Q. Okay.

16 A. To that --

17 Q. At some point, did you become aware of a
18 contract?

19 MR. BUZBEE: Objection, Your Honor.
20 Hearsay.

21 MS. BUESS: I'll reword it.

22 MR. BUZBEE: She just said she wasn't
23 involved and she heard about it, so everything she knows
24 about it, somebody told her.

25 PRESIDING OFFICER: Sustained.

1 MS. BUESS: I'll reword it.

2 Q. (BY MS. BUESS) At some point, did you become
3 aware of a contract that had been set aside for Brandon
4 Cammack?

5 A. Yes.

6 Q. When did you learn about that?

7 A. I recall being told --

8 MR. BUZBEE: Objection. I'm sorry, Missy.
9 Your Honor, she's telling us right now
10 that everything she knows is hearsay.

11 MS. BUESS: I'll reword it.

12 PRESIDING OFFICER: Sustain.

13 Q. (BY MS. BUESS) Without telling us what
14 somebody said, tell us, first of all, the time frame of
15 when you became aware of it?

16 A. I'm just not sure I can tell you the exact time
17 frame.

18 Q. Okay. Ballpark is fine.

19 MR. BUZBEE: No it's not, Your Honor.
20 That's pure speculation. Ballpark is not good enough
21 under oath in court.

22 PRESIDING OFFICER: Sustained.

23 Q. (BY MS. BUESS) Did you get a phone call from
24 General Paxton about a contract for Brandon Cammack?

25 A. I did.

1 Q. When did that happen?

2 A. September 28th of 2020.

3 Q. All right. Where were you?

4 A. I was at my ranch in Mason, Texas. I got a
5 call on my cell phone.

6 Q. Okay. Was this COVID? Were you at home?

7 A. I was.

8 Q. Working from home?

9 A. I was.

10 Q. All right. The first contact you had, what was
11 it from the General?

12 A. The attorney general called and asked me for
13 some advice given my experience in the outside counsel
14 world about an outside counsel contract he was
15 interested in entering into with Brandon Cammack. And
16 so he called and asked me how the process worked.

17 Q. And what did you tell him?

18 A. I told him how the process worked. We talked
19 about the statute. We talked about the rules. We
20 talked about the internal procedure of how it worked.
21 He was interested in pursuing an outside counsel
22 contract with him.

23 Q. On September 28, did he make you aware that
24 there had been a problem with the contract that had --
25 was going through the office for signature for approval?

1 A. He did.

2 Q. Did he tell you who was holding it up?

3 A. He did.

4 Q. Who did he tell you?

5 A. Mark Penley.

6 Q. And did he ask you how to get that contract in
7 effect without that signature from Mark Penley?

8 A. He did.

9 Q. What did you tell him?

10 A. I told General Paxton that I believed given my
11 experience that he as the attorney general could sign an
12 outside counsel contract with Mr. Cammack if he followed
13 certain procedures that weren't able to be waived.

14 Q. Okay.

15 A. Which is the best interest standard in order to
16 pay him. Then I also told him he could waive in writing
17 based on one Texas Administrative Code Section 52.7(c),
18 that if the attorney general or the first assistant
19 waives the internal procedures in writing then they can
20 all be waived. The ones that aren't statutory are
21 required by the appropriations act.

22 Q. So the waiver can happen by the attorney
23 general or first assistant, but it has to be in writing,
24 is that correct?

25 A. That's what the administrative rule says.

1 Q. All right. You also mentioned that -- that
2 despite that, the standards of whether or not that
3 contract is in the best interest of the state still
4 applied, is that correct?

5 A. Standard of whether the contract met the best
6 interest of the state in order to be funded still
7 applied, yes.

8 Q. All right. So he can sign a contract on his
9 own as long as he provides a written waiver.

10 How about funding?

11 A. So at the Office of the Attorney General there
12 isn't an account set aside for outside counsel
13 contracts. The money has to be moved from what is
14 called the first assistants reserve, which is a -- some
15 funding that's at the first assistant's discretion.
16 That money can be moved by -- in writing to the budget
17 people and set aside, the money. Then the money is
18 coded and applied to the outside counsel contract.

19 Q. So can be done but should be done. Are those
20 two different questions?

21 A. They are.

22 Q. Did you talk with him about the -- whether or
23 not it should be done?

24 A. I did.

25 Q. What did you tell him?

1 A. I -- since he had already told me that Mark
2 Penley was refusing to sign, we talked about why that
3 could be that Mark Penley did not want to sign and why
4 Jeff also did not want to sign and that it was going to
5 be really hard to get over the best interest standard
6 till we resolved that, which is the funding part, not
7 whether or not it was legal for the attorney general to
8 sign his own outside counsel contract.

9 Q. Okay. How did he respond when you told him
10 that?

11 A. He was very appreciative of the advice. He
12 asked me if I could text him the statutes and the rules
13 and the procedure so he could see what we were talking
14 about. And I did that.

15 Q. Before you hung up with him, did you tell him
16 this was ill-advised?

17 A. I did.

18 MR. BUZBEE: Objection, leading.

19 PRESIDING OFFICER: Sustained.

20 Q. (BY MS. BUESS) What did you mean by
21 "ill-advised"? In your opinion, what does that mean?

22 MR. BUZBEE: Your Honor, if I could,
23 obviously you sustained the objection and now she's
24 going right back at it and now testifying herself.

25 PRESIDING OFFICER: Would you --

1 sustained. And would you --

2 MS. BUESS: I'll reword it.

3 PRESIDING OFFICER: Reword it.

4 Q. (BY MS. BUESS) When you advise someone that a
5 contract shouldn't be done, can be done but shouldn't be
6 done, how did you tell him?

7 A. I would have used the word "ill-advised."
8 That's just kind of a word I use.

9 Q. And did you tell him why it was ill-advised?

10 A. I did.

11 Q. What did you tell him?

12 A. Told him that his senior staff felt like that
13 this contract was a problem and they didn't want him to
14 do it and that we needed to resolve that and be on the
15 same page.

16 Q. Okay. Were there continued -- was there
17 continued contact from Ken Paxton concerning this
18 contract?

19 A. He emailed me back the next morning after I
20 sent him the stuff in writing and said he appreciated
21 it. He did call me back again the next day a couple of
22 hours later, and we had -- we had a conversation again.
23 We talked about all these same things again. And I --
24 then I think he might have reached out to me on October
25 the 1st, but I did not return that call.

1 Q. Okay. That last phone call you had with him,
2 what was the content of it?

3 A. It was very similar to the first -- the content
4 of the first conversation.

5 Q. So he wanted to know what was -- how he could
6 do it?

7 A. Follow-up questions about now didn't you say
8 that I could do it this way or that way. And we went
9 through that again and how the funding worked again and
10 how to -- how to make it happen.

11 Q. That last phone call that you had with him
12 about how to make it happen, did you talk with him again
13 about why he shouldn't make it happen?

14 A. I -- my recollection is I was much firmer on
15 how strongly the executive team felt that it was
16 ill-advised.

17 Q. Okay. I want to talk about his demeanor on the
18 telephone during that particular phone call. Would you
19 describe it?

20 A. The second phone call?

21 Q. Yes.

22 A. His demeanor -- it was like I was on
23 speakerphone and somebody else was listening, which
24 concerned me.

25 Q. Why did you think that?

1 MR. BUZBEE: Your Honor, I'm sorry. I'm
2 going to have to object. This is rank speculation, and
3 I object under 602.

4 PRESIDING OFFICER: Overruled.

5 Q. (BY MS. BUESS) You've known him for how many
6 years?

7 A. Since 2015.

8 Q. You've known him through good times and bad
9 times?

10 A. I have.

11 Q. Tell us, based on your knowledge of him, what
12 your impressions were of that phone call of his
13 demeanor.

14 A. It was unusual. It was like I was speaking to
15 somebody besides him because he's very bright and he
16 knew exactly what we had talked about the day before,
17 and it was repeating the same thing like it was playing
18 to an audience.

19 Q. Did you think that it was a phone call where it
20 was a private phone call, like telephone to ear?

21 MR. BUZBEE: Objection. Again, Your
22 Honor, this is speculation. She doesn't know if anybody
23 was there with him, and she's just speculating.

24 MS. BUESS: I'll ask it a little
25 differently.

1 PRESIDING OFFICER: Yes, rephrase.

2 Q. (BY MS. BUESS) Did you have an impression that
3 you were not on a direct private telephone line with Ken
4 Paxton at that time?

5 A. I was concerned about that, yes.

6 Q. What did you think?

7 MR. BUZBEE: Again, Your Honor, what she
8 thought is irrelevant. And it's also speculation.

9 PRESIDING OFFICER: Sustained.

10 Q. (BY MS. BUESS) That phone call obviously made
11 you very uncomfortable. You've said that. What about
12 it made you uncomfortable?

13 A. General Paxton's persistence to do this knowing
14 his senior staff objected, which was very unusual. And
15 it was also unusual to me that he chose to call me and
16 talk to me about it since we were not on the best of
17 terms.

18 Q. Let's talk a little bit -- a little bit about
19 these types of contracts.

20 To create a contract and assign
21 responsibility to an outside attorney, are there certain
22 parameters and limitations?

23 A. So the outside counsel process was designed in
24 order to protect and preserve the attorney general's
25 office's constitutional and statutory duties to

1 represent the state. So necessarily a grant of an
2 outside counsel approval is a granting that in the first
3 instance, those activities would have been within the
4 course and scope of something the attorney general's
5 office could do. If that makes sense.

6 Q. And are the scope of duties of the attorney
7 general's office lined up with civil law? In other
8 words, are they civil properties?

9 A. I mean, it's civil. There are civil parts of
10 it. There's also the ability of the attorney general's
11 office to assist prosecutors on requests.

12 Q. Okay.

13 A. If that's what you're asking.

14 Q. That's what I'm asking.

15 A. Okay.

16 Q. So talk with me for just a minute about how we
17 get to prosecution. What has to happen? What has to
18 happen for the attorney general's office to be able to
19 prosecute legally?

20 A. Well, if the attorney general's office wasn't
21 provided statutory authority by the legislature to have
22 sole prosecutorial authority in the area, those sorts of
23 questions are ones that come from a request by a
24 constitutional district attorney or county attorney for
25 assistance as a general rule.

1 Q. Okay. So can the district attorney limit the
2 scope of the ability of the office to do that kind of
3 work?

4 A. I'm sure they can. They pick and choose what
5 they decide to send over and what they ask for.

6 Q. During all the years you were at the AG's
7 office, have you ever seen the Office of the Attorney
8 General hire outside counsel to handle a criminal item?

9 A. I don't recall hiring outside counsel to handle
10 a criminal item.

11 Q. Are those large divisions within the office?

12 A. Some of them are larger than others, but we do
13 have -- we have prosecutors on staff, we have peace
14 officers on staff.

15 Q. Okay. So there are qualified people within the
16 attorney general's office to handle those types of
17 things?

18 A. There's -- yes.

19 Q. Okay. I want to talk about the contract in
20 particular, the Cammack contract. Have you seen it?
21 Have you been able to look at it?

22 A. I have seen it.

23 Q. All right. I want to talk about the contents
24 of that. The limitations were provided on that
25 contract, were they not?

1 A. Yes.

2 Q. Was there an addendum A?

3 A. The addendum A is generally the scope of work
4 that the outside counsel is being requested. That's how
5 it's set up in the form.

6 Q. Okay. And based on your research, what did
7 that addendum A track? What language was that?

8 A. Can you show it to me, please, ma'am?

9 MS. BUESS: Stacey, 227, please. It's in
10 evidence.

11 THE WITNESS: If I could see addendum A,
12 please, ma'am.

13 MS. BUESS: We need addendum A, please.
14 Oops. Thank you. There we go.

15 Q. (BY MS. BUESS) Do you recall looking at that
16 language?

17 A. I have read this language before, yes, ma'am.

18 Q. And was that language tracked from the Travis
19 County District Attorney's Office referral letter? Did
20 you take a look at that?

21 A. It appears to be very similar.

22 Q. Okay. And is it a limiting type of language?

23 A. Meaning by its nature all scope of services are
24 limiting in their language.

25 Q. This particular contract, though, does it

1 give --

2 MR. BUZBEE: Your Honor, I hate to object.
3 Can we get some foundation here? This is -- she was not
4 involved in this other than the phone call she just
5 talked about. And we heard Ryan Vassar who drafted
6 this. So this is all something she learned later, and
7 she shouldn't be up there testifying about it.

8 Q. (BY MS. BUESS) Missy, do you have a lot of
9 experience --

10 PRESIDING OFFICER: Sustained.

11 Q. (BY MS. BUESS) -- in these contracts?

12 MR. BUZBEE: I'm talking about this
13 particular contract, Your Honor. She just asked it
14 again. This witness was not involved in the drafting of
15 this contract.

16 MS. BUESS: This witness does not have to
17 be involved in the drafting of the contract to give an
18 opinion concerning it or to talk about it. That's not
19 required under the law.

20 MR. BUZBEE: Moreover -- thank you for
21 that.

22 Moreover, Your Honor, now she's asking her
23 to give some sort of legal opinion, which certainly
24 she's not been proffered as an expert. They don't have
25 any experts in this case.

1 MS. BUESS: She's a person who teaches.
2 This is an area of her expertise. She's talked about
3 the thousands of contracts that she's looked at and
4 approved.

5 PRESIDING OFFICER: Let me settle this.
6 I'm going to overrule.

7 Continue.

8 MS. BUESS: Thank you, Mr. President.

9 A. Can you repeat that question?

10 Q. (BY MS. BUESS) Can you look at addendum A, and
11 there's a limitation in there concerning the ability to
12 do what? What is it authorizing Brandon Cammack to do?

13 A. Let me take a second to review it, please.

14 Q. Certainly.

15 A. The contract provides that pursuant to a
16 request basically from the Travis County District
17 Attorney's Office that the outside counsel will conduct
18 an investigation under the authority of the attorney
19 general's office of the criminal allegations contained
20 in the complaint.

21 Q. Okay. It says to conduct a review, does it
22 not, in the very --

23 A. It does.

24 Q. -- first paragraph?

25 A. It does. A review and then --

1 Q. Of the allegations?

2 A. A review of the allegations. And then the
3 third paragraph, conduct an investigation.

4 Q. Okay. Does that particular contract authorize
5 prosecution of a case?

6 A. The last sentence in the contract: Exclude
7 legal services relating to post-investigation activities
8 including but not limited to indictment and prosecution.

9 Q. So it excludes that?

10 A. Correct.

11 Q. All right. I want to talk about this contract,
12 this contract that you were consulted about by Ken
13 Paxton himself. Is there a problem with Ken Paxton
14 authorizing signing a contract like this to provide
15 services when he's authorized him at least two weeks
16 ahead of time to start providing those services?

17 A. I have never been made personally aware of when
18 Ken Paxton signed this contract, so I don't think I can
19 answer your question.

20 Q. So what I'm asking you is: If he had
21 authorized Brandon Cammack --

22 MR. BUZBEE: Your Honor --

23 Q. (BY MS. BUESS) -- two weeks earlier --

24 MR. BUZBEE: I'm sorry.

25 MS. BUESS: Let me finish my question,

1 please.

2 MR. BUZBEE: There's no reason to yell.

3 Your Honor, I'm sorry. I have to object
4 that counsel is putting facts that are not in evidence.
5 The witness has already told us she has no personal
6 knowledge. This is completely improper and I object.

7 MS. BUESS: She is an employee who's
8 familiar with the procedures and whether or not things
9 are proper or not. In fact, she's being consulted about
10 it, so I think I'm entitled to ask her.

11 PRESIDING OFFICER: Overruled. Overruled.

12 MS. BUESS: Thank you.

13 A. Can you repeat the question, please?

14 Q. (BY MS. BUESS) Is there a problem if the
15 contract was signed by Ken Paxton and he had authorized
16 the services to be performed weeks ahead of time before
17 that date of signature?

18 A. The contract should have an -- in the first
19 pages an effective date of the contract. And I don't
20 have in front of me what those effective dates were, but
21 the effective dates need to line up. It's not the time
22 of signature, it's the effective date of the contract.
23 But there's still the problem of the funding. It's
24 unresolved.

25 Q. What if there's no date at all because it's not

1 been put on there?

2 A. Then I would be speculating as to whether or
3 not the contract was signed before the date of the
4 effective date of the work.

5 Q. Okay. Assuming that your advice to General
6 Paxton about his ability to sign it under that little
7 provision --

8 A. Uh-huh.

9 Q. -- would it be properly done if he did not
10 provide a written waiver?

11 A. If he did not provide the written waiver
12 required by the rules, then the procedures should have
13 been followed.

14 Q. Okay. So you either follow the procedures or
15 you have to sign it and give a written waiver as the
16 attorney general, is that correct?

17 A. That's the process.

18 Q. All right. So without that written waiver,
19 where are we?

20 A. It's nearly a violation of the process. It
21 doesn't make it illegal; it just makes it a violation of
22 the process.

23 Q. How about funding it, what does it do to that?

24 A. Without the proper written indicators to the
25 controller, they're not going to pay the invoices.

1 Q. Okay.

2 A. Even if the money is there.

3 Q. The addendum A talks about a referral from the
4 Travis County District Attorney's Office. If General
5 Paxton had added a second referral and told Brandon
6 Cammack just do the whole job, is there a problem with
7 that, with a contract that's not authorizing the work to
8 be done?

9 A. I don't know that I'm comfortable speculating
10 to that.

11 Q. Uh-huh.

12 MR. BUZBEE: Then I object, Your Honor.
13 The witness has admitted, thank you, that this would be
14 all speculation.

15 PRESIDING OFFICER: Sustained.

16 Q. (BY MS. BUESS) What are your thoughts on that?

17 MR. BUZBEE: Your Honor --

18 MS. BUESS: I'd like you -- I'd like to
19 let her finish the thought, as far as she's not
20 rendering an opinion, but I'd like her thoughts on it.

21 MR. BUZBEE: Again, Your Honor, she just
22 said this would be mere speculation, so this is
23 improper.

24 PRESIDING OFFICER: Sustained. Sustained.

25 Q. (BY MS. BUESS) Are you familiar with the

1 attorney applicants who applied for this particular
2 contract?

3 A. I'm familiar with their names.

4 Q. Okay.

5 A. Do not know them.

6 Q. Was Brandon Cammack the qualified candidate?

7 A. I don't think I was ever asked to weigh in to
8 that question.

9 Q. I'm not asking you that.

10 Having looked at all these contracts and
11 you've said you have to have a qualified candidate for
12 the job, looking at those two, was Brandon Cammack the
13 qualified applicant for it? Was he the best choice?

14 A. It was not my decision to make who the best
15 choice was.

16 Q. I'm not asking that. I'm asking your opinion.
17 As you sit here today --

18 PRESIDING OFFICER: Asked and answered, I
19 think.

20 Q. (BY MS. BUESS) Would it ever be in the best
21 interest of the state to pay for a free investigation to
22 a private citizen when there's no state interest
23 involved?

24 A. You're hypothetically asking me if it's --

25 Q. I am.

1 A. -- proper to execute an outside counsel at zero
2 dollars for an investigation where there's no state
3 interest involved at all?

4 Q. Correct.

5 A. I'm not sure it's possible to execute an
6 outside counsel contract where there's no state interest
7 involved because the ability to contract with outside
8 counsel derives from the ability of the attorney
9 general's office to represent a particular client in a
10 particular matter.

11 Q. We're talking about a cost, right? We're
12 paying somebody other than an in-house attorney from the
13 OAG to do the work requested, correct?

14 A. Statute -- the Government Code at 402-0212 that
15 describes outside counsel talks about the full-time
16 employees of the agency don't count against as being
17 outside counsel. It's when you hire a counsel that's
18 not employed by the state.

19 Q. So my question is: When you're paying someone
20 like Brandon Cammack outside of the state to provide
21 services that benefit only one individual for a job that
22 is not in the best interest of the state, do we have a
23 good contract?

24 MR. BUZBEE: I'm sorry, Your Honor.
25 Objection. Vague. The question is completely vague.

1 PRESIDING OFFICER: Sustained.

2 Q. (BY MS. BUESS) You said that in order for a
3 contract to be approved and signed from the office of
4 attorney general for an outside counsel, the whole
5 contract has to be in the best interest of the state,
6 right?

7 A. Yes. I mean, that would be ideal. It's not
8 because that comes from the appropriations act, but it
9 is -- the state should not perform acts with taxpayer
10 dollars that are not in the best interest of the state,
11 in my opinion.

12 Q. Right. And so if it's -- if it's a job that's
13 only going to benefit a citizen and has nothing grounded
14 within a state interest, that's not a contract that
15 should be approved, is it?

16 MR. BUZBEE: Objection, leading.

17 PRESIDING OFFICER: Sustained.

18 Q. (BY MS. BUESS) Is that the type of contract
19 that we want?

20 MR. BUZBEE: Objection.

21 Q. (BY MS. BUESS) That we should be approving?

22 MR. BUZBEE: I'm sorry. I don't know who
23 "we" is, but objection. Vague.

24 PRESIDING OFFICER: Sustained.

25 Q. (BY MS. BUESS) Let's talk about

1 September 28th. That afternoon after you spoke with Ken
2 Paxton about this contract, did your phone start blowing
3 up?

4 A. I talked to General Paxton, I believe -- I
5 believe those phone calls were in the evening on the
6 28th, not in the morning.

7 Q. And who --

8 A. And so --

9 Q. Who were you getting the phone calls from?

10 A. So when General Paxton called me, because he
11 hadn't looped me into his world in a while, I did call
12 Jeff Mateer before I called him back, and Jeff
13 relayed --

14 MR. BUZBEE: Objection, hearsay.

15 PRESIDING OFFICER: Sustained.

16 Q. (BY MS. BUESS) Later on that evening, who did
17 you speak with?

18 A. Mr. Mateer.

19 Q. Did you speak with anyone else other than him?

20 A. After I spoke to General Paxton, I don't
21 believe so. It was late.

22 Q. Okay. Following day, did you receive some
23 phone calls from other people within the office?

24 A. I did.

25 Q. Who did you hear from?

1 A. I think there was sort of a all -- there was
2 all involved deputies call with a number of the deputies
3 that's been previously reported on that I was on the
4 telephone for.

5 Q. Okay. And how long were you on the phone?
6 What --

7 A. Hours.

8 Q. -- time frame?

9 All right. How many of you were on that
10 call?

11 A. I mean, I would -- I would say six to eight of
12 us at various times, sometimes up to ten. And people
13 were in and out of the call.

14 Q. What was going on?

15 A. There had been some subpoenas issued by
16 Mr. Cammack that some of the staff had known about and
17 reported, and the deputies were getting together with
18 Mr. Mateer to discuss those facts and the circumstances
19 around what was happening at the time.

20 Q. Okay.

21 A. With him.

22 Q. Was Nate Paul at the center of that
23 conversation?

24 MR. BUZBEE: Objection, hearsay.

25 MS. BUESS: Topic -- I'm not asking her to

1 repeat what was said.

2 PRESIDING OFFICER: Overruled.

3 Q. (BY MS. BUESS) Was Nate Paul the topic?

4 A. Yes.

5 Q. Did you learn about several things that had
6 been going on in the office?

7 A. Yes.

8 Q. Any idea why you were not aware of those things
9 before that date?

10 A. I believe that due to COVID, everyone being
11 home and not on the same floor working together and
12 people coming in and out on different days of the office
13 in the middle of the pandemic, we were not -- we were
14 not all together at that time as a team in the same
15 place at the same time. And so there wasn't complete
16 awareness like there usually would have been of what
17 each deputy was working on with relation to Mr. Paul and
18 General Paxton.

19 Q. So as a result of that long phone call with the
20 group, did you come to -- I'm not asking you to repeat,
21 but did you come to learn about those things that had
22 been happening within the office?

23 A. I did.

24 Q. And what was the connecting theme of those
25 things?

1 A. Mr. Paul.

2 Q. All right. As a person who's spent so many
3 years worrying about ethics and how things should be
4 managed within a government office, what were your
5 thoughts about what was going on?

6 A. I was surprised at the level of involvement
7 from the attorney general with one particular person
8 that reached across so many levels of the executive
9 staff all related to one person.

10 Q. In the course of your career, have you ever
11 experienced something like that before?

12 A. Not related to a particular person as opposed
13 to a particular topic.

14 Q. Okay. Tell us what your concern was ethically
15 with what had happened.

16 A. I learned that the contract was executed even
17 though the conversations I was having with General
18 Paxton, he never told me that the contract was already
19 executed. We were approaching the conversations as if
20 it was not a fait accompli and had not been done. So I
21 was very surprised by that, and I was surprised by how
22 many different things related back to a use of resources
23 by the agency for one person.

24 Q. So what's the big deal with that? Who cares?

25 MR. BUZBEE: Objection, Your Honor. I

1 mean --

2 Q. (BY MS. BUESS) What's the deal?

3 MR. BUZBEE: -- I don't know what that is.
4 That's not a question. That's not a proper question. I
5 object to it.

6 PRESIDING OFFICER: Sustained.

7 Q. (BY MS. BUESS) What's the problem with all of
8 those resources going to one person?

9 A. Besides it being unusual, it was unusual, and
10 there was a lot of speculation about the underlying
11 reasons during that phone call.

12 Q. Okay. Was there any resolution with that phone
13 call? Was there a decision to do something?

14 A. On the 29th?

15 Q. Yes.

16 A. There was not.

17 Q. How about the 30th, the next day?

18 A. There was.

19 Q. And what did you decide to do? What did the
20 group decide to do?

21 A. The group felt like some of the group felt like
22 they had an obligation to report to law enforcement.

23 Q. Why would they do that? What was -- what was
24 the problem --

25 MR. BUZBEE: Objection, speculation.

1 She's asking about people we've already heard from tell
2 us what they were thinking. We've heard from them.

3 MS. BUESS: I'll reword it.

4 PRESIDING OFFICER: Sustained.

5 MS. BUESS: I'll reword it.

6 Q. (BY MS. BUESS) And at this point in time, what
7 was the problem with what had been going on? What was
8 the concern in your mind?

9 A. The concern in my mind was the immense amount
10 of effort that was being put to the problems of one
11 particular individual when so many of the executive
12 staff disagreed with that. And I'm a consensus builder,
13 and there was not consensus on how to move forward on
14 these things.

15 Q. Was it the degree of that --

16 MR. BUZBEE: Objection, leading.

17 PRESIDING OFFICER: Sustained.

18 Q. (BY MS. BUESS) When you looked at all of the
19 events that you learned about and you looked at the
20 people that had been involved with it, did you, in your
21 mind, figure out how much of the office had actually
22 been dedicated to doing work for Nate Paul's benefit?

23 A. I did.

24 Q. What kind of number did you come up with? How
25 did you -- how did you describe it?

1 A. I think at the time I mentally came up it was
2 six -- more than 50 percent of the deputies' time of our
3 entire executive staff.

4 Q. Have you ever seen anything like that in your
5 career?

6 A. I had not.

7 Q. All for the benefit of who?

8 A. I think -- I don't know that I can answer who
9 it was for the benefit of. What I can answer is the
10 commonality --

11 MR. BUZBEE: Objection.

12 A. -- and the thread --

13 MR. BUZBEE: Sorry, ma'am. The witness
14 just told us she can't answer the question. Next
15 question.

16 Q. (BY MS. BUESS) And what was --

17 PRESIDING OFFICER: Sustained. Sustained.

18 Q. (BY MS. BUESS) What was the commonality of it
19 that you were about to talk about?

20 A. Nate Paul was the commonality.

21 Q. All right. And the other -- the other
22 commonality would be who directed it. And who was that?

23 A. Attorney General Paxton.

24 Q. When the attorney general's office does
25 something that totally violates it's long-time policy,

1 for example, something like open records and not
2 disclosing information for pending law enforcement, you
3 know, honoring the law enforcement exception, and not
4 releasing documents that have to do with ongoing
5 criminal investigations, what's the effect? What kind
6 of things happen to the office and to the public?

7 MR. BUZBEE: Your Honor, that is a
8 completely improper question. This person is not even
9 involved in public information at the office. Moreover,
10 it's -- the question -- it is three or four different
11 questions.

12 PRESIDING OFFICER: Sustained.

13 MR. BUZBEE: It's improper.

14 Q. (BY MS. BUESS) Do you have experience in open
15 records?

16 A. I do. I've -- I was the public information
17 coordinator for the Office of the Attorney General. I
18 was the division chief of the division. And at the time
19 that you're asking about, I was the supervisor of the
20 public information officer for the Office of the
21 Attorney General who had briefed that particular ruling
22 to the open records division.

23 Q. So when you violate the policy, the
24 long-standing policy to protect that type of
25 information, what does it do?

1 MR. BUZBEE: Your Honor, that assumes --
2 she just said she approved this, and now her -- the
3 lawyer is saying that she violated some policy. That's
4 improper.

5 MS. BUESS: That's incorrect. I've not
6 said anything like that.

7 PRESIDING OFFICER: Overruled.

8 Q. (BY MS. BUESS) What's the long-term effect?
9 What happens? What's the concern?

10 A. The open records division changes long-standing
11 precedent in their rulings, it can create confusion and
12 it is a proactive statement of precedent on other
13 rulings in that area.

14 Q. And when it's broken, what does that mean, that
15 precedence gone?

16 A. All the governmental agencies have to adapt to
17 that new precedent across the board with every request
18 that's similar.

19 Q. Did you go with the others to the FBI?

20 A. I did not.

21 Q. Why not?

22 A. I had retired, and so I did not. I was invited
23 to the meeting, and I was three hours away, and the
24 meeting -- I was told that unless you came in person,
25 don't come.

1 Q. Did you have an occasion later on to go talk
2 with the FBI about your observations?

3 A. I was subpoenaed by the grand jury to talk
4 about my observations in 2021.

5 Q. Okay. And did you do that?

6 A. I did.

7 Q. Did you cooperate?

8 A. I complied with a lawful subpoena.

9 Q. And your name is not on the whistleblower
10 letter, is that correct?

11 A. I am not a whistleblower.

12 Q. Why is that? Why did you not sign the letter?

13 A. Because I had -- the time all this was
14 happening, I had already submitted my notice to retire
15 and my retirement was imminent. So for lack of a better
16 word, I was a quitter. I had quit.

17 MS. BUESS: Pass the witness.

18 PRESIDING OFFICER: Mr. Buzbee, your
19 witness.

20 MR. BUZBEE: Yes, Your Honor. Thank you.

21 CROSS-EXAMINATION

22 BY MR. BUZBEE:

23 Q. Hello, ma'am.

24 A. Mr. Buzbee.

25 Q. You look like you're a little nervous.

1 A. I'm not nervous.

2 Q. Feeling good?

3 A. You know, I don't think anybody particularly
4 wants to be here, Mr. Buzbee.

5 Q. Let me ask you something. You said you
6 appeared in front of the grand jury?

7 A. I was subpoenaed to appear at the grand jury.

8 Q. And that was in 2021?

9 A. Yes, sir.

10 Q. And it's 2023 now?

11 A. Yes, sir.

12 Q. And that you told them everything you told us
13 here?

14 A. I answered the questions --

15 MS. BUESS: I object. If she's appeared
16 before grand jury, she cannot talk with us about what
17 she testified to.

18 MR. BUZBEE: She can tell me that if
19 that's the case.

20 PRESIDING OFFICER: Sustain.

21 Q. (BY MR. BUZBEE) So suffice it to say your
22 story hasn't changed since 2021, right?

23 A. Can you explain to me what story I'm talking
24 about?

25 Q. I'm wondering why the so-called whistleblowers

1 who reported this to the Travis County DA's Office and
2 to the FBI and maybe others and you who spoke to
3 apparently the FBI or the grand jury at some point, why
4 nothing's happened even though every single thing that
5 we've heard in this impeachment has already been fully
6 vetted. Can you tell me, has there been an indictment
7 of our attorney general?

8 A. So your question is --

9 Q. Has there been an indictment of our attorney
10 general?

11 A. Not that I'm aware of.

12 Q. Okay. You think that Laura Olson drives a red
13 car. Is that what you told us?

14 A. I did not say that. I said the person at the
15 Galaxy Cafe that I saw drove a red car. I've never said
16 it was Laura Olson for sure.

17 Q. Why are you even telling us about somebody that
18 drives a red car at the Galaxy Cafe when Laura Olson
19 never owned a red car?

20 MS. BUESS: Objection. That assumes facts
21 that are not in evidence.

22 PRESIDING OFFICER: Sustained.

23 Q. (BY MR. BUZBEE) Do you know whether Laura
24 Olson has ever owned a red car?

25 A. Do not.

1 Q. Do you know what kind of car Laura Olson would
2 have been driving back in that time frame?

3 A. I do not.

4 Q. Okay. So you just got up here in front of all
5 these people, people watching at home, our distinguished
6 jury and was telling us about some unknown person
7 driving a red car at Galaxy Cafe and you don't even know
8 who that was, do you?

9 A. That would be correct.

10 Q. Why the devil are we even hearing about the
11 Galaxy Cafe? You didn't know who that person was?

12 A. I never said that I did.

13 Q. How long did you work with these people over
14 here to prepare yourself for your testimony?

15 A. I didn't work with them. I was asked to go in
16 front of the house managers and interviewed as well as
17 talk to you and your staff.

18 Q. There was -- was there -- are you sure there
19 was some sort of attorney general's conference in San
20 Antonio in that time frame?

21 A. The best of my recollection.

22 Q. There wasn't. I guess I'm trying to figure out
23 how good is your memory?

24 A. Is that a question?

25 Q. Yeah. Not very good, is it?

1 A. No, sir, it's not.

2 Q. That's what I thought.

3 Ken Paxton was your boss before you
4 retired, right?

5 A. Yes, sir.

6 Q. Your -- you told us about all this teaching
7 you've done and CLEs, continuing legal educations,
8 right?

9 A. Yes, sir.

10 Q. You -- you've taught students, you've taught
11 other lawyers, right?

12 A. Yes, sir.

13 Q. And you sat up here and you were trying to
14 explain to us contracts and how the process works,
15 right?

16 A. Yes, sir.

17 Q. And your boss called you because he wanted to
18 legally do the right thing, and you provided him advice,
19 didn't you?

20 MS. BUSS: Objection. Calls for
21 speculation on the part of this witness.

22 PRESIDING OFFICER: Sustained.

23 Q. (BY MR. BUZBEE) He wanted to know how to
24 properly sign an outside counsel contract, didn't he?

25 MS. BUSS: Objection. Calls for

1 speculation.

2 MR. BUZBEE: It's exactly what he told
3 her.

4 MS. BUESS: Objection.

5 PRESIDING OFFICER: Overruled.

6 Q. (BY MR. BUZBEE) He wanted line and verse.
7 What did he call you? Missy? Is that what he called
8 you?

9 A. Yes, sir.

10 Q. Missy, look, I'm having a disagreement with
11 this Penley fellow. He's refusing to do his job, he's
12 insubordinate. I need to know under the statutes if I
13 have the authority, the legal authority, to sign a
14 contract. And you gave him advice, didn't you?

15 A. Yes, sir.

16 Q. And you said, Ken, you do.

17 Isn't that right?

18 A. Correct.

19 Q. Why are we here? The guy did everything he was
20 supposed to. He had some insubordinate people in his
21 outfit. So --

22 MS. BUESS: I object. Counsel is
23 testifying. Not asking questions.

24 MR. BUZBEE: That is a question. I'm not
25 finished.

1 PRESIDING OFFICER: Sustained.

2 Q. (BY MR. BUZBEE) You knew that Penley refused
3 to follow the procedure and sign off on the contract
4 right? You knew Penley said, I ain't going to sign it,
5 right?

6 A. I knew Penley said he did not want to sign it,
7 correct.

8 Q. The only person in the office who has authority
9 to sign the contract himself, unless designated, is Ken
10 Paxton, isn't that right?

11 A. That is correct.

12 Q. Let's make sure we're all clear on that. This
13 bureaucratic process that this person signs and this
14 person signs and this person signs, all of their power
15 and authority to sign a contract comes from the elected
16 Attorney General Ken Paxton, isn't that true?

17 A. Subject to the appropriations act, the
18 statutes, and the rules that we adopted, correct.

19 Q. That's right.

20 A. Yes, sir.

21 Q. So -- and we saw Mr. Penley's notes, if he said
22 in his notes: Missy told Ken he had the authority to
23 sign the contract --

24 MS. BUSS: Objection. That violates the
25 rule. Sorry. That violates the rule.

1 MR. BUZBEE: You keep objecting. This is
2 a document that's in evidence, Your Honor. We all
3 looked at it.

4 PRESIDING OFFICER: Overruled.

5 Q. (BY MR. BUZBEE) When we looked at Mr. Penley's
6 notes --

7 MS. BUESS: I object. I object --

8 MR. BUZBEE: You can object again, but
9 it's in the evidence, Your Honor. You saw it. We all
10 saw it.

11 MS. BUESS: I object to him testifying
12 about a document that this witness has not established
13 that she's ever even seen. That's improper.

14 MR. BUZBEE: That's not right, Your Honor.
15 When I asked her if Penley's notes are correct, that is
16 Missy told Ken --

17 MS. BUESS: I am asking for a ruling,
18 Judge.

19 MR. BUZBEE: -- he had the authority to
20 sign a contract, that's an incredibly appropriate
21 question.

22 PRESIDING OFFICER: Sustained.

23 Q. (BY MR. BUZBEE) Now, you did tell Penley that
24 you had told Ken he had the authority, right?

25 A. I told everyone on the phone call, then Penley

1 was one of the members of the phone call, correct.

2 Q. Let's make sure we all get that right.

3 And your job at that point in time when
4 you told Mr. Paxton that was?

5 A. His chief of staff.

6 Q. The chief of staff of the attorney general's
7 office of the state of Texas advised her boss, the
8 attorney general, that it was okay to sign an outside
9 counsel contract, correct?

10 A. I told General Paxton that it was legal for him
11 to sign the outside counsel contract, correct.

12 Q. And then later when everybody was scrambling
13 around, you told his entire executive staff that you had
14 told him that, right?

15 A. I was completely honest with them, yes, sir.

16 Q. And they still went to the FBI, didn't they?

17 A. They, in fact, went to the FBI.

18 Q. That's right.

19 Are you somebody that goes to church?

20 A. I'm not sure that's an appropriate question, is
21 it? My personal beliefs.

22 Q. Well, it is when you're telling us about the
23 ethical, legal, and moral implications of an affair.
24 Remember telling us all that?

25 Remember saying that? Maybe -- I think

1 you said political, ethical, legal implications of an
2 affair. Remember saying that?

3 A. I remember giving the attorney general my
4 thoughts on those topics.

5 Q. Okay. So I won't get your thoughts on the
6 topic.

7 You ever met somebody that's perfect?

8 A. Never, sir.

9 Q. Okay. Was there only one person that was
10 perfect?

11 A. In my belief system, there is only one entity
12 that's perfect.

13 Q. All have sinned and fallen short of the grace
14 of God, right?

15 A. I would agree with that, sir.

16 Q. Yeah. Sometimes people make stupid mistakes,
17 correct?

18 A. Yes, sir.

19 Q. Sometime -- I mean, imagine if we impeached
20 everybody here in Austin that had had an affair, we'd be
21 impeaching for the next hundred years, wouldn't we?

22 A. I don't think I should answer that question in
23 this chamber particularly. I've been around a long
24 time, Mr. Buzbee. I'm not going to go there with you.

25 Q. I'm quite sure you've seen a lot, have you not?

1 A. Indeed.

2 Q. Yeah, just because somebody has an affair
3 doesn't mean that they're a quote, criminal, does it?

4 A. I would not associate that directly.

5 Q. Yeah. I mean, that would be incredibly
6 hypocritical, would it not, if somebody said this guy is
7 a criminal because he had a marital indiscretion. That
8 would be really hypocritical, would it not?

9 A. I would not say that.

10 Q. Yeah, you would never say something like that,
11 would you?

12 A. I would not.

13 Q. You even sent in those -- when you were texting
14 back and forth with Ken Paxton, your boss, you sent him
15 the legal authority that gives him the authority to sign
16 contracts, right?

17 A. Correct.

18 Q. Okay. And you also referred him to the
19 attorney general's website, didn't you?

20 A. With the procedure, yes, sir.

21 Q. Yeah. So you not only told him over the phone,
22 but you also sent him the exact statute and the website,
23 the AG's website, right?

24 A. I did.

25 Q. Okay. Did you ever figure out how the grand

1 jury subpoenas were actually obtained by Mr. Cammack?

2 A. I did not.

3 Q. Okay. You know, of course, he didn't have to
4 appear in front of any grand jury. Right?

5 A. If you told me that, then, you know, I'll take
6 your word for it. I didn't dive into that. Again, I
7 told General Paxton that the contract was legal to sign.

8 Q. Okay.

9 A. But not -- couldn't be funded. He had a
10 funding issue.

11 Q. Okay. We'll talk about the funding issue.

12 The funding issue is something you -- you
13 know, of course, Cammack didn't get any money?

14 A. I do not know that.

15 Q. Okay.

16 A. But you're telling me Cammack didn't get any
17 money.

18 Q. Young man did some -- a lot of work, didn't get
19 paid?

20 MS. BUSS: I object to defense counsel
21 testifying.

22 Q. (BY MR. BUZBEE) I'm asking if you knew that --

23 MS. BUSS: I object.

24 PRESIDING OFFICER: Sustained.

25 Q. (BY MR. BUZBEE) Did you know that, that he

1 never got paid?

2 A. I did not know that until you just told me.

3 Q. Okay. Let me ask you: Is -- would it be an
4 appropriate process for the attorney general, before you
5 everyone try to go through the executive approval
6 memorandum process, the -- that's a bureaucratic
7 process, is it not?

8 A. Correct.

9 Q. Okay. It's a bunch of procedural rules that
10 have no force in law, right?

11 A. It's documentation that has -- not the legal
12 document.

13 Q. Right. You know, oh, got you, you didn't
14 follow the procedure in the office. The AG can decide
15 what the procedure in the office is, can he not?

16 A. He can waive the procedure in writing, yes,
17 sir.

18 Q. He can waive it verbal. He can do what he
19 wants as long as he's -- he believes he's serving the
20 people of Texas, isn't that right?

21 A. Well, he agreed to the rules that said it would
22 be in writing.

23 Q. And he can change the rules?

24 A. If he goes to the Texas Administrative Code
25 process in this instance, he could change the rules,

1 yes.

2 Q. Let me just ask this, though, so we're all
3 clear: Can the AG of our state send an email to the
4 controller? Is there a controller in the office?
5 Somebody in charge of the money?

6 A. It's -- there is a controller in the office,
7 and then there's the Texas controller.

8 Q. Yeah, I'm not -- I'm talking about the internal
9 one. Who was the internal controller in the AG's
10 office?

11 A. Michele Price.

12 Q. Can the AG send an email to the controller
13 within the office and say, set aside 50 K or 25 K for a
14 contract I'm going to sign?

15 A. He can.

16 Q. Okay. Is that something that he has the
17 authority to do?

18 A. Yes.

19 Q. Okay. Does anybody else have that authority?

20 A. The appropriations act in Article IX,
21 Section 16, says that the communication needs to go to
22 the controller. So that communication would need to be
23 forwarded to the controller to prove that the attorney
24 general felt it was in the best interest of the state.

25 Q. The attorney general. No one else?

1 A. The appropriations act uses the words "attorney
2 general," and as you correctly stated, those kind of
3 things he can delegate, but if he didn't delegate, it
4 says attorney general, yes, sir.

5 Q. If he did not delegate, it would be illegal,
6 true?

7 A. I don't understand the question.

8 Q. Let's say that one day Mr. Penley decides that
9 he wants to set aside 50k to sign an outside counsel
10 contract. That would be illegal, wouldn't it?

11 A. I don't think it would be illegal. I don't
12 think anyone would do it for him. The controller would
13 be following the procedures.

14 Q. You think so?

15 A. I do.

16 Q. Okay.

17 A. I would say staff --

18 Q. Let's look in evidence. We've already seen
19 Exhibit 361.

20 MR. BUZBEE: Can we put it on the screen
21 for the witness, Erick? You help me out here, Erick?

22 Everybody likes Erick, Your Honor.

23 PRESIDING OFFICER: And Stacey.

24 MR. BUZBEE: And Stacey. And Stacey.

25 If you don't mind, Erick, go to Page 4 of

1 Exhibit -- AG Exhibit 361.

2 Q. (BY MR. BUZBEE) You see that there in front of
3 you: Jeff Mateer is authorizing \$50,000 to be set aside
4 for a guy named Johnny Sutton.

5 Do you see that?

6 A. I do see this.

7 Q. Did you know that was going on?

8 A. No, sir.

9 Q. Did they tell you they were doing that?

10 A. No, sir.

11 Q. Do you think that that the first assistant has
12 the authority to hire outside counsel be it with an
13 email?

14 A. I do.

15 Q. You do.

16 But Ken Paxton doesn't?

17 A. I believe that Ken Paxton could have sent a
18 very similar email if he did about the funding. I know
19 he would have achieved the same result, if he did. You
20 may show me that documentation, if you'd like. I don't
21 have -- I'm not aware of it.

22 Q. Is the -- I thought we had this real strict
23 bureaucratic procedure to hire outside counsel.

24 Remember you telling us about all that?

25 A. We do.

1 Q. Okay.

2 A. And in that procedure the first assistant has
3 been delegated that authority.

4 Q. No. Ken Paxton did not delegate any authority
5 to hire Johnny Sutton. No. You know that's true?

6 MS. BUESS: I object. That's a
7 misstatement of what she said.

8 Q. (BY MR. BUZBEE) Do you know whether Ken
9 Paxton --

10 MS. BUESS: Object.

11 MR. BUZBEE: I'm going to rephrase the
12 question.

13 PRESIDING OFFICER: Sustain.

14 Rephrase.

15 Q. (BY MR. BUZBEE) Do you know whether Ken
16 Paxton, the boss, authorized Jeff Mateer, the
17 subordinate, to set aside \$50,000 for Johnny Sutton?

18 A. I have no personal knowledge of Johnny Sutton.

19 Q. Okay.

20 MR. BUZBEE: Pass the witness.

21 PRESIDING OFFICER: Redirect.

22 MS. BUESS: No, sir.

23 PRESIDING OFFICER: Are -- both sides can
24 excuse the witness?

25 MR. BUZBEE: We are finished with this

1 witness.

2 MS. BUESS: Yes. Yes.

3 PRESIDING OFFICER: You may step down,
4 thank you.

5 THE WITNESS: Am I excused?

6 PRESIDING OFFICER: You are excused.

7 THE WITNESS: Thank you, sir.

8 PRESIDING OFFICER: She asked is she
9 subject to recall?

10 MS. BUESS: No.

11 PRESIDING OFFICER: Subject to recall?

12 MR. BUZBEE: No, Your Honor. I think
13 we're done with this one.

14 PRESIDING OFFICER: Okay, thank you.
15 Who's your next witness?

16 MR. DONNELLY: Your Honor, the House calls
17 Gregg Cox.

18 PRESIDING OFFICER: Bailiff will bring in
19 Gregg Cox.

20 MR. DONNELLY: And, Mr. President, if I
21 may in an attempt to hopefully expedite the process, I
22 have one piece of evidence that I intend to show while
23 Mr. Cox is on the stand. It is Exhibit No. 249 whose
24 affidavit attached is No. 640. It's a video before the
25 Senate finance committee from February 10th, 2021. It

1 is a government record, and it is authenticated by the
2 proper affidavit associated with it. We'd offer the
3 same into evidence.

4 PRESIDING OFFICER: You're going to submit
5 that, right?

6 MR. DONNELLY: I'm offering it as
7 evidence, Your Honor, because I intend to play it with
8 the witness.

9 PRESIDING OFFICER: It has --

10 MR. DONNELLY: To expedite, I was hoping
11 to get any objections taken care of beforehand.

12 PRESIDING OFFICER: Do you have any
13 objections?

14 MR. BUZBEE: No, Your Honor.

15 (Witness enters)

16 PRESIDING OFFICER: Mr. Cox, raise your
17 right hand.

18 I do solemnly swear or affirm that the
19 evidence I give upon this hearing by the Senate of Texas
20 impeachment charges against Warren Kenneth Paxton, Jr.
21 shall be the truth, the whole truth, and nothing but the
22 truth, so help me God.

23 THE WITNESS: I do.

24 PRESIDING OFFICER: Please take your seat.
25 Court will admit into evidence Exhibit 249

1 and Exhibit 640.

2 (HBOM Exhibits 249 and 640 admitted)

3 MR. DONNELLY: Thank you, Mr. President.

4 May I proceed?

5 PRESIDING OFFICER: Yes, you may.

6 GREGG COX,

7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. DONNELLY:

10 Q. Good afternoon, sir.

11 A. Good -- good afternoon.

12 Q. I'm going to need you to speak a little bit
13 closer to the mic. I'm never really told that nobody
14 can hear me, but I know that acoustics are not great, so
15 please step forward -- or slide forward to make sure we
16 can hear you.

17 A. Very good.

18 Q. Would you please introduce yourself to the
19 honorable Senators?

20 A. Hi. My name is Gregg Cox.

21 Q. And tell us, sir, how you're currently
22 employed?

23 A. I am currently the first assistant with the
24 Hays County District Attorney's Office in San Marcos.

25 Q. Could you give us, please, a quick briefing of

1 your history, professional, and perhaps even law school
2 that led you up to this point?

3 A. Yes. I attended law school at the University
4 of Texas. And actually during my first year of law
5 school, I worked here at the Texas Senate. Took a year
6 off from law school, worked for an accounting firm. And
7 then when I went back during my second year, I got a job
8 as a law clerk at the Travis County District Attorney's
9 Office in the Public Integrity Unit.

10 Upon graduation and passing the bar, I was
11 offered a position as an assistant district attorney,
12 and I ended up staying with the Travis County District
13 Attorney's Office for 30 full years.

14 Q. After leaving the district attorney's office in
15 those 30 years of service, did you go to another
16 government or quasi-government job?

17 A. I did. I initially went and was general
18 counsel in 2021 at the Texas Civil Commitment Office, a
19 small state agency that oversees people that have been
20 civilly committed as sexually violent predators. I left
21 there and went to the Texas District and County
22 Attorneys' Association where I was assistant director of
23 training. And then in January of this year, I became
24 first assistant in the Hays County office.

25 Q. I appreciate that, sir. Thank you.

1 During your time at the Travis County
2 District Attorney's Office, you indicated you were
3 director of special prosecutions division. Did that
4 include investigations into public corruption?

5 A. Yes, it did. I served as director of special
6 prosecutions, which included the state funded Public
7 Integrity Unit while it existed for 15 years, the end of
8 2021 to the end of 2016.

9 Q. I figure you might get some questions about
10 that, but I'll let my colleagues take care of that.

11 Let's move on then to your time at the
12 district attorney's office towards the end, who was the
13 district attorney -- not the last elected district
14 attorney that you served under, but second to last? If
15 I'm asking that right?

16 A. So --

17 Q. Let me ask it a better way. Do you know
18 Margaret Moore?

19 A. Yes.

20 Q. Okay.

21 A. 2017 through 2020, Margaret Moore was district
22 attorney. During her administration, I was serving as
23 director of operations.

24 Q. Very good.

25 Did she ask you at some point to speak

1 with her -- or let me ask you this: Did you flag a
2 concern for her related to a possible open records
3 request?

4 A. In October of 2020, one of my responsibilities
5 was overseeing public information. I became aware of an
6 open records request that the office had received
7 related to Ken Paxton and Nate Paul. I didn't know what
8 was going on. I asked a question about that. She
9 briefed me on some things that had been going on that I
10 had been unaware of and then asked me to start joining
11 into some meetings with some individuals related to
12 that.

13 Q. Is it fair to say that up unto that point you
14 had not heard the name Nate Paul in relation to the
15 Travis County District Attorney's Office?

16 A. That's correct.

17 Q. Very good.

18 Then who did you speak with at Ms. Moore's
19 request?

20 A. Initially, I spoke with a couple of lawyers
21 that represented the Mitte Foundation.

22 Q. And let me back up. I poorly phrased that
23 question, as I often do.

24 Back that up to say, Ms. Moore, you
25 indicated, wanted to speak with you --

1 A. Yes.

2 Q. -- about this request. Did you speak with
3 Ms. Moore, and was there anybody else present?

4 A. I spoke with Ms. Moore and Don Clemmer, I may
5 have spoken with Mindy Montford, although I can't recall
6 that for certain.

7 Q. And based on what you learned during that
8 conversation, was there a next step that you took?

9 A. I drafted up a real brief overview of potential
10 criminal offenses that could be relevant to the
11 situation that they briefed me on, and then we set up a
12 series of meetings to gather more information.

13 Q. Do you recall approximately when it was that
14 you drafted this initial -- I'm going to call it a
15 skeleton outline?

16 A. If I am recalling the dates correctly, the
17 initial conversation was on October 21st of 2020. I
18 drafted the first memo on October 23rd, which was Friday
19 of that week. And then Monday, Tuesday, and Wednesday
20 of the following week, we had a series of meetings. And
21 then I believe it was on October 28th that I drafted a
22 more thorough memo about the situation.

23 MR. DONNELLY: Your Honor, if I may
24 approach the witness after I ask the following question?

25 Q. (BY MR. DONNELLY) I'm going to show you what

1 I'm -- I don't intend to introduce into evidence but
2 would ask if you would rely on your memo to refresh your
3 memory?

4 A. Sure.

5 MR. BUZBEE: Objection. Your Honor, he
6 hasn't said that he doesn't remember anything yet.

7 MR. DONNELLY: Fair enough.

8 MR. BUZBEE: He can't sit up there and
9 testify from a document that's clearly hearsay.

10 MR. DONNELLY: Your Honor, I'll rephrase.
11 I apologize. Thank you.

12 And, Mr. President, I keep saying "Your
13 Honor." Force of habit.

14 PRESIDING OFFICER: Whatever is
15 comfortable for you.

16 MR. DONNELLY: Thank you, sir.

17 Q. (BY MR. DONNELLY) Do you have a full
18 recollection of each and every item that you outlined in
19 your October 28, 2020 memo?

20 A. I have a reasonably good recollection of it.

21 Q. Do you feel that looking at that would assist
22 and aid you in your testimony in order to provide
23 comment to the ladies and gentlemen of the jury and not
24 waste a lot of time?

25 A. I do.

1 MR. DONNELLY: May I approach the witness,
2 Your Honor?

3 MR. BUZBEE: Your Honor, may I, again --
4 and, again, I'm all about saving some time, but this is
5 not proper to give him a document that he hasn't said --
6 he hasn't asked a specific question about do you
7 remember this, remember that. You don't just refresh a
8 recollection with an entire document. That's not how it
9 works.

10 MR. DONNELLY: Your Honor, respectfully,
11 I've yet to hear a single objection on this issue from
12 Mr. Buzbee, other than his complaints about it. I will
13 proffer to the Court, if I may, sir.

14 MR. BUZBEE: It's hearsay. Not allowed.

15 MR. DONNELLY: If I may, sir -- if I may,
16 sir. Thank you. I've allowed you to continue your
17 objections, and I ask you to give me the same decency.

18 Your Honor, this witness is testifying
19 that he created a report. He has testified here today
20 that he doesn't have full memory of everything contained
21 in that report. And, Mr. President, he has said that it
22 would assist him in providing testimony to the jury.

23 PRESIDING OFFICER: Overrule the
24 objection.

25 MR. DONNELLY: Thank you.

1 May I approach, Mr. President?

2 PRESIDING OFFICER: Yes, you may.

3 MR. DONNELLY: I hope I'm not the only one
4 that's ever happened to because my wife will take care
5 of me later on.

6 Q. (BY MR. DONNELLY) Sir, tell me after your
7 initial meeting with Margaret Moore and Mr. Clemmer,
8 what steps did you take, if any?

9 A. So the initial conversation, I was provided a
10 briefing of some facts that they knew at that point. I
11 then went and looked at some open source information to
12 gather some additional facts, and I drafted an earlier
13 version of this memo that did not include any fact
14 summary. It only included an outline of potential
15 criminal offenses that might be avenues of
16 investigation.

17 I provided that to Ms. Moore on Friday,
18 the 23rd. And then we had the series of meetings that I
19 referenced a moment ago. And I drafted this memo after
20 that series of meetings.

21 Q. Do you recall the individuals who you spoke
22 with? And I'm not asking you what they said, just the
23 identity of those individuals.

24 A. Yes. As I started mentioning a little bit ago,
25 two attorneys from the Mitte Foundation, however you say

1 that. Then we had a meeting that Monday afternoon, a
2 video meeting over Zoom with Mr. Mateer. The following
3 day we had a telephone conference call with Mr. Maxwell.
4 And then the next day, Wednesday of that week, we had a
5 rather lengthy conference call with Mr. Penley.

6 Q. Then did you summarize -- did you summarize
7 those facts as you knew them within this report that I
8 provided to you, which you had drafted around
9 October 28th?

10 A. Yes. I took detailed notes. And then I wrote
11 this fact summary and the rest of the memo after that.

12 Q. Very good.

13 And, again, I'm not going to go into you
14 about the specifics in your report. You're here to
15 testify about your memory.

16 So let me ask you: As a result of your
17 conversations -- let me back that up.

18 Would you call what you did an
19 investigation?

20 A. I would call it a preliminary investigation.

21 Q. Would it be fair to describe it as a limited
22 investigation?

23 A. Yes.

24 Q. So in this preliminary limited investigation,
25 you spoke with multiple individuals. And were you able

1 to identify in your mind possible criminal offenses?

2 A. Yes, I was.

3 Q. And who would have been the subject of the
4 possible criminal offenses?

5 A. Primarily, Ken Paxton. But there were other
6 individuals that were also identified as potential
7 suspects.

8 Q. Very good.

9 I'd like to ask you which offenses you
10 identified, and I'm going to ask you one by one to just
11 go slowly.

12 Could you tell me, please, what you
13 believe the first potential offense you identified was?

14 A. Potentially bribery.

15 Q. Bribery.

16 What else did you identify?

17 A. Accepting a gift to a public servant.

18 Q. Very good.

19 Next?

20 A. Official -- abuse of official capacity under
21 39.02 of the penal code, which has two different ways of
22 committing the offense. One is misusing something of
23 value belonging to government for an improper purpose.
24 Second part is violating a law relating to your office
25 or employment.

1 And I believed that there were
2 commissioned -- there were potential offenses under both
3 of those sections.

4 MR. DONNELLY: Ms. Manela, could I please
5 ask you to bring up on the screen the two -- the three
6 potential criminal offenses that have been identified?

7 MR. BUZBEE: Objection, Your Honor. We
8 all know that Ken Paxton's not been charged with
9 anything. This is completely improper. He --
10 possible -- possible criminal violations. This is
11 completely improper.

12 MR. DONNELLY: Your Honor, this
13 information goes directly to rebut inferences provided
14 by the defense team concerning any possible
15 investigation that may have occurred.

16 Additionally, it goes specifically to
17 articles of impeachment regarding potential abuse of
18 power, potential bribery. Many of the other ones we're
19 about to elicit from this witness, Your Honor.

20 MR. BUZBEE: May I be heard one further
21 time, Your Honor?

22 Imagine that it would be proper in a court
23 for somebody to come here and say he's possibly did
24 this, possibly did that, possibly did this. Incredibly
25 improper. That's pure speculation. He hasn't been

1 charged with anything. And even if he were charged,
2 he'd still be innocent.

3 MR. DONNELLY: Your Honor --

4 MR. BUZBEE: So this is completely
5 improper, and I object to it because it's speculation.

6 MR. DONNELLY: Mr. Buzbee, I apologize for
7 interrupting you.

8 If I may, Your Honor, just briefly. This
9 witness is here to testify to his perceptions, his
10 opinions. They are opinions that can be challenged. He
11 is a lay witness under rule 701. And he is using his
12 information and rationally based on his perception is
13 providing opinions which would be helpful to the jury to
14 understand a fact in issue. He is available to be
15 cross-examined by Mr. Buzbee who I'm sure will take him
16 on cross-examination and test his credibility.

17 MR. BUZBEE: He hasn't responded to the
18 objection, which is this is all speculation. I mean, he
19 could say that about everybody here. Possible this,
20 possible that. That's why as the gatekeeper the Court
21 can't allow it.

22 MR. DONNELLY: And, Your Honor, again,
23 I've responded directly to it as a rule 701 lay --

24 PRESIDING OFFICER: Okay. Hold it.

25 MR. DONNELLY: I apologize.

1 PRESIDING OFFICER: I got it.

2 Overrule the objection. Go ahead.

3 MR. DONNELLY: Thank you.

4 Ms. Manela, if you would, please.

5 Q. (BY MR. DONNELLY) I bring up on the screen --
6 I just want to make sure these are three that you have
7 identified here in court. Is this an accurate and
8 correct summary of the testimony you've provided up to
9 this point?

10 A. It is.

11 Q. Please, sir, the next potential offense that
12 you've identified?

13 A. We were also concerned about some election code
14 violations if certain factors came into play about how
15 money may have been transmitted or handed over. And
16 along those same lines, money laundering under 34.02 of
17 the penal code.

18 Q. Money laundering is listed now on here. Is
19 that accurate -- an accurate summary of what you've
20 stated?

21 A. That is.

22 Q. Very good.

23 What is the next offense that you
24 identified?

25 A. Tampering with a government record and possible

1 perjury related to personal financial statements filed
2 under Chapter 572 under the Government Code.

3 Q. And, Mr. Cox, I'll ask you: As you turn to the
4 side, just make sure to keep your voice up so we can all
5 hear you.

6 A. Yes.

7 Q. Please, sir, what's the next one you identified
8 as a potential offense?

9 A. Coercion of a public servant under 36.02 of the
10 penal code.

11 Q. And, again, what's showing up on the screen,
12 does that accurately reflect the testimony you provided?

13 A. It is.

14 Q. Next offense?

15 A. Official oppression under 39.03 of the penal
16 code. And retaliation under 36.06 of the penal code.

17 Q. And, again, those two that have just popped up
18 on the screen, do those accurately reflect your
19 testimony?

20 A. Yes.

21 Q. Next offense that you potentially identified?

22 A. We discussed whether there could be under penal
23 code 15.02 of the penal code or under penal code
24 Section 71.02, either a criminal conspiracy to commit
25 any of those offenses, including the ones that haven't

1 been put on the screen that I mentioned or engaging in
2 organized criminal activity with connection to these
3 offenses.

4 Q. Was there also -- was there also an
5 identification of a potential Government Code section
6 violation?

7 A. Yes. Chapter 572 of the Government Code not
8 only has the financial disclosure rules, it also has
9 standards of conduct for state employees in
10 Subchapter C. And there was what appeared to be a
11 fairly clear violation of one of the provisions of that
12 section.

13 Q. Sir, the information that's displayed on the
14 screen now, is this an accurate summary of the -- of
15 your testimony here today specifically as to the
16 potential offenses that you personally identified?

17 A. Yes, it is.

18 MR. DONNELLY: Your Honor, I've marked for
19 identification purposes Exhibit No. 660, which is the
20 entirety of what is shown on the screen. And I would
21 offer the same into evidence as summation.

22 PRESIDING OFFICER: It is admitted into
23 evidence.

24 (HBOM Exhibit 660 admitted)

25 MR. DONNELLY: Thank you, Your Honor.

1 PRESIDING OFFICER: Did you object --

2 MR. BUZBEE: I was going to, Your Honor.

3 PRESIDING OFFICER: I'm sorry. Excuse me.

4 MR. BUZBEE: Why don't we --

5 PRESIDING OFFICER: I mean, I thought you
6 had already allowed it earlier, and it had not been
7 admitted. So state your objection.

8 MR. BUZBEE: Why don't we write on there
9 that -- accurately reflect the testimony of potential or
10 possible instead of just putting the statutes on there.
11 He -- the witness clearly said that he speculated this
12 might have been some offenses. And so it would be
13 really improper to put that into evidence without
14 clearly identifying that these are all potentials or
15 possibles that have never been indicted on. Ever.

16 MR. DONNELLY: May I respond, Your Honor?
17 Or, Mr. President, may I respond?

18 PRESIDING OFFICER: Hold on.

19 MR. DONNELLY: I know Mr. President has
20 indicated his desire not to have to look at too many
21 numbers, so I'm probably going to make it worse by
22 suggesting the following, but the Texas Supreme Court
23 under Uniroyal Goodrich Tire verse Martinez and in
24 Speier verse Webster College have adopted that charts
25 that summarize or perhaps emphasize testimony are

1 admissible if the underlying information has been
2 admitted into evidence.

3 This is simply a summary. Mr. Buzbee may
4 question the witness at his leisure concerning the
5 qualifications and any particular changes that he
6 believes are appropriate for this jury to understand.

7 MR. BUZBEE: Your Honor, it has to be a
8 fair summary. No one's challenging that you can do a
9 summary, but it has to be a fair summary, and that's not
10 fair.

11 PRESIDING OFFICER: I'm going to sustain
12 the objection. You are allowed to bring it in. He said
13 these were possible, so I'm going to sustain the
14 objection.

15 MR. BUZBEE: And so can we have it -- if
16 it's going to come into evidence, write "possible" on it
17 or "potential"?

18 PRESIDING OFFICER: Yes.

19 MR. BUZBEE: That's not -- yes, thank you.

20 PRESIDING OFFICER: Do you agree?

21 MR. DONNELLY: I'd be happy to -- I'd be
22 happy to identify it as the testimony which has been
23 provided as possible evidence, and I'll even identify
24 that it's by Mr. Gregg Cox.

25 PRESIDING OFFICER: And then are you --

1 MR. BUZBEE: If he write -- if he writes
2 that on there, because that's going to be on the front
3 page of the newspaper, and let's make it clear that this
4 guy didn't have any evidence of that.

5 MR. DONNELLY: Your Honor, may I do that
6 at a break so as not to take any further time, but
7 before formally submitting into evidence?

8 PRESIDING OFFICER: Yes. On each one,
9 each item.

10 MR. DONNELLY: Yes, Your Honor.

11 PRESIDING OFFICER: All right.

12 MR. DONNELLY: Mr. President, excuse me.
13 Either, thank you.

14 Q. (BY MR. DONNELLY) Sir, after you've identified
15 these possible potential offenses, and, again, this is
16 your opinion, and as you've described to us, you have
17 worked in the criminal field for some 30 years, is that
18 accurate?

19 A. Correct.

20 Q. What, if anything, did you do?

21 A. After discussing this with Margaret Moore, the
22 decision was made to reach out to the U.S. Attorney's
23 Office, make sure that moving forward with an
24 investigation would not interfere with any ongoing
25 federal investigation. And I was tasked with making

1 those calls and setting up meetings about that.

2 Q. The Chapter 572 of the Government Code offense
3 that you flagged, was that one that you discussed with
4 Margaret Moore?

5 A. I believe so, yes.

6 Q. Do you recall the complete language of
7 Section 572 of the Government Code?

8 A. Not off the top of my head.

9 Q. Could you recite it off the top of your head?

10 A. I could not.

11 Q. If you had a copy of the statute, would it
12 assist you in providing your testimony here today?

13 A. Yes, it would.

14 MR. DONNELLY: Your Honor, for
15 identification purposes only and not for admission, I'd
16 offer 661 of the House Board of Managers exhibit to the
17 witness and to counsel so they may review as the witness
18 testifies.

19 PRESIDING OFFICER: Are you bringing it
20 forward?

21 MR. DONNELLY: Yes, Your Honor. But,
22 again, not offer as -- not offered into evidence but
23 merely for purposes of reliance during his testimony.

24 PRESIDING OFFICER: Okay.

25 MR. BUZBEE: May I have a copy?

1 PRESIDING OFFICER: Yes.

2 Q. (BY MR. DONNELLY) Sir, could you identify for
3 us -- and you don't have to read directly from it, but
4 are you familiar after having looked at this document
5 with 572.002?

6 A. Yes, I am.

7 Q. And does it provide -- tell us what your
8 thought process was -- and if you need to refer to the
9 documents, please do -- but what your thought process
10 was as to why this would be a potential violation?

11 A. Well, actually, 572.002 sets out who the
12 various officers are that are subject to this. 572.051
13 sets out the standards of conduct.

14 And what I referenced earlier in my
15 testimony about the violating a law related to his
16 office or employment under 39.02 of the penal code, this
17 would constitute a law relating to someone's office or
18 employment.

19 And the Subsection A says that a state
20 officer should not accept or solicit any gift favor or
21 service that might reasonably tend to influence the
22 officer or employee on the discharge of his official
23 duties or that the officer or employee knows or should
24 know is being offered with the intent to influence the
25 officer or employee's official conduct.

1 Q. So after flagging these potential violations
2 for your elected District Attorney Moore, what actions
3 did you take?

4 A. I reached out to the U.S. Attorney's Office,
5 spoke with the then manager of the Austin branch of the
6 U.S. Attorney's Office, Ashley Hoff, and we ended up
7 setting up a meeting.

8 Q. Was the idea to reach out to the local United
9 States Attorney's Office yours or Ms. Moore's?

10 A. I believe it was mine, although I can't say
11 that Ms. Moore didn't also suggest it.

12 Q. Was there any concern -- well, let me ask --
13 let me ask it a different way.

14 Was there any concern about an ongoing
15 investigation?

16 A. So much of what we were talking about related
17 to Nate Paul, and we knew that Nate Paul was the subject
18 of a federal investigation. We were concerned that if
19 we jumped into this and opened an investigation, we were
20 going to interfere with an ongoing federal
21 investigation. So we just wanted to basically
22 deconflict with the feds before we took any action.

23 Q. Is that common? That deconfliction, is that
24 common?

25 A. That is common.

1 Q. Don't want to run into each other on the
2 investigation?

3 A. Correct.

4 Q. Want to make sure the witnesses know that there
5 are potentially two tracks going?

6 A. Exactly.

7 Q. Fair enough.

8 Do you recall who all you -- well, let me
9 ask you this: You set up a meeting, correct?

10 A. We set up a couple of different meetings.
11 Initially, we had a conference call, Margaret Moore, Don
12 Clemmer, and myself from the district attorney's office.
13 Gregg Sofer, Ashley Hoff, and Christina Playton from the
14 U.S. Attorney's office. And we talked through a lot of
15 the facts, and then we agreed to have an in-person
16 meeting the following week. In between those two
17 meetings, I was advised that because Mr. Clemmer and
18 Ms. Moore --

19 MR. BUZBEE: Objection, hearsay.

20 PRESIDING OFFICER: Sustained.

21 Q. (BY MR. DONNELLY) Can you tell us whether or
22 not there were multiple people from your office who were
23 going -- who were supposed to be meeting with the U.S.
24 Attorney's Office?

25 A. When we set up the in-person meeting, I was the

1 only person attended so that no potential witnesses were
2 involved.

3 Q. And did those potential witnesses include
4 individuals from your office?

5 A. Correct.

6 Q. Fair enough.

7 Without getting into the content of what
8 was discussed at that meeting, did you believe you had a
9 path forward to continue your investigation?

10 A. That's what we were trying to determine, was
11 whether there was a path forward that did not interfere
12 with a significant federal investigation that was going
13 on.

14 Q. Did you believe that you, after that meeting,
15 had a path forward?

16 A. After that meeting, I was still unclear. The
17 in-person meeting we had included people from Washington
18 D.C. that came down for the meeting. And then shortly
19 after that meeting, I had a telephone call with someone
20 from the U.S. Attorney's Office. And at that point, we
21 stood down.

22 Q. You stood down. Was that your desire to stand
23 down?

24 A. I was frustrated by that.

25 Q. Is it fair to say that you had additional

1 investigation that you wanted to achieve?

2 A. Yes.

3 Q. And I should phrase that differently.

4 Was it something that you wanted to
5 achieve or you felt the evidence would lead you to
6 follow?

7 A. It was something I felt was worthy of
8 investigation. It involved important issues involving
9 the state of Texas, and I was concerned that as I had
10 seen happen too often, the federal government would sit
11 on it for a long time, and then we might not see
12 anything happen.

13 Q. Does that appear to have been the case thus
14 far?

15 A. It does.

16 Q. Finally, sir, as you were going through
17 Section 572.051, I'd ask you to take a look at
18 Subsection D of that statute.

19 A. Yes.

20 Q. As it relates to the testimony that you
21 previously provided that an officer, an employee -- a
22 state officer or employee should not solicit gifts,
23 favors, services, or bribes, does it indicate who is
24 responsible for drafting the policies that would go
25 throughout the entire state?

1 A. Subsection C of that statute says that each
2 state agency shall adopt a policy, and it places the
3 burden of drafting a model policy of these standards of
4 conduct and making sure that ethical policies are in
5 place on the attorney general.

6 MR. DONNELLY: I'll pass the witness, Your
7 Honor.

8 PRESIDING OFFICER: Mr. Buzbee, we were
9 going to break in five minutes. We can go 10 or 15, if
10 you want to start, and then we'll break, or do you want
11 to break now?

12 MR. BUZBEE: Let's just break.

13 PRESIDING OFFICER: Okay. Members, we'll
14 break now. This is your late afternoon break. We'll
15 come back at 5:15 and then we'll go to about 7:00.

16 (Recess: 4:53 p.m. to 5:18 p.m.)

17 PRESIDING OFFICER: Bailiff, please bring
18 in the witness.

19 (Witness enters)

20 PRESIDING OFFICER: Looks like I'm missing
21 a juror or two, or one anyway. A few over here.

22 I believe we have everyone.

23 Mr. Buzbee.

24 MR. BUZBEE: Yes, Your Honor.

25 PRESIDING OFFICER: Your witness.

1 CROSS-EXAMINATION

2 BY MR. BUZBEE:

3 Q. You know, they say that you can indict a ham
4 sandwich. You ever hear people say that?

5 A. I've heard that saying.

6 Q. In fact, you recall that our -- the former
7 governor of our state was indicted just for exercising
8 his veto. Remember that?

9 A. He was not actually indicted.

10 Q. He was indicted. Governor Rick Perry was
11 indicted.

12 A. I thought --

13 Q. For exercising his veto. Did you not know
14 that?15 A. I thought they did an investigation that
16 resulted in a no bill.

17 Q. No. You're misinformed.

18 He was indicted by a Travis County grand
19 jury. Did you not know that?

20 A. I did not know that.

21 Q. And he said over and over and over, my gosh,
22 all I did was exercise a veto. You can indict a ham
23 sandwich.24 MR. DONNELLY: Respectfully object to this
25 line of questioning as being wholly irrelevant.

1 PRESIDING OFFICER: Overruled.

2 Q. (BY MR. BUZBEE) So here we have a Travis
3 County -- in Governor Perry's case a Travis County grand
4 jury indicted him for exercising his veto, and you just
5 went through this litany of possible maybes with regard
6 to Ken Paxton, didn't you?

7 A. That's correct.

8 Q. He might have done this, he might have done
9 that, right?

10 A. Correct.

11 Q. I guess what you were saying is that, hey, I'm
12 analyzing the law. If any of this foolishness is true,
13 this might be the criminal violations, right?

14 A. That would be accurate.

15 Q. And you know for a fact that you're not
16 supposed to come into a court like this and testify
17 about what somebody might or may have done, isn't that
18 right?

19 A. I was answering the questions that were asked.

20 Q. You would have never -- I mean, have you ever
21 been in court before as a prosecutor.

22 A. I have.

23 Q. So you know for a fact that that is not proper,
24 don't you?

25 A. This is not a criminal trial.

1
2 Q. Right. It's not proper to go into a court
3 that's -- and testify on live stream and to jurors about
4 something that someone might have done. That's
5 incredibly misleading, incredibly prejudicial and wrong,
6 isn't it?

7 MR. DONNELLY: Objection, Your Honor, to
8 asked and answered. Mischaracterizes the evidence as
9 presented by the witness.

10 PRESIDING OFFICER: Overruled.

11 A. I was asked to identify the possible avenues of
12 investigation that I outlined in the memo to the
13 district attorney.

14 Q. (BY MR. BUZBEE) Possible, maybe, potentially.
15 We don't know, right? You don't know at all, do you?

16 A. I don't understand that question.

17 Q. You were just sitting up there and making a
18 bunch of silly guesses, weren't you?

19 A. I would not agree with that.

20 Q. And you just testified in this historic
21 impeachment proceeding in response to the House's
22 questions about all of the potentials or the maybes or
23 the possibilities. Right?

24 A. I was talking about the memo that I wrote for
25 the district attorney outlying -- outlining the avenues

1 of investigation had the feds not waived us off and we
2 had moved forward.

3 Q. The feds waived you off, you say?

4 A. Yes.

5 Q. Y'all were excited about this. We got a chance
6 to get Ken Paxton, isn't that true?

7 A. That's not accurate.

8 MR. BUZBEE: Let's look at, Erick, AG
9 Exhibit 170, Brickman 202.

10 Q. (BY MR. BUZBEE) You tell me if this is right.
11 It's in evidence.

12 MR. BUZBEE: Bring up -- bring that right
13 there on 10-27-2020, Erick.

14 Right there, Erick.

15 Q. (BY MR. BUZBEE) Let me just read this so we'll
16 understand what y'all really were up to.

17 My phone conference with Margaret Moore
18 and her team went well today. They are excited about
19 pursuing this investigation and will coordinate their
20 efforts with the U.S. Attorney Office so that both
21 pursuits complement each other. They obviously want to
22 move quickly as they have time constraints. They are
23 not going to wait on the feds.

24 Did I read that right?

25 A. You read it correctly, yes.

1 Q. Uh-huh. So the DA's office of Travis County --
2 Margaret Moore, is she a Democrat, Republican?

3 A. She's a Democrat.

4 Q. Okay. So the Democrat -- elected Democrat
5 district attorney of Travis County was excited. She had
6 a chance -- she had a chance to go after Ken Paxton for
7 just an entire litany of things, according to your
8 little memo, right?

9 A. I disagree with the description of "excited."

10 Q. And you're telling me that the feds waived her
11 off, that's what you're telling me?

12 A. Correct.

13 Q. The feds under whom -- who was in charge of the
14 feds?

15 A. At that time, I believe it was still Attorney
16 General Barr.

17 Q. Okay. Who was the president at that point in
18 time?

19 A. Donald Trump.

20 Q. Oh, think about that for a minute. You're
21 telling me that this elected Democrat who you claim the
22 maybes, the possibilities, the potential, all kinds of
23 crimes, that she as an elected Democrat decided stand
24 down, Donald Trump says stand down. You think that we
25 really believe that foolishness? You think we believe

1 that?

2 A. I have no idea what you believe.

3 Q. Nobody believes that. And you don't believe it
4 either.

5 MR. DONNELLY: Objection, Your Honor.

6 Q. (BY MR. BUZBEE) Do you?

7 MR. DONNELLY: I object -- sir, thank
8 you -- to the form of the question and offering an
9 opinion that he is not entitled to offer in testimony.

10 PRESIDING OFFICER: Sustain.

11 Q. (BY MR. BUZBEE) You don't believe that either,
12 do you?

13 A. I don't even know what you're saying right now.
14 What was your question?

15 Q. (BY MR. BUZBEE) Now, you had told us that
16 potentially, possibly, maybe abuse of official capacity,
17 right?

18 A. Correct.

19 Q. Potential, maybe, who knows, acceptance of gift
20 to a public servant?

21 A. Correct.

22 Q. No clue if that was true or not, was there?
23 You had no clue, did you?

24 A. Can I explain the purpose of --

25 Q. I'm asking you whether you had any clue that

1 any of those things were true?

2 A. Based upon the information provided by the
3 three witnesses that we had interviewed, yes, it
4 appeared that it was true.

5 Q. You thought it was true, so you had probable
6 cause to make an arrest, and that's what you did, right?

7 A. No.

8 Q. Okay.

9 A. A preliminary investigation is to determine
10 whether or not to move forward with an investigation.
11 That was the stage we were at.

12 Q. Probable cause means you have enough for an
13 arrest, right?

14 A. Probable cause would give rise to justification
15 for an arrest.

16 Q. You didn't have justification for an arrest,
17 did you?

18 A. We were at the point of making a determination
19 of whether to move forward with an investigation.

20 Q. There was no indictment, right?

21 A. Correct.

22 Q. There was no arrest, right?

23 A. Correct.

24 Q. And yet -- and yet, you came here in front of
25 all these fine people and told us a bunch of maybes,

1 isn't that right?

2 A. I came here and answered questions about the
3 memo.

4 Q. Uh-huh. And looking at this litany that
5 your -- the lawyer wanted to put into evidence one of
6 those was possibly, maybe, who knows, engaging in
7 organized criminal activity, right?

8 A. That is something I outlined in the memo.

9 Q. That sounds bad, doesn't it?

10 A. It's a offense under the penal code.

11 Q. That sounds like there's something really going
12 on bad at the AG's office, right?

13 A. That is your characterization of that.

14 Q. That's something you would never want to be a
15 part of, right?

16 A. I don't understand your question.

17 Q. Well, I'm just trying to figure out. I mean,
18 if that's what's going on at the AG's office, if you
19 really believe that, you certainly never would want to
20 be a part of it, right?

21 A. I'm not an employee of the attorney general's
22 office.

23 Q. I mean, my point is, you would never engage in
24 such activity, would you? This might, maybe activity
25 you talked about?

1 A. The activity that was being alleged on the part
2 of Mr. Paxton?

3 Q. You would have never engaged in any of these
4 so-called potential crimes yourself, would you?

5 A. Correct, I would not.

6 Q. You would never want to be a part of anything
7 like that, would you?

8 A. That is correct.

9 Q. You wouldn't want to be associated with
10 something like that, would you?

11 A. That is correct.

12 Q. You have dedicated your life, you claim, to the
13 rule of law, right?

14 A. Correct.

15 Q. And so there is no way, no way you would ever
16 want to be associated or affiliated with that kind of
17 criminal conduct, isn't that right?

18 A. I am not following your line of -- you're
19 talking about the conduct described in the memo about
20 Mr. Paxton after the interview of the three witnesses?

21 Q. I'm talking about criminal -- organized
22 criminal activity. You'd never want to be a part of
23 that?

24 A. Correct.

25 Q. I mean, if you really believed it, if you

1 really believed that, you certainly wouldn't want to be
2 a part of it, right?

3 A. Correct.

4 Q. You applied for a job at the AG's office,
5 didn't you?

6 A. I did.

7 Q. Let's make sure we let that sink in. You
8 applied for a job after this silly memo you wrote,
9 didn't you?

10 A. Yes.

11 Q. Let it sink in. You wrote this silly memo
12 where you talk about potential violations of law and
13 months later you apply to work at the AG's office,
14 didn't you?

15 A. That is correct.

16 Q. And you know what the kicker is? Who wrote
17 your letter of recommendation?

18 A. Margaret Moore. She wrote a general letter of
19 recommendation that I could use with any employer. It
20 was not specific for that job.

21 Q. She wrote you a letter of recommendation. This
22 whole thing should be dismissed, don't you agree?

23 A. No.

24 Q. Yeah.

25 MR. BUZBEE: I think the point has been

1 made, Your Honor. I pass the witness.

2 PRESIDING OFFICER: Your witness on
3 redirect.

4 MR. DONNELLY: Thank you, Mr. President.

5 REDIRECT EXAMINATION

6 BY MR. DONNELLY:

7 Q. Mr. Cox, did you speak with the elected
8 District Attorney Moore to determine whether or not
9 there was an ongoing active investigation at the Travis
10 County District Attorney's Office?

11 A. Yes -- please ask that again.

12 Q. Fair enough.

13 You indicated to us that prior to writing
14 your October 28, 2020 memo, you had had a conversation
15 with Margaret Moore, is that accurate?

16 A. Yes.

17 Q. Did you learn whether or not there was an
18 ongoing investigation at the Travis County District
19 Attorney's Office concerning the allegations made by
20 Nate Paul?

21 MR. BUZBEE: Objection. The question
22 calls for hearsay.

23 PRESIDING OFFICER: Sustained.

24 Q. (BY MR. DONNELLY) Did you review documents or
25 were you -- did you ask for any documents, you

1 personally ask for any documents that would show whether
2 or not there was an ongoing active investigation
3 concerning the complaints made by Nate Paul?

4 MR. BUZBEE: Now he's asking to testify
5 about documents not in evidence. Hearsay. And best
6 evidence rule.

7 MR. DONNELLY: All right. If I may, Your
8 Honor, best --

9 PRESIDING OFFICER: Sustained.

10 Q. (BY MR. DONNELLY) Did you have an opinion as
11 to whether or not there was an ongoing investigation
12 into the complaints made by Nate Paul?

13 MR. BUZBEE: Objection. His opinion is
14 completely irrelevant.

15 MR. DONNELLY: Your Honor, we've
16 established that under rule 701 and others as a
17 testifying witness, he's allowed to testify as to what
18 his opinion is based on the evidence as he knew it.

19 MR. BUZBEE: I didn't say that he was an
20 expert, Your Honor. He's not an expert. That's
21 improper.

22 MR. DONNELLY: And as Mr. Buzbee knows
23 without making these foolish arguments, 701 deals with
24 lay witness opinions.

25 PRESIDING OFFICER: Sustained.

1 MR. DONNELLY: If we could, please,
2 Ms. Manela, play Exhibit 249.

3 MR. BUZBEE: This goes beyond the scope of
4 the cross.

5 MR. DONNELLY: And, Your Honor, as you
6 know --

7 MR. BUZBEE: If I can finish, please. I'm
8 sorry, sir.

9 MR. DONNELLY: Of course.

10 MR. BUZBEE: He's expanding the recross or
11 the -- his redirect. It's improper. He never mentioned
12 that video that went into evidence, so he can't talk
13 about it now.

14 MR. DONNELLY: If I may, Mr. President?

15 PRESIDING OFFICER: Under the rules -- it
16 was very clear in the rules that the Senators passed 25
17 to 3 that direct -- redirect would have to be on what
18 was already covered.

19 MR. DONNELLY: I apologize then, Your
20 Honor. I didn't understand the rule as it relates to
21 that specific issue. We'll provide the testimony
22 through an additional witness. Thank you, sir.

23 Pass the witness.

24 MR. BUZBEE: I have nothing further for
25 this witness, Your Honor.

1 PRESIDING OFFICER: Are you both finished
2 with the witness?

3 MR. DONNELLY: Yes, sir.

4 MR. BUZBEE: Yes, Your Honor.

5 PRESIDING OFFICER: Okay. You're able to
6 go.

7 MR. HARDIN: Your Honor, we call Margaret
8 Moore. We call Margaret Moore.

9 PRESIDING OFFICER: Okay. Before we call
10 the witness, I want to be correct. Not in the rules
11 being on direct to direct was what we discussed when we
12 all met now two weeks ago, that redirect would be on
13 what was brought in the testimony on direct. That's
14 what we discussed.

15 You may bring in the witness.

16 (Witness enters)

17 PRESIDING OFFICER: Would you please raise
18 your right hand.

19 (The following oath was given to the
20 witness.)

21 PRESIDING OFFICER: I do solemnly swear or
22 affirm that the evidence I give upon this hearing by the
23 Senate of Texas of the impeachment charges against
24 Warren Kenneth Paxton, Jr. shall be the truth, the whole
25 truth, nothing but the truth, so help you God?

1 THE WITNESS: I so swear.

2 PRESIDING OFFICER: Please have a seat.

3 Your witness, Mr. Hardin.

4 MR. HARDIN: Thank you, Your Honor.

5 MARGARET MOORE,

6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HARDIN:

9 Q. Ms. Moore, I'm going to ask you, we've had
10 trouble with this microphone with all of us, mine and
11 the witness. So if you would try to stay closer than
12 you would ordinarily stay with a microphone, I'd
13 appreciate it.

14 A. Will do.

15 Q. All right. Would you state your name, please?

16 A. My name full name is Margaret McCarthy Moore.

17 Q. Ms. Moore, how are you -- going to go through
18 with you a little bit of history of your background and
19 all, but I want to really kind of relate it to your
20 personal and professional background.

21 Where'd you grow up?

22 A. I grew up in Waco, Texas.

23 Q. And did you live in Waco all the way through
24 high school?

25 A. I did.

1 Q. And after high school, what did you do?

2 A. I came to the University of Texas here in
3 Austin.

4 Q. And did you attend and graduate?

5 A. I did. I earned a BBA in accounting in 1970,
6 and then I started law school here.

7 Q. All right. After graduate school or after law
8 school, what year did you become licensed to practice in
9 the state of Texas?

10 A. 1973.

11 Q. And then what did you do?

12 A. At that time, I was working in the legislature.
13 In 1973, I was working in the House. I got my
14 license -- I passed the bar in April of that year.

15 I ended up coming back and working the
16 constitutional convention in '74 and worked in the -- in
17 1975 during the session and then I -- when I became a
18 lawyer, I really wanted to be in the courtroom, so I was
19 able to -- I was appointed the juvenile public defender
20 for Travis County in 1976.

21 Q. All right. And then you had a series of other
22 jobs. What led you in to where you became the elected
23 district attorney of Travis County?

24 A. I was hired as an assistant district attorney
25 in 1977. I had gotten to know Ronnie Earle when he was

1 in the legislature, and he gave me a job in the DA's
2 office.

3 Q. How long were you there?

4 A. I was there until I was elected county attorney
5 in 1980. I took office in 1981.

6 Q. As the county attorney?

7 A. Yes.

8 Q. How long were you the county attorney in
9 Travis?

10 A. Four years.

11 Q. Pardon me?

12 A. Four years.

13 Q. Okay. And then after your tour, would that be
14 1985?

15 A. Correct.

16 Q. And then what was your next position?

17 A. Mommy.

18 Q. All right.

19 A. I had a -- I had a daughter, and I remarried in
20 1984 and we had two sons, one in '85 and one in '87.
21 And my husband was a litigator, so we made the family
22 decision that somebody ought to be home with these kids.
23 So I did not go back into the practice of law until much
24 later.

25 I did, though -- during that time, I did

1 serve twice on the Travis County Commissioners Court as
2 an appointee to fulfill unexpired terms.

3 Q. What year did you become the elected district
4 attorney for Travis County?

5 A. Well, I was elected in 2016, and I took office
6 January 2017.

7 Q. All right. So some of the things we're going
8 to be talking about occurred in 2020. You were, of
9 course, a Democrat, correct?

10 A. That is correct.

11 Q. And then what was the outcome of the
12 March 2020 -- or, really, I think there was a runoff,
13 was there not, in the race in the primary?

14 A. 2020 I was defeated in a runoff in July.

15 Q. All right. So from July the 20 -- July of
16 2020, you were in effect a lame duck to the end of the
17 year, were you not?

18 A. Yes.

19 Q. All right.

20 A. How flattering.

21 Q. Not a phrase we all enjoy, but it was a
22 reality, correct?

23 A. Correct.

24 Q. All right. I want to take your attention, if I
25 can, to Attorney General Paxton.

1 Had you had a particular mission and
2 intent as to the kind of relationship you hoped to have
3 with Attorney General Paxton as you were elected
4 district attorney as a Democrat and he was the elected
5 attorney general as a Republican?

6 A. Well, in general, my aim as district attorney
7 was to establish good relationships between the Travis
8 County District Attorney's Office and all of the law
9 enforcement agencies that -- and that included the
10 attorney general's office. I -- I had -- did work there
11 under General Abbott for nine and a half years, so that
12 was an office that I had a particular fondness for.

13 Q. Well, I appreciate that.

14 So at the time that General Paxton was the
15 attorney general and you were the district attorney, you
16 had how many years experience previously working for the
17 attorney general's office?

18 A. Nine and a half.

19 Q. And what year -- what -- when was that era?

20 A. I went to work there in 2000 -- sorry.

21 Q. That's okay.

22 A. 2005 to 2014.

23 Q. And was Governor Abbott at that time the
24 attorney general?

25 A. He was.

1 Q. Was he the attorney general for the entire time
2 you worked for the attorney general's office?

3 A. Yes, he was.

4 Q. All right. Now, how would you describe into
5 the period of May, June, or whatever of 2020, how would
6 you describe your relationship and dealings with the
7 attorney general?

8 A. He had -- General Paxton himself?

9 Q. Yes.

10 A. Had been -- I considered him a friend. I
11 didn't know him well, but he'd been very generous with
12 helping with matters that we asked him to help with. I
13 considered him a friend.

14 Q. All right. In May of 2020, did you become
15 aware of any type of request that he was making
16 regarding a particular matter?

17 A. Yes.

18 Q. And what was that and how did you become aware?

19 A. My first assistant was Melinda Montford, known
20 as Mindy Montford, and she told me -- informed me
21 about --

22 MR. BUZBEE: Objection, hearsay.

23 A. She --

24 PRESIDING OFFICER: Sustained.

25 Q. (BY MR. HARDIN) So did you become aware of a

1 conversation that Mindy Montford had with the attorney
2 general?

3 A. I did.

4 Q. And as a result of that conversation, did you
5 authorize or agree to any type of meeting with the
6 attorney general on behalf of members of your staff?

7 A. Of course.

8 Q. All right. And when you say "of course," what
9 do you mean?

10 A. I did consider him a friend, and I'd considered
11 the relationship between the DA's office and the
12 attorney general's office to be a very important working
13 relationship. So an elected official, the highest legal
14 officer in the land, wants to have a meeting --

15 Q. All right.

16 A. -- with me or my folks, it's going to be yes.

17 Q. And who attended this meeting and what type of
18 meeting was it? Were you informed as to where it was
19 and all?

20 A. It was a lunch meeting to discuss a case that
21 the attorney general felt should be investigated by the
22 DA's office.

23 Q. So was the original contact, then, with a
24 proposal for the attorney -- by the attorney general for
25 the district attorney's office to investigate a

1 particular case?

2 A. It was directly between General Paxton and
3 Ms. Montford.

4 Q. Had you ever yourself at this time or before
5 heard the name of Nate Paul?

6 A. Not that I recall.

7 Q. All right.

8 A. No.

9 Q. And then were you present at the meeting?

10 A. No.

11 Q. And to your knowledge who was present at the
12 meeting?

13 A. Mindy Montford, Don Clemmer, who was my
14 director over special crimes, Mr. Paxton, Mr. Paul, and
15 Mr. Wynne, an attorney from Houston that represented
16 Mr. Paul.

17 Q. All right. Now, at this lunch, did you know
18 anything about whether there was perhaps another person?
19 Have you ever heard of a Mr. Drew Wicker?

20 A. I have not.

21 Q. So do you have any knowledge one way or the
22 other as to whether he was at that lunch?

23 A. I do not have that knowledge.

24 Q. When lunch was over, did the -- Mr. Clemmer and
25 Ms. Montford come back to report on it to you?

1 A. Yes, they did.

2 Q. And as a result of what they reported, what was
3 your reaction as to what y'all intended to do with the
4 attorney general's recommendation? Or request, rather?

5 A. Well, the allegations that were reported to me
6 that Mr. Paul turned out to be his complaints that
7 Mr. Paul brought to Mindy and Mr. Clemmer were
8 ridiculous and their communication to me was to that
9 effect, and I agreed with them after they described it
10 to me.

11 MR. HARDIN: Can I have exhibit which is
12 in evidence 88 up on the screen, please, or on the iPad,
13 please.

14 Is that 68 instead? Do I have the wrong
15 number? I'm trying to read handwriting on here.

16 MR. BUZBEE: Are you talking about the
17 first referral?

18 MR. HARDIN: That's the right exhibit.

19 MR. BUZBEE: 68.

20 MR. HARDIN: Do I have the right number?

21 MR. BUZBEE: Yes.

22 MR. HARDIN: 68? Thank you.

23 Q. (BY MR. HARDIN) Now, did you -- did you become
24 aware was the issue as to what to do about a complaint
25 by Mr. Nate Paul that he wanted to have investigated by

1 the DA's office?

2 A. Yes.

3 Q. All right. And once you found out enough about
4 it, did you actually read the complaint that is before
5 you as -- on the screen whether it's 68 -- if we could
6 go over to the other page, where it says "request to
7 investigate." Did you know anything about -- do you
8 recall when you reviewed it and formed whatever opinions
9 you had about it?

10 A. I do not recall when.

11 Q. All right. But did you ultimately become aware
12 of what the allegations were here, what the contentions
13 were?

14 A. Oh, yes. I was aware of the allegations, but I
15 didn't see the RTI till later, if I did it --

16 Q. So --

17 A. I don't know when that was.

18 Q. What was your position as to what your office
19 was going to do with this complaint?

20 A. Well, it was going nowhere.

21 Q. All right. Well, if it was going to go
22 nowhere, what do you mean by that?

23 A. I mean it would have been handled like with
24 courtesy. You're here, fill out the form, and then it
25 would have been followed up by a rejection letter.

1 Q. Does the rest of this exhibit --

2 MR. HARDIN: If you could, Stacey, just go
3 through -- give about five seconds on each page.

4 Q. (BY MR. HARDIN) And ask if this -- if this
5 document showing her is the kind of form and complaint
6 that your office would do? And I want to go
7 particularly to page -- I want to make sure that we're
8 not publishing any of the identifying data on the -- on
9 the complaint.

10 So here you see the signature of Mr. Paul.
11 You notice -- do y'all request that they swear to these
12 complaints, or is that there in case they choose to?

13 A. No, it's a practice that they swear to the
14 complaint.

15 Q. Okay. Can you stay with that microphone,
16 ma'am. Pretty please.

17 All right. Now, this, of course, has a
18 place for somebody to notarize and swear to it if they
19 choose to, correct?

20 A. Correct.

21 Q. And what is the policy in your office
22 ordinarily? Do people swear to these complaints? Are
23 they asked to, or what is -- what's customarily done?

24 A. My belief is that they were asked to swear to
25 it.

1 Q. All right. Well, we notice here that this
2 didn't happen here, correct?

3 A. It did not.

4 Q. All right. Now, on the next page, I don't want
5 to show the people over. I'm going to read you some
6 names, but with no identifying data on the screen until
7 it gets taken out. And I don't know whether it's been
8 taken out of this particular screen. I want to just
9 read names to you without us publishing them and see if
10 you recall these names being names that were proposed
11 that they would be investigated based on this document.

12 A Mr. Sabban, a Mr. Preston Joy, a
13 Mr. Jason Ernst, a Mr. Alan Buie, Ms. Gupta, a Judge
14 Mark Lane, and then a series of other -- one other
15 person and some others.

16 Now, did you -- were you aware of the
17 nature of who some of these people were at the time you
18 were informed about this?

19 A. Absolutely.

20 Q. And is this another reason that you're saying
21 it wasn't going anywhere?

22 A. It was going nowhere in my office.

23 Q. And does that mean that y'all had no intention
24 of either investigating or prosecuting with this kind of
25 allegation?

1 A. None whatsoever.

2 MR. HARDIN: If we can, Stacey, if we can
3 move over now. Skip the people and go to Bates number
4 68 -- excuse me -- Bates number 9036, 9037.

5 Q. (BY MR. HARDIN) And I want to represent to you
6 this is Mr. Paul laying out what -- his contentions or
7 so. And ultimately, did you folks decide what you were
8 going to do with this case --

9 MR. HARDIN: That's fine. You can take it
10 down, thank you.

11 Q. (BY MR. HARDIN) What were you going to do with
12 this case if it was going to go nowhere? What did you
13 do?

14 A. I decided to send it to David Maxwell.

15 Q. And by the time you were going to send it to
16 Mr. Maxwell, how long had you known him, and what was
17 your view of his competence and ability, et cetera?

18 A. I don't remember how long. I --

19 Q. And I want you to get back to that microphone.

20 A. I said I don't remember how long. I knew of
21 his reputation because I worked in the AG's office. I
22 thought very highly of him. I knew that he was a former
23 Ranger and was working with the Rangers. He had a very,
24 very stellar reputation as an investigator.

25 I sent -- I decided to send it to him

1 because it was -- I was quite confident that he would
2 view this complaint the same way I did.

3 Q. And so what you thought when you -- when you
4 sent it -- when you came up with the idea of sending it
5 to the AG's office, why did you send it to the AG's
6 office instead of just politely telling Mr. Paul, no
7 dice. Nice to have met you, we're not going to do
8 anything?

9 A. Because I didn't want to offend Mr. Paxton.

10 Q. If, in fact, Mr. Paul had come on his own not
11 being sponsored with the attorney general and made this
12 same complaint, what would you have done?

13 A. We would have sent a rejection letter.

14 Q. Pardon me?

15 A. We would have sent a rejection letter.

16 Q. All right. But because it was sponsored to you
17 by the attorney general, what did you do?

18 MR. BUZBEE: Your Honor, I'm going to
19 object. There's been no evidence of any sort of, quote,
20 sponsor, so I object to that.

21 MR. HARDIN: We just had a luncheon in
22 which he sponsored it. I don't know what he means.

23 PRESIDING OFFICER: Overruled.

24 MR. HARDIN: Thank you.

25 Q. (BY MR. HARDIN) Go ahead.

1 A. Had it not been for Mr. Paxton's personal
2 interest, it would have been handled routinely, but
3 because I valued the relationship with Mr. Paxton and
4 considered him to have been a friend, I didn't -- I
5 didn't want to offend him. And this seemed to be a
6 delicate way of having the matter reach --

7 Q. So --

8 (Simultaneous discussion)

9 Q. (BY MR. HARDIN) Yeah, so let me ask you, if
10 you sent it over to him --

11 MR. HARDIN: If I can, can I have 668,
12 please.

13 This is in evidence, Your Honor.

14 Actually, it's AG 68. Again, I'm
15 misreading handwriting, and I apologize for it.

16 Q. (BY MR. HARDIN) All right. No, I'm sorry.
17 Let's go to 124. Now, could you read this?

18 A. Uh-huh.

19 Q. All right.

20 A. Yes, I can.

21 Q. And could you identify what it is, please?

22 A. This is a letter from Don Clemmer to Brandon
23 Cammack of sending a second complaint that Mr. Paul
24 filed with our office.

25 Q. I'm sorry. This is not -- this is the second

1 referral?

2 A. Yes.

3 Q. I wanted to go to the first referral.

4 MR. HARDIN: I apologize. I'm probably
5 giving you the wrong number, Stacey. I want the first
6 referral, please. Thank you.

7 Q. (BY MR. HARDIN) Now, if you would look at
8 this, who -- this letter is signed by whom?

9 Signed by whom there? You can see below.

10 A. By Don Clemmer, yes.

11 Q. All right. Was this letter written at your
12 suggestion?

13 A. It would -- yes, it was written after we
14 discussed what we -- what I wanted it to say.

15 Q. Did you instruct or discuss with Mr. Clemmer
16 the language he would use in describing to Mr. Maxwell
17 while he was sending it?

18 A. Yes.

19 Q. All right. I want to particularly -- to look
20 at the last sentence where it says -- or the next to
21 last sentence, the two last two sentences: However,
22 since an employee of the Department of Public Safety is
23 one of the subjects of the complaint, referral to the
24 Rangers would appear inappropriate. I am, therefore,
25 requesting that your agency conduct the review.

1 Did you consider this a -- an official
2 recusal from you?

3 A. Absolutely not.

4 Q. All right. And then why did you -- why did
5 you -- why does it got that sentence in there saying
6 that since he was -- Department of Public Safety is one
7 of the subjects, it would be inappropriate to send to
8 them? Why is that in there?

9 A. Well, public -- matters of public integrity
10 are -- we're required to involve the Texas Rangers. One
11 of the named -- the people in the complaint, it was a
12 Ranger. But this letter was written to send it over,
13 but not to in any way endorse it as needing to be
14 investigated.

15 Q. Had y'all done any investigation of this
16 complaint?

17 A. I think the one thing we ascertained is that
18 there was indeed a -- an active federal investigation.
19 And other than that, no.

20 Q. All right. And do -- and did you at any time
21 intend and expect the attorney general's office to
22 conduct an investigation?

23 A. No.

24 Q. And, in fact, this letter doesn't ask for an
25 investigation, does it?

1 A. No.

2 Q. This letter says for them to do what with it?

3 A. Review it.

4 Q. And by that language, knowing Mr. -- and with
5 Mr. Clemmer having worked with David Maxwell, what did
6 you want to make sure that Mr. Maxwell understood that
7 language meant when you sent it to him?

8 MR. BUZBEE: Objection, Your Honor. This
9 witness did not send this letter. Mr. Clemmer would be
10 the one to answer that question --

11 MR. HARDIN: I'm asking what she --

12 MR. BUZBEE: Can I finish my objection,
13 please?

14 Mr. Clemmer --

15 (Simultaneous discussion)

16 MR. HARDIN: Not if you're using my time.

17 PRESIDING OFFICER: Stop. Stop. Stop.
18 Court reporter can't report --

19 MR. HARDIN: I understand.

20 PRESIDING OFFICER: -- record --

21 MR. HARDIN: I am going to request,
22 though, that this man learn to object the way it's
23 supposed to be. Otherwise, he's using up our time
24 unnecessarily. He's been speaking through objections
25 all day, and I respectfully ask that the Court to keep

1 that in mind.

2 PRESIDING OFFICER: Sustained your
3 objections.

4 MR. BUZBEE: Thank you.

5 PRESIDING OFFICER: I sustained the
6 objection, continue.

7 MR. HARDIN: All right.

8 Q. (BY MR. HARDIN) Now, what did you expect is
9 what I'm asking, not somebody else, but what did you
10 expect when you sent that kind of language over there?

11 MR. BUZBEE: Objection, speculation.

12 MR. HARDIN: No, I asked what she
13 expected. I'm not asking her what she expected --

14 Q. (BY MR. HARDIN) Let me put it this way: What
15 did you expect and want to happen?

16 PRESIDING OFFICER: Overrule.

17 Go ahead.

18 A. I expected David Maxwell and any of the
19 criminal lawyers in the AG's office would view this
20 matter as absolutely baseless and not worthy of
21 investigation. I expected it to be a dead issue.

22 Q. (BY MR. HARDIN) And --

23 A. On arrival.

24 Q. And, in fact, did you give Mr. Clemmer
25 instructions to call Mr. Paxton ahead of time and warn

1 him it's coming -- Mr. Maxwell, not Mr. Paxton?

2 A. Yes, I did.

3 Q. And --

4 A. I did not want David Maxwell to think that I
5 didn't have a good enough sense to know this was
6 ridiculous.

7 Q. All right. Now, during that time when it
8 happened, did you ever authorize that Mr. Cammack or
9 anyone else associated with the attorney general's
10 office, did you yourself authorize them to conduct any
11 kind of criminal investigation?

12 A. No.

13 Q. Did you appoint anyone as a special prosecutor?

14 A. No.

15 Q. Did you appoint anyone as a pro tem prosecutor?

16 A. No.

17 Q. Tell the jury the distinction in your mind of
18 what a special prosecutor is, if such a position exists,
19 if -- what a pro tem prosecutor is, and what you did or
20 did not do as a result?

21 A. A pro tem district attorney is appointed when
22 the district attorney recuses, and that's a formal
23 process. It requires the district attorney to ask the
24 Court's permission to recuse. And when the Court does
25 recuse, a pro tem is appointed to take the place of the

1 district attorney.

2 Q. And what is the process that happens? I mean,
3 is there a very, as you mentioned, formal process?
4 Let's say that the attorney -- the -- your office
5 concludes it's wrong, appropriate for you to conduct an
6 office -- was a matter of ethics or public policy and
7 decide that you're going to recuse yourself and ask an
8 attorney pro tem, would it be --

9 A. Yes.

10 Q. -- to be appointed?

11 And that would be like a DA in an
12 adjoining county?

13 A. That is the law now. Or it could be the
14 attorney general's office.

15 Q. All right.

16 A. We had that --

17 Q. And then --

18 A. An instance of that.

19 Q. If you decide to do that though, what would the
20 process be?

21 A. A motion would be made in court.

22 Q. A written motion?

23 A. Correct.

24 Q. All right. A written motion is made to a
25 judge, and what would that written motion say?

1 A. It would say that the district attorney because
2 of a conflict or for whatever other reason, it's usually
3 a conflict, is asking the Court's permission to recuse
4 and the Court then, please appoint a district attorney
5 pro tem to handle. And it's always a specific matter.

6 Q. All right. And did any of that -- and then
7 does the judge ultimately, for it to be effective, enter
8 an order?

9 A. The judge rules on the motion and enters an
10 order and usually at that time appoints -- has found
11 someone to be appointed. It is, you know, not uncommon
12 to assist the judge in finding someone, but I've also
13 had the judge say who she wanted.

14 Q. Right. So if one is an appointed pro tem, it
15 ultimately results in a judicial order, does it not?

16 A. It does.

17 Q. All right. Did that happen in any way, any of
18 those procedures you described, did any of that happen
19 in this -- involving anybody being asked to look into
20 the complaint of Mr. Paul?

21 A. No.

22 Q. Now, how would a special prosecutor work if you
23 were going to appoint a special prosecutor?

24 A. The way we use the term "special prosecutor" in
25 my experience has been that the district attorney

1 appoints someone to handle a special matter. And that
2 person is not on the payroll of the district attorney,
3 but is sworn in by the district attorney and becomes
4 essentially like any other assistant DA. It's under
5 this -- when the pro tem is appointed, the DA loses all
6 control over the lawsuit. The DA is out of it. And
7 with a special prosecutor, the district attorney
8 continues to supervise the handling of the case.

9 Q. And they're actually sworn in by a judge?

10 A. No, they're sworn in by me.

11 Q. All right. Did you do any of that in this
12 case?

13 A. No.

14 Q. So was either a attorney pro tem or a special
15 prosecutor under that term, were either of those
16 positions engaged in by you on this complaint of
17 Mr. Paul?

18 A. No, they were not.

19 Q. And when this file went from you to the
20 attorney general's office following the letter of
21 Mr. Clemmer, did you -- and by that time, had you hired,
22 retained, appointed, sworn in, any of those things, any
23 lawyer, to look into and work with you on the complaint
24 of Mr. Paul?

25 A. No.

1 Q. And after that case file left you and went to
2 the AG's office, did you in your office have anything to
3 do with investigating that file?

4 A. No, we did not.

5 Q. Other than helping Mr. Cammack get his grand
6 jury subpoenas, other than that, did you do anything to
7 assist Mr. Cammack in investigating this case?

8 A. No.

9 Q. And did anybody in the attorney general's
10 office ask you to aid in any way Mr. Cammack?

11 A. No.

12 Q. Did the attorney general ever ask you in any
13 way to aid Mr. Cammack?

14 A. He did not ask me. I don't know that he asked
15 anyone.

16 Q. So was Mr. Cammack ever hired or employed by
17 your office in any way?

18 A. No.

19 Q. I believe I have the right number. I just want
20 to make -- if I could check.

21 This is a video that is in evidence.

22 MR. HARDIN: I'm going to ask Stacey,
23 Exhibit 249, I would ask her to queue it up and play it
24 for the jury, please.

25 Q. (BY MR. HARDIN) And I will ask you to listen,

1 then I'll have a question afterwards.

2 (Video playing)

3 Q. (BY MR. HARDIN) What is your testimony --

4 (Video playing)

5 Q. (BY MR. HARDIN) Is that testimony truthful?

6 A. No.

7 Q. How untruthful is it? In what way?

8 A. It is astonishingly untruthful. There is no
9 way that anyone could interpret the facts as my
10 appointing Mr. Cammack as a special prosecutor. I
11 couldn't pick him out of a lineup today. I don't know
12 him.

13 MR. HARDIN: Pass the witness.

14 PRESIDING OFFICER: Mr. Buzbee.

15 MR. BUZBEE: Yes, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. BUZBEE:

18 Q. Hi, Ms. Moore.

19 A. Hello.

20 Q. How are you doing?

21 A. I'm doing well. Thank you.

22 Q. Good.

23 MR. BUZBEE: Erick, could you pull up
24 Article V, the impeachment article, so we can look at it
25 real quick.

1 Q. (BY MR. BUZBEE) As he's doing that, Ms. Moore,
2 you're telling us all that there was never in this
3 situation an attorney pro tem, true?

4 A. Correct.

5 Q. Let's look at the article of impeachment
6 article.

7 You see the language that says: Attorney
8 General Warren Kenneth Paxton misused his official
9 powers by violating the laws governing the appointment
10 of prosecuting attorneys pro tem.

11 You see that?

12 A. I do.

13 Q. There was never a prosecutor pro tem with
14 relation to Mr. Cammack, isn't that true?

15 A. There was not one appointed.

16 Q. Okay. It sounds like when you learned about
17 the complaint of Nate Paul, your initial gut reaction
18 was, that is absolutely ridiculous what he's alleging,
19 true?

20 A. True.

21 Q. But you know, of course, that sometimes the FBI
22 does, in fact, violate people's rights, right?

23 A. I've never witnessed that.

24 Q. But you've certainly read the news reports
25 about it, haven't you?

1 A. I've read news reports alleging that.

2 Q. I mean, there's a lot of them, but did you hear
3 about the FBI admitted flawed forensic testimony in 32
4 death penalty cases?

5 A. No.

6 Q. How about when the FBI conducted improper
7 searches of U.S. officials using a foreign database?

8 A. I don't know about that.

9 Q. How about when the FBI improperly spied on
10 activists?

11 A. I don't recall reading about that either.

12 Q. How about when the FBI misused an intelligence
13 database and performed 278,000 searches?

14 A. I didn't hear about that.

15 Q. And the reason I keep asking you about these
16 repeated alleged FBI abuses is because when you first
17 heard about this alleged FBI abuse, the first thing you
18 thought was ridiculous, correct?

19 A. No, that's not correct. That's not what I
20 said.

21 Q. You knew that a federal judge had ruled that
22 FBI agents had conducted illegal searches of businesses?

23 A. I don't know what you're alluding to.

24 Q. How the FBI violated the privacy rights of tens
25 of thousands of Americans?

1 A. Mr. Buzbee, I'm not aware of that article.

2 Q. Seems to me that that might be something you
3 make yourself aware of before you side --

4 MR. HARDIN: Excuse me. Excuse me. This
5 is all irrelevant. Using it to attack one agency or
6 another is irrelevant to what the attorney general did
7 in this case, and I object to being extremely
8 irrelevant.

9 MR. BUZBEE: Your Honor --

10 PRESIDING OFFICER: Overruled.

11 MR. BUZBEE: Thank you.

12 Q. (BY MR. BUZBEE) You --

13 MR. HARDIN: Judge, the second thing is
14 he's testifying.

15 MR. BUZBEE: I'm asking the witness --

16 MR. HARDIN: Cross does not give him the
17 right to simply sit up there in an unsworn way and make
18 these kind of allegations. He's testifying and not
19 asking a question.

20 MR. BUZBEE: I'm not making any
21 allegation.

22 PRESIDING OFFICER: Please --

23 MR. BUZBEE: My question --

24 PRESIDING OFFICER: -- address the witness
25 properly.

1 MR. BUZBEE: Yes, Your Honor.

2 Q. (BY MR. BUZBEE) My question to this witness
3 who claimed or who said in her statement that she gave
4 the Board of Managers that her initial reaction was this
5 entire claim against the FBI was ridiculous, I'm just
6 asking her whether she had heard very similar claims and
7 had seen very similar claims reported all over the
8 United States with regard to the FBI?

9 MR. HARDIN: It does not allow him to be
10 talking about irrelevant other circumstances, Your
11 Honor, to make his point.

12 PRESIDING OFFICER: Okay. Well, he
13 stopped. He stopped.

14 MR. HARDIN: Thank you.

15 PRESIDING OFFICER: You put a stop to
16 that, right? We asked him to go straight. Ask the
17 questions properly.

18 Go ahead.

19 MR. HARDIN: Thank you.

20 A. May I answer?

21 Q. (BY MR. BUZBEE) I don't know, the lawyer's
22 objecting. I don't know. I'll move on.

23 A. No, I'd like to answer because you've misstated
24 what I saw and what -- why I responded that way.

25 Q. Uh-huh.

1 A. It wasn't just against the FBI. It was a whole
2 range of agencies that was a conspiracy that I felt was
3 absolutely incredible and without basis.

4 Q. Uh-huh.

5 A. That's not just the FBI. The Texas Rangers,
6 the U.S. Marshal, the U.S. Magistrate, the U.S.
7 Attorney's Office, all of those together, the securities
8 board.

9 Q. You --

10 A. That's why I considered it incredible.

11 Q. Well, couldn't you have just said, you know
12 what? I don't think the Rangers would do that. I don't
13 think the magistrate would do that. But you know what?
14 That -- those FBI folks, they may have done that. You
15 could have just investigated that, right? What you
16 could have done --

17 A. Mr. Buzbee, I worked with the FBI.

18 Q. Uh-huh.

19 A. I worked with the FBI to have a prisoner -- I
20 mean, an accused murderer surrender at the border the
21 very first month I was in office. I worked with the FBI
22 investigating the bombings in this city. I stood next
23 to the U.S. attorney himself watching assistant U.S.
24 attorneys and FBI agents and other law enforcement
25 officials drawing up search warrants to submit to a

1 magistrate. I did not find this allegation of a broad
2 conspiracy among all these agencies to have any merit.

3 Q. Based on no investigation, true?

4 A. Correct.

5 Q. Yep. So what you decided to do rather than
6 investigate it, you decided to refer it back to the AG's
7 office, right?

8 A. I decided to send it to David Maxwell.

9 Q. Yeah, you said part of the allegation was
10 against the Texas Rangers, right?

11 A. Yes.

12 Q. So you sent it to the hall of fame Texas
13 Ranger, didn't you?

14 A. He was the chief investigator in the AG's
15 office.

16 Q. Trying to get this right.

17 You thought it would be inappropriate to
18 send the allegation to the Texas Rangers, so you,
19 instead, sent it to the Texas Ranger, right?

20 A. What I'd really like -- I think would be
21 truthful here is that I wasn't concerned about sending
22 it to the Texas Rangers because it wasn't worth sending.
23 I did think that the chief investigator in the attorney
24 general's office would view it the same way.

25 Q. So I'm just trying to remember who it was sent

1 to.

2 So one of the allegations was against the
3 U.S. Attorney's Office?

4 A. Yes.

5 Q. And the referral was to a U.S. -- a former U.S.
6 attorney, right?

7 A. I don't know to whom you --

8 Q. Mr. Penley, a former U.S. attorney?

9 A. Mr. Penley was not named in that letter.

10 Q. Yeah.

11 A. That was specifically sent to David Maxwell.

12 Q. Well, we all know now, and I know you weren't
13 here, you wouldn't know this, but -- but just so we're
14 clear, the allegation among others was against Texas
15 Rangers and U.S. Attorney's Office, and you sent it to
16 the AG's office where the head of both -- the both of
17 the divisions that would have looked at this would have
18 been a Ranger and a U.S. attorney. Did you realize
19 that?

20 A. I didn't know Mr. Penley.

21 Q. Let's look at the referral letter.

22 MR. BUZBEE: AG 68, Erick, please.

23 MR. HARDIN: Pardon me, Your Honor. Just
24 to correct -- just to correct the record, I believe he
25 mistakenly referred to Mr. Penley as a U.S. attorney,

1 and I don't want that to stay unchallenged. He, of
2 course, was an assistant U.S. attorney. I don't want to
3 suggest that was being looked at by a U.S. attorney.

4 MR. BUZBEE: A former assistant U.S.
5 attorney. I think we all know who he is. He testified.

6 MR. HARDIN: Thank you.

7 Q. (BY MR. BUZBEE) Now, let's look at the
8 referral.

9 Clemmer at the time worked for you in the
10 office, right?

11 A. Yes.

12 Q. Okay. He had the authority to send this
13 letter, true?

14 A. Yes.

15 Q. And he sent the letter to Mr. Maxwell. You've
16 told us that, right?

17 A. Correct.

18 Q. And he says: Would typically forward such a
19 complaint to the Public Integrity Unit of the Texas
20 Rangers for review.

21 Right?

22 A. Yes.

23 Q. However, since an employee of the Department of
24 Public Safety is one of the subjects of the complaint,
25 referrals to the Rangers would appear inappropriate.

1 Correct?

2 A. Yes, he says that.

3 Q. Okay. Now, you also made a comment with
4 Mr. Hardin about you typically would require someone
5 making a criminal complaint to swear to the complaint,
6 is that right?

7 A. Yes, the form.

8 Q. Is it required?

9 A. I don't -- I didn't review every single
10 complaint, but it's my understanding we had that policy,
11 yes.

12 Q. That was the policy in the office is to require
13 the complainant to swear to the complaint?

14 A. Yes.

15 MR. BUZBEE: May I approach the witness?

16 Q. (BY MR. BUZBEE) Do you see the document I just
17 handed you, ma'am?

18 A. I do.

19 Q. And who -- it's an email, is it not?

20 A. It is.

21 Q. An email from whom to whom? From who to whom?

22 A. There's two, it appears.

23 Q. Is this email from people within your office?

24 A. And it's both -- both of the emails on this
25 piece of paper are from Todd Bircher to Don Clemmer.

1 And then the next one is Todd Bircher to M. Wynne.

2 MR. BUZBEE: Your Honor, we move for
3 admission of this -- of this piece of evidence.

4 PRESIDING OFFICER: Any objection?

5 MR. HARDIN: I have no objection.

6 PRESIDING OFFICER: Admit AG Exhibit 0242
7 into evidence.

8 (AG Exhibit 242 admitted)

9 Q. (BY MR. BUZBEE) And we'll put on the screen
10 Exhibit 242, which I think His Honor put into evidence,
11 allowed into evidence.

12 And let's -- just so we know what the --
13 your underlings -- Mr. Bircher was one of your
14 subordinates, was he not?

15 A. He was.

16 Q. And let's look at what he told Mr. Paul's
17 lawyer in writing. I'm going to read it. You tell me
18 if I get it right.

19 Please see the attached RTI, which
20 includes instructions on submitting your client's
21 complaint. Feel free to contact me with any questions
22 you may have. Again, no need to get a Notary's
23 signature on it.

24 That's what your people told Mr. Paul's
25 lawyer, isn't that true?

1 A. That's what this email says, yes.

2 Q. And yet, and yet, there's been suggestion here
3 that the complaint, Mr. Paul, a suggestion that he knew
4 that was baloney, and that's why he didn't get it
5 notarized, did you know that was a suggestion being
6 made?

7 Did you know that was the suggestion --

8 A. No.

9 Q. -- being made?

10 A. I've been under the rule, so I haven't heard
11 anything.

12 Q. I figured that.

13 But what we know specifically is exactly
14 what Mr. Paul's lawyer was told is what he did. He did
15 not get it notarized, did he?

16 A. No, he did not.

17 Q. Now, I want to focus with you, if you would, on
18 the second referral. It's in evidence, AG Exhibit 124.
19 Let's take a look at that one.

20 Were you aware that your subordinate
21 Mr. Clemmer was doing -- was sending a second referral?

22 A. I don't know when I became aware of that. It
23 very possibly was after this. I don't know.

24 Q. Okay. So it could be the case that when
25 Mr. Clemmer sent a second referral directly to

1 Mr. Cammack in Houston, you didn't have any idea about
2 that at the time?

3 A. That could well be the case. I just don't
4 recall.

5 Q. Now, certainly Mr. Clemmer -- I mean, common
6 sense would dictate Mr. Clemmer knew who Mr. Cammack
7 was, right?

8 A. I don't know what -- he addresses this to him.

9 Q. Right. He knew who Mr. Cammack was.
10 Otherwise, why would he send him the letter in Houston,
11 the referral in Houston, right? That's common sense,
12 isn't it?

13 A. It would appear.

14 Q. Yeah, okay. Is it typical -- let me ask it
15 this way: If a special prosecutor is appointed and an
16 additional matter comes up within the office and they
17 want to continue to use the special prosecutor, is that
18 sometime done?

19 A. That did not occur in my administration.

20 Q. Uh-huh. Now, I want to look at some things
21 that were happening, maybe you didn't know about them.
22 Did you not realize that the people within your office
23 were assisting Mr. Cammack in obtaining grand jury
24 subpoenas?

25 A. I didn't know it until recently.

1 Q. Okay. You had no idea that there were multiple
2 people in your office who were guiding Mr. Cammack in
3 obtaining grand jury subpoenas?

4 A. I did not.

5 Q. But you will admit now that you know it now,
6 right?

7 A. I do know it now.

8 Q. So let's be clear. Even though you didn't know
9 it, you admit that there were multiple people in your
10 office who were assisting Mr. Cammack in obtaining grand
11 jury subpoenas related to both the first and second
12 referral, isn't that right?

13 A. That's what I believe to be the case, yes.

14 Q. Yeah. As an example, let's --

15 MR. BUZBEE: Let me offer, hopefully
16 without objection, I need to know if this is in
17 evidence, House Managers' Exhibit 186. We offer House
18 Managers' Exhibit 186. It's their exhibit. Copies?

19 PRESIDING OFFICER: It's not. It's not
20 in --

21 MR. BUZBEE: We offer --

22 PRESIDING OFFICER: -- evidence yet. Any
23 objection?

24 MR. BUZBEE: We offer House Managers' 186.

25 PRESIDING OFFICER: Mr. Hardin, any

1 objection?

2 MR. HARDIN: May I have just a second?

3 PRESIDING OFFICER: Yes, you may.

4 MR. HARDIN: I have no objection.

5 PRESIDING OFFICER: Admit 18 -- is it 186?
6 Yes, 186 into evidence.

7 (HBOM Exhibit 186 admitted)

8 MR. BUZBEE: Yes, Your Honor.

9 And, Erick, bring up House Managers'
10 Exhibit 186 that's now in evidence, and go to the third
11 page. Make it the fourth page, Erick, please. There we
12 go.

13 Q. (BY MR. BUZBEE) Now, there's some email
14 traffic between Brandon Cammack and someone named Gayla
15 Schwab. Do you know that person?

16 A. Yes.

17 Q. Who is she?

18 A. Her position was bailiff of the grand jury.

19 Q. Okay.

20 MR. BUZBEE: And let's go to the next
21 page, Erick.

22 Q. (BY MR. BUZBEE) And notice here that Gayla
23 Schwab, who's legal secretary at the grand jury unit, is
24 sending email -- an email to Brandon Cammack. Do you
25 see that there at the bottom?

1 A. No, not on this page. I'm seeing the email
2 from Bailey Molnar.

3 Q. Look at -- look at the email. It says: Hi,
4 Brandon. I was directed to forward your request to Don
5 Clemmer, director of our special prosecution division,
6 to handle this -- to handle this matter.

7 Do you see that?

8 A. No, that's not the page that's on my screen.

9 Q. Okay. Well, my eyes are terrible, so I can't
10 see really your screen.

11 MR. BUZBEE: Erick, third page.
12 Exhibit 186. Email at the bottom to Brandon Cammack
13 from Gayla Schwab. There we go.

14 Q. (BY MR. BUZBEE) Now, can you see the email
15 where she is referring Mr. Cammack to one of your
16 subordinates?

17 A. Yes, I see that.

18 Q. And do you see --

19 A. Thanks for enlarging it.

20 Q. I know it's hard. We're going to try to roll
21 through this quickly.

22 And do you see that your subordinate,
23 Mr. Clemmer's response to Mr. Cammack right above it?

24 A. I've seen it, but this is illegible.

25 Q. How about now?

1 A. There we go.

2 Q. He says: Let me know what type of case this
3 investigation involves so I can get the right people to
4 assist you. Thanks.

5 That's what he says to Mr. Cammack, right?

6 A. Yes.

7 Q. He says: Cammack, let me know what case this
8 is so I can get the right folks to help you.

9 Right?

10 A. What he says.

11 Q. Okay. And then --

12 MR. HARDIN: Your Honor, excuse me.

13 Excuse me, Mr. Buzbee.

14 Could I ask if the juror -- the witness
15 would like a paper copy to have in front of her? If so,
16 I'll be glad to give her one.

17 PRESIDING OFFICER: Can you read this?

18 THE WITNESS: I can when they enlarge it.

19 MR. BUZBEE: Just trying to slow us down.

20 PRESIDING OFFICER: All of us need it
21 enlarged so...

22 MR. BUZBEE: Yeah. And we'll enlarge.

23 (Simultaneous discussion)

24 MR. BUZBEE: Best I can. I can't see it
25 either, Ms. Moore.

1 Q. (BY MR. BUZBEE) And do you see Mr. Cammack's
2 response?

3 MR. BUZBEE: Bring it up.

4 Q. (BY MR. BUZBEE) It says -- it's on
5 September 23rd, 2020, at 4:25 p.m. You see, he says:
6 I've been appointed on a referral from your office to
7 the AG's office regarding a matter involving public
8 corruption. I'm trying to get grand jury subpoenas
9 issued.

10 Do you see that?

11 A. I do.

12 Q. He explained in detail what he was up to,
13 didn't he?

14 A. I'm not sure about the detail part, but he does
15 say.

16 Q. I mean, it's in writing what he was -- he was
17 telling your subordinate what he was doing, right?

18 A. He does.

19 Q. He's getting grand jury subpoenas --

20 A. He does.

21 Q. -- for a corruption investigation, right?

22 A. Yeah, he just doesn't mention that it was the
23 Nate Paul case, but -- but he does -- it's a matter
24 involving public corruption. I'm -- I'm reading this.
25 The first time I saw it was last week.

1 Q. Right. And that -- that was the first
2 referral. Let's look at the first page of this exhibit.
3 And we can see at the top another email to Mr. Cammack
4 from your subordinate, Don Clemmer.

5 MR. BUZBEE: Pull it up, please.

6 Q. (BY MR. BUZBEE) And here's where your
7 subordinate is sending a referral to Mr. Cammack. That
8 is the second referral, isn't that right?

9 A. Yes, September of '20.

10 Q. Okay. So if there's any suggestion by anybody
11 that your people weren't helping this young man obtain
12 grand jury subpoenas, that would be false, isn't that
13 right?

14 A. They did help him.

15 Q. They even filled out the forms for him and sent
16 it to him via DocuSign, didn't they?

17 A. Yes.

18 Q. Let's let that sink in. They filled out the
19 form, emailed it to him using DocuSign, and all he had
20 to do was DocuSign for the applications for the
21 subpoenas, isn't that right?

22 A. That's my understanding.

23 Q. Who put the word "special prosecutor" on the
24 DocuSign that was sent to this man?

25 A. I do not know that.

1 Q. So according to you, it could be possible that
2 your subordinates in the office put that language in the
3 DocuSign that this young man signed electronically,
4 isn't that right?

5 A. Yes, but I notice that he uses that term,
6 "special prosecutor," for the OAG.

7 Q. Yeah.

8 A. So I wouldn't be surprised if they used his
9 language.

10 Q. I mean, they certainly didn't tell him don't
11 use that language, did they?

12 A. No, I wouldn't think that a secretary to the --

13 Q. It was more than a secretary, ma'am. You know
14 it was more than one person, don't you?

15 A. There was --

16 Q. You know --

17 A. Mr. Buzbee, do you want me to answer these
18 truthfully, or do you want to just --

19 Q. No, no, I prefer you not lie. Yes, of course,
20 I'd prefer you not lie. I'd prefer you to follow your
21 oath.

22 Will you agree that there were multiple
23 people involved in your office in assisting this young
24 in getting grand jury subpoenas issued?

25 A. I would agree that multiple people offered to

1 assist him. I do not believe multiple people filled out
2 the forms.

3 Q. I want to show you something that's in
4 evidence, and you just tell me if it's true. It's --

5 MR. BUZBEE: I'm going to get yelled at
6 for this, but it's Exhibit 127, Exhibit 19, Erick. It's
7 already in evidence. 127, Exhibit 19, Erick. There we
8 go.

9 Q. (BY MR. BUZBEE) Now here's some language in
10 this letter sent to Mr. Cammack shortly thereafter. And
11 it says: It has come to our attention that you appeared
12 before the Travis County grand jury.

13 Can we agree that Brandon Cammack never,
14 never appeared in front of any grand jury?

15 A. Ever? I have no idea --

16 Q. With relation to this particular matter?

17 A. Well, he wouldn't have appeared in person
18 before a grand jury.

19 Q. I mean, all he did --

20 A. All the grand jury proceedings at this time
21 were, in fact, over Zoom anyway.

22 Q. He didn't even do a Zoom, all he did --

23 A. I don't think he did. I mean --

24 (Simultaneous discussion)

25 A. It would --

1 Q. (BY MR. BUZBEE) You see the point --

2 A. May I finish?

3 Q. Yeah, I'm sorry. Go ahead.

4 A. It would be unusual for anyone issuing a grand
5 jury subpoena to actually appear in front of the
6 physical grand jury.

7 Q. Right. Because what we know happened was some
8 of your folks in the office helped him fill out forms,
9 and he signed them electronically with DocuSign, right?

10 A. That's what it appears to be happened.

11 Q. Okay. Now, is it true that your office was
12 excited about pursuing an investigation against Ken
13 Paxton?

14 A. I can't speak for the entire office.

15 Q. Well --

16 A. But I was not excited about any of this.

17 Q. Okay.

18 MR. BUZBEE: Your Honor, I pass the
19 witness.

20 PRESIDING OFFICER: Redirect, Mr. Hardin.

21 MR. HARDIN: Yes, Your Honor.

22 Your Honor, I move to introduce -- I move
23 to introduce Exhibit 243.

24 PRESIDING OFFICER: Any objection?

25 MR. BUZBEE: This is beyond -- this is, of

1 course, beyond the scope of her direct, as you know, and
2 so I would object to it.

3 PRESIDING OFFICER: As I said earlier, and
4 I corrected myself. It was not within the rules, but we
5 discussed direct -- redirect would be on what was
6 discussed on direct.

7 MR. HARDIN: I understand, but part of
8 this cross was challenging whether or not her office was
9 involved and what her office's involvement with this --
10 this is her answer to an attorney general public
11 relations statement that he made, which also sets out
12 her position about this entire matter. And she sent it
13 to him on October the 9th long before any of this was
14 looked at.

15 PRESIDING OFFICER: Hold on one second,
16 Counselors.

17 I'm going to overrule the objection
18 because it does go to the cross testimony.

19 MR. HARDIN: Thank you.

20 Can you put it up, please?

21 REDIRECT EXAMINATION

22 BY MR. HARDIN:

23 Q. Now, I'm going to ask you to publish it by
24 reading it. If you look up close to the microphone, I'd
25 like for you to read to the jury what you told

1 Mr. Paxton on October the 9th of 2020 through this
2 letter?

3 A. It's addressed to Ken Paxton, attorney general
4 of Texas, the Office of the Attorney General via email
5 and by hand delivery.

6 Dear Attorney General Paxton: On June 10,
7 2020, my office sent to David Maxwell a letter referring
8 a request to investigate, in parenthesis, RTI, filed in
9 our office by Nate Paul. The RTI was received by us
10 after you asked my office to hear his complaints. The
11 referral to the OAG was made with your approval. We did
12 not conduct -- conduct any investigation into the merits
13 of the matters complained of. In referring the matter
14 to the OAG, we concluded that ours was not the
15 appropriate office to either address the matters raised
16 in the complaint or to conduct an investigation into
17 them.

18 The referral cannot and should not be used
19 as any indication of a need for investigation, a desire
20 on the Travis County DA's part for an investigation to
21 take place, or an endorsement of your acceptance of the
22 referral.

23 My office has closed this file and will
24 take no further action. Furthermore, I have instructed
25 my employees to have no further contact with you or your

Lorrie A. Schnoor, CSR, RDR, CRR

1 office regarding this matter.

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

8 Sincerely, Margaret Moore.

9 Q. Now, Ms. Moore, are you aware that if one is a
10 special prosecutor that they are to be supervised by the
11 authority appointing them a special prosecutor?

12 A. Yes. A special --

13 Q. And --

14 A. And a properly appointed special prosecutor is
15 supervised by the prosecuting authority.

16 Q. And if somebody is appointed as a special
17 prosecutor -- or let me strike that. Another way.

18 Do you consider when a person that says
19 that they are a special prosecutor for the attorney
20 general, when that person contacts your office and asks
21 for help in getting out subpoenas, tells you he doesn't
22 really have experience in doing that, and your people
23 assisting him, do you consider that in any form in any
24 way supervising his later investigation?

25 MR. BUZBEE: Objection, leading.

1 PRESIDING OFFICER: Sustained.

2 Q. (BY MR. HARDIN) You can tell me either way.
3 What is your opinion as to whether that is some type of
4 supervision?

5 A. Number one, I don't know that there's any such
6 thing as a special prosecution for the Office of the
7 Attorney General. A prosecution is -- the authority to
8 prosecute is limited to the elected district and county
9 attorneys of the state. So I don't even know what a
10 special prosecutor for the OAG is, but that's -- this
11 person was not appointed by me and was not supervised by
12 me.

13 Q. And was he authorized -- would he be authorized
14 to do any prosecution in the state of -- in Travis
15 County without your approval?

16 A. No.

17 Q. And is that built into the statutes that say
18 only the elected district attorney of a county has the
19 authority to approve and conduct prosecutions?

20 A. That is the law, and I knew that.

21 Q. Finally, finally, the video that we saw?

22 A. Yes.

23 Q. Did you -- did you notice that the attorney
24 general made no attempt to correct that untruthful
25 testimony given before the finance committee?

1 A. Not in the clip that I saw.

2 MR. HARDIN: That's all I have. Thank
3 you.

4 PRESIDING OFFICER: We need to admit
5 Exhibit 243 into evidence. I have not admitted it into
6 evidence yet.

7 MR. HARDIN: Thank you very much.

8 (HBOM Exhibit 243 admitted)

9 PRESIDING OFFICER: Mr. Buzbee, recross.

10 MR. BUZBEE: Yes, Your Honor.

11 Let's look at -- you said 247, is what it
12 was, or 3? Or 243?

13 PRESIDING OFFICER: 243.

14 MR. BUZBEE: 243.

15 PRESIDING OFFICER: Yes, sir.

16 MR. BUZBEE: Put on the screen, Erick --
17 it's our AG 19, same exhibit. This --

18 RECROSS-EXAMINATION

19 BY MR. BUZBEE:

20 Q. Ms. Moore, at the time you wrote this letter,
21 you didn't even know about the second referral, did you?

22 A. I easily could have. It's October 9, and the
23 second referral was sent to Cammack on the 23rd. What
24 happened in between is the motion to quash the subpoenas
25 issued by Mr. Cammack were granted by -- the motion was

1 granted to quash those subpoenas, and when that
2 happened, all of this was brought to my attention. So I
3 could by October 9th have seen this second referral.

4 Q. Let's just make sure that we can agree on
5 something. You didn't mention any second referral in
6 this letter, did you?

7 A. No, I didn't.

8 Q. No mention whatsoever of the second referral in
9 this letter, is there?

10 A. No.

11 Q. Okay. One thing you said in this letter in the
12 third paragraph, your office has closed this file,
13 right?

14 A. I do say that.

15 Q. So up and until that point, y'all had an open
16 file on this referral, didn't you?

17 A. I don't -- I don't know that we did. I saw
18 this. I don't have a full recollection of exactly what
19 was going on at that moment, but I don't think we ever
20 actually opened a file.

21 Q. So you just closed an already closed file is
22 that what you're saying?

23 A. Could have, yeah.

24 Q. So how many times do you have to close a file
25 before it's closed?

1 A. Well, Mr. Buzbee, I'm sorry, but I -- you know,
2 this matter was dead on arrival, and it remained that
3 way in my mind and --

4 MR. BUZBEE: Objection, nonresponsive.

5 A. -- all along.

6 PRESIDING OFFICER: Sustained.

7 Q. (BY MR. BUZBEE) Now, one of the things that
8 happened after all this came out in the newspaper, in
9 addition to you sending this letter, you also told one
10 of your subordinates to put everything that had happened
11 in writing, didn't you?

12 A. You want to be a little more specific?

13 Q. Do you remember Mindy Montford?

14 A. Oh, yes.

15 Q. You encouraged Mindy Montford to do a full
16 statement of what the office had done with regard to
17 these referrals, right?

18 A. I encouraged her to make a statement about what
19 occurred, yes.

20 Q. And that statement is AG Exhibit 44.

21 MR. BUZBEE: And we offer it, Your Honor.

22 PRESIDING OFFICER: Can you give us a copy
23 of it?

24 MR. BUZBEE: Is it in evidence or not?

25 It's in evidence, Your Honor.

1 PRESIDING OFFICER: It's already in
2 evidence.

3 MR. BUZBEE: I'm sorry about that.
4 Erick, please put Exhibit 44 on the
5 screen.

6 Q. (BY MR. BUZBEE) In response to your
7 encouragement, one of your subordinates, Mindy Montford,
8 did, in fact, put everything that happened, at least
9 from her point of view, in writing, isn't that right?

10 A. Yes.

11 Q. Let's look at what she put in writing. And she
12 swore that this was true, did she not?

13 A. Yes.

14 MR. HARDIN: The scope has been exceeded
15 by this based on the Court's rulings.

16 MR. BUZBEE: No.

17 MR. HARDIN: I don't believe -- I don't
18 believe anything that this is relevant to that -- I
19 never mentioned Mindy Montford. I didn't discuss that
20 at all.

21 MR. BUZBEE: Your Honor, you let him put
22 into evidence over my objection her letter about how
23 things went down. And now to complete the record, I'm
24 going to put -- I've put in evidence, it's already,
25 there, what her subordinate who is directly involved

1 said went down. It's perfectly within the line of the
2 recross.

3 MR. HARDIN: He's perfectly entitled to
4 call her as a witness. And we would welcome that. But
5 I'm not objecting to the exhibit. But going into this
6 subject is what I'm saying is contrary to the Court's
7 previous ruling.

8 PRESIDING OFFICER: I think he gave the
9 explanation why it's not contrary to the Court's rule
10 that we discussed because it had been introduced.
11 Overruled.

12 Q. (BY MR. BUZBEE) Let's look at the affidavit
13 that was done.

14 MR. BUZBEE: And just, Erick, so everybody
15 knows, look at the last page of Exhibit 44. So we'll
16 know when Ms. Montford swore that this was -- what
17 actually happened under oath. Go to the last page.

18 Q. (BY MR. BUZBEE) Can you confirm with me,
19 Ms. Moore, that she did this in January of 2021?

20 A. Yes.

21 Q. Okay.

22 MR. BUZBEE: Now, Erick, go back to the
23 second page of this exhibit. Last paragraph.

24 Q. (BY MR. BUZBEE) Ms. Moore, I just want to make
25 sure that I get this right.

1 Don Clemmer and I discussed the meeting
2 with Margaret Moore by phone.

3 That's true, isn't it? The meeting with
4 Nate Paul?

5 A. Thank you for enlarging it.

6 Q. There you go.

7 A. Is she referring to the meeting with --

8 Q. The lunch meeting with Nate Paul.

9 A. The lunch meeting. Okay, yes.

10 Q. Yeah. She goes on to say at the beginning of
11 the last sentence in that paragraph: The district
12 attorney's office no longer has the resources to conduct
13 broad-based investigations.

14 MR. BUZBEE: Go to the next page, Erick.
15 Pull it up so we can read it.

16 Q. (BY MR. BUZBEE) This is what she said was the
17 truth at the time -- to conduct broad-based
18 investigations on its own so we knew we were not capable
19 of thoroughly looking into the allegations.

20 Am I right so far?

21 A. Yes.

22 Q. She said: When we receive complaints from
23 individuals such as Mr. Paul's, it is our normal course
24 of business to refer these cases to the Texas Department
25 of Public Safety, the Office of the Attorney General,

1 the FBI, or a local police department with jurisdiction
2 to investigate.

3 That's what she wrote, true?

4 A. True.

5 Q. That's what she swore was the truth, right?

6 A. Yes.

7 Q. Then she goes on to say, skipping a sentence:
8 It was decided that we should refer the matter to the
9 OAG for review.

10 You see that?

11 A. Yes.

12 Q. She goes on to say: It was our intention to
13 have the OAG review the matter and determine whether or
14 not it rose to the level of a formal criminal
15 investigation.

16 Do you see that language?

17 A. I do.

18 Q. Okay.

19 MR. BUZBEE: Let's go to the bottom,
20 Erick, the sentence -- pull up the last half of the last
21 paragraph. The sentence starts: I've also told General
22 Paxton -- that sentence.

23 Q. (BY MR. BUZBEE) She says: I did inform
24 General Paxton at the time -- that time that the
25 district attorney's office did not have sufficient

1 resources to look into Mr. Paul's claims and that we
2 believe the only agency that could properly review the
3 matter would be the OAG.

4 That's what she swore was true, correct?

5 A. It's written here, yes.

6 Q. She then says: It should be noted that at no
7 time prior to this conversation did General Paxton ask
8 that we refer this matter to his office. To my
9 knowledge, the idea to refer the Nate Paul matter to the
10 Office of the Attorney General --

11 MR. HARDIN: Pardon me. Pardon me.

12 MR. BUZBEE: Okay.

13 MR. HARDIN: Pardon me. My problem,
14 Mr. Buzbee, excuse me, I'm having trouble following it.
15 Can you point us to which page he's on and just tell me
16 so I can --

17 MR. BUZBEE: Does the witness know where I
18 am?

19 Q. (BY MR. BUZBEE) Ms. Moore, do you know where I
20 am?

21 A. I'm reading it here.

22 Q. Sure, you do. We all know where I am. Let me
23 keep going.

24 MR. HARDIN: Excuse me. Excuse me.

25 PRESIDING OFFICER: Give him the courtesy

1 of catching up.

2 MR. BUZBEE: Fourth line from the bottom
3 of the second page.

4 MR. HARDIN: Thank you.

5 MR. BUZBEE: Third page.

6 Q. (BY MR. BUZBEE) It should be noted that at no
7 time prior to this conversation did General Paxton ask
8 that we refer the matter to his office. To my
9 knowledge, the idea to refer the Nate Paul matter to the
10 OAG came from our office.

11 Did I get that right?

12 A. Yes.

13 Q. General Paxton was not certain his office could
14 even review the matter.

15 Do you see that?

16 A. I do.

17 MR. BUZBEE: Your Honor, I pass the
18 witness.

19 PRESIDING OFFICER: That will -- we'll
20 adjourn in a moment. I want to get you the timestamp
21 here.

22 Time remaining, House, 9 hours, 19
23 minutes, and 12 seconds.

24 Respondent, 12 hours, 14 minutes, and
25 15 seconds.

1 Tomorrow will be another long day. We'll
2 come in at 9:00. We'll go to about the same time, 6:30
3 to 7:00, whenever the natural ending. Until then, we
4 are adjourned.

5 You may be dismissed. Thank you.

6 I'm sorry. Can she be excused,
7 Mr. Hardin?

8 Mr. Buzbee, can she be excused?

9 MR. BUZBEE: Yes, sir, please.

10 MR. HARDIN: Yes, Your Honor, but with the
11 same understanding she could be on call.

12 PRESIDING OFFICER: All right. Thank you.

13 (Proceedings recessed 6:50 p.m.)
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C E R T I F I C A T E

STATE OF TEXAS)

COUNTY OF TRAVIS)

I, Lorrie A. Schnoor, Certified Shorthand Reporter in and for the State of Texas, Registered Diplomat Reporter and Certified Realtime Reporter, 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/ **Lorrie A. Schnoor**

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