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

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

TRIAL
VOLUME 8 - AM SESSION
SEPTEMBER 14, 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 Mary Oralia Berry,
CSR, RDR, CRR, CBC.

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A P P E A R A N C E S

FOR THE TEXAS HOUSE OF REPRESENTATIVES BOARD OF MANAGERS:

Mr. Rusty Hardin
Ms. Lara Hudgins Hollingsworth
Ms. Jennifer Brevorka
Ms. Megan Moore
Mr. Daniel Dutko
Ms. Leah M. Graham
Mr. Armstead Lewis
Ms. Aisha Dennis
RUSTY HARDIN & ASSOCIATES, LLP
1401 McKinney Street, Suite 2250
Houston, Texas 77010
(713) 652-9000
rhardin@rustyhardin.com

Mr. Dick DeGuerin
Mr. Mark White, III
DEGUERIN AND DICKSON
1018 Preston
Houston, Texas 77002
(713) 223-5959
ddeguerin@aol.com

Ms. Harriet O'Neill
LAW OFFICE OF HARRIET O'NEILL, PC
919 Congress Avenue, Suite 1400
Austin, Texas 78701
honeill@harrietonelllaw.com

Ms. Erin M. Epley
EPLEY LAW FIRM, LLC
1207 South Shepherd Drive
Houston, Texas 77019-3611
erin@epley-law.com

Mr. Mark E. Donnelly
PARKER, SANCHEZ & DONNELLY, PLLC
700 Louisiana, Suite 2700
Houston, Texas 77002
mark@psd.law

Ms. Terese Buess
buesster@gmail.com

1 Ms. Donna Cameron
2 State Bar No. 03675050

3 Mr. Brian Benken
4 BENKEN LAW
5 1545 Heights Blvd., Suite 900
6 Houston, Texas 77008
7 (713) 223-4051

8 Mr. Ross Garber
9 THE GARBER GROUP LLC
10 1300 I Street, N.W., Suite 400E
11 Washington, D.C. 20005
12 rgarber@thegarbergroup.com

13 Ms. Lisa Bowlin Hobbs
14 KUHN HOBBS PLLC
15 3307 Northland Drive, Suite 310
16 Austin, Texas 78731
17 lisa@kuhnhobbs.com

18 ALSO PRESENT:

19 HOUSE BOARD OF MANAGERS:

20 Representative Andrew Murr
21 Representative Ann Johnson
22 Representative Briscoe Cain
23 Representative Terry Canales
24 Representative Erin Gamez
25 Representative Charlie Geren
Representative Jeff Leach
Representative Oscar Longoria
Representative Morgan Meyer
Representative Joe Moody
Representative David Spiller
Representative Cody Vasut

1 FOR THE ATTORNEY GENERAL:

2 Mr. Tony Buzbee
3 Mr. Anthony Dolcefino
4 Mr. Colby Holler
5 THE BUZBEE LAW FIRM
6 JP Morgan Chase Tower
7 600 Travis Street, Suite 7500
8 Houston, Texas 77002
9 tbuzbee@txattorneys.com

10 Mr. Dan Cogdell
11 Mr. Anthony Osso
12 COGDELL LAW FIRM
13 1000 Main Street, Suite 2300
14 Houston, Texas 77002
15 dan@cogdell-law.com

16 Mr. Judd E. Stone, II
17 Mr. Christopher D. Hilton
18 Ms. Allison M. Collins
19 Ms. Amy S. Hilton
20 Ms. Kateland R. Jackson
21 Mr. Joseph N. Mazzara
22 STONE|HILTON PLLC
23 1115 West Slaughter Lane
24 Austin, Texas 78748
25 (737) 465-3897
judd.e.stone@proton.me
christopher.d.hilton@proton.me

Mr. J. Mitchell Little
SCHEEF & STONE, LLP
2600 Network Blvd., Suite 400
Frisco, Texas 75034
(214) 472-2140
mitch.little@solidcounsel.com

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

2 THURSDAY, SEPTEMBER 14, 2023

3 (9:05 a.m.)

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

8 PRESIDING OFFICER: Good morning,
9 everyone. Please bring in the jury.

10 I see the bag pipes are gone but the
11 crickets are still here.

12 (Senators entered the Senate chamber)

13 PRESIDING OFFICER: Senator Hughes, I
14 believe you're doing the prayer this morning.

15 SENATOR HUGHES: Let's go to the Lord in
16 prayer.

17 Heavenly Father, when we consider who you
18 are, the one who has always existed before time, way
19 back into eternity who always was, and always will be;
20 when we consider that you made everything we see, things
21 we cannot see, us, every molecule, every particle of
22 each of us, just because of who you are, we owe you
23 everything. We owe you our lives.

24 And, Father, when we consider, on top of
25 that, all that you've done for us, the gifts that you

1 lavish upon us, that you heap upon us, our very lives,
2 and especially those of us in this country, in this
3 state, the special blessings we enjoy of liberty and
4 opportunity and justice, unknown in the history of the
5 world, uniquely, uniquely given to us here, from your
6 hand, we know we each have a responsibility in
7 preserving those things as stewards, each one of us,
8 whatever our role.

9 So, Father, we thank you. Thank you for
10 who you are, for what you have done. We confess our
11 failure to acknowledge you as we ought to look to you to
12 humble ourselves before you. And we just thank you for
13 loving us. The ultimate expression of your love for us,
14 that Jesus Christ, God's son, God himself, would humble
15 himself and come to this earth and take on human form
16 and live that beautiful life, and then pay the penalty
17 for all of our sins on the cross, and then raise from
18 the dead on the third day. We thank you for Him.

19 Your Word says that since You gave Him
20 for us, there is nothing you'll hold back. So, Father,
21 we ask you for wisdom that you promise to give. We ask
22 you to be honored in these proceedings today by everyone
23 here, whatever their role. Thank you for loving us so
24 much.

25 In Jesus' name we pray. Amen.

1 THE JURY: Amen.

2 PRESIDING OFFICER: Thank you, Senator.
3 You may be seated.

4 Members, can we have a little quiet in
5 the courtroom?

6 Can I have both parties come forward?

7 (At the bench, off the record)

8 PRESIDING OFFICER: Is the defense ready
9 to call their first witness?

10 MS. COLLINS: We are, Your Honor.

11 PRESIDING OFFICER: And who would that
12 be?

13 MS. COLLINS: Justin Gordon.

14 PRESIDING OFFICER: Bailiff will bring in
15 Justin Gordon.

16 Counselor, state your name for the
17 record.

18 MS. COLLINS: Of course. Allison
19 Collins.

20 PRESIDING OFFICER: I always give you the
21 time check.

22 Members, House, you have two hours, 34
23 minutes and 49 seconds remaining.

24 Respondent, eight hours, 38 minutes and
25 no seconds remaining.

1 (Witness entered the Senate chamber)

2 PRESIDING OFFICER: Were you here on
3 Day 1 to be sworn in?

4 THE WITNESS: Yes, sir.

5 PRESIDING OFFICER: I thought so. Please
6 have a seat.

7 JUSTIN GORDON,
8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. COLLINS:

11 Q. Good morning, Mr. Gordon. How are you today?

12 A. Good morning. I'm good. Thank you.

13 Q. Could you please turn on your microphone? And
14 go ahead and adjust it pretty close. The acoustics in
15 here can be a little difficult.

16 A. Is that okay?

17 Q. Yes. That's much better.

18 Could you please state your name for the
19 Court?

20 A. My name is Justin Gordon.

21 Q. And where are you currently employed?

22 A. I'm employed in the open records division of
23 the Texas Attorney General's Office.

24 Q. And what is your position there?

25 A. I'm the open records divisions chief.

1 Q. How long have you been the chief of the open
2 records division?

3 A. I began in 2015, at the beginning of
4 General Paxton's term.

5 PRESIDING OFFICER: Excuse me. I think
6 you're going to have to speak louder and a little
7 closer.

8 A. Okay. I began in 2015. In January of 2015.

9 Q. (BY MS. COLLINS) What does the open records
10 division do?

11 A. Our division handles a number of
12 responsibilities regarding the Texas Public Information
13 Act. That includes enforcement and review of public
14 information decision requests. We also provide training
15 for governmental bodies on the Public Information Act.

16 Q. Okay. I'm going to ask you just to slow down
17 a little bit while you're talking, okay, to help the
18 court reporter out.

19 Can you tell us how many public
20 information ruling requests your division handles a
21 year?

22 A. Last year we did over 40,000. In the previous
23 fiscal year, we did just under 40,000.

24 Q. And does your division maintain a record for
25 each ruling request?

1 A. Yes. We maintain both, an internal record of
2 our ruling requests; we also post all of our letter
3 rulings on our website after they are issued.

4 Q. Do you recall a request for ruling from the
5 Texas State Securities Board in the fall of 2019 for
6 some records related to Nate Paul?

7 A. Yes.

8 Q. Do you recall if any records were released as
9 a result of that ruling request?

10 A. I do not believe any records were released in
11 response to that ruling request.

12 Q. Do you recall if there was a request for
13 reconsideration of that ruling?

14 A. Yes, there was.

15 Q. How frequently does the open records division
16 receive requests for reconsideration or complaints about
17 a ruling?

18 A. That's very common. I don't have an exact
19 number to provide you, but that's something that we see
20 certainly on a monthly basis, if not weekly.

21 Q. Were you also involved in deciding a request
22 for ruling from DPS, The Department of Public Safety, in
23 the spring of 2020, which we're going to call "the big
24 request" for ease of reference? Do you recall that one?

25 A. Yes, I do.

1 Q. Was that also related to Nate Paul, if you
2 recall?

3 A. It was.

4 Q. At some point as one of your duties as part of
5 your employment, did you make a summary of that file?

6 A. I did.

7 MS. COLLINS: Your Honor, if I may
8 approach the witness?

9 PRESIDING OFFICER: Yes, you may.

10 MS. COLLINS: I'm going to approach with
11 what is marked as AG --

12 PRESIDING OFFICER: Hold on one second.
13 Yes, Senator Whitmire.

14 SENATOR WHITMIRE: I can't hear the
15 entire --

16 PRESIDING OFFICER: Allison, you're going
17 to have to speak louder as well.

18 MS. COLLINS: Even louder, okay.

19 PRESIDING OFFICER: That will do it.

20 MS. COLLINS: I'm going to approach with
21 what has been marked at AG 205, and it has been
22 pre-admitted.

23 PRESIDING OFFICER: Members, do you need
24 for -- for us to review with the court reporter what has
25 already been said? You're okay? Everyone's okay?

1 SENATOR WEST: I do.

2 PRESIDING OFFICER: You do?

3 SENATOR WEST: Yes.

4 PRESIDING OFFICER: Okay. So let's go
5 back to where you began the question on DPS.

6 Senator West?

7 SENATOR WEST: Securities.

8 PRESIDING OFFICER: Securities.

9 MS. COLLINS: No problem.

10 Q. (BY MS. COLLINS) Do you recall receiving a
11 request for ruling from the Texas State Securities Board
12 in fall of 2019 for some records related to Nate Paul?

13 A. Yes.

14 Q. Do you recall if any records were released as
15 a result of ORD's ruling?

16 A. No, I do not believe any records were released
17 in that ruling.

18 Q. Do you recall if there was a request for
19 reconsideration of that ruling?

20 A. Yes, there was a request for reconsideration.

21 Q. How frequently does ORD receive requests for
22 reconsideration or complaints about a ruling?

23 A. That's very frequent. I don't have an exact
24 number to provide to you, but it's something that we
25 see, if not on a -- on a weekly basis, then certainly

1 monthly, many -- several times a month we receive
2 reconsiderations.

3 Q. Do you also recall being involved with a
4 request from DPS in the spring of 2020 related to
5 Nate Paul?

6 A. Yes.

7 Q. Now, we've been calling that "the big request"
8 to help distinguish them. Will you understand what I'm
9 saying if I call it "the big request"?

10 A. Yes.

11 Q. Thank you.

12 And at one point, as part of your
13 employment, did you create a summary of this file?

14 A. Yes.

15 MS. COLLINS: Your Honor, I now am going
16 to approach the witness with what has already been
17 admitted as AG 205.

18 PRESIDING OFFICER: Okay.

19 Q. (BY MS. COLLINS) Mr. Gordon, do you recognize
20 this document?

21 A. I do.

22 Q. Is it a fair and accurate depiction of the
23 summary that you created for this file?

24 A. Yes. It is the summary I provided for the
25 file.

1 Q. Well, let's talk about it. Let's walk through
2 it together. Okay?

3 A. Okay.

4 Q. First, how would you describe this particular
5 request, the big request?

6 A. It started off as what I would have
7 characterized as a relatively routine request from The
8 Department of Public Safety. The Department of Public
9 Safety routinely briefs our office on law enforcement
10 matters. They, again, very commonly submit rulings to
11 our office.

12 However, as the ruling was being -- was
13 being reviewed, it took a turn procedurally. And then
14 there was a number of procedural irregularities that
15 occurred with the file that made it -- that made it
16 unique.

17 MS. COLLINS: And, Erick, if you could
18 please pull up AG Exhibit 205, and highlight the first
19 paragraph please.

20 Q. (BY MS. COLLINS) And Justin -- and,
21 Mr. Gordon, I think it's consistent with what you just
22 said, that there were procedural issues that made this
23 file unique; is that correct?

24 A. That's correct.

25 Q. Okay. And when was the request received by

1 your office?

2 A. On March 13th.

3 Q. Okay. And at this point this is when you're
4 talking about it was very routine?

5 A. Correct.

6 Q. Do you recall what exception DPS was
7 asserting?

8 A. They sought to withhold the information under
9 the law enforcement exception. That's Government Code
10 Section 552.108.

11 Q. Is that -- there are generally two types of
12 exceptions under the PIA; is that right?

13 A. That's correct. There are two -- we
14 characterize them as two separate types of exceptions.
15 There's a -- an exception for confidentiality provisions
16 that we would also call "mandatory exceptions." And
17 there's a type of exception that is just a normal
18 exception disclosure that we would call a permissive
19 exception to disclosure.

20 Q. And which type is the law enforcement
21 exception?

22 A. Section 552.108 is a permissive exception.
23 The governmental body has the option to raise it or not
24 to raise it.

25 Q. What happens if they do not raise it?

1 A. Nothing happens if they do not raise it. We
2 won't -- we won't address it if they don't -- if they do
3 not raise it.

4 Q. So if they don't raise it and you don't
5 address it, what's the end result as it relates to the
6 request? Are those records released or are they
7 withheld under the law enforcement exception?

8 A. Oh, they would be released. They would not be
9 withheld under the law enforcement exception.

10 Q. So let's talk about some of the procedural
11 irregularities in this file.

12 MS. COLLINS: I'm now on the second
13 paragraph, Erick, if you could blow that up for the
14 senators.

15 Q. (BY MS. COLLINS) Where did this file first
16 start to take a turn towards the unique?

17 A. Where you have -- where you have it
18 highlighted, I described that --

19 PRESIDING OFFICER: Excuse me one second.
20 I'm very sorry. I'm very understanding with eight
21 grandchildren and a lot of little ones, but we really
22 can't have a distraction.

23 I'm sorry. You might have to step out.
24 I really apologize, but I don't want to distract the
25 jurors. I'm very sorry for that.

1 MS. COLLINS: May we continue? Thank
2 you.

3 Q. (BY MS. COLLINS) You -- I believe you were
4 about to point out to us where the procedural issues
5 started to rise in this file.

6 A. Sure. So we have -- we have a statutory
7 45-day deadline by which we have to issue all of our
8 rulings. That's from the Government Code. And as we
9 were approaching that deadline, the -- the DPS submitted
10 a -- a follow-up -- a follow-up correspondence to our
11 office explaining that the requested information may
12 implicate the interest of the -- of the FBI. And at
13 that time they also submitted additional records.

14 So in the initial submission, they only
15 submitted a representative sample, which they are
16 permitted to do. In fact, the PIA requires them to do
17 that if the records are voluminous. And they had done
18 that in the initial submission.

19 However, when they submitted the
20 subsequent submission, they submitted additional
21 documents, not the same representative sample that they
22 had submitted earlier. And the new documents were
23 substantially different than the documents that had been
24 originally submitted and were of a different character,
25 so they have --

1 Q. I'm going to stop you. I think that's a great
2 spot. And just to summarize, so essentially the
3 original representative sample that DPS sent in did not
4 match with the sample that they later sent to your
5 office in May of 2020; is that right?

6 A. That's correct.

7 Q. And they sent that second sample at the time
8 that they were notifying the FBI that they might have an
9 interest in the file in the information being sought by
10 the request?

11 A. That's correct.

12 Q. Is that considered a procedural violation
13 under the Public Information Act?

14 A. Yes. Governmental bodies are required to
15 submit all of the records that they want a ruling on or
16 in a -- or a proper representative sample by the 15th
17 business day after receiving the request, which had
18 been, you know, substantially before this time period.

19 Q. So the sample was also late; is that correct?

20 A. That's right. That's correct.

21 Q. What is the consequence for a procedural
22 violation of this nature?

23 A. Under the Public Information Act, failure to
24 comply with the procedural requirements and requesting
25 decision from our office results in a presumption that

1 the information is released unless the exception that
2 they're raising constitutes a compelling exception. And
3 our office has concluded that Section 552.108 does not
4 constitute a compelling reason.

5 That's a fancy way of saying that they
6 waive that exception and they would -- they would waive
7 it for the information that they had the procedural
8 violation on.

9 Q. And that would be all of the information that
10 they provided as the second sample in May of 2020?

11 A. Correct. Anything in that representative
12 sample, the second set of documents that -- that was not
13 in the first set.

14 Q. And is it your understanding that that second
15 set of documents had also been provided to the FBI?

16 A. Oh, I -- I'm not sure if they provided that
17 second set of documents to the FBI. I -- I don't
18 remember that.

19 Q. You-all -- so this late -- was the notice to
20 the FBI also late?

21 A. Yes. Governmental-wise there are procedural
22 requirements, and there are also due process
23 requirements in the Public Information Act. And -- and
24 because of those deadlines, there are -- there are
25 certain notice requirements. So the only notice

1 requirements in the act that applies to third parties is
2 in Section 552.305.

3 That section requires governmental bodies
4 to notify third parties if their privacy or proprietary
5 interests are at issue. And that notice is supposed to
6 come within 10 days of receiving the requests.

7 Otherwise, there's -- there's also the due process
8 element of that notice needs to be made in time for
9 those -- for those comments to be received by our office
10 before -- you know, in time for us to be aware of them
11 and also in time for the requestor to receive notice.

12 Q. And in this instance was the notice given
13 close in time to your statutory deadline to issue a
14 ruling?

15 A. Yes. We received it just a couple of -- a
16 couple of weeks before our -- our 10-day deadline -- or
17 our 45-day deadline.

18 Q. The second sample of documents -- the second
19 set of documents that you were provided by DPS, how were
20 those provided to you? Hard copies? On a CD? Do you
21 recall?

22 A. I don't recall if they were a CD or if they
23 were -- if they were a hard copy.

24 Q. Okay. So you sent this -- the notice went out
25 to the FBI and you received a copy of it. What happens

1 next?

2 A. So at that point we were kind of up against it
3 with respect to the timelines. You've got the -- you've
4 got the highlights here with respect to the -- you know,
5 to kind of what was going on in this file. We had also
6 been notified by the requestor in this file that -- that
7 he had filed a lawsuit against DPS in this case, which
8 added a whole nother layer of -- of complexity to it.

9 Because the late notice, because the
10 notice was received so close up against our 45-day
11 deadline, we didn't feel like the -- the third party who
12 was notified, FBI, would have had -- would have had time
13 to submit comments to our office in time. And so we --
14 while we were waiting for those comments so that we
15 could receive them and review them from the FBI, we --
16 we took a 10-day extension on it and then gave ourselves
17 a 10-day extension, which is permitted under the PIA.

18 Q. All right. I'm going to ask you just to slow
19 down a little bit, okay. You're doing great.

20 So you get -- you extend it for 10 more
21 days. Does the FBI eventually provide your office with
22 comments?

23 A. Yes.

24 Q. And do you know if the FBI also provided the
25 requestor with a copy of those comments?

1 A. The -- at the time when we identified the
2 documents -- we actually only found the comments because
3 the requestor let us know that he had received comments,
4 and so then we went and -- and tracked them down. This
5 is at the beginning of COVID, so our mail -- our mail
6 intake was kind of -- was kind of thrown off. So when
7 the requestor notified that we had received comments, we
8 went and tracked those down.

9 To add another procedural, you know,
10 complication to it, at that time the requestor notified
11 us that his copy -- copy of the comments had been
12 completely redacted. Our copy did not have any
13 redactions on it. It just had a reference that -- at
14 the end that the version that had been provided to the
15 requestor was redacted.

16 MS. COLLINS: And, Your Honor, if I may
17 approach with what has been marked as House Managers' 46
18 but has not been admitted into evidence yet.

19 PRESIDING OFFICER: You may approach the
20 witness.

21 Q. (BY MS. COLLINS) Mr. Gordon, do you recognize
22 the -- the document that I placed in front of you?

23 A. I do.

24 Q. What is it?

25 A. This appears to be a copy of our internal

1 ruling file pertaining to the -- the DPS file that we
2 have been discussing.

3 Q. And does it appear to be a complete and
4 accurate copy of the file?

5 A. I'm sorry. I'm just double-checking.

6 Q. Take your time.

7 A. Yes, it does.

8 Q. I appreciate your thoroughness.

9 MS. COLLINS: At this time we move to
10 admit House Managers' 46.

11 PRESIDING OFFICER: Any objection?

12 MS. GRAHAM: Mr. President, no objection
13 to the admission. However, in this document, it
14 contains a copy of the unredacted FBI brief, which not
15 only contains personal identifying information, but a
16 number of sensitive information of the types of
17 operations plans, and other sensitive law enforcement
18 information, which Nate Paul had been trying to get for
19 a while.

20 If it comes in, we just ask that it be
21 redacted because that information has not been publicly
22 made available.

23 MS. COLLINS: And, Your Honor, we'll get
24 to that on the next request. But I will represent to
25 this Court that that is not the case. As has been

1 discussed by other witnesses, this brief was, in fact,
2 released publicly.

3 PRESIDING OFFICER: So they did not
4 object, and I'll let her go along with her line of
5 questioning, and we'll get back to that issue, but thank
6 you for bringing it up.

7 Go ahead.

8 MS. COLLINS: Thank you.

9 Erick, if you could pull up, towards the
10 back of that Exhibit 46, the Bates number at the bottom
11 is 8803 --

12 MS. GRAHAM: Mr. President, I do have
13 to -- I'm sorry, before this is shown to the jury, there
14 is personal identifying information --

15 MS. COLLINS: And --

16 MS. GRAHAM: May I finish?

17 PRESIDING OFFICER: Stop. Stop talking
18 over each other.

19 MS. GRAHAM: -- that has not been
20 released publicly. It may have been released to
21 Nate Paul at General Paxton's direction.

22 However, it has not been made public to
23 the world at large. There's very sensitive law
24 enforcement operation plans, details about search
25 warrants, how investigations are done, and also specific

1 names of individuals that are identified and involved.

2 PRESIDING OFFICER: Come on up to the
3 bench. Please come up to the bench.

4 (At the bench, off the record)

5 PRESIDING OFFICER: A little quiet,
6 please.

7 (At the bench, off the record)

8 PRESIDING OFFICER: Members, take your
9 seats.

10 So we're going to proceed slowly,
11 carefully.

12 You may proceed.

13 MS. COLLINS: Thank you.

14 Q. (BY MS. COLLINS) Mr. Gordon, as a preliminary
15 matter, if a document is released after a ruling request
16 or a ruling decision, would that be released to a
17 subsequent requestor for that same information?

18 MS. GRAHAM: Objection. Calls for
19 speculation.

20 PRESIDING OFFICER: Overruled.

21 A. Yes. There's a specific section that directly
22 addresses that. Section 552.007 of the Government Code
23 prohibits the governmental bodies from selectively
24 releasing information and provides that different
25 information has been released to one requestor that it

1 would be released to a subsequent requestor, unless
2 there's a special right of access that applied to the
3 initial requestor.

4 SENATOR: Can the witness slow down?

5 THE WITNESS: I'm sorry.

6 PRESIDING OFFICER: All right.

7 Mr. Gordon -- Mr. Gordon, repeat your answer. Slow
8 down.

9 THE WITNESS: Yes, sir.

10 A. Yes. There is a specific section of the
11 Public Information Act that addresses that. It is
12 Section 552.007. It provides that if information is
13 released to one requestor, then it would be released to
14 a subsequent requestor. It prohibits the selective
15 release of information to one requestor and not to
16 another. So if information has been released by a
17 governmental body, then it would be released to
18 subsequent requestors, unless there's a special right of
19 access that only applied to the initial requestor.

20 For example, if I asked for my driver's
21 license number and receive it, you wouldn't release my
22 driver's license number to the next person because I
23 have a right of access to that.

24 Q. (BY MS. COLLINS) Thank you for that
25 explanation.

1 MS. COLLINS: Erick, could you please
2 pull up within House Managers' 46 at Bates 8803, which
3 is page 77 within that PDF.

4 Q. (BY MS. COLLINS) Mr. Gordon, can you see that
5 on your screen?

6 A. Yes, I can.

7 Q. Does this appear to be a fair and accurate
8 picture of the redacted brief the FBI provided to
9 Mr. Larsen?

10 A. That's correct.

11 MS. COLLINS: And, Erick, if you could
12 scroll to the next page, so to 78, and go down.

13 Q. (BY MS. COLLINS) Is this showing an entirely
14 redacted page?

15 A. Yes.

16 Q. And does that continue through the majority of
17 this brief?

18 A. Yes.

19 Q. Is this unusual?

20 A. Yes.

21 Q. Can you explain why?

22 A. Under the Government Code, if a third party
23 submits comments to our office objecting to the release
24 of information, they're required to notify the requestor
25 and provide the requestor with a copy of those comments.

1 They are permitted to redact the comments, but only to
2 the extent that it -- it reveals the information that is
3 requested.

4 In this case, they've redacted the
5 entirety of the brief including all of the substantive
6 arguments.

7 Q. And why does that -- why is that -- why does
8 that matter?

9 A. That matters because the requestor was not put
10 on notice about what arguments the governmental body was
11 making and it would have been unable to respond to them
12 to our office in order to refute any statements that
13 were made or directly address the -- the statements that
14 were provided by the briefing third party.

15 Q. Is this another procedural violation of the
16 PIA?

17 A. Yes.

18 Q. So, so far we've talked about at least three
19 procedural violations or irregularities with this file?

20 A. Yes.

21 MS. GRAHAM: Objection. Leading.

22 PRESIDING OFFICER: Restate the question.

23 Sustained.

24 Q. (BY MS. COLLINS) Can you estimate for us how
25 many procedural irregularities we have discussed related

1 to this file so far?

2 A. There was the failure to submit the
3 representative sample or -- they -- they submitted the
4 documents late.

5 Q. Uh-huh.

6 A. The representative sample that they submitted
7 the second time was not -- indicated that the first
8 representative sample was not actually representative.
9 They did not notify the third party in a timely fashion.
10 And then when the third party briefed us, they
11 substantially redacted their briefing to us -- or I'm
12 sorry, they substantially redacted the copy of the
13 briefing that was provided to the requestor.

14 Q. Are you able to tell us how frequently you
15 work on a file that has four different procedural
16 irregularities?

17 A. We see a lot of procedural irregularities.
18 These are pretty unique, though, in the way that they --
19 in the way that they came in. Ordinarily what we see
20 are missed deadlines. So it would be pretty rare that
21 we see four completely different procedural violations
22 like this.

23 Q. And, again, what can be the consequence of a
24 procedural irregularity of the nature you've been
25 discussing?

1 A. If a governmental body fails to comply with
2 the procedural requirements of the act, then they would
3 waive their discretionary exceptions.

4 Q. Meaning that any documents that fell within a
5 discretionary exception would be released?

6 MS. GRAHAM: Objection. Leading.

7 PRESIDING OFFICER: Sustained.

8 Rephrase your question.

9 Q. (BY MS. COLLINS) All right. So what's the
10 consequence of that, of the permissive exceptions being
11 waived?

12 A. If a permissive exception is waived, then we
13 would not apply it or review in it the context of those
14 documents. And if that's the only exception that's
15 addressed, then those documents would be -- would be
16 released.

17 Q. And in this particular file, the DPS file in
18 front of you, was the only exception raised the law
19 enforcement exception?

20 A. That's correct.

21 Q. And it is a permissive exception?

22 A. That's correct. They did not raise any
23 confidentiality provision. They only raised the law
24 enforcement exception.

25 Q. Do you recall meeting with the attorney

1 general about this file?

2 A. Yes.

3 Q. And I don't want you to go into what anyone
4 said at that meeting, okay, but could you please tell us
5 what topics were discussed?

6 A. We discussed this topic, this DPS file.

7 Q. Did you discuss options for how to proceed?

8 A. Yes.

9 Q. And what were those options?

10 A. The primary options were to release the
11 information, to conclude that there had been a
12 procedural violation and a failure to establish that the
13 information was excepted from disclosure. And then the
14 second exception, which was the primary option, was the
15 closed letter that we ended up issuing.

16 Q. Did you agree with the -- with issuing the
17 closed letter?

18 A. Yes.

19 Q. Why?

20 A. It was correct. The -- the procedural
21 background of the -- of the request put the requestor at
22 a significant disadvantage and allowing the -- I guess
23 the procedural actions that were taken would have really
24 been a detriment to that requestor. There was already a
25 pending lawsuit and courts will give our letter rulings

1 great weight. And rubber stamping the actions in this
2 procedural context would have, or could have -- I don't
3 know what the Court would have done with our ruling --
4 but it could have tilted the scale in favor of a -- of a
5 governmental body who had failed to comply with the
6 procedural requirements.

7 Q. And I want to make sure I understood your
8 testimony a moment ago. You considered releasing all of
9 the information. What do you call that within ORD?

10 A. Pouring out.

11 Q. And would that have been supportable under the
12 law, in your opinion?

13 A. It would have been pushing it. I -- I agree
14 with the -- with the closed -- with the closed letter.
15 I feel like releasing it all would have been -- would
16 have been pushing it.

17 Q. To your knowledge, had ORD issued closed
18 letters of this nature in the past?

19 A. Yes.

20 MS. COLLINS: Erick, I'm going to ask you
21 to pull up the closed letter, which is within House
22 Managers' 46 at page 2.

23 And please take it off the screen before
24 finding the new page and placing it there.

25 MS. GRAHAM: Counsel, what was the Bates

1 number that you directed him to, please?

2 MS. COLLINS: It's page -- it's page 2 of
3 the PDF, which is in front of you.

4 MS. GRAHAM: OAG 8728?

5 MS. COLLINS: I don't have it in front of
6 me, but it's the closed letter.

7 Q. (BY MS. COLLINS) Mr. Gordon, does this appear
8 to be a complete and accurate copy of the closed letter?

9 A. Yes, it does.

10 Q. And in that letter you reference a prior ORD
11 decision, right?

12 A. That's correct.

13 Q. Why? Why did you reference that prior ORD
14 decision?

15 A. Well, there was -- there were a lot of
16 reasons. The -- the primary reason is that what this
17 open records decision specifies is that if a lawsuit is
18 filed after a ruling request is made -- I'm sorry. Let
19 me take it back and maybe simplify it.

20 Under the Public Information Act a
21 requestor can sue a governmental body if they believe
22 they're improperly withholding documents. What this
23 open records decision provides is that if a requestor
24 files a lawsuit after a governmental body has issued --
25 or has requested a decision from our office, then our

1 office should still go on and issue a ruling.

2 Prior to this decision, we routinely
3 closed files and did not issue determinations where the
4 issue that was -- that would come before us in the
5 decision was in court. So we would demurrer and -- and
6 close that letter and let the Court decide.

7 Q. And in your opinion, how did this DPS file
8 differ from -- the closed letter that you issued in this
9 case, how did that differ or was distinguished from the
10 ORD decision?

11 A. It was all of the procedural irregularities,
12 especially the redacted FBI brief. That was the -- the
13 primary issue that prevented us from -- from ruling in
14 accordance with due process. It was the -- it was the
15 heavily redacted FBI brief.

16 Q. And why did that cause you so much heartburn?

17 A. Again, our rulings are given weight -- or
18 great weight, quote/unquote, by the Courts. And in the
19 face of that -- of those procedural irregularities,
20 giving a rubber stamp of approval to them could have
21 tilted the scales in that -- in that court, even despite
22 the procedures being handled incorrectly.

23 Q. Could it also set bad precedent?

24 MS. GRAHAM: Objection. Leading.

25 MS. COLLINS: I'm asking his opinion,

1 Your Honor. It's not -- it's a yes or no. He can say
2 what he would like.

3 PRESIDING OFFICER: Overruled.

4 A. I'm sorry. I didn't understand -- I didn't
5 hear the question.

6 Q. (BY MS. COLLINS) Sure. Could it also set bad
7 precedent in PIA requests coming into your office?

8 MS. GRAHAM: Objection -- objection, Your
9 Honor. The relevance of the -- this personal witness'
10 opinion is not relevant to any issue in this proceeding.
11 And what he considers a good or bad precedent is purely
12 subjective and not at issue in this case.

13 MS. COLLINS: He's --

14 PRESIDING OFFICER: Overruled.

15 MS. COLLINS: Thank you.

16 Q. (BY MS. COLLINS) You can answer the question.

17 A. I wouldn't characterize it as a -- as a
18 precedent. So many of our rulings are fact specific.
19 What I do think it could have resulted in, because DPS
20 and FBI routinely brief our office, it could have,
21 again, been seen as condoning that type of heavy
22 redaction, which then could have led to that -- that
23 type of action being taken in future requests and for
24 future requestors. So I wouldn't have characterized it
25 as a precedent.

1 But it could have indicated that, you
2 know, we thought that was okay. And then they would --
3 because they do it routinely, I mean, they request
4 decisions from us routinely, they could have seen that
5 as a, Oh well, now we've got the stamp of approval to do
6 this and now we're -- we'll keep doing it.

7 Q. And now while all of this is going on, were
8 you made aware of a request from Mr. Larsen for a copy
9 of the FBI brief?

10 A. Yes.

11 Q. How were you made aware of that?

12 A. That came in as a Public Information Act
13 request. The Public Information Act request was
14 forwarded to my division for -- for handling. And when
15 I say "handling," I mean, we collected the documents.
16 So we collected the unredacted brief in processing that
17 Public Information Act request, and we provided it to
18 our public information office.

19 Q. As to the DPS ruling itself, did that closed
20 letter result in the release of any documents?

21 A. It did not.

22 Q. Okay. So this request from Mr. Larsen comes
23 in for a copy of the brief. Do you know what happened
24 after that was received?

25 A. I know what happened after the fact. Because

1 it involved open records decision documents, our
2 division does not rule on decision requests for our own
3 documents, so it was handled by another division. But
4 through the process of this whole -- this whole
5 circumstance, I -- I did become aware of what issued or
6 what happened with that -- with that public information
7 request.

8 Q. And your division maintains those files, even
9 if it doesn't necessarily make the decision on the
10 request, correct?

11 A. That's correct. They were -- because the FBI
12 submitted the brief to our office, we were the ones who
13 maintained that as part of our work file.

14 Q. Have you reviewed the ORD file for the FBI
15 brief request before?

16 A. So just to clarify, our office -- or my
17 subdivision does not have a -- a file on that public
18 information request. We have the file that's here
19 before me as this PDF. And, yes, I have reviewed that.
20 But I have not seen the -- I have not seen the opinions
21 file or the public information office file involving
22 that -- that ruling request for that brief.

23 Q. Now, in the file in front of you, there is a
24 copy of the unredacted FBI brief, correct?

25 A. That's correct.

1 Q. Would you take a look at it, please.

2 A. Okay. I'm looking at page --

3 Q. And what I want you to look for, you know,
4 you -- you're the chief of ORD. I want you to set aside
5 law enforcement exception for a moment. I want you to
6 look at that brief and let me know if you think there
7 are any mandatory exceptions to public disclosure that
8 are flagged within that brief.

9 A. Not to nitpick, but there is a -- Mr. Larsen's
10 e-mail address is at the end of the brief. But the --
11 he was -- he was the requestor. So, no, but other than
12 that, I don't see any -- any confidential information on
13 the face of the document.

14 Q. Thank you.

15 And just one more thing on -- forgive me.

16 MS. COLLINS: Your Honor, if I might --
17 may approach with what has been marked as AG 34.

18 PRESIDING OFFICER: You may.

19 Q. (BY MS. COLLINS) Mr. Gordon, do you recognize
20 the document I placed in front of you?

21 A. I do.

22 Q. And what is it?

23 A. This would appear to be the internal file for
24 the opinions ruling requests that we've been discussing
25 that was Mr. Larsen's request for the unredacted FBI

1 brief.

2 Q. Does OAG receive requests for copies of PIA
3 briefing on other occasions?

4 A. Yes.

5 Q. Does that occur with -- can you tell us with
6 any sort of frequency how often you receive that type of
7 request for briefing?

8 A. If I had to guess, I would say it would be
9 once a month, probably less than once a month, at the --
10 yeah, at the -- not -- it's not very common. It's not a
11 weekly occurrence.

12 Q. And were you familiar with Joe Larsen?

13 A. Yes.

14 Q. How?

15 A. I've worked with Joe Larsen for a long time.
16 He is a well-known open government lawyer. He's also
17 involved with the Freedom Information Foundation, which
18 our office has partnered with in the past to perform
19 trainings. He's routinely sought after to provide
20 his -- to provide input on Public Information Act
21 requests. I've also observed a number of cases that
22 he's handled because he -- he ends up handling -- often
23 handling, you know, important Public Information Act
24 cases. So I -- I've known Mr. Larsen for a long time.

25 Q. Was -- based on your knowledge of Mr. Larsen

1 and working with him, was it surprising or unusual for
2 him to submit a request for a copy of that redacted
3 brief?

4 A. No, I wasn't surprised at all that Mr. Larsen
5 would ask for that.

6 Q. And you started to walk us through what OAG
7 does when it receives a request for documents that OAG
8 itself holds. I just want to make sure that's clear for
9 the jurors, okay. So let's walk through it.

10 So what's the first step OAG would do
11 when it receives a request for records that it itself
12 holds?

13 A. The -- that would be received and handled by
14 the attorney general's public information office --

15 MS. GRAHAM: Objection, Your Honor. I
16 apologize to the witness, but at this point it's clear
17 from the witness' own testimony that once this request
18 that's about to be discussed was made, it went to a
19 different division, not his, that he does not oversee.
20 And he's previously testified that he was not involved.

21 So any information that he has about
22 specifically how it was handled or by whom would be
23 hearsay or speculation.

24 MS. COLLINS: Your Honor, right now I'm
25 asking him to walk through the general process of how

1 this is handled, which is something that as the chief of
2 ORD he is intimately familiar with.

3 PRESIDING OFFICER: The witness can
4 answer.

5 Overruled.

6 A. When a request comes into our public
7 information office, the public information officer will
8 identify the divisions that they believe maintain
9 documents and they will notify those divisions. Those
10 divisions then collect the information. Generally we
11 collect the information unless there's some issue with
12 the request, like we don't understand it or it would
13 require a cost estimate. Those divisions, my division
14 in that case, will -- will respond back that we maintain
15 documents, and then we'll follow that up by providing
16 those documents.

17 If a decision is required, then the
18 public information officer will prepare that decision
19 and they will send it to our division. As soon as we
20 receive that, we -- as soon as we see that we've
21 received a -- a request from the attorney general's
22 office, it gets segregated out. And at this time it
23 would have been forwarded to the opinions division.

24 Q. (BY MS. COLLINS) So ORD is not deciding
25 decisions on documents held by ORD; is that right?

1 A. That's correct.

2 MS. GRAHAM: Objection. Leading.

3 PRESIDING OFFICER: Sustained.

4 You can reask the question.

5 MS. COLLINS: I think the point has been
6 made, Your Honor.

7 I'm going to move to admit AG 34. It is
8 an internal business record of OAG. It was actually
9 given to us pursuant to a business affidavit that has
10 been on record for more than 14 days.

11 MS. GRAHAM: And, Your Honor --

12 PRESIDING OFFICER: Any objection?

13 MS. GRAHAM: -- as we discussed at the
14 bench, the issue is not the business records affidavit.
15 It is protecting the sensitive information of law
16 enforcement, how they conduct their investigations, and
17 specifically the individuals involved. A -- an exact
18 identical copy of the same brief we just talked to you
19 about at the bench is also contained in this document.

20 And so I have no objections, as long as
21 she's willing to protect law enforcement and the
22 integrity of the investigations and redact that
23 sensitive information. With those redactions, no
24 objection.

25 MS. COLLINS: And, Your Honor, the chief

1 of ORD has now looked at this brief and told you that
2 there were no mandatory exceptions and no confidential
3 information within that brief. He's also testified that
4 once a brief is given to one -- once documents are given
5 to one requestor, they are given to any subsequent
6 requestor. They are considered public.

7 And so I do believe that he is, one, more
8 than very highly qualified to speak to this file and
9 that there are no confidentiality concerns raised within
10 it based on this witness' testimony.

11 MS. GRAHAM: Brief response, Your Honor?

12 PRESIDING OFFICER: Yes.

13 MS. GRAHAM: Everything my -- my
14 colleague said misses the point. All I'm trying to do
15 is make sure that the sensitive law enforcement
16 information, which is in front of you, the identities of
17 the individuals involved in the investigation, how they
18 conducted the investigation, their sensitive operations
19 plans, the -- their sealed search warrant affidavits,
20 and the details contained within, how they communicate
21 with each other, who was on those communications, and
22 when they were sent, all of that information, I just
23 would ask, would be redacted. Otherwise --

24 MS. COLLINS: And, Your Honor, very
25 quickly --

1 PRESIDING OFFICER: Hold on. Stop, stop,
2 stop, stop, stop. Don't talk over each other. Court
3 reporters have a tough job as it is.

4 Come up for a moment again.

5 (At the bench, off the record)

6 PRESIDING OFFICER: Members, we will take
7 a break in a little bit, just a little bit.

8 Everybody be seated, please.

9 So as we have been going through this
10 testimony, slowly continue.

11 Q. (BY MS. COLLINS) Mr. Gordon, the file placed
12 in front of you marked as AG 34, is there any search
13 warrant inside this file?

14 A. There is no search warrant inside this file.

15 Q. Are there any e-mails between the FBI and DPS
16 inside this file?

17 A. There are no e-mails between the FBI and DPS
18 in this file.

19 Q. Did you notice any victim information inside
20 this file?

21 A. I did not.

22 Q. And if the redacted FBI brief had been
23 released to one requestor, it would be released to other
24 requestors?

25 A. That's correct.

1 Q. And you've had a chance to look at this file
2 now, correct?

3 A. Yes.

4 Q. And at the back of it, you'll see that --
5 well, let's -- let's walk through it.

6 So I think you've testified that based on
7 this file before you, does it appear that OAG sent a
8 notice to the FBI about this request for their redacted
9 version of a brief?

10 A. Yes, it does.

11 Q. Did the FBI respond?

12 A. Yes, they did.

13 Q. And I want you to take a close look at their
14 response brief, and specifically the last page under the
15 signature line. It's the last page of the file.

16 Are you there?

17 A. Yes, that's page 6 of the draft.

18 PRESIDING OFFICER: The witness needs to
19 stay close to the mic and speak up.

20 Q. (BY MS. COLLINS) Does it indicate that the
21 version sent to Mr. Larsen was redacted?

22 MS. GRAHAM: Objection, Your Honor.

23 Counsel is mischaracterizing the evidence and honestly
24 misleading the witness. The document --

25 PRESIDING OFFICER: Overruled.

1 Q. (BY MS. COLLINS) You may answer the question.

2 A. On this brief, it does not say "redacted"
3 after the cc list to Mr. Larsen.

4 Q. And this brief was filed by a Mr. McPhillips
5 from the FBI; is that right?

6 A. That's correct.

7 Q. And from the front of this brief, was it
8 filed -- and it's actually marked as received by open
9 records on or about June 18th, 2020? Do you see that?

10 A. Yes.

11 Q. And then I want you to look immediately in
12 front of this brief is the -- is a copy of the redacted
13 brief at issue. Do you see that?

14 A. I'm sorry. Would you repeat the question?
15 I'm --

16 Q. Yeah. If you go -- keep flipping forward in
17 the file, the next thing you see is a copy of the
18 blacked-out brief that the FBI had filed first.

19 A. Oh, I believe that's -- I don't see in this --

20 Q. The Bates at the bottom of the page I would
21 like to direct you to is 49982.

22 A. 49982? Oh, yes, okay. That's the last page
23 of the redacted version?

24 Q. It's the last page of the brief that the FBI
25 filed in May of 2020, right?

1 A. That's correct. I'm sorry. I was looking for
2 the version that was actually redacted. There is no
3 redacted version.

4 Q. I apologize. There is no redacted version
5 here.

6 And when you look under the signature --
7 first, who signed this brief from May 2020 for the FBI?

8 A. Matthew Phillips (sic).

9 Q. So the same Mr. --

10 A. McPhillips.

11 Q. -- McPhillips?

12 A. Yes.

13 Q. And underneath his signature line, what does
14 it indicate next to Mr. Larsen's signature -- I mean,
15 next to Mr. Larsen's name on the copy list?

16 A. Next to Mr. Larsen's name on the copy list it
17 says it was redacted.

18 Q. So the first brief was sent to Mr. Larsen,
19 redacted. Is that what that represents to you?

20 A. Yes.

21 Q. And so the second brief, the June 2020 one,
22 based on what you -- the documents before you, was that
23 redacted when it was sent to Mr. Larsen?

24 A. It does not indicate that it was redacted.

25 Q. Does that indicate to you that the FBI

1 provided a copy of this brief directly to Mr. Larsen?

2 MS. GRAHAM: Objection. Leading.

3 PRESIDING OFFICER: Sustained.

4 Rephrase your question.

5 Q. (BY MS. COLLINS) What does that indicate to
6 you?

7 A. That indicates that they provided this -- the
8 same copy of this brief that they provided to DPS not --
9 unredacted.

10 Q. And I want you to take a look at this
11 June 2020 brief and tell me how it compares to the
12 May 2020 brief.

13 A. They look -- they look very similar. There's
14 some -- there is some different language certainly at
15 the beginning, but they look -- they look very similar.

16 Q. Other than the first paragraph, they are very
17 similar?

18 A. Yes, that's correct.

19 Q. So based on the documents in this file, does
20 it appear that Mr. Larsen provided -- I mean, that the
21 FBI provided this information itself to Mr. Larsen?

22 A. Yes.

23 Q. And the very front of this file is the
24 decision issued in this case. It starts with Bates
25 49954. Do you see that?

1 A. I do.

2 Q. And you just looked at the FBI's June 2020
3 brief addressing whether or not that blacked-out brief
4 should be released to the public, right? You just
5 looked at it?

6 A. I did.

7 Q. Did it anywhere in there argue that their
8 redacted brief should be withheld from public
9 disclosure?

10 A. No. It looked like the arguments applied to
11 the documents that were issued in the underlying DPS
12 file.

13 Q. And so when that happens, when the comments
14 don't address the information being sought, what in your
15 experience in ORD happens in a file like that?

16 A. In that case we would not apply the exception
17 to the -- to the documents that are submitted. We
18 ordinarily -- because this opinion was done by opinions,
19 they used slightly different language than us. But
20 we've got boilerplate for that type of circumstance;
21 either that the entity that submitted the arguments is
22 arguing against the release of information that was not
23 submitted to our office, or that the arguments that they
24 have submitted don't apply to the -- to the information
25 that is -- that is at issue.

1 Because we have a presumption of
2 openness, there has to be an exception to disclosure in
3 order to withhold the information. And if it's a
4 discretionary exception, it wouldn't be applied to
5 information that they don't seek to withhold. If it's a
6 discretionary exception, they have to seek to withhold
7 it in order for the exception to be applied to it.

8 Q. And the FBI -- so the FBI just didn't address
9 their -- their redacted brief at all based on this file;
10 is that right?

11 A. That's right.

12 Q. Which would result in what ultimately for the
13 requestor?

14 A. That would result in the information -- that
15 would result in the arguments that are raised not being
16 addressed to the information for which there -- there
17 are no arguments. And if there are no other arguments,
18 then the information would be released.

19 Q. Okay. So I want to make sure we all
20 understand what your testimony has been here today. So
21 we have the first request to TSSB in the fall of 2019.

22 Was any information disclosed to
23 Nate Paul as a result of OAG's ruling?

24 A. No.

25 Q. Then we move on to the big request to DPS in

1 the spring of 2020. Was any information released to
2 Nate Paul as a result of that ruling?

3 A. No.

4 Q. And then we get to this third request. And
5 what we see is that the FBI provided a copy of the brief
6 directly to the requestor itself; is that right?

7 A. That's right.

8 MS. GRAHAM: Objection. Leading.

9 PRESIDING OFFICER: Overruled.

10 Repeat the question and answer.

11 Q. (BY MS. COLLINS) We get to this FBI request
12 for the -- for their blacked-out brief. And what we see
13 is that the FBI directly gives a copy of the brief to
14 the requestor --

15 MS. GRAHAM: Objection.

16 Q. (BY MS. COLLINS) To Nate Paul; is that
17 correct?

18 MS. GRAHAM: Objection, Your Honor. It
19 should be made clear for the record that we're talking
20 about two different briefs, one in May and one in June.
21 And the one in June, yes, there's no dispute: The FBI
22 provided that to Nate Paul's counsel. That is not the
23 one that contains the sensitive information that we have
24 been discussing.

25 PRESIDING OFFICER: Clarify.

1 MS. COLLINS: Of course.

2 PRESIDING OFFICER: I sustained the
3 objection. Clarify.

4 Q. (BY MS. COLLINS) So the -- what we're seeing
5 from this file is that the FBI provided a copy of its
6 June 2020 brief directly to Mr. Larsen; is that right?

7 A. Yes, that's correct.

8 Q. And you've also testified that that June 2020
9 brief is very similar to the May 2020 redacted brief,
10 right?

11 A. Yes, that is correct.

12 Q. And that ultimately because the FBI did not
13 address why their redacted brief should be -- should not
14 be released to the public, it was released?

15 MS. GRAHAM: Objection. Leading.

16 PRESIDING OFFICER: Sustained.

17 Rephrase your question.

18 Q. (BY MS. COLLINS) What was the ultimate
19 outcome of the opinion on this FBI request related to
20 its redacted brief?

21 A. The opinion concluded that the unredacted
22 brief could be released to the requestor.

23 Q. And you've reviewed that brief?

24 A. Yes.

25 Q. And you did not see any mandatory exceptions

1 within that brief that would require OAG to -- to apply
2 its own redactions before release?

3 A. That's correct.

4 MS. GRAHAM: Objection. Leading.

5 PRESIDING OFFICER: Overruled.

6 A. That's correct.

7 Q. (BY MS. COLLINS) And after -- after this
8 ruling in August of 2020 on the FBI brief, do you recall
9 one way or another if Joe Larsen, on behalf of
10 Nate Paul, continued to seek information from public
11 safety agencies through public information requests?

12 A. Yes, he did.

13 Q. And how do you know that?

14 A. He continued -- well, he had a -- he continued
15 to pursue complaints against the Texas State Securities
16 Board all the way through September of that year,
17 seeking to obtain documents that TSSB was withholding
18 from him in the context of Public Information Act
19 requests. So then that -- so that continued, you know,
20 throughout the summer and into the fall.

21 Q. And after ORD rules on a request, what does
22 ORD do with the documents that the governmental agency
23 provided to you to make your ruling?

24 A. We send the documents back to the governmental
25 body.

1 Q. You don't keep a copy?

2 A. No.

3 MS. COLLINS: Those are all my questions
4 for this time. Thank you.

5 PRESIDING OFFICER: Thank you,
6 Ms. Collins.

7 MS. GRAHAM: Cross-examination, Your
8 Honor.

9 PRESIDING OFFICER: Yes.

10 MS. COLLINS: I'm so sorry. One thing,
11 we are moving for admission of HM 46 and AG 34, based on
12 this witness's testimony.

13 MS. GRAHAM: Your Honor, same objection.
14 All we're trying to do is protect the sensitive law
15 enforcement operations, who was involved, when e-mails
16 were sent, what the subject of those e-mails were, what
17 the FBI's operations plans were, how they work with the
18 State Securities Board, the FBI, the DPS. If that
19 information is redacted --

20 PRESIDING OFFICER: Okay. Hold on.

21 MS. GRAHAM: -- no objection.

22 PRESIDING OFFICER: Hold on. We've
23 discussed this at length. He testified there was
24 nothing confidential. The FBI could be here. They
25 could be called.

1 MS. GRAHAM: Yes. Yes, Your Honor -- or
2 Mr. President. Yes, that's correct.

3 PRESIDING OFFICER: Either one. It
4 doesn't matter.

5 MS. GRAHAM: Okay. Yes, sir.

6 PRESIDING OFFICER: But they're not here.

7 MS. GRAHAM: They're not. However, I
8 would like to, for the record, remind the Court that it
9 was Mr. Bangert's testimony opposite to Mr. Gordon's --

10 MS. COLLINS: Your Honor, I'm going to
11 insist that she not state testimony of another witness
12 in front of this witness.

13 PRESIDING OFFICER: Okay. Both of you
14 just stop for a moment. Okay.

15 MS. COLLINS: Your Honor, if I could -- I
16 just want to make sure that there's no misunderstanding
17 or misstatement here.

18 PRESIDING OFFICER: Hold on. Hold on.
19 Jurors, please, take your seats again.

20 MS. COLLINS: I just want to make sure
21 that there's no misunderstanding here.

22 You have a complete copy of those files
23 in front of you, and you can see for yourself that there
24 are no copies of search warrants. There are no copies
25 of the actual e-mails within those files which appear to

1 be the documents that counsel is concerned about. And I
2 just want to make sure that's clear for the record that
3 those documents are not in those files.

4 PRESIDING OFFICER: And -- and we have
5 reviewed them while -- while up here going through this
6 testimony.

7 Is it your representation as an officer
8 of the Court that this document has already been --
9 already been released to the public?

10 MS. COLLINS: Yes.

11 PRESIDING OFFICER: Both documents?

12 MS. COLLINS: Yes.

13 PRESIDING OFFICER: And that was the
14 testimony?

15 MS. COLLINS: It was.

16 PRESIDING OFFICER: I have to overrule
17 your objection. I will admit into evidence AG 34 and
18 OAG Exhibit 46.

19 MS. COLLINS: That should be HM 46 and
20 AG 34, Your Honor.

21 (Exhibits HBOM 46 and AG 34 admitted)

22 PRESIDING OFFICER: Oh, I'm sorry. HM
23 46, yes.

24 MS. COLLINS: Thank you, Your Honor.
25 Those are my questions for now.

1 PRESIDING OFFICER: Your witness.

2 CROSS-EXAMINATION

3 BY MS. GRAHAM:

4 Q. Good afternoon -- morning, Mr. Gordon.

5 PRESIDING OFFICER: Please state your
6 name for the record -- for the --

7 MS. GRAHAM: Leah Graham.

8 Q. (BY MS. GRAHAM) You talked about this
9 decision being fact specific. Do you recall the
10 testimony?

11 A. Yes.

12 Q. So let's talk facts. The requestor in this
13 case was Nate Paul's lawyer, correct?

14 MS. COLLINS: Objection. Speculation.

15 MS. GRAHAM: I believe that same
16 testimony was elicited on direct that --

17 PRESIDING OFFICER: Overruled.

18 Go ahead.

19 Q. (BY MS. GRAHAM) Correct?

20 A. We did not know that at the time. It's become
21 apparent that that is the case now, but we did not know
22 that at the time.

23 Q. And your original opinion, as it relates to
24 the request for the full release of the DPS file, was
25 that it should not be released and that the law -- law

1 enforcement exception applied, true?

2 A. That's the -- that's the big DPS file that
3 we're referring to?

4 Q. Yes, sir.

5 A. The original draft on that, I believe, did
6 have -- did just address it under the law enforcement
7 exception.

8 Q. And that was your opinion that it should not
9 be disclosed under the law enforcement exception,
10 correct?

11 A. No, that was not my opinion. That was just
12 the first draft that was on the -- on the ruling.

13 Q. Who drafted the first draft?

14 A. I'm not sure if that was the drafter on the
15 ruling or if that was me. It -- I don't remember.

16 Q. You had direct conversations with Ken Paxton
17 about this specific request for a full copy of the DPS
18 file, true?

19 A. Yes.

20 Q. He made it clear to you that he wanted to find
21 a way to release the documents that Nate Paul's attorney
22 was requesting, true?

23 MS. COLLINS: Objection, Your Honor.

24 That's improper testimony through -- through this
25 counsel. Assuming facts that have not been addressed

1 with this witness.

2 MS. GRAHAM: Your Honor, this testimony
3 has already been elicited.

4 PRESIDING OFFICER: Overruled.

5 Q. (BY MS. GRAHAM) True?

6 A. No.

7 Q. Mr. Paxton did not summon you to his office to
8 talk about this file?

9 A. Yes, he did.

10 Q. He did not put pressure on you to either not
11 release -- to either not rule against the requestor or
12 to release the information?

13 A. No, I would not -- I would not classify it
14 as -- as "pressure." The decision that we made was
15 not --

16 Q. Sir, I appreciate that. I'm not asking you
17 what the decision was made. I was asking about your
18 conversation with Mr. Paxton.

19 He had one of two things that he wanted
20 to occur: Either release the information or, at a
21 minimum, figure out a way not to rule against the
22 requestor, true?

23 MS. COLLINS: Same objection, Your Honor.
24 Assuming facts not before this witness.

25 PRESIDING OFFICER: Sustained.

1 Q. (BY MS. GRAHAM) In your conversation with
2 Ken Paxton about this particular DPS file, can you
3 recall any other time when Mr. Paxton directly came to
4 you and got involved on a DPS open records request?

5 A. No.

6 Q. Ultimately you did exactly what Mr. Paxton
7 wanted, correct? You did not rule against the
8 requestor, Nate Paul's attorney, true?

9 MS. COLLINS: Again, objection, Your
10 Honor. Assuming facts not before this -- this witness.

11 PRESIDING OFFICER: Overruled.

12 Q. (BY MS. GRAHAM) True?

13 A. I'm sorry, could you repeat the question?

14 Q. Yes, sir.

15 Ultimately, the opinion was not to rule
16 against the requestor, which was exactly what Ken Paxton
17 was pressuring you to do, correct?

18 MS. COLLINS: Again, Your Honor, I'm
19 going to object. She's now mischaracterizing this
20 witness' testimony. He said he was not pressured.

21 PRESIDING OFFICER: Sustained.

22 Q. (BY MS. GRAHAM) By not ruling you were not
23 ruling against the requestor? By making a no decision,
24 that's not ruling against the requestor, true?

25 A. That's correct. We didn't rule against either

1 party, the requestor or the governmental bodies at
2 issue.

3 Q. Now, earlier you said that the OAG decision
4 not ruling against Nate Paul's attorney, quote, tilted
5 the scale in terms of how a Court would ultimately
6 decide whether or not to rule on the disclosure of that
7 information. True?

8 A. No. If I said that, I may I have misspoken.
9 It did -- we did not want to tilt the scale. We didn't
10 want to put -- we didn't want to tip the scale either
11 way. We wanted to maintain the status quo and allow the
12 Court to review it completely de novo without our
13 opinion, which is do great weight tilting the scale
14 based on the procedural requirements.

15 Q. Withholding the information would have been
16 detrimental to the requestor. That's what you said on
17 direct. Do you remember that?

18 A. I'm sorry. Could you repeat the question?

19 Q. You said, Withholding the requested
20 information would have been detrimental to the
21 requestor. Do you recall that testimony?

22 MS. COLLINS: I'm going to object, Your
23 Honor. I don't recall him -- that testimony either. So
24 mischaracterization of his testimony.

25 MS. GRAHAM: And I'm happy to put her on

1 the stand. I'm asking the witness if he recalls his --

2 PRESIDING OFFICER: We can --

3 MS. GRAHAM: -- testimony.

4 PRESIDING OFFICER: We can check with the
5 court reporter.

6 MS. GRAHAM: I have a quote: It would
7 have been detrimental to the requestor.

8 PRESIDING OFFICER: Okay. I'm going to
9 overrule.

10 You can answer yes or no.

11 A. Yes. It would have concluded that the
12 information could be withheld.

13 Q. (BY MS. GRAHAM) Now, on June 8th, after the
14 opinion came out, Johnna Ward -- do you know who that
15 is?

16 A. Johnna Ward?

17 Q. Yes, sir.

18 A. Yes.

19 Q. Okay. On June 8th, she was asking if you
20 still had the file in your possession. Do you recall
21 that?

22 A. Yes.

23 Q. And -- and the file she's referring to was the
24 entire DPS file, correct?

25 A. Yes.

1 Q. And within that file is -- one part of it
2 would have been the probable cause affidavit that
3 Nate Paul was looking for, correct?

4 A. No. I -- I believe that that -- if I'm not
5 mistaken, I think that that was after the ruling had
6 been issued.

7 Q. It is, sir. That's not my question.

8 Included within the DPS file would have
9 been the probable cause affidavit that Nate Paul was
10 looking for, true?

11 A. No.

12 Q. The probable cause affidavit would not have
13 been within the DPS file?

14 A. Not after we issued a ruling. We would have
15 sent the documents back to -- to DPS.

16 Q. But by June 8th, after the decision was
17 released, do you recall Johnna Ward e-mailing you and
18 specifically asking you if you still had it -- it was
19 still checked out to you and asking when you were going
20 to return it? Do you recall that?

21 A. Yes.

22 Q. We talked a lot about precedent and what --
23 and what should be publicly disclosed. You would agree
24 with me that a search warrant is treated substantially
25 differently than a probable cause affidavit, or search

1 warrant affidavit, in terms of whether or not that
2 should be released to the public, correct?

3 A. There are different exceptions that can apply
4 to those, but I would not characterize anything as what
5 can or should be released to the public. It needs to
6 have an exception that applies to it.

7 But both can be released to the public.
8 A search warrant affidavit is more likely to have an
9 exception that applies. They're not automatically
10 confidential.

11 Q. Correct.

12 MS. GRAHAM: No further questions, Your
13 Honor.

14 PRESIDING OFFICER: Redirect?

15 MS. COLLINS: Very briefly.

16 REDIRECT EXAMINATION

17 BY MS. COLLINS:

18 Q. In any of these requests, could either party
19 have filed a lawsuit challenging the outcome?

20 A. Yes.

21 Q. Did anyone file a lawsuit of -- for the
22 outcome of the FBI brief ruling request?

23 A. No.

24 MS. COLLINS: That's all I have, Your
25 Honor.

1 PRESIDING OFFICER: And just so the Court
2 knows, because it has been unusual, either side can ask
3 questions from the podium or their tables, in case
4 anyone is asking.

5 Can the witness --

6 MS. GRAHAM: Requires no redirect, Your
7 Honor.

8 PRESIDING OFFICER: Pardon?

9 MS. GRAHAM: Witness requires no
10 redirect -- recross.

11 PRESIDING OFFICER: Can the witness be
12 excused?

13 MS. COLLINS: Yes, Your Honor.

14 Thank you, Mr. Gordon.

15 THE WITNESS: Am I released,
16 Mr. President?

17 PRESIDING OFFICER: I'm checking with the
18 House.

19 Yes, you can be released. Thank you.

20 Defense will call their next -- no, we're
21 going to take a break. I'm sorry. We'll call your next
22 witness after our break.

23 How about five minutes after 10:00, a
24 20-minute break? 11:00. I'm sorry, we're past the
25 10:00 hour. Five minutes after 11:00.

1 (Recess: 10:43 a.m. to 11:12 a.m.)

2 PRESIDING OFFICER: Please call the next
3 witness. Who will that be?

4 MR. HILTON: Thank you, Your Honor.
5 Chris Hilton for the attorney general.

6 The next witness is Austin Kinghorn.

7 PRESIDING OFFICER: Bailiff, please bring
8 in Mr. Kinghorn.

9 MR. HILTON: And, Your Honor, I'd just
10 like to -- while Mr. Kinghorn is coming in, I just want
11 to clarify for the record, for the jury, and for the
12 public, at the end of the day yesterday we had called
13 Professor Michael Gerhardt, who was intended to be one
14 of our expert witnesses. Last night the Court ruled
15 that the expert testimony we were going to provide would
16 not be heard. And so to the extent there was confusion,
17 I just wanted to make the jurors aware and the public
18 aware that that was the Court's ruling and that's why
19 those witnesses aren't here.

20 PRESIDING OFFICER: And the Court ruling
21 was based on objection from the House, under Rule such
22 and such.

23 MR. HILTON: Yes.

24 PRESIDING OFFICER: And we took about an
25 hour to deliberate and look at all the questions.

1 MR. HILTON: That -- that's right. I
2 apologize for --

3 PRESIDING OFFICER: And we ruled --

4 MR. HILTON: Yeah.

5 PRESIDING OFFICER: And we ruled in favor
6 of the House on that.

7 MR. HILTON: I just wanted the public to
8 be aware. That's right.

9 PRESIDING OFFICER: And you were very
10 kind to pull them from your witness list.

11 (Witness entered the Senate chamber)

12 PRESIDING OFFICER: Mr. Kinghorn, I
13 believe I already swore you in in the group.

14 THE WITNESS: Yes, sir.

15 PRESIDING OFFICER: You may be seated.
16 Speak loudly and closely to the mic. Thank you.

17 AUSTIN KINGHORN,

18 having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. HILTON:

21 Q. Austin, good morning. Thank you for being
22 here. We both need to speak slowly and loudly into the
23 microphone, I am told.

24 You've testified in this chamber before,
25 before the Senate, correct?

1 A. Yes, I have.

2 PRESIDING OFFICER: Turn the mic on.

3 A. Yes, I have.

4 Q. (BY MR. HILTON) So you know the acoustics in
5 here can get a little bit weird, especially for our
6 folks in the back.

7 A. That's correct.

8 Q. So please just introduce yourself to the jury
9 and tell us about your career.

10 A. My name is Austin Kinghorn. I'm the associate
11 deputy attorney general for legal counsel at the Office
12 of the Attorney General.

13 Would you like me to go back a bit?

14 Q. Yeah, sure. Why don't -- if you could,
15 please, just start with law school, walk us through what
16 you've done up to the present day.

17 A. So I graduated from Baylor Law School in 2010.
18 After that I did a clerkship on the Fourteenth Court of
19 Appeals for then-Justice Jeff Brown. I did a stint in
20 commercial litigation.

21 PRESIDING OFFICER: Stay close to the
22 mic.

23 THE WITNESS: Yes, sir.

24 A. I did a stint in commercial litigation. After
25 that, primarily doing insurance defense. After that, I

1 went to work for the AG's office in the civil Medicaid
2 fraud division.

3 When Justice Brown was elevated to the
4 Texas Supreme Court, I went to work for him again as a
5 staff attorney. And I worked at the court for about six
6 and a half years in that capacity for Justices Brown and
7 later Justice Jane Bland, and then came back to the AG's
8 office in the general counsel division. From there I
9 was promoted to general counsel, and then most recently
10 to the title that I hold now.

11 Q. (BY MR. HILTON) Thank you, sir. And tell us
12 a little bit about your work for the attorney general
13 and your -- your current roles both as general counsel,
14 opinions committee, and your current title.

15 A. Right. So as the associate deputy for legal
16 counsel, I'm over two divisions. It's a general counsel
17 division and the opinion committee. In that role, I am
18 both the division chief of general counsel and general
19 counsel for the agency and also chair of the opinion
20 committee.

21 Q. How many employees do you oversee?

22 A. Nineteen.

23 Q. Okay. And are you proud of your time at the
24 attorney general's office?

25 A. I am very proud.

1 Q. I think this is a bit of a silly question but
2 it's come up a lot. Are you a RINO?

3 Do you know what a RINO is?

4 A. Yes, I do. I've been called a lot of
5 four-letter words. That's not one of them.

6 Q. What are your politics? Are you conservative?

7 A. Yes, I am.

8 Q. Again, I think it's a silly question, but it's
9 being asked. On a scale of 1 to 10, how conservative do
10 you think you are?

11 A. Eleven.

12 Q. Fair enough.

13 What I would like to do today with you is
14 go through these Articles of Impeachment, see if there's
15 any perspective you can provide as to each. And I
16 appreciate you being here, helping explain the work of
17 the agency for the jury.

18 So let's start with Article I, which
19 relates to the Mitte Foundation and the intervention
20 into that lawsuit.

21 Were you directly involved in that
22 lawsuit or that intervention in any way?

23 A. I was not.

24 Q. Okay. But are you familiar with EAMs?

25 A. Yes, I am.

1 Q. Unfortunately, we've talked a lot about EAMs
2 during this trial. What's your understanding -- what is
3 an EAM to you?

4 A. The executive approval memorandum is a
5 document that the agency relies on to seek and obtain
6 executive approval of various agency actions or
7 engagements.

8 Q. And do you receive EAMs as part of your work?

9 A. I do.

10 Q. Okay.

11 A. I probably see -- receive one or more a day.

12 Q. What do you do if you have concerns about an
13 EAM?

14 A. If I have concerns about an EAM, you know,
15 typically the -- the practice is going to be to reach
16 out to who circulated the EAM, and, you know, engage
17 with that person directly, try to flesh out the issues.
18 You know, sometimes it's -- it's simply a matter of
19 correcting something in an EAM and recirculating it. So
20 the first step is always just get in touch with the
21 folks who are asking for the executive action and
22 connect and make sure you have an understanding of what
23 is going on.

24 Q. If you get an EAM that you're concerned about
25 or you're proposed a course of action that you don't

1 agree with, do you just go ahead and sign the EAM
2 anyway?

3 A. No, I do not.

4 Q. Okay. So what does signing the EAM signify?

5 A. That would signify that you have reviewed the
6 EAM, you reviewed the legal authority in it, the
7 explanation of the rationale for the actions being
8 sought, and that you approve of that action being taken.

9 Q. So if someone at the attorney general's office
10 signs an EAM, does that mean they've approved that
11 action?

12 A. That's correct.

13 Q. What about -- let me ask you this: Does the
14 attorney general have to have an EAM that's fully
15 approved by his subordinates before he takes an action?

16 A. No, he does not.

17 Q. Why not?

18 A. The attorney general's authority and the first
19 assistant's authority flow directly from the Texas
20 Constitution and from statutes, specifically Government
21 Code Chapter 402. The EAM process exists to vet certain
22 proposals, but it is ultimately not binding on the
23 person or persons who actually possess the
24 constitutional executive power to act as attorney
25 general or on behalf of the Office of the Attorney

1 General.

2 Q. So just to make that clear, the attorney
3 general has the legal authority to act without an EAM
4 approved by his subordinates?

5 A. Absolutely.

6 Q. Okay. Does that include the authority to sign
7 a contract?

8 A. Yes, it would.

9 Q. Okay. Let's look at an example of an EAM.

10 MR. HILTON: Can we pull up House
11 Exhibit 62, please, Mr. Arroyo.

12 Your Honor, I believe this has already
13 been admitted into evidence. And I'm going to try and
14 go electronic today. So we'll see if it works.

15 And, Mr. Arroyo, if you can just zoom in
16 on the signatures at the top of this EAM and maybe
17 capture the subject line as well.

18 Q. (BY MR. HILTON) Have you -- have you seen
19 this EAM before, Mr. Kinghorn?

20 A. Yes, I have.

21 Q. Okay. And -- and which EAM is this?

22 A. This is a EAM requesting approval to intervene
23 in the Mitte Foundation litigation.

24 Q. You weren't a signatory on this EAM, correct?

25 A. No, I was not.

1 Q. Okay. But let's look at the first signatory.
2 That's -- that's Mary Henderson. Who is that?

3 A. Mary Henderson at the time was in our
4 financial litigation division as a -- and she had a
5 senior attorney role in that division.

6 Q. And what does her signatures on this EAM
7 indicate?

8 A. That would indicate that she has approved of
9 the -- the action described in this EAM, and it -- it
10 looks like she's the one who actually circulated this
11 EAM.

12 Q. Well, why do you say she's the one who
13 circulated it?

14 A. It -- it says from Mary Henderson. And also
15 she's the first signatory. So typically the first
16 signatory on the document, the lowest signatory, would
17 be the person who actually routed the document for
18 approval.

19 Q. So does this indicate that Mary Henderson and
20 Cat Day actually authored this EAM? Is that what this
21 says to you?

22 A. That's likely the case, yes.

23 Q. Do you know whether the attorney general ever
24 spoke with Mary Henderson or Cat Day about this EAM?

25 A. I do not know.

1 Q. Okay. Who is next on the signature line? Who
2 is Josh Godbey?

3 A. Josh Godbey at the time was the division chief
4 for the financial litigation division.

5 Q. And what does his signature here indicate?

6 A. That would also indicate approval of the
7 action that the EAM is seeking.

8 Q. And who's next up the chain on this EAM?

9 A. That's Darren McCarty.

10 Q. What was his role at this time?

11 A. At the time he was the deputy attorney general
12 for civil litigation. So you -- you would see his name
13 a lot on EAMs like this involving requested courses of
14 action in active litigation.

15 Q. And, again, I want to be clear about what his
16 signature means here. When he's DocuSigned this EAM,
17 what does that indicate to you as general counsel of the
18 agency?

19 A. That indicates approval of the action that is
20 sought by the EAM.

21 Q. And the same question with Mr. Mateer. What
22 was his role and what does his signature here indicate
23 to you?

24 A. Jeff Mateer was the First Assistant Attorney
25 General at the time. And his signature would indicate

1 approval of the action the EAM seeks.

2 Q. And would it be your expectation that all of
3 these people who signed this EAM have read it?

4 A. It would. I mean, that is certainly the
5 point.

6 Q. That's what you normally do within OAG, right?

7 A. Correct.

8 Q. And would it be your expectation that they
9 understood the memorandum before they signed it?

10 A. I would not sign an EAM that I did not
11 fully --

12 MS. EPLEY: Objection, Your Honor. The
13 question calls for speculation.

14 MR. HILTON: I'll move on.

15 Thank you, Mr. Arroyo.

16 PRESIDING OFFICER: Sustained.

17 Q. (BY MR. HILTON) All right. Let's move on
18 to -- to talking about Article II. That's about the
19 foreclosure guidance letter. It's been called a lot of
20 things in this courtroom. That's what I'm going to call
21 it.

22 Do you understand what I'm referring to?
23 Are you familiar with that letter?

24 A. I do understand it, and I am familiar with it.

25 Q. Okay. Did you work on that guidance letter

1 personally?

2 A. In a very limited capacity. Early on I
3 performed some very perfunctory research on it. I -- I
4 never participated in the drafting of the letter itself.

5 Q. Okay. Who asked you to do that, that
6 research?

7 A. Ryan Vassar.

8 Q. And did you -- did you form a conclusion as to
9 what was the ultimate outcome in your limited role?

10 A. As memory serves, I -- I didn't form any firm
11 conclusions at the time. I -- I performed a couple of
12 hours, maybe three hours, of research. And -- and
13 really just had enough time to kind of come up with some
14 general parameters of what the issues were.

15 And Mr. Vassar and I had a phone
16 conversation about what we had found so far in our
17 respective research. And he took it from there. And I
18 never had another conversation with anyone else about
19 the letter moving forward.

20 Q. Did you see the letter once it was ultimately
21 issued?

22 A. Only when it was issued, yeah, when it went up
23 on the website.

24 Q. Right. So typically you weren't involved in
25 the drafting process, so you don't know how they got

1 from A to Z on that?

2 A. That's right.

3 Q. Okay. But you saw the final letter?

4 A. I did.

5 Q. Did you agree with the analysis of that
6 conclusion in that letter?

7 A. I do.

8 MS. EPLEY: Objection, Your Honor.
9 Relevance.

10 PRESIDING OFFICER: Overruled.

11 Q. (BY MR. HILTON) And just -- sitting there --
12 as you sit there today, can you briefly explain what
13 that letter does in your view? Well, rather -- let me
14 rephrase.

15 How -- can you explain the conclusion of
16 the letter?

17 A. The -- the legal conclusion?

18 Q. Yes.

19 A. The legal conclusion essentially was that
20 under the circumstances of COVID at the time with
21 10-person restrictions on in-person gatherings, that
22 there was a possibility that -- that a public sale, as
23 defined by statute, that that necessary element to
24 proceed on the foreclosure wouldn't be satisfied if you
25 didn't have a situation where anyone who wanted to be a

1 bidder on a property that was under foreclosure would
2 have an opportunity to bid on it and, thus, get the
3 best, most fair value for the property.

4 Q. Well, let me make sure I understand each piece
5 of that. So -- so you mentioned the public sale issue.
6 That's a requirement out of statute?

7 Did -- did I understand you?

8 A. That's right.

9 Q. Okay. And you mentioned a bidder being
10 excluded. Why would that be the case?

11 A. I'm sorry, could you repeat that?

12 Q. I -- I thought you mentioned the 10-person
13 requirement might result in a bidder not be able to
14 participate in a foreclosure sale. Why would that be
15 the case?

16 A. Correct. So normally these sales are open to
17 the public. Anyone who wants to go bid on a property
18 can. And that, of course, has the effect of -- of
19 increasing the price typically. And the COVID
20 restrictions at the time -- the governor's executive
21 orders only permitted 10 people to gather at once in
22 what was considering -- I think the nomenclature was at
23 the time a public gathering.

24 Q. I want to make sure I understand what you're
25 saying. If there were bidders that were excluded, that

1 could drive the price down of the sale?

2 A. Yeah. That's certainly a possibility.

3 Q. Okay. Did -- in your view, does that letter
4 shut down foreclosure sales in the state of Texas?

5 A. I -- I don't have an opinion on whether it did
6 or didn't. I do know it was nonbinding and informal
7 legal guidance.

8 Q. Did you work on any other COVID-related
9 opinions or guidance documents?

10 A. I worked on a great number of them. You know,
11 during my first several months at the agency starting in
12 June of 2020, COVID-related work was the vast majority
13 of what I was doing.

14 Q. And if you could just briefly, for a minute
15 here, explain to the jury, explain to the public, you
16 know, we're trying to explain the work of the Office of
17 the Attorney General today. So explain what it was like
18 to be working on these issues during COVID.

19 A. It was intense. It was a demanding time, as
20 I'm sure it was for a lot of people in this room. We
21 were on the cutting edge of a lot of novel legal issues.
22 A lot of folks were looking to the AG's office for
23 guidance and direction on how to respond, how to
24 navigate the challenges that were coming forward,
25 especially as it -- as it pertained to the governor's

1 executive orders, which were coming out.

2 We were -- we were often looked to for
3 guidance how to comply with those, what they meant
4 construing them. And we fielded those requests from --
5 from all corners.

6 Q. Was it unusual during that time to have
7 expedited requests or to be working on short deadlines?

8 A. That is never unusual at the OAG, under any
9 circumstances.

10 Q. Particularly so during COVID?

11 A. Sure. Particularly so.

12 Q. Let's talk --

13 A. Anyone who came to us with a problem needed an
14 answer and wanted an answer, at least quickly.

15 Q. Understood.

16 Let's talk about opinions and guidance
17 documents from the attorney general's office more --
18 more broadly. What kinds of guidance can the attorney
19 general issue?

20 A. Well, there's a range of options. A lot of
21 folks in this room are probably familiar with our formal
22 legal opinions. Under Chapter 402 of the Government
23 Code, an authorized statutory requestor may request a
24 formal legal opinion from the OAG. And that opinion,
25 while not binding, is a source of persuasive legal

1 authority that Courts typically will look to and
2 consider when resolving a case. But we have other tools
3 in our belt beyond that.

4 Additionally, under Chapter --

5 Q. Before I go -- I just wanted to clarify one
6 thing. You mentioned that a lot of the folks in this
7 room might be familiar with that formal legal opinion.

8 Why would that be the case? Why would
9 these senators and some of these House members be
10 familiar with that?

11 A. Chairs of legislative committees, senators and
12 House members are authorized requestors under the
13 statute.

14 Q. Okay. Does the attorney general's office work
15 frequently with those authorized requestors regarding
16 their requests for opinions?

17 A. We -- we frequently work with members of the
18 Legislature on a host of issues, and -- and try to be as
19 solicitous as possible in -- in being helpful and giving
20 the first legal guidance we can.

21 Q. And I'm sorry to interrupt you. So that was
22 the formal legal opinion process.

23 A. Yes, sir.

24 Q. We're moving on to the next category, so I
25 apologize for interrupting.

1 A. Sure. So under Chapter 418 of the Government
2 Code, which is the Texas Disaster Act, the AG's office
3 has additional authority to provide legal counsel to
4 local political subdivisions during a declared disaster.
5 Authorized requestors include mayors, county judges,
6 county commissioners, emergency management directors.

7 Beyond that, the office has historically
8 operated with the understanding that we have broad legal
9 authority with the attorney general as the chief legal
10 officer of the state to issue informal guidance of
11 public note, of public interest that would have a wide
12 applicability to the public at large, especially in
13 disaster situations where there's a need to get good
14 information out to the public on pressing issues.

15 And that -- that authority I think flows
16 directly from the attorney general's constitutional and
17 statutory authority as the attorney general, as the
18 chief legal officer of the state.

19 Q. Other than the foreclosure guidance letter,
20 can you recall any examples of other COVID-related
21 guidance that was issued that also fell in that -- that
22 third category you described?

23 A. We -- we put several guidance documents out on
24 issues that a lot of folks are facing. Churches,
25 private religious schools. I know that we did some

1 opinions on -- on access to vacation homes -- not
2 opinions, letters -- on access to vacation homes in
3 other states, whether -- where golf courses fell in
4 terms of the governor's order for -- for shutdown
5 purposes.

6 So there were a lot of topics that we put
7 something out there short of a formal opinion that was
8 designed to provide generally applicable informal legal
9 guidance to the public at large.

10 Q. So it's fair to say -- is it fair to say that
11 the foreclosure letter was not unique in that regard?
12 It was not the only informal guidance that was put out?

13 A. That's correct.

14 MR. HILTON: Let's look at a couple of
15 other examples of guidance from this time.

16 Mr. Arroyo, if you could pull up House
17 Exhibit 105.

18 And I believe this has already been
19 admitted, Your Honor.

20 Q. (BY MR. HILTON) Are you familiar with this
21 document, Mr. Kinghorn?

22 A. Yes, I am.

23 Q. And just very briefly, what is this -- this
24 document?

25 MS. EPLEY: Objection, Mr. President.

1 This document is not in evidence.

2 MR. HILTON: I apologize. I thought it
3 had been admitted. It's House Managers' Exhibit 105.
4 And I would offer it if it hasn't been admitted.

5 PRESIDING OFFICER: We thought it was
6 pre-admitted, Ms. Epley.

7 MS. EPLEY: No, Mr. President. I don't
8 believe so. We don't object. It's our document to
9 begin with. I just wanted to make sure the record was
10 clear.

11 MR. HILTON: I apologize. I -- I tried
12 to get this smoothed out with counsel before we started,
13 but, yes, I offer it, if it hasn't already been
14 admitted.

15 PRESIDING OFFICER: It will now be
16 admitted into evidence. That's exhibit -- what's the
17 number, 105?

18 MR. HILTON: House Exhibit 105, Your
19 Honor.

20 PRESIDING OFFICER: All right. Admitted
21 into evidence.

22 (HBOM Exhibit 105 admitted)

23 Q. (BY MR. HILTON) Mr. Kinghorn, if you could,
24 please, just -- if -- to the extent that you can, please
25 just describe briefly what -- what this document is.

1 A. This was a general guidance document that the
2 agency issued to house -- houses of worship during the
3 COVID pandemic.

4 Q. Is this a full-blown opinion under
5 Chapter 402?

6 A. It is not.

7 Q. And is this a disaster counsel letter under
8 Chapter 418?

9 A. No, this is not.

10 MR. HILTON: Mr. Arroyo, if you could
11 show us the bottom of the page. There's a date next to
12 the exhibit stamp.

13 Q. (BY MR. HILTON) And when was this letter
14 issued?

15 A. It says April 27 of -- of 2020.

16 Q. Do you think it was any way improper for the
17 agency to issue this guidance?

18 A. No, I do not. And, in fact, I think this
19 is -- this is the kind of guidance a lot of folks were
20 looking to the attorney general to provide.

21 Q. Let's look at another example --

22 MS. EPLEY: May I seek clarification? He
23 was confirming that the guidance in regards to the house
24 of worship example -- or excuse me, Exhibit 105 is not
25 something he takes issue with, correct, not the

1 foreclosure letter itself?

2 MR. HILTON: Your Honor, she can
3 cross-examine the witness.

4 MS. EPLEY: No, I'm clarifying --

5 MR. HILTON: This is my examination and
6 she shouldn't be able to --

7 PRESIDING OFFICER: You can cross-examine
8 on that.

9 MS. EPLEY: Okay. Thank you.

10 MR. HILTON: Thank you, Your Honor.

11 Let's briefly look at House Exhibit 104
12 next. I also thought this one had been pre-admitted.
13 Maybe I'm wrong. To the extent that it wasn't, I'd
14 offer House Exhibit 104.

15 PRESIDING OFFICER: Thumbs up.

16 MR. HILTON: Great.

17 Q. (BY MR. HILTON) Mr. Kinghorn, have you seen
18 this letter?

19 Rather, are you familiar with this
20 letter?

21 A. Yes. Generally speaking, yes.

22 Q. Okay. This is a letter in response to
23 Chairman Frank?

24 A. Yes. This is the one about the golf courses,
25 okay. I had to read a little bit into it.

1 Q. Okay. Great.

2 MR. HILTON: Let's look at the last page,
3 please, Mr. Arroyo.

4 If you can just zoom in on that text,
5 please.

6 Q. (BY MR. HILTON) So this letter, was this a --
7 a full-blown Chapter 402 opinion?

8 A. No, it was not.

9 Q. And how can you tell that?

10 A. It's got some language there caveating that it
11 is -- is not a formal opinion issued Section -- pursuant
12 to Section 402.042, which is our formal opinion statute.

13 Q. It says on the letter that it is not a formal
14 opinion under Chapter 402?

15 A. That's right.

16 Q. So if someone were to say that this was a
17 Chapter 402 opinion, they would be wrong. Do you agree?

18 A. I do.

19 Q. Are you aware that the foreclosure guidance
20 letter has substantially similar language in it?

21 A. Yes, I'm aware of that.

22 Q. Okay. And who was this letter signed by?

23 A. Ryan Vassar.

24 Q. So Ryan Vassar signed an informal guidance
25 letter?

1 A. Yes.

2 Q. Does that indicate to you whether Mr. Vassar
3 thought he had the authority to sign that letter? Do
4 you think there was an issue with authority for issuing
5 this letter?

6 A. I -- I assumed that he operated under the
7 authority to -- to issue this letter on behalf of the
8 agency.

9 Q. Did you think a requestor was necessary for
10 the foreclosure letter?

11 A. No, I did not personally.

12 Q. Do you have any personal knowledge as to why
13 one was sought?

14 A. I do not.

15 Q. So you would have no reason to disagree with
16 me if I were to tell you that a requestor was demanded
17 because --

18 MS. EPLEY: Objection.

19 Q. (BY MR. HILTON) -- someone was trying to --

20 MS. EPLEY: Objection.

21 Q. (BY MR. HILTON) -- get out of doing work?

22 MS. EPLEY: Objection, Mr. President.

23 I'm sorry. Counselor is testifying to facts not known
24 to this witness.

25 I'm sorry, counselor is testifying to

1 facts not known to this witness.

2 PRESIDING OFFICER: Sustained.

3 MR. HILTON: You can take that down,
4 Mr. Arroyo.

5 Q. (BY MR. HILTON) I think that's enough for
6 Article II. I think we're going to skip Articles III
7 and IV because I don't think you have any unique
8 responsibility with regard to the PIA; is that true?

9 A. I do not, that's right.

10 Q. And we've heard plenty about the PIA today.
11 But as an aside, does the attorney
12 general have the authority to access any case file or
13 file in the agency?

14 A. Yes, I believe he does. He's the attorney
15 general.

16 Q. Why -- why does that give him the right to
17 access any file he wants?

18 A. Well, I guess there's kind of an old saying in
19 the legal profession that his name is on the wall. It's
20 his agency, and -- and he's the duly-elected attorney
21 general. So it's his law firm. He -- he gets to see a
22 file if he wants to see it.

23 Q. So if someone were to say that the attorney
24 general improperly accessed a file, would that make
25 sense to you?

1 A. That would not -- that would not compute to
2 me.

3 Q. Me neither.

4 MR. HILTON: Can you pull up Article IV
5 briefly, Mr. Arroyo.

6 Q. (BY MR. HILTON) Do you see the allegation
7 here where it says, Paxton improperly obtained access to
8 information held by his office?

9 Did I read that correctly?

10 A. Yes.

11 Q. Okay. Let's go to Article V now.

12 MR. HILTON: You can take that down,
13 Mr. Arroyo.

14 Q. (BY MR. HILTON) Are you familiar with the
15 contract with Brandon Cammack?

16 A. I am.

17 Q. Okay. Did you have any involvement with
18 hiring him?

19 A. I did not.

20 Q. Did you have any involvement with drafting the
21 contract or executing it or anything like that on the
22 front end?

23 A. I did not.

24 Q. Okay. When did your involvement with this
25 particular contract begin? When did your familiarity

1 with it begin?

2 A. Sometime later after the contract had been
3 terminated, I believe Mr. Cammack reached out to our
4 office to inquire about payment on the contract for the
5 outstanding invoices.

6 Q. And when you say "reached out to our office,"
7 does that mean he reached out to you as general counsel,
8 someone in your division? Do you recall?

9 A. My best recollection is that it was a phone
10 call to the general counsel division. I think he was
11 looking for someone to talk to about it.

12 Q. Okay. Do you remember a date for that phone
13 call?

14 A. I don't.

15 Q. Was that before or after you had been promoted
16 to general counsel?

17 A. I believe it was after.

18 Q. Okay. And when were you promoted to general
19 counsel?

20 A. During the month of November of 2020.

21 Q. Okay. So sometime after your promotion in
22 November 2020, Mr. Cammack called to inquire about
23 payment on his contract; is that -- is that your
24 testimony? I just want to make sure I understand the
25 timeline.

1 A. That's right.

2 Q. Okay. You were made aware of this phone call.
3 What did you do with that information?

4 A. I conferred with Lesley French, our chief of
5 staff, on that, primarily because she had more awareness
6 of these -- these issues and what had been happening at
7 the time. As I said before, I had no involvement with
8 the contract. So she and I -- I recall discussing it --

9 MS. EPLEY: Objection, Mr. President.
10 The question calls for hearsay -- or he's about to get
11 into hearsay at this point.

12 MR. HILTON: And let me clarify. Please
13 don't --

14 PRESIDING OFFICER: Sustained.

15 MR. HILTON: Yeah. Thank you. Of
16 course, I agree.

17 Q. (BY MR. HILTON) Please don't relay the
18 contents of any conversation that you had with anyone
19 else. Don't tell me what anyone said.

20 Again, I'm just asking, you know, once
21 you became aware of this request for payment, what
22 happened next? You said you conferred with
23 Lesley French. Please pick up there.

24 A. My best recollection on this is that at some
25 point a call was made to Mr. Cammack.

1 MS. EPLEY: Objection. Anything he could
2 state after that is going to be hearsay.

3 MR. HILTON: We -- we don't know what
4 he's going to state next, so I don't think that's true.

5 PRESIDING OFFICER: Overruled.

6 MS. EPLEY: In that case anything next is
7 nonresponsive. May he ask another question?

8 PRESIDING OFFICER: You can break it down
9 into questions.

10 Q. (BY MR. HILTON) Did you reach out to
11 Mr. Cammack?

12 A. Yes.

13 Q. What was the purpose of reaching out to
14 Mr. Cammack?

15 A. To follow up on his inquiry.

16 Q. What did you want Mr. Cammack to know when you
17 followed up with him?

18 MS. EPLEY: Objection, Your Honor.
19 Hearsay.

20 MR. HILTON: I didn't ask for what he
21 said. I asked for what he wanted Mr. Cammack to know in
22 response to his inquiry.

23 PRESIDING OFFICER: Overruled.

24 A. The purpose of the call was to inform
25 Mr. Cammack of how he might proceed about processing his

1 invoices under the contract.

2 Q. (BY MR. HILTON) And what were Mr. Cammack's
3 options to get paid at that point?

4 A. There remained work within the scope of
5 services that had not been satisfied before we could
6 issue payment. Specifically the preparation of a report
7 of his findings hadn't been completed. So what I
8 relayed to him, and I believe this was over a voice
9 mail, was that we couldn't make payment on the contract
10 until the -- until that -- that commitment had been
11 made.

12 Q. If Mr. Cammack had sent you that memo that he
13 had contracted to -- to provide, what would you have
14 done?

15 A. Subject to any other clerical reason that --
16 that we might have to shore up, from my view it was a
17 payable invoice because it was a valid contract at the
18 time that the services were performed.

19 Q. Did you ever hear back from Mr. Cammack after
20 you advised him that if he sent you the memo he could
21 get paid?

22 A. I did not.

23 Q. Mr. Cammack never called you?

24 A. Not to my knowledge.

25 Q. And, again, when was this, to the best of your

1 recollection?

2 A. My best recollection is it -- it would have
3 been sometime in November or later.

4 Q. Let's go ahead and skip ahead to Article VII,
5 just briefly. Are you aware of the attorney general's
6 office internal report regarding the events underlying
7 this impeachment proceeding?

8 A. Yes.

9 Q. And broadly speaking, what is that report as
10 you understand it?

11 A. That report is the findings of a 10-month
12 investigation that was conducted internally at the
13 Office of the Attorney General concerning the
14 allegations that the whistleblowers raised.

15 Q. Did you ever review that report?

16 A. I did.

17 Q. How many times and what was the nature of your
18 review?

19 A. Two, no more than three times, I was provided
20 a copy and asked for general feedback on the document;
21 proposed edits, revisions, things along those lines.

22 Q. Were you ever directed by anyone to make sure
23 that the report was a sham?

24 A. No.

25 Q. Were you ever directed to make sure it

1 included false or misleading statements?

2 A. Absolutely not.

3 Q. Are you aware of anyone else receiving such a
4 direction?

5 A. Absolutely not.

6 Q. What would you have done if you had identified
7 a false or misleading statement in that report when you
8 reviewed it?

9 A. If I had identified a false and -- or
10 misleading statement, I would have immediately raised
11 that issue to the folks who were working on the report
12 for consideration.

13 Q. When was that report published?

14 A. That was August 24th, I believe, of '21.

15 Q. And just to be clear, I'm -- I'm looking at
16 the text of Article VII here. The allegation is, Paxton
17 directed employees of his office to conduct a sham
18 investigation.

19 Are you aware of that occurring?

20 A. I'm not aware that that occurred.

21 Q. And you're one of the employees who, at least
22 to some degree, worked on the report?

23 A. That's right.

24 Q. The report was published in August 2021, you
25 said?

1 A. That's right.

2 Q. And it's been on the attorney -- has it been
3 on the attorney general's office website continuously
4 since that time?

5 A. Yes, it has.

6 Q. So was that before or after November 8th,
7 2022, that this report was issued to the public?

8 A. After.

9 Can you repeat the question?

10 Q. I'm sorry?

11 A. Repeat the date.

12 Q. Was the report made public before or after the
13 attorney general's election on November 8th, 2022?

14 A. Oh, I'm sorry, before. Before. Before.

15 Q. It's been on the attorney general's office
16 website continuously since then?

17 A. That's right.

18 Q. Was there -- are you aware of whether there
19 was a reporting on the issuance of that report?

20 A. There's been extensive reporting on the issues
21 that were discussed in that report.

22 Q. When did that reporting begin, as far as
23 you're aware?

24 A. That reporting began pretty much immediately
25 when the whistleblowers reported General Paxton to law

1 enforcement, and it's something we've been dealing with
2 ever since.

3 Q. And the OAG report also contains the details
4 of -- of those facts?

5 A. It does.

6 Q. And that's been public?

7 A. Yes.

8 Q. On the attorney general's website?

9 A. Yes.

10 MR. HILTON: You can take that down,
11 Mr. Arroyo.

12 Q. (BY MR. HILTON) Let's move on to discussing
13 Article VIII a little bit. Article VIII deals with the
14 settlement of the Brickman versus Office of Attorney
15 General litigation.

16 Are you generally aware of that
17 litigation and that settlement?

18 A. Yes, I am.

19 Q. As part of the agreed settlement terms in that
20 case, are there any contingencies that must be satisfied
21 before the settlement is fully effective?

22 A. Well, the biggest contingency would be funding
23 for the settlement itself. I think there may have been
24 some nonmonetary considerations as well, but I think
25 maybe the one you're asking about is -- is the

1 contingency of -- of the Legislature funding, the
2 requested amount.

3 Q. That is the one I'm asking about.

4 Why is that legislative appropriation of
5 funding contingency necessary for this settlement?

6 A. Like other State agencies, the Office of the
7 Attorney General is prohibited in the General
8 Appropriations Act from settling a case for more than
9 \$250,000, without seeking additional funds to do that.

10 Q. Does State law set out a process for seeking
11 funding for such a settlement?

12 A. It does.

13 Q. Did the Office of the Attorney General follow
14 that process?

15 A. Yes, we did.

16 Q. Do you know whether funding was appropriated?

17 A. It has not been appropriated to this -- to
18 this date.

19 Q. Has the Office of the Attorney General paid
20 out a single dime on this settlement?

21 A. It has not.

22 Q. As far as you're aware, has a single dime of
23 taxpayer money been spent funding that settlement?

24 A. It has not.

25 Q. Who decides whether that will ever happen?

1 A. At this point ultimately the Legislature will.

2 Q. The House and the Senate?

3 A. Correct.

4 Q. It's up to them whether to fund it?

5 A. That's right.

6 Q. The attorney general can't force them to do
7 that, can he?

8 A. He can only ask.

9 MR. HILTON: Let's pull up Texas
10 Government Code Section 554.010.

11 Your Honor, this is just a statute. I'm
12 not offering it as an exhibit. It's going to be up on
13 all of the screens.

14 Mr. Arroyo, if you can zoom in on that.

15 And I have paper copies for the witness
16 and the Court and opposing counsel, if that will be
17 helpful.

18 THE WITNESS: Yeah, this will work.

19 Q. (BY MR. HILTON) Are you familiar with this
20 provision in the Whistleblower Act?

21 A. Yes, I am.

22 Q. Can you explain in English what the statute
23 means?

24 A. So this is essentially a reporting
25 requirement. It's -- it kind of -- there's two parts to

1 this. When you -- when you pay out on a settlement or a
2 judgment, a Whistleblower Act case, the agency is
3 required to essentially put together a report on that
4 case. And following that report, the state auditor's
5 office may initiate an audit or an investigation of
6 basically what -- what went into what happened with the
7 Whistleblower Act complaint.

8 And if the SAO initiates that
9 investigation, then they must follow up with a report to
10 several entities on improvements that can be made,
11 things that can be changed to prevent this from
12 happening again.

13 Q. So let's -- let's break that down and let's go
14 piece by piece.

15 If the settlement is consummated, the
16 attorney general's office has to do what?

17 A. It has to put together a brief memorandum
18 describing the facts and the disposition of the suit.
19 And it has to provide that to the state auditor's
20 office.

21 Q. Okay. The attorney general's office has to
22 prepare a memorandum describing the lawsuit and send it
23 to the state auditor's office. What happens after that?
24 What does the state auditor's office do with it?

25 A. The state auditor's office will review the

1 report, and not later than the 90th day of that report
2 is submitted, the SAO has the option to investigate the
3 governmental entity or conduct an audit --

4 Q. And let's just -- and let's just pause right
5 there.

6 They have the option. Has the attorney
7 general's office been contacted by the state auditor's
8 office regarding this provision in connection with the
9 Brickman versus OAG matter?

10 A. Yes.

11 Q. And what's your understanding of that contact
12 from the state auditor's office regarding this statutory
13 audit?

14 A. We were made aware of the existence of the
15 statute, and -- and they just wanted to bring it to our
16 attention in light of the settlement road that we were
17 on to make sure that we were aware of this requirement.

18 Q. The audit is coming?

19 A. Yes, sir.

20 Q. And under the statutory audit, who would have
21 received the state auditor's report?

22 A. The legislative budget board and the
23 legislative audit committee, and the governing board of
24 the chief executive officer of the entity involved.

25 Q. What would that report contain pursuant to the

1 terms of the statute?

2 A. The SAO's report would include recommendation
3 on changes that would be necessary to create -- correct
4 the problems that gave rise to the whistleblower suit.

5 MR. HILTON: Mr. Arroyo, could you pull
6 up the text of Article VIII, please.

7 Q. (BY MR. HILTON) If I'm understanding your
8 testimony correctly, the OAG has been notified of the
9 statutory audit by the state auditor's office, and those
10 findings and recommendations will be given to the
11 Legislature under the terms of the statute, correct?

12 A. That's right.

13 Q. Are audits and cover-ups the same thing?

14 A. I'm sorry, could you repeat that?

15 Q. Is an audit the same thing as a cover-up?

16 A. Did you say "cover-up"?

17 Q. A cover-up.

18 A. No, it is not. It's kind of the opposite.

19 Q. If someone is trying to, oh, I don't know,
20 conceal their wrongful acts, should they subject
21 themselves to an audit, in your opinion, as general
22 counsel of the attorney general's office?

23 A. No.

24 Q. Do you know whether the state auditor's office
25 likes to conceal facts when it conducts an audit?

1 A. I do not believe that is the way they are
2 wired.

3 Q. I don't believe so either.

4 And, of course, we talked earlier. Your
5 testimony is that the allegations underlying the facts
6 at issue in this impeachment have been reported since
7 they happened. That's your understanding?

8 A. Correct.

9 Q. You've seen reports in the media frequently
10 about going -- you know, goings on at the attorney
11 general's office?

12 A. That's right.

13 Q. Texas Tribune seems to have a story every
14 other day about the attorney general's office, don't
15 they?

16 A. There's a lot of coverage.

17 Q. Do you have any personal knowledge of
18 Ken Paxton ever forming or agreeing -- forming an
19 agreement with Nate Paul on accepting a bribe?

20 A. I have no personal knowledge of that.

21 Q. And do you have personal knowledge of anything
22 to do with Laura Olson?

23 A. I do not.

24 Q. Okay. Do you have any personal knowledge of
25 any vast criminal conspiracies involving misuse of OAG

1 resources?

2 A. I have no such knowledge.

3 Q. If there were such a conspiracy, would you
4 still be working at the attorney general's office?

5 A. No, I would not. I accepted promotion in this
6 agency at a very critical time, and I assured myself and
7 assured my wife if there were ever anything that I saw
8 that were illegal or unethical, I would step away. And
9 I'm still here. I'm proud of the work we do. I'm proud
10 to serve General Paxton. I'm proud to be a part of this
11 agency.

12 MR. HILTON: Thank you, Austin.

13 Pass the witness.

14 PRESIDING OFFICER: Ms. Epley, your
15 witness.

16 MS. EPLEY: Thank you, Mr. President.

17 CROSS-EXAMINATION

18 BY MS. EPLEY:

19 Q. Hi, Mr. Kinghorn.

20 A. Good afternoon.

21 Q. Have you and I spoken before?

22 A. We are old friends now.

23 Q. That's right.

24 Is it fair to say that you have been my
25 contact to get documents from the Office of the Attorney

1 General?

2 A. That's right.

3 Q. And that our first conversation went well, but
4 subsequent ones got a little chillier?

5 A. That's fair.

6 Q. Now, we played respectfully with one another,
7 right? No one was rude?

8 A. That's right.

9 Q. Okay. Is it also accurate, though, that right
10 after I would have private conversations with you, as an
11 officer of the Office of the Attorney General,
12 particular details of our conversation would show up in
13 Ken Paxton's filings?

14 MR. HILTON: Objection, Your Honor.
15 Relevance. Hearsay. Has nothing to do with these
16 proceedings.

17 PRESIDING OFFICER: Sustained.

18 MS. EPLEY: Mr. President, I don't know
19 that I've ever seen a lawyer open up a bigger door in
20 regards to the credibility and bias of a particular
21 witness, and I would ask for a little latitude.

22 MR. HILTON: Your Honor, this has nothing
23 to do with credibility and bias. She's asking about
24 litigation and discovery. That has nothing to do with
25 it.

1 PRESIDING OFFICER: I sustained the
2 question.

3 Try your question a different way.

4 Q. (BY MS. EPLEY) Did you receive pressure from
5 Chris Hilton or Judd Stone to provide you information in
6 regards to our conversations?

7 A. Not at all. And I can answer your question
8 more pointedly.

9 Q. I am certain he will do that. So I don't want
10 to be rude, but I want to make sure we move forward.

11 Did you receive pressure in coming
12 without a conversation?

13 A. Not at all.

14 Q. Did you receive directives in regards to what
15 position you should take?

16 A. No.

17 Q. So the fact that you and I would have a
18 conversation and it would show up in their filing the
19 next day is completely and totally made up?

20 MR. HILTON: Objection, Your Honor. This
21 is totally improper. All parties, all witnesses, were
22 free to speak to both sides. That was in the Senate
23 rules that were adopted. And it is only fair that
24 people producing discovery talk to both sides.

25 They certainly talked to people we were

1 talking to. We talked to people they were talking to.
2 That's how the entire litigation of this impeachment has
3 gone. This is completely improper. Nothing improper
4 happened here. And she's not only attacking the
5 witness' character but my character and my colleagues'
6 character. This is completely improper.

7 PRESIDING OFFICER: Sustained.

8 Q. (BY MS. EPLEY) To clarify, then, maybe it was
9 the subjective use of a word.

10 As opposed to pressure, did you receive
11 incoming communications that inquired about our
12 conversations?

13 MR. HILTON: Objection, Your Honor. Same
14 objection. And this is hearsay.

15 PRESIDING OFFICER: Sustained.

16 MS. EPLEY: Okay.

17 Q. (BY MS. EPLEY) You talked some about -- about
18 Mitte; is that correct?

19 A. About you?

20 Q. About Mitte, I'm sorry. M-I-T-T-E.

21 A. Mitte, yes.

22 Q. Yes, sir.

23 A. Yes.

24 Q. You were not directly involved in that
25 litigation?

1 A. I was not.

2 Q. So mostly what you offered for us was the use
3 of the EAM or people's signatures to validate a contract
4 or an action, correct?

5 MR. HILTON: Objection, Your Honor.
6 Mischaracterizes his testimony. His testimony speaks
7 for itself.

8 PRESIDING OFFICER: Sustained.

9 Q. (BY MS. EPLEY) What is the purpose of the
10 EAM?

11 A. The purpose of an EAM is to solicit and obtain
12 executive approval of an action that's being proposed to
13 be taken -- or an engagement that's being proposed
14 within the agency.

15 Q. Thank you, Mr. Kinghorn.

16 And when you personally sign an EAM, are
17 you signing to say, I believe this is a good idea, we
18 should proceed? Or are you signing to confer as general
19 counsel there is legal authority?

20 A. You're asking about me personally?

21 Q. Yes, sir.

22 A. In -- I would be signing generally as to legal
23 authority.

24 Q. Okay. So when Mr. Hilton asked you and you
25 said you were giving approval, it means consistent with

1 your job, that's an available option that we can
2 justify, not this is my idea. I suggest we do it?

3 MR. HILTON: Objection. Misstates
4 testimony.

5 MS. EPLEY: He can answer, Your Honor, if
6 it's within his scope of knowledge.

7 PRESIDING OFFICER: Overruled.

8 MS. EPLEY: Thank you.

9 THE WITNESS: I think that everyone's --
10 depending on their role, their -- their reasons for
11 going into their signature is a little different. For
12 my role as general counsel, I'm primarily focused on
13 whether the agency has legal authority to take the
14 action proposed.

15 Q. (BY MS. EPLEY) And to draw an analogy, then,
16 Ryan Vassar, for example, signing Brandon Cammack's
17 contract is approval, but it's a legal justified
18 position, not that it's the right one?

19 MR. HILTON: Objection, Your Honor.
20 Assumes facts not in evidence with this witness.

21 PRESIDING OFFICER: Sustained.

22 Q. (BY MS. EPLEY) But your approval is about
23 legal authority? Yes or no.

24 A. Yes.

25 Q. Okay. I'm going to turn your attention for a

1 moment to the PIA. Are you aware of incoming public
2 information requests as to Ken Paxton's e-mail: Signal,
3 or Proton?

4 A. Typically, no. If -- if a PIA request you're
5 referring to is directed exclusively toward the attorney
6 general, that's probably not a request that would --
7 would come across my desk.

8 Q. I think I want to be more specific.

9 Are you personally aware of any PIA
10 requests ever for the text messages, Signal account or
11 Proton, of Ken Paxton?

12 MR. HILTON: Objection, Your Honor.
13 Relevance.

14 PRESIDING OFFICER: Overruled.

15 A. There's been a great number of PIA requests
16 concerning --

17 Q. (BY MS. EPLEY) Mr. --

18 A. -- the attorney general's personal
19 communication devices. I don't remember with
20 specificity as to the specific types of communication
21 you're referring to.

22 Q. So you're telling the Senate you do not know
23 if a PIA has ever been requested for his texts?

24 A. If you phrase it that way, then, yes, I am
25 aware that there have been PIA requests for his texts.

1 Q. Are you aware of PIA requests for his Proton
2 e-mail?

3 A. I'm -- I'm not personally aware of them, or at
4 least do not recollect.

5 Q. Are you personally aware of PIA requests for
6 his Signal?

7 A. I'm not personally aware or don't recollect at
8 this point.

9 Q. Are you personally aware that he has those
10 accounts?

11 MR. HILTON: Again, objection, Your
12 Honor, to the relevance of this. It has nothing to do
13 with anything this witness has testified about. It has
14 nothing to do with anything in his personal knowledge,
15 and nothing to do with any of the Articles of
16 Impeachment.

17 PRESIDING OFFICER: Overruled.

18 A. I do not have any personal knowledge on the
19 use of a Signal account. In terms of -- as I have
20 reviewed the documents in terms of producing them to you
21 through subpoena requests, I have seen that there was a
22 Proton e-mail account that wasn't included, I believe.

23 Q. (BY MS. EPLEY) Are you familiar with the fact
24 that either the Proton or the Signal was set up by the
25 Office of the Attorney General IT staff?

1 A. I'm not familiar with that.

2 Q. Do you think that you should be, if it's true?

3 A. Not necessarily.

4 Q. Okay. Are you aware of the fact either
5 through a PIA request or the subpoena authority of this
6 Senate we were not provided any documentation related to
7 Signal or to Proton e-mail for business conducted on
8 behalf of the State of Texas by Ken Paxton?

9 MR. HILTON: Objection, Your Honor.
10 Lacks foundation. Lacks personal knowledge. The
11 witness has testified that this is not within his scope
12 and that he doesn't know anything about it at least.
13 This is an argumentative question with no foundation.

14 PRESIDING OFFICER: Sustained.

15 Q. (BY MS. EPLEY) Did you personally respond to
16 our discovery requests?

17 A. Yes, I did.

18 Q. Did you personally have a conversation with me
19 about Proton e-mail?

20 MR. HILTON: Objection, Your Honor.
21 Hearsay.

22 MS. EPLEY: I -- I don't know what to say
23 to that, Your Honor. We're both here.

24 PRESIDING OFFICER: I'm going to
25 overrule.

1 You can answer the question.

2 MS. EPLEY: Thank you.

3 A. Can you restate the question for me? I'm
4 sorry.

5 Q. (BY MS. EPLEY) Did you personally have a
6 conversation with me about Ken Paxton's Proton e-mail?

7 A. I do remember that conversation, yes.

8 Q. Do you remember telling me that you knew it
9 existed but couldn't provide me any of those documents?

10 A. I did not say that.

11 Q. You didn't tell me that you knew that there
12 was a Proton e-mail account, but you didn't know
13 anything about it?

14 MR. HILTON: Objection, Your Honor.
15 Asked and answered. She's attempting to impeach the
16 witness with a conversation that she thinks she
17 recollects. This is improper.

18 MS. EPLEY: I'm certain I recollect it,
19 if that helps.

20 PRESIDING OFFICER: Overruled. He did --
21 you did ask. He did answer. But overruled.

22 Q. (BY MS. EPLEY) Okay. So let's try this one
23 last time.

24 Will you tell the ladies and gentlemen of
25 the Senate if you provided us any Proton or Signal

1 documentation for Ken Paxton?

2 A. Can you ask it just a little bit more slowly,
3 just the echo is --

4 Q. That's fair. I speak quickly.

5 Will you tell the ladies and gentlemen of
6 the Senate whether you did or did not provide us any
7 document in regards to Ken Paxton's Proton or Signal
8 account?

9 A. We did not provide any documents related to a
10 Proton or Signal account.

11 Q. At one point during the questioning, I think
12 what you had said was the Office of the Attorney General
13 is Ken Paxton's law firm. Did I get that right?

14 MR. HILTON: Objection. Misstates prior
15 testimony.

16 MS. EPLEY: It was in court today and a
17 moment ago on the subject of cross.

18 PRESIDING OFFICER: Overruled.

19 MS. EPLEY: Thank you.

20 A. It's -- it's -- I'm analogizing, but, yes, I
21 did say that.

22 Q. (BY MS. EPLEY) But, of course, that kind of
23 brings me to my next point.

24 As a prosecutor, your job is to zealously
25 advocate for the -- I mean, I'm sorry -- your job is to

1 seek a true and fair -- I've forgotten my oath.

2 As a defense attorney, your job is to
3 zealously advocate. But as a civil attorney who works
4 on behalf of the Office of the Attorney General, what is
5 your oath? What are you supposed to do? What's the
6 most important part of being a lawyer for the State of
7 Texas?

8 MR. HILTON: Objection, Your Honor.
9 Compound question.

10 PRESIDING OFFICER: Overruled.

11 A. I would say the most important part of my job
12 as a public servant is to faithfully serve my principal
13 and the -- the people of Texas.

14 Q. (BY MS. EPLEY) Do you believe your principal
15 and the people of Texas to be different?

16 Who do you think your client is,
17 Mr. Kinghorn?

18 A. Who is my what?

19 Q. Who is your client?

20 A. My client?

21 Q. Yes.

22 A. Is the attorney general.

23 Q. Would you believe me if I told you that when
24 you work for the Office of the Attorney General, you
25 work under his authority and for him, but your client

1 is, and only ever is, the State of Texas?

2 MR. HILTON: Objection, Your Honor.
3 Argumentative. Contains a legal conclusion.

4 PRESIDING OFFICER: Sustained.

5 Q. (BY MS. EPLEY) Do you believe me when I say
6 that, or do you agree with it now as you sit here?

7 MR. HILTON: Objection, Your Honor.
8 Same.

9 PRESIDING OFFICER: Yeah. Same question.
10 Sustained.

11 Q. (BY MS. EPLEY) You were asked questions about
12 Brandon Cammack, and you relayed a conversation in which
13 he called to find out about payment. Do you recall
14 that?

15 A. I do.

16 Q. And can you tell us what month and year that
17 was?

18 A. Not with any greater specificity than what I
19 indicated earlier.

20 Q. I didn't hear you, so would you tell me again.

21 A. Sure. I believe it was after I was promoted
22 general counsel, which would have been sometime during
23 the month of November, but it wasn't necessarily during
24 November. It -- it could have been December. I -- I
25 don't remember exactly when it happened.

1 Q. Okay. So Ryan Vassar was part of bringing you
2 into the Office of the Attorney General; is that
3 correct?

4 A. He was.

5 Q. And Ryan Vassar was a friend of yours,
6 correct?

7 A. Yes.

8 Q. And is it fair to say that you liked and
9 respected Ryan Vassar?

10 A. Yes.

11 Q. And when he was summarily dismissed from the
12 Office of the Attorney General, you rose to his position
13 somewhere around November, correct?

14 MR. HILTON: Objection, Your Honor.
15 Argumentative and assumes facts not in evidence before
16 this witness.

17 Moreover, I don't know what this line of
18 questioning is intended to do other than improperly
19 bolster the character of some witness who is not here.
20 The door has not been open to that, so that aspect of
21 this questioning is also improper.

22 PRESIDING OFFICER: Overruled.

23 A. I'm sorry. Could you give me the question
24 again?

25 Q. (BY MS. EPLEY) Were you promoted after Ryan

1 Vassar was fired?

2 A. Eventually.

3 Q. Yes or no?

4 A. Yes.

5 Q. Thank you. And it was after that, that you
6 had a conversation with Brandon Cammack. And
7 Brandon Cammack is asking your office about payment
8 because despite the fact that he's been employed since
9 September, he's never been paid; is that right?

10 A. That's right.

11 Q. And as of November, there was no contract in
12 place, right?

13 A. There was a valid contract --

14 Q. Then why was he never paid?

15 A. -- at one time.

16 By the time Mr. Cammack reached out, I
17 believe the contract had been closed at that time. I'm
18 just trying to be specific.

19 Q. So -- so what I'm asking you is, there's a
20 secret private contract signed only by Ken Paxton not
21 kept in the Office of the Attorney General at some point
22 in this storyline, correct?

23 MR. HILTON: Objection, Your Honor.
24 Argumentative. Assumes facts not in evidence before
25 this witness.

1 PRESIDING OFFICER: Sustained.

2 MS. EPLEY: I don't know how else to do
3 that. The defense's entire position is that Ken Paxton
4 signed a contract with Brandon Cammack, correct?

5 MR. HILTON: Objection. This witness has
6 been subject to the Rule and doesn't necessarily -- you
7 know, doesn't speak for the defense. It's the same
8 question. It's argumentative. It's a sidebar. You
9 just sustained the objection.

10 MS. EPLEY: If -- if I may. He was
11 questioned at length in regards to the OAG report. Any
12 person who's read it once or skimmed through knows that
13 this is their position. It's not a violation of the
14 Rule. It's a question he opened.

15 MR. HILTON: Objection. Argumentative
16 and lacks foundation. She hasn't laid that he knows
17 anything about that aspect of the OAG report. And
18 she -- if she wants to ask that question, she can do it,
19 but she has to lay the foundation for it and do it
20 properly.

21 MS. EPLEY: I'm happy to do that.

22 PRESIDING OFFICER: Sustained.

23 Go ahead.

24 Q. (BY MS. EPLEY) Did you read the Office of the
25 Attorney General report?

1 A. I have read it, yes.

2 Q. Okay. So on page 5, it reads, Position taken
3 by the attorney general in this litigation was adverse
4 to Nate Paul and in support of a higher settlement
5 amount to be paid by Nate Paul.

6 Do you recall that being their position?

7 MR. HILTON: Objection, Your Honor. If
8 she's reading from a document, I don't understand what
9 it is, and I don't have it.

10 MS. EPLEY: He's testified that he's read
11 the Office of the Attorney General report.

12 MR. HILTON: I didn't understand that.

13 MS. EPLEY: It's a question in regards to
14 its veracity. I intend to take him through a list of
15 false and misleading statements to get his position and
16 then challenge him with the testimony of the
17 whistleblowers as allowed by the rules.

18 PRESIDING OFFICER: Objection overruled.

19 Q. (BY MS. EPLEY) In regards to the Mitte
20 Foundation on page 5, it says, The position taken by the
21 attorney general in this litigation was adverse to
22 Nate Paul.

23 You understand that's his, his being
24 Ken Paxton's, position, correct?

25 MR. HILTON: Objection, Your Honor.

1 There's been no testimony about Ken Paxton's position,
2 and there's no -- are we talking about the report, or
3 are we talking about Ken Paxton? I'm still confused as
4 to what we're doing here.

5 PRESIDING OFFICER: Sustained.

6 Q. (BY MS. EPLEY) Is the Office of the Attorney
7 General report in question published on the AG's
8 website?

9 A. I'm sorry. Say that again.

10 Q. Is the Office of the Attorney General report
11 published on the AG website?

12 A. Yes, it is.

13 Q. And do you have to have either title status,
14 meaning Ken Paxton or the first assistant, in order to
15 publish it?

16 A. Yes. That's a fair statement.

17 Q. And, therefore, every statement put onto that
18 website is adopted and made on behalf of Ken Paxton,
19 correct?

20 A. I believe that the -- that the report is
21 issued by the Office of the Attorney General. You know,
22 whether that extrapolates to a legal position that
23 Ken Paxton holds pursuant to this proceeding, I'm
24 just -- I'm not going to go there.

25 Q. So as an officer of the Court and a government

1 agent, you're not going to honestly say that anything
2 published on the Office of the Attorney General website
3 is the responsibility of Ken Paxton and something he
4 should be held accountable for? That's your position?

5 MR. HILTON: Objection, Your Honor.
6 Argumentative. She's demanding that this witness make a
7 legal conclusion that he's justified -- that he just
8 testified that he cannot make.

9 PRESIDING OFFICER: Overruled.

10 MS. EPLEY: He is the general -- thank
11 you.

12 Q. (BY MS. EPLEY) Is your position that he
13 cannot be held accountable for what he posts on the
14 website?

15 A. My position is that I can't speak to the
16 attorney general's legal positions as --

17 Q. Isn't that your entire job duty?

18 MR. HILTON: Objection.

19 PRESIDING OFFICER: Let him answer. Let
20 him finish his answer.

21 MR. HILTON: Thank you.

22 A. No, it is not. My job is to provide advice
23 and counsel to my client, the Attorney General of Texas.

24 Q. (BY MS. EPLEY) Okay. So if you had to choose
25 between the State of Texas' interest and the attorney

1 general's interest, whose do you choose?

2 A. I do not see them in conflict.

3 Q. Okay. Then back to this point: Do you or do
4 you not, as attorney for Ken Paxton, think that he is
5 held accountable for the items that he posts on his
6 website?

7 A. I don't know what you mean by "held
8 accountable." That's a very vague --

9 Q. Are you --

10 A. -- question.

11 Q. I'll help.

12 Are you familiar with the Texas Rules of
13 Evidence?

14 A. Somewhat. I am general counsel. I'm not a
15 litigator.

16 Q. Do you understand what an admission by
17 adoption is, or an admission because it's made by a
18 representative, or an admission because it's made by an
19 employee?

20 A. I'm aware of those rules.

21 Q. Do you believe that those things would apply
22 in appropriate context to Ken Paxton?

23 A. That's not something that I've researched
24 specific to this proceeding. I don't have an answer for
25 you on that.

1 Q. I think we're all clear on you not wanting to
2 answer this question, so I'll move along.

3 I'm going to give you a series of
4 statements then, and I would like for you and I to
5 discuss them.

6 This investigation revealed the OAG's
7 intervention worked to the foundation's advantage on
8 mediation. If I was telling you -- or if that statement
9 is about Mitte, and you have Ryan Bangert, Josh Godbey,
10 Darren McCarty, and Ray Chester all disagreeing with
11 this statement, would even them disagreeing change your
12 opinion as to it being valid?

13 MR. HILTON: Objection, Your Honor.
14 Assumes facts not in evidence before this witness as to
15 those other folks' positions.

16 I don't have an objection to her
17 questioning the witness about a document that I believe
18 is in evidence, but I think in fairness, he should be
19 provided with a copy of it.

20 PRESIDING OFFICER: Sustained.

21 Q. (BY MS. EPLEY) So earlier when Mr. Hilton
22 asked you if you believed in the OAG report, you're not
23 actually saying anything in it is true or not true or
24 that any of us should really entertain your opinion on
25 it, right?

1 MR. HILTON: Objection. Argumentative.
2 Misstates testimony.

3 PRESIDING OFFICER: Overruled.

4 A. Can you restate the question?

5 Q. (BY MS. EPLEY) Your opinion on the Office of
6 the Attorney General report being truthful is irrelevant
7 to this proceeding because you will not address the
8 statements within it; is that accurate?

9 A. I don't agree with the question as you phrased
10 it.

11 Q. Okay. Then let's talk about -- let's talk
12 about the foreclosure letter. You went into great
13 detail in regards to the distinctions. You relied on
14 418.

15 Is it accurate to say that applies to
16 mayors in local subdivisions but not Senator Hughes?

17 A. That's correct.

18 Q. And so Senator Hughes' authority or name
19 wouldn't be necessary if that was the basis of that
20 letter, correct?

21 A. I do not believe it was necessary, that's
22 correct.

23 Q. That's a different question.

24 If the attorney general was relying on
25 418, Senator Hughes' approval would not be necessary,

1 correct?

2 A. If I understand your -- yes, that's correct.

3 Q. in regards to 402.042, that, you do need an
4 official requestor for, correct?

5 A. That's right.

6 Q. And if it was an informal guidance, then no
7 requestor is needed at all, correct?

8 A. That would be my position personally.

9 Q. So in regards to Items 1 and 2, you wouldn't
10 need to involve Senator Hughes at all, let alone use his
11 name to put forth an opinion that he certainly would
12 never have approved of, right?

13 MR. HILTON: Objection. Assumes facts
14 not in evidence. Moreover, she's stating a juror's
15 opinion without following the rules.

16 PRESIDING OFFICER: Sustained.

17 Q. (BY MS. EPLEY) Okay. Last, in regards to
18 your credibility and the attorney general's reliance on
19 you, is it fair to say that you represented him in a bar
20 grievance relying on a government filing -- or a court
21 filing? And you took the position that the attorney
22 general was not subject to the bar rules or the State of
23 Texas' ethics rules?

24 MR. HILTON: Objection, Your Honor.
25 Assumes facts not in evidence.

1 MS. EPLEY: I'm asking him. He's on the
2 stand. It was his position.

3 MR. HILTON: And you're characterizing
4 that grievance and that litigation. You're
5 mischaracterizing it. You haven't established that any
6 of those things are true with this witness.

7 MS. EPLEY: That's the purpose of the
8 questioning.

9 PRESIDING OFFICER: Overruled.

10 Q. (BY MS. EPLEY) Did you or did you not take
11 the position that the Attorney General of the State of
12 Texas is not -- is not beholden to State Bar ethics
13 rules?

14 MR. HILTON: Objection. Relevance. That
15 doesn't have anything to do with the Article of
16 Impeachment.

17 PRESIDING OFFICER: Overruled.

18 A. Ms. Epley, I'm not sure which -- can you be
19 more specific about what complaint you're referring to?
20 I -- I don't have a recollection as I sit here as to
21 specific --

22 Q. (BY MS. EPLEY) Does it feel appropriate to
23 you that you would ever, for any reason, for any
24 purpose, indicate that the Attorney General of the State
25 of Texas was not beholden to bar ethics rules?

1 A. I don't think that's what we said at any
2 point.

3 MS. EPLEY: Pass the witness.

4 REDIRECT EXAMINATION

5 BY MR. HILTON:

6 Q. Mr. Kinghorn, do you know if any Proton mail
7 or Signal documents that would be responsive to their
8 subpoena exists?

9 A. I do not.

10 Q. Did you conduct a diligent search for those
11 documents on behalf of the Office of the Attorney
12 General?

13 A. I conducted a diligent search of -- of all
14 documents that we had in our custody and control.

15 Q. Do you have an obligation to produce documents
16 that don't exist and that aren't in your possession,
17 custody, or control?

18 A. I do not.

19 MR. HILTON: If I may have one moment,
20 Your Honor.

21 PRESIDING OFFICER: Pardon?

22 MR. HILTON: Just one moment. I just
23 want to confer with counsel.

24 I pass the witness, Your Honor.

25 PRESIDING OFFICER: Ms. Epley, are you

1 coming back?

2 MS. EPLEY: No. I have no further
3 questions for Mr. Kinghorn. Thank you.

4 PRESIDING OFFICER: May he be excused?

5 MS. EPLEY: May we approach on a quick
6 housekeeping matter? It's just the admission of some
7 records I left at the podium frankly.

8 PRESIDING OFFICER: May I excuse the
9 witness?

10 MR. HILTON: Yes. That's fine with us,
11 Your Honor.

12 PRESIDING OFFICER: Yes, you can
13 approach.

14 (Witness left the Senate chamber)

15 (At the bench, off the record)

16 PRESIDING OFFICER: Members, we -- we
17 will take our lunch break now until 1:30, and there's a
18 short meeting before that.

19 (Recess taken at 12:23 p.m.)

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C E R T I F I C A T E

STATE OF TEXAS)

COUNTY OF TRAVIS)

I, MARY ORALIA BERRY, Certified Shorthand Reporter in and for the State of Texas, Registered Diplomat Reporter, Certified Realtime Reporter, and Certified Realtime Captioner, 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 14th day of September, 2023.

/s/ *Mary Oralia Berry*

Mary Oralia Berry, Texas CSR #2963
Texas Certified Shorthand Reporter
CSR No. 2963 - Expires 10/31/24
email: maryoberry@gmail.com