

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

3 IN THE MATTER OF §
4 WARREN KENNETH §
5 PAXTON, JR. §

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12 TRIAL

13 VOLUME 8 - PM SESSION

14 SEPTEMBER 14, 2023
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20 The following proceedings came on to be heard
21 in the above-entitled cause in the Senate chambers before
22 Lieutenant Governor Dan Patrick, Presiding Officer, and
23 Senate members.

24 Stenographically reported by Tami Lewis, CSR,
25 RDR, CRR, CRC.

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

2 THURSDAY, SEPTEMBER 14, 2023

3 (1:53 p.m.)

4 THE BAILIFF: All rise. The Court of
5 Impeachment of the Texas Senate is now in session.

6 PRESIDING OFFICER: You can all be seated.
7 Thank you.

8 To the parties, sorry we were a little
9 late. We had some business to take care of back there
10 before coming out.

11 Would you please state your name for the
12 record?

13 MS. HILTON: Yes, Your Honor. Amy Hilton
14 for the attorney general.

15 PRESIDING OFFICER: Would you call your
16 first witness.

17 MS. HILTON: Yes, Your Honor. The attorney
18 general calls Henry De La Garza.

19 PRESIDING OFFICER: Will the bailiff bring
20 in Henry De La Garza.

21 Amy, there are some documents still up here
22 if you want to get those removed.

23 Watch your step. I need to swear you in.
24 Raise your right hand.

25 (Witness sworn by the Presiding Officer)

1 Please be seated, and speak closely to the
2 microphone.

3 Hold on. I understand we have a new court
4 reporter I need to swear in also. Where is our new court
5 reporter?

6 If you'll raise your right hand and step to
7 the side. Hi.

8 (The oath was given to the court reporter.)

9 HENRY DE LA GARZA,
10 having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. HILTON:

13 Q. Good afternoon, Mr. De La Garza. Could you
14 please introduce yourself to the jury?

15 A. Yes. My name is Henry De La Garza.

16 PRESIDING OFFICER: Hold on. Henry, push
17 that button right there. There you go. Yes, sir.

18 THE WITNESS: Sorry about that.

19 A. My name is Henry De La Garza.

20 Q. (BY MS. HILTON) And I'd like to just have you
21 take a minute and a half or so and give us a little of
22 your background, where you're employed, and -- and what
23 you do there?

24 A. I work at the Office of the Attorney General,
25 an agency of the State of Texas, and I am the HR

1 director, the chief employment counsel, and the ethics
2 advisor.

3 Q. And how long have you held the position as HR
4 director?

5 A. Of HR director, interim director, November 2nd
6 of 2020, and then became permanent HR director
7 December 1st of 2020.

8 Q. How long have you worked for the Office of
9 Attorney General?

10 A. I started in 1995 as an Assistant Attorney
11 General I and worked my way up.

12 Q. And what division did you start in? Have you
13 always been in human resources?

14 A. No. I started in the Habeas Corpus Division
15 and then went to transportation division and then human
16 resources.

17 Q. How many attorneys general have you worked for
18 at the agency?

19 A. Well, let's see. I guess it would have been
20 Dan Morales; and then John Cornyn, now Senator Cornyn;
21 Greg Abbott, now Governor Greg Abbott; and then
22 Ken Paxton; and then also the provisional AG John Scott
23 and provisional AG Angela Colmenero.

24 Q. How many years have you been working in human
25 resources?

1 A. I started in May of 2008.

2 Q. You've testified that you've been at the agency
3 for a couple of decades. How would you describe your
4 experience working at the Office of Attorney General?

5 A. The agency is an outstanding state agency.
6 It's a great place to work. This is a -- as a -- as a
7 lawyer, it's an ideal place to practice law, whether you
8 do civil, criminal, trial, appellate, transactional,
9 plaintiff, defense, whatever, we -- we have it. And, you
10 know, as an agency, we are -- we're number one in child
11 support enforcement. This is an agency of lawyers, of
12 child support officers, peace officers, and a lot of
13 hard-working employees.

14 Q. And as the HR director, how many employees of
15 the Office of Attorney General are you responsible for,
16 you know, enforcing agency policy and procedure?

17 A. Well, the -- approximately 4,000 employees that
18 we have throughout the State of Texas. We also handle
19 human resources work for the State Office of Risk
20 Management, SORM.

21 Q. And just generally, you know, what -- what are
22 your responsibilities as both the ethics advisor, the HR
23 director, and the chief employment counsel?

24 A. Well, that's quite a bit. As HR director, I --
25 I oversee the HR operations for our state agency, 4,000

1 employees throughout the State of Texas. I lead a team
2 of -- of 22 talented and dedicated employees. We handle
3 all sorts of HR functions from hiring, posting,
4 classifications, onboarding, benefits, leave, training,
5 development. We have a wonderful wellness program, and
6 we also have a robust law clerk program.

7 And as, you know, chief employment counsel,
8 I, along with the other attorney in the division, an
9 excellent deputy chief, we provide legal guidance to the
10 managers and supervisors of the -- of the agency, and we,
11 you know, make sure -- you know, EEO compliance, the rare
12 EEOC charge of discrimination and workers' compensation
13 and unemployment benefits.

14 And then as ethics advisor, I provide
15 guidance to approximately 700 lawyers of our agency,
16 mostly on the, you know, Texas Disciplinary Rules of
17 Professional Conduct, other ethical issues, and then I
18 oversee the agency's fraud waste and abuse prevention
19 program. I think I have it all.

20 Q. I -- I started as a law clerk at the office,
21 and so I certainly appreciate everything that -- that you
22 do for the office.

23 Outside of working in HR, have you -- do
24 you have any other experience with employment law?

25 A. Yes. Before starting in HR, I worked in the

1 transportation division where I managed the employment
2 law matters for TxDOT, another outstanding state agency,
3 and handled the, you know, trials, appeals, hearings for
4 state and federal law, for all different types of -- of
5 employment law, Title VII, Chapter 21 of the labor code;
6 FMLA, FLSA, ADA, you know, First Amendment retaliation,
7 whistleblower retaliation, USERRA retaliation, workers'
8 comp retaliation, all of that.

9 Q. And so you mentioned the Whistleblower Act.
10 Have you ever taken a Whistleblower Act case to trial?

11 A. I actually have.

12 Q. And does the Whistleblower Act, does that have
13 certain requirements in order to state a claim?

14 A. It does.

15 Q. And does it also provide specific remedies?

16 A. It does.

17 Q. Is one of those remedies removal from office?

18 A. It is not.

19 Q. And who is a proper defendant under the Texas
20 Whistleblower Act?

21 A. The government entity.

22 Q. Is it -- is an elected official a proper
23 defendant under the Texas Whistleblower Act?

24 A. No.

25 Q. Where are Whistleblower Act claims usually

1 adjudicated?

2 A. It's a -- it's a state law claim, so it would
3 be in state district court.

4 Q. Are you aware of a Whistleblower Act claim ever
5 being litigated outside of the state district court?

6 A. Not under the Texas Whistleblower Act.

7 Q. Are you aware, Mr. De La Garza, that in 2020, a
8 group of high-level staffers made reports to law
9 enforcement about the attorney general?

10 A. I am.

11 Q. And are you aware that some of those staffers
12 subsequently filed a Texas Whistleblower Act lawsuit
13 against the Office of Attorney General?

14 A. I am.

15 Q. And to your knowledge, is that case still
16 pending?

17 A. Yes, in Travis County.

18 Q. You mentioned that you've worked under a number
19 of attorneys general, and so I just want to ask you a few
20 brief questions about how the agency works. How do most
21 employees of the Office of Attorney General obtain their
22 positions?

23 A. Most employees -- I mean, we're talking about,
24 you know, just about everyone -- would apply through a
25 competitive posting and -- and then the hiring manager

1 would select the -- the best qualified candidate.

2 Q. And how did the -- the former staffers who made
3 those complaints to law enforcement, how did they obtain
4 their positions?

5 A. They were appointed by Attorney General
6 Ken Paxton.

7 Q. And so -- and typically, I think you said there
8 are about 4,000 OAG employees?

9 A. Yes, about 4,000.

10 Q. And -- and about how many are appointed?

11 A. We're talking about half of 1 percent, maybe .2
12 percent -- or .02 percent.

13 Q. Is it -- is it your understanding, Mr. De
14 La Garza, that the attorney general has authority to
15 appoint certain high-level policymakers?

16 A. Yes.

17 Q. And what is that understanding based on?

18 A. Well, it's a well-established concept and
19 tradition in the United States of political patronage.
20 This has been affirmed in Supreme Court law, U.S. Supreme
21 Court law, federal law, state law, that elected
22 officials, whether you are the Governor or the attorney
23 general or the elected sheriff of a county, that you have
24 the right to hand-select people who you are -- who are
25 going to help you reach the goals and the vision that

1 you've presented to -- to the electorate and who voted
2 you in.

3 Q. And for those appointed officials at the Office
4 of Attorney General, are those appointed officials still
5 required to comply with agency policies, just like every
6 other OAG employee?

7 A. Yes.

8 MS. HILTON: At this time, Your Honor, I'm
9 going to move to admit attorney general Exhibit 431.
10 Counsel and I discussed this during the break, and I
11 understand that there is no objection.

12 MR. DUTKO: No objection.

13 PRESIDING OFFICER: Admit AG 431 into
14 evidence.

15 (AG Exhibit 431 admitted)

16 MS. HILTON: Mr. Arroyo, could you please
17 pull up AG 431. And could you turn to the second page,
18 please, Mr. Arroyo.

19 Q. (BY MS. HILTON) Mr. De La Garza, is
20 Exhibit 431 -- do you recognize this as a copy of OAG
21 policies and procedures?

22 A. On the screen, there's nothing on the screen.

23 Q. Oh.

24 PRESIDING OFFICER: Hold on one moment.
25 We'll stop the clock for a moment.

1 (Brief pause.)

2 PRESIDING OFFICER: Members, return to your
3 seats, please.

4 Hold on one second, Amy.

5 Restart the clock again. Proceed.

6 Q. (BY MS. HILTON) Mr. De La Garza, can you see
7 attorney general Exhibit 431 on your screen?

8 A. Yes.

9 Q. And you recognize that as a copy of the
10 attorney general -- office -- Office of the Attorney
11 General policies and procedures?

12 A. Manual, yes.

13 Q. And what is your role, if any, with respect to
14 drafting and creating policies for the office?

15 A. Well, since May 2008, I've been pretty active
16 in making sure that our policies are up-to-date, revising
17 policies with -- with new -- new laws. For example, I
18 know that we've got the new CROWN Act and military
19 performance and paid parental leave, things like that, so
20 we make sure that we're always keeping up, and we -- we
21 made changes to the manual.

22 Q. Do these policies provide that Office of the
23 Attorney General employees are at-will employees?

24 A. Yes.

25 Q. And can you just briefly explain what that

1 means?

2 A. Well, the State of Texas is an at-will state
3 since, I think, 1877 or something like that, and it just
4 means that in -- in Texas, you don't have a property
5 right in your job and you can be fired for any reason.

6 Q. Mr. De La Garza, are members of the executive
7 administration at-will employees?

8 A. Yes.

9 Q. Does OAG have an unacceptable conduct policy?

10 A. Yes.

11 MS. HILTON: Mr. Arroyo, could you please
12 flip to page 43 of Exhibit 431. At the bottom, the Bates
13 stamp should end in 535.

14 Q. (BY MS. HILTON) Mr. De La Garza, is this the
15 unacceptable conduct policy we were just talking about?

16 A. Yes.

17 MS. HILTON: And, Mr. Arroyo, if you could
18 just flip to the next page, please.

19 Q. (BY MS. HILTON) And about halfway down on
20 those bullet points, Mr. De La Garza, one of the things
21 that's listed as unacceptable conduct is: Use of an
22 insubordinate or unprofessional tone towards management.

23 Do you see that?

24 A. Yes.

25 Q. Is that a policy that you wrote?

1 A. Yes.

2 Q. And when did you write that policy?

3 A. Based on the date that I saw, looked like it
4 was in 2013.

5 Q. And can you explain for the jury why you
6 included that policy in the office's policies and
7 procedures handbook?

8 A. It just seems typical that most manuals for
9 employers would include something about, you know,
10 conduct and what's appropriate and what's not.

11 Q. What are the potential consequences for failing
12 to comply with agency policies?

13 A. Well, it depends. We look at every situation
14 individually. It could be corrective action, such as a
15 counseling session, a reprimand, but if it's -- depending
16 on the situation, it could be disciplinary action,
17 including involuntary separation.

18 Q. As the chief employment counsel, the ethics
19 advisor, the director of human resources, do you provide
20 advice to executive management on matters -- on
21 employment issues?

22 A. I do.

23 Q. And do you provide advice related to the
24 application of the policies that are contained in AG
25 Exhibit 431?

1 A. I do.

2 Q. I'd like to -- to switch gears a little bit
3 here, Mr. De La Garza, and talk about the ex-staffers,
4 the former staffers, that left the Office of Attorney
5 General in 2020.

6 Who is -- who is Jeff Mateer?

7 A. Jeff Mateer was the first assistant attorney
8 general.

9 Q. And how did his employment at the OAG conclude?

10 A. Jeff Mateer resigned on October 2nd, 2020.

11 Q. And who succeeded him as first assistant?

12 A. Because Jeff Mateer resigned and Attorney
13 General Ken Paxton had, you know, a right to then
14 appoint -- select someone, and, you know, under the Texas
15 Government Code, every state agency needs to have an
16 executive head, and at the attorney general's office the
17 executive head is the first assistant. And so they
18 pretty much manage the -- the division day-to-day, and so
19 Attorney General Paxton appointed Brent Webster, and then
20 he began that same Monday, I believe, October 5, 2020.

21 Q. At the time that Mr. Mateer resigned, were the
22 other former staffers still employed at Office of
23 Attorney General?

24 A. Yes.

25 Q. And so at that time, they reported to

1 Mr. Webster; is that right?

2 A. Yes. Starting on October 5, 2020, they would
3 have been reporting to First Assistant Brent Webster.

4 Q. And would those staffers be required to comport
5 with OAG policies in their interactions and their work
6 for First Assistant Webster?

7 A. Yes.

8 Q. And that would be a reasonable expectation that
9 Mr. Webster would have of them?

10 A. Yes.

11 Q. Let's talk about Ryan Bangert. Do you recall
12 what his title was?

13 A. Ryan Bangert was the deputy first assistant
14 attorney general.

15 Q. And how did his employment at OAG conclude?

16 A. Mr. Bangert submitted a letter of resignation
17 on approximately -- I think it was October 28, 2020, and
18 then left the agency, as identified in the letter, on
19 November 4, 2020.

20 Q. And what about Darren McCarty? How did his
21 employment at OAG conclude?

22 A. Darren -- Darren McCarty was the deputy
23 attorney general for civil litigation, and Mr. McCarty
24 submitted a letter of resignation on, I believe,
25 October 26, 2020, and then left the agency. Pursuant to

1 the -- the letter, he left on November 4, 2020.

2 Q. And what about Blake Brickman? Do you remember
3 his title?

4 A. Mr. Brickman was deputy attorney general for
5 policy and strategy.

6 Q. And how did his employment at the office
7 conclude?

8 A. Mr. Brick -- Brickman was involuntarily
9 separated.

10 MS. HILTON: Mr. Arroyo, could you please
11 pull up AG Exhibit 224?

12 And, Your Honor, I'm going to move to admit
13 this exhibit. I understand from counsel during the break
14 that there's no objection.

15 MR. DUTKO: No objection.

16 PRESIDING OFFICER: The exhibit shall be --
17 what was the number again, Amy?

18 MS. HILTON: AG 224.

19 PRESIDING OFFICER: 224 admitted into
20 evidence.

21 (AG Exhibit 224 admitted)

22 Q. (BY MS. HILTON) Mr. De La Garza, is this memo
23 a memo that you drafted related to Mr. Brickman's
24 employment with the attorney general's office?

25 A. Yes.

1 Q. And could you -- does this memo reflect advice
2 that you provided to the office related to Mr. Brickman's
3 continued employment and ultimate termination?

4 A. Yes. It was advice about if we wanted to write
5 a justification, this could be a draft of a
6 justification.

7 Q. And is this justification, was this the result
8 of an independent analysis that you made with respect to
9 his employment at the office?

10 A. Yes.

11 Q. Were you instructed by anybody to -- to come to
12 any conclusions regarding his employment?

13 A. No.

14 Q. Could you please explain the conclusion of this
15 memo for the jury?

16 A. I only see page 1. I'm not sure.

17 MS. HILTON: Your Honor, may I approach the
18 witness, please, with a hard copy?

19 PRESIDING OFFICER: Yes, you may.

20 THE WITNESS: Thank you.

21 A. The conclusion was that -- involuntary
22 separation, that he could be allowed to resign.

23 Q. (BY MS. HILTON) Looking at the memo, at the
24 bottom of page 1, you write that Mr. Brickman has engaged
25 in the following misconduct as identified in the agency's

1 unacceptable conduct policy.

2 Do you see that?

3 A. Yes.

4 Q. And you list a number of violations; is that
5 correct?

6 A. Yes.

7 Q. And is it true that in this memo you indicate
8 that regardless of Mr. Brickman's report to law
9 enforcement, there are violations of agency policy that
10 justify termination?

11 A. Yes. I mean, in many ways, it's just -- it was
12 just a situation of an employee with a new boss and
13 having an insubordinate or unprofessional tone towards
14 the new boss and not following orders, directives of the
15 new boss.

16 Q. And based on the information that you were
17 aware of at the time, was it your opinion that
18 Mr. Brickman's -- had some job performance issues in the
19 workplace following his report to law enforcement?

20 A. Yes.

21 Q. And was part of that misconduct creating an
22 atmosphere that was untenable for the agency?

23 A. Yes.

24 Q. And -- and can you just describe a little bit
25 what that is? I'm looking at page 2 of your memo talking

1 about the working relationship being strained and
2 inefficient. Could you describe what you were aware of
3 at the time that you made this memo?

4 A. Yes, I mean, overall, it -- it appeared that
5 there were some pretty egregious violations of the -- you
6 know, kind of the insubordinate tone of that policy that
7 you had mentioned earlier, and -- the insubordinate tone,
8 the demeanor, the language, the refusal to perform
9 directives from the -- Mr. Brickman's new -- new boss,
10 new supervisor.

11 Just overall, there were -- those issues
12 really stood out, and then, overall, just based on the,
13 you know, everything applicable; state law, federal law,
14 the facts presented. There was no reasonable expectation
15 that he could -- that he wanted to work for the new boss,
16 the new first assistant, or -- or no reasonable
17 expectation in that --

18 MR. DUTKO: Objection. Narrative.

19 We just ask for question and answer, Your
20 Honor.

21 PRESIDING OFFICER: Sustained.

22 Q. (BY MS. HILTON) Mr. De La Garza, you mentioned
23 that Mr. Brickman's behavior was egregious. Did I hear
24 that correctly?

25 A. Yes.

1 Q. And is it your understanding that part of the
2 egregious nature of his behavior was his refusal to meet
3 with his supervisors?

4 MR. DUTKO: Objection. Leading.

5 MS. HILTON: I'll rephrase.

6 PRESIDING OFFICER: Rephrase. Sustained.

7 Q. (BY MS. HILTON) Mr. De La Garza, what was
8 egregious about Mr. Brickman's behavior?

9 A. I mean, based on the facts presented to me,
10 that type of -- of insubordinate tone and demeanor is --
11 is pretty rare in -- in our agency.

12 Q. Who did you provide this memo to?

13 A. I believe I would have probably sent it to my
14 boss at the time, the human resource director at the time
15 and -- and probably Brent Webster, the new first
16 assistant.

17 Q. Who -- to your understanding, who made the
18 decision to terminate Mr. Brickman's employment?

19 A. It would have been -- you know, his supervisor
20 was the first assistant.

21 Q. And did you support the decision to terminate
22 Mr. Brickman's employment?

23 A. Based on -- on the -- the facts as presented to
24 me and the applicable state law and federal law
25 especially about, you know, political patronage, yes,

1 there didn't seem to be a reasonable expectation that he
2 could continue working with or for Brent Webster or
3 continue serving as a high-level policymaker for the
4 attorney general.

5 Q. And do you stand by the advice in this memo
6 today?

7 A. I do.

8 Q. Okay. Let's talk about Mr. Ryan Vassar. Was
9 he the deputy attorney general for legal counsel?

10 A. Yes.

11 Q. And his employment at the office was
12 terminated; is that correct?

13 A. Yes, involuntary separation, yes.

14 Q. And who made that decision?

15 A. That also would have been the first assistant.

16 Q. Did you support the decision to terminate his
17 employment with the office?

18 A. Based on all the facts presented to me and --
19 and the applicable state and federal law, yes, there
20 was -- there was a variety of reasons. There was a lack
21 of confidence in -- in his --

22 MR. DUTKO: Objection, Your Honor.
23 Hearsay. The witness just testified based on information
24 he received.

25 PRESIDING OFFICER: Sustained.

1 Q. (BY MS. HILTON) Mr. De La Garza, did you
2 provide any recommendations concerning Mr. Vassar's --
3 the involuntary separation?

4 A. Yes. I mean, as an HR director, I have to rely
5 on information that is presented to me.

6 Q. Okay. And -- and -- sorry. I didn't mean to
7 talk over you.

8 When you were providing those
9 recommendations, were you -- were you advised by
10 management of some issues, some job performance issues
11 that -- that they were experiencing with Mr. Vassar?

12 MR. DUTKO: Objection. Hearsay. "Advised
13 by management," out-of-court statement.

14 MS. HILTON: Your Honor, if I may, I'm
15 asking about the facts that inform his recommendation.
16 I'm not offering them for the truth of the -- the truth
17 of the matter, but, rather, just the things that he was
18 aware of at the time he made his recommendation and why
19 he made that recommendation.

20 PRESIDING OFFICER: I'm going to sustain
21 your objection. Find another way to ask the question.

22 MS. HILTON: Thank you, Your Honor.

23 Q. (BY MS. HILTON) Did agency policy support the
24 decision to terminate Mr. Vassar's employment with the
25 agency?

1 A. Yes.

2 Q. And was it your understanding that Mr. Vassar
3 had violated agency policy by sharing confidential grand
4 jury subpoenas outside of the agency?

5 MR. DUTKO: Objection, Your Honor. I need
6 to interrupt. This is knowledge gained through hearsay
7 and leading.

8 PRESIDING OFFICER: Sustained.

9 Q. (BY MS. HILTON) Could you please describe what
10 the violations of agency policy were that supported
11 termination?

12 A. Well, just overall as far as the -- the reasons
13 presented to me for separating him were -- there's a
14 combination of --

15 MR. DUTKO: Objection, Your Honor. Reason
16 stated to me is an out-of-court statement. Hearsay.

17 MS. HILTON: Your Honor, again, this goes
18 to the basis for his recommendation. This is not a --
19 he's not testifying as to the truth of it, but, rather,
20 the information -- his understanding of the information
21 and what informed his advice to the agency.

22 PRESIDING OFFICER: I'll overrule your
23 objection this time.

24 Q. (BY MS. HILTON) You can answer the question,
25 Mr. De La Garza.

1 A. Yes. I mean, I have to rely on -- on the facts
2 presented to me. I mean, we have 4,000 employees, so
3 with respect to Mr. Vassar, I had to rely on the facts
4 presented to me on what he had done or had not done and
5 so as far as the overall reasons, there was a variety of
6 reasons, a lack of confidence. There were some issues
7 about his performance, some issues about the handling
8 of -- of grants or mishandling of grants.

9 Overall, there was some insubordinate tone
10 and demeanor, and, overall, there was -- my
11 understanding, there was one -- one last meeting to see
12 if there was any reasonable expectation that Mr. Vassar
13 could or wanted to work with or for his new boss.

14 MR. DUTKO: Objection, Your Honor. I
15 apologize for interrupting. Can we keep this question
16 and answer? My objection is narrative.

17 PRESIDING OFFICER: Sustained.

18 Q. (BY MS. HILTON) Mr. De La Garza, let me ask
19 you about that meeting. You mentioned that there was one
20 last meeting before there was a decision made to separate
21 Mr. Vassar from his employment at the office.

22 Were you present at that meeting?

23 A. No.

24 Q. Were you later requested to provide counsel as
25 a result of what had happened in that meeting?

1 A. Yes, my --

2 Q. And, sorry, I'm going to stop you right there
3 just because I want to make sure that we're keeping this
4 question and answer.

5 A. I apologize.

6 Q. And -- but I appreciate your -- your -- your
7 testimony.

8 As -- when you were asked for advice, did
9 you ultimately recommend separation?

10 A. Yes.

11 Q. And do you agree with that decision today?

12 A. Yes.

13 Q. Let's talk about Mr. Maxwell. Was he the
14 director for law enforcement?

15 A. Yes.

16 Q. And was he also -- was his employment also
17 terminated from the Office of Attorney General?

18 A. He was involuntary separated on -- yes.

19 Q. And who made that decision?

20 A. First Assistant, Brent Webster.

21 Q. Did you advise Mr. Webster, with respect to
22 that decision to terminate Mr. Maxwell's employment from
23 the agency?

24 A. I recommended that it could be done, that it
25 was reasonable based on the facts presented to me.

1 Q. And did you personally have prior experience
2 with Mr. Maxwell and -- and some violations of agency
3 policy in the past?

4 A. Yes.

5 Q. And how -- how would you recommend -- or excuse
6 me. How would you describe your experience working with
7 Mr. Maxwell?

8 A. I mean, I -- I admire all that he's done. But
9 with respect to HR issues in -- in HR, certainly, it was
10 a developing pattern of not going to HR for guidance on
11 some very sensitive HR matters.

12 Q. And did the failure to go to HR for guidance on
13 very sensitive matters, did that ultimately expose the
14 agency to liability?

15 A. It could have.

16 Q. And in about how many instances?

17 A. Well, there was -- there was one case with a
18 Hispanic peace officer, a female who had been subject to
19 sexual harassment.

20 MR. DUTKO: Objection, Your Honor. This is
21 knowledge gained through hearsay. Presumably, he did an
22 interview with this woman who will not come in to
23 testify. All of the information he gathered and he's
24 relaying to us is hearsay.

25 MS. HILTON: Your Honor, I'll move on.

1 PRESIDING OFFICER: Sustained. Continue.

2 MS. HILTON: I'd like to offer what's going
3 to be marked as AG Exhibit 1055. I understand Counsel
4 does not have an objection to this either.

5 MR. DUTKO: No objection, Your Honor.

6 PRESIDING OFFICER: Admit 1055.

7 MS. HILTON: And, Your Honor, may I
8 approach the witness with a hard copy?

9 PRESIDING OFFICER: Yes.

10 MS. HILTON: Thank you. Mr. Arroyo, could
11 you please pull up AG Exhibit 1055.

12 Q. (BY MS. HILTON) Mr. De La Garza, do you
13 recognize AG Exhibit 1055 as an email that you drafted to
14 Brent Webster and Aaron Reitz?

15 A. Yes.

16 Q. And does this memo provide your legal advice
17 regarding these -- the continued employment of these
18 staff members?

19 A. Yes.

20 Q. Could you -- what prompted this email?

21 A. Mr. Maxwell and Mr. Penley -- Mr. Maxwell and
22 Mr. Penley had been on investigative leave, and they
23 wanted to have a -- like a -- a meeting to see if there
24 was any reasonable expectation that they could work with
25 or for Brent Webster.

1 Q. And I'm sorry, Mr. De La Garza. Just for the
2 record and for clarification, when you say "they wanted
3 to have a meeting," who is "they"?

4 A. Well, primarily the first assistant,
5 Brent Webster.

6 Q. Thank you. And I'm sorry to interrupt.

7 Please go on.

8 A. And there was a -- kind of a -- sort of a
9 last-ditch, let's see if there's any reasonable
10 expectation that they could work with or for
11 Brent Webster, the new first assistant, and whether there
12 was any reasonable expectation that they -- that they
13 could continue as high-level policymakers with Attorney
14 General Ken Paxton.

15 Q. And so is this email your suggestions of things
16 to ask in those meetings?

17 A. Yes.

18 Q. Why did you pick these particular questions,
19 like, Do you trust me, Do you trust the attorney general,
20 Are you committed to the vision?

21 Why did those questions make it into this
22 memo?

23 A. Well, based on the -- you know, the -- the --
24 the case law, Elrod v. Burns, Branti v. Finkel and its
25 progeny, that's what you focus on; the loyalty, trust,

1 you know, can the -- can the elected official, you know,
2 trust the people that he's -- or she has chosen to -- to
3 support their -- their vision, their goals.

4 Q. Why would that be important to the agency?

5 A. Well, it's definitely a question about
6 efficiency. I mean, you -- you -- you -- you want the --
7 everything to move along and if his -- if his deputies
8 aren't -- if they're not seeing eye to eye, it's going to
9 break down and then it eventually starts trickling down
10 and we start losing, you know, efficiency, and there
11 could be worse problems.

12 MS. HILTON: Mr. Arroyo, could you please
13 pull up House Managers Exhibit 383. And, Your Honor,
14 this is already in evidence. May I approach the witness
15 with a hard copy?

16 PRESIDING OFFICER: Yes.

17 Q. (BY MS. HILTON) Mr. De La Garza, do you
18 recognize this email that was sent by Greg Simpson, your
19 former boss, to Brent Webster copying you related to the
20 CID division?

21 A. Yes.

22 Q. And I just want -- I don't want to go through
23 this whole thing, but I just want to ask you on the
24 second page, could you please read aloud the last two
25 sentences on the last page of this document?

1 A. It reads: Overall, HRD has had difficulty
2 getting CID to work with us on matters that are
3 appropriately and exclusively within HRD's authority.
4 Maxwell's actions have exposed the agency to potential
5 liability.

6 Q. And what does HRD and CID -- what does that
7 mean?

8 A. HRD would be the human resources division and
9 CID would be the criminal investigations division.

10 Q. And the criminal investigations division, that
11 was the division that Mr. Maxwell was -- was chief of,
12 correct?

13 A. Yes. That's one of the primary divisions under
14 law enforcement under his purview.

15 Q. And so does this email identify a number of
16 issues with Mr. Maxwell's management of his division?

17 A. Yes. Mr. Simpson explained that there were
18 some challenges that the -- that HR had faced.

19 Q. Did you agree with the decision to terminate
20 Mr. Maxwell's employment with the agency?

21 A. Yes. Based on the facts presented to me and
22 the applicable law, it seemed reasonable.

23 Q. And -- okay. You can set that -- that aside.
24 Thank you.

25 Do you agree with that decision today,

1 Mr. De La Garza?

2 A. I do.

3 Q. And who made that decision?

4 A. That would also have been the first assistant,
5 Brent Webster.

6 Q. I'd like to talk to you about Mr. Penley. Do
7 you recall that he was the deputy attorney general for
8 criminal justice?

9 A. Yes.

10 Q. And he was also involuntarily separated?

11 A. Yes.

12 Q. Was he offered the option to resign?

13 A. Yes, he was.

14 Q. And, to your knowledge, before Mr. Penley was
15 let go, did he meet with Brent Webster?

16 A. Yes.

17 Q. And did he have the meeting that you
18 suggested -- or that you mentioned earlier about whether
19 there could be a reasonable expectation that Mr. Penley
20 could work effectively with the new first assistant?

21 A. Yes, that meeting took place.

22 Q. And what was your understanding about the
23 prospect of Mr. Penley being able to effectively work
24 with Mr. Webster following that meeting?

25 A. My understanding from that meeting was that

1 there was no reasonable expectation that Mr. Penley
2 wanted to work with or for his new boss, First Assistant
3 Brent Webster, that he could in the future and that he --
4 he could serve as a high-level policymaker for Attorney
5 General Ken Paxton.

6 Q. Did agency policy support Mr. Penley's
7 involuntary separation?

8 A. Yes.

9 Q. How so?

10 A. Well, just based on the -- the lack of
11 confidence. There was -- there was some evidence of, you
12 know, questionable decision-making, the -- you know, just
13 the -- the breakdown in the working relationship. There
14 may have -- also have been, from what I recall, some
15 insubordinate tone or demeanor towards Brent Webster.
16 And so just overall based on the -- the applicable state
17 and federal law and the facts presented to me, it seemed
18 reasonable, and the policy supported that.

19 Q. Was it also your understanding at the time that
20 Mr. Penley had omitted some material information in a
21 court filing?

22 A. Yes. That had been also presented to me as far
23 as some, you know, wrongdoing, whether it was just
24 con --

25 MR. DUTKO: I apologize for interrupting.

1 "This had been presented to me" is hearsay, out-of-court
2 statement. We object to hearsay.

3 MS. HILTON: Your Honor, this is the same
4 ruling that you made earlier to overrule the objection.
5 This is the facts that were presented to him that
6 informed his advice to the agency. And that was
7 subsequently conveyed to Mr. Webster who determined what
8 the employment decisions would be going forward.

9 MR. DUTKO: Your Honor, if I may --

10 PRESIDING OFFICER: Overruled.

11 Q. (BY MS. HILTON) You may continue.

12 A. Yes, I'm sorry. What was the question again?
13 I'm sorry.

14 Q. Yes. The question was whether it was -- you
15 know what? I think you answered it.

16 A. Oh, thank you.

17 Q. Thank you, Mr. De La Garza.

18 I will ask you a follow-up question. You
19 said it was your understanding that facts had been
20 presented to you that Mr. Penley had omitted material
21 information from a court filing; is that right?

22 A. Yes. That was the facts presented to me.

23 Q. And do you know whether that constitutes a
24 violation of the agency's policy on handling confidential
25 and privileged information?

1 A. Yes. We have a specific policy on that.

2 Q. And did you agree with Mr. Webster's decision
3 to terminate Mr. Penley's employment?

4 A. Yes. Based on the law and the facts presented
5 to me, it was a reasonable decision.

6 Q. And sitting here today, do you stand by that,
7 that support, that recommendation?

8 A. I do.

9 MS. HILTON: Mr. Arroyo, could you please
10 pull up AG Exhibit 120.

11 And, Your Honor, this is not in evidence,
12 so I'm going to offer it now. I understand that Counsel
13 does not have an objection.

14 MR. DUTKO: No objection.

15 PRESIDING OFFICER: Admit AG 120 into
16 evidence.

17 (AG Exhibit 120 admitted)

18 MS. HILTON: And, Your Honor, may I also
19 approach the witness with a hard copy?

20 PRESIDING OFFICER: Yes, you may.

21 MS. HILTON: Thank you.

22 Q. (BY MS. HILTON) Mr. De La Garza, do you
23 recognize this email?

24 A. Yes.

25 Q. And does this email reflect some of the legal

1 advice that you provided to the agency, including to
2 Mr. Webster, about the application of the Whistleblower
3 Act?

4 A. Yes. I provided some -- what I considered
5 privileged and confidential advice regarding the -- the
6 petition that had been filed.

7 Q. Understood. Mr. De La Garza, looking at the
8 first paragraph of this email, you write, Here is my list
9 of why Vassar, Maxwell, Penley, Brickman should be
10 considered high-level policymakers who are exempt from
11 whistleblower protection.

12 Do you see that?

13 A. I do.

14 Q. And I want to ask you about that term
15 "high-level policymakers." What does that -- why was
16 that important?

17 A. That is the term used in, sort of, political
18 patronage case law about, you know, that elected
19 officials can -- can appoint -- they have to be
20 high-level policymakers for them to be appointed.

21 Q. They -- I'm sorry. I just want to be -- they
22 have to be high-level policymakers to be appointed. Is
23 that what you said?

24 A. Yes.

25 Q. Thank you. And all of the former staffers who

1 made reports to law enforcement, in your view, fell under
2 the category of high-level policymakers?

3 MR. DUTKO: Objection. Leading.

4 MS. HILTON: Your Honor, I'm just
5 clarifying his testimony, but can I restate.

6 PRESIDING OFFICER: Sustained. Just
7 restate it.

8 Q. (BY MS. HILTON) Mr. De La Garza, is it your
9 opinion that the former staffers who made reports to law
10 enforcement were all high-level policymakers?

11 A. They were high-level policymakers.

12 Q. And could you just summarize for the jury some
13 of the points that -- that were important to you here
14 that led you to your conclusion that they constitute
15 high-level policymakers that are exempt from the
16 Whistleblower Act?

17 A. Well, based on the -- the list that I have
18 here, and it was supported by case law, they -- you know,
19 they required more than simple ministerial competence.
20 They create or implemented, you know, agency goals,
21 policy. They -- they controlled or exercised a role in
22 the decision-making process as to the goals and general
23 operating procedures of the agency. They ensured that
24 policies which the electorate had sanctioned by electing
25 the attorney general were effectively implemented. They

1 all had access to confidential documents or other
2 materials that embodied policymaking deliberations and
3 determinations; you know, party affiliation was an
4 appropriate requirement. They served as --

5 Q. Sorry, Mr. De La Garza, if I could, I just want
6 to stop you there. At the bullet point about party
7 affiliation, you write here that, Party affiliation was
8 an appropriate requirement for effective performance of
9 the public office involved. Is party affiliation
10 something that the agency would look for in the -- in the
11 employees who apply for competitive jobs in regular
12 postings?

13 A. No.

14 Q. Mr. De La Garza, do you stand by this advice in
15 AG Exhibit 120 today?

16 A. I do.

17 Q. Thank you. You can set that aside.

18 Mr. De La Garza, did the Office of the
19 Attorney General have legitimate, nonretaliatory reasons
20 for terminating these staffers' employment?

21 A. In my opinion, yes.

22 Q. And under the Texas Whistleblower Act, can the
23 Office of Attorney General, or any state agency,
24 terminate a whistleblower based on information or
25 evidence that is not related to their whistleblower

1 report?

2 A. Yes.

3 Q. And do you agree that the age -- that for the
4 agency to be effective, that high-level policymakers need
5 to be able to collaborate effectively with the first
6 assistant and with the attorney general?

7 A. Yes.

8 Q. Did you believe that there was any reasonable
9 possibility that any of these former staffers could do
10 that?

11 A. Well, Darren McCarty resigned. There -- there
12 could have been Ryan Bangert, so, you know, I would say
13 that there was possibly with them, but --

14 Q. For the ones that resigned. But for the ones
15 that were terminated -- for the ones that were
16 terminated, was there a reasonable expectation that they
17 could work with the first -- the new first assistant and
18 with the attorney general?

19 A. Yes. For the ones who were involuntarily
20 separated, no. In my opinion, there was no reasonable
21 expectation.

22 Q. Did Ken Paxton ever indicate, expressly or
23 implicitly, that these former staffers needed to be fired
24 because they made a report to law enforcement?

25 A. Not to my knowledge.

1 Q. Do you have any knowledge that Brent Webster
2 ever indicated, expressly or implicitly, that these
3 former staffers needed to be fired because they made a
4 report to law enforcement?

5 A. Not to my knowledge.

6 Q. Did anyone at the Office of Attorney General
7 determine what your recommendations would be with respect
8 to the legal advice you provided for these former
9 staffers who were involuntarily terminated?

10 A. Not to my knowledge.

11 Q. Was your analysis of whether the former
12 staffers had violated agency policy, was -- was your
13 analysis an independent analysis?

14 A. Yes. I mean, at times, I consulted with the
15 other lawyer, my -- my boss before he -- he left.

16 MS. HILTON: Mr. Arroyo, could you please
17 pull up Article of Impeachment VI? And could you turn to
18 the next paragraph of Article VI, please, Mr. Arroyo.

19 Q. (BY MS. HILTON) Mr. De La Garza, Article VI
20 accuses the attorney general of: Terminating the
21 employees without good cause or due process and in
22 retaliation for reporting his illegal acts and improper
23 conduct.

24 Do you see that?

25 A. I do.

1 Q. Is good cause required to terminate an employee
2 in Texas?

3 A. No, it's not. But at the attorney general's
4 office, we ensure that there are good reasons and that
5 it's fair.

6 Q. And did good reasons and fair reasons exist for
7 each of the former staffers that were involuntarily
8 terminated?

9 A. In my opinion, yes.

10 Q. Is due process required to terminate an
11 employee in Texas?

12 A. No. There's no property right to our -- to our
13 jobs since we're at-will, so due process, there's no
14 constitutional right, and -- but we ensure that it's
15 fair.

16 Q. So -- okay. Thank you.

17 And were any of the former executive
18 administration staffers terminated in retaliation for
19 making a report to law enforcement?

20 A. In my opinion, no.

21 MS. HILTON: Thank you, Mr. De La Garza.
22 I pass the witness, Your Honor.

23 PRESIDING OFFICER: Thank you.

24 Your witness. Please state your name for
25 the record.

1 MR. DUTKO: Yes, Your Honor. Daniel Dutko.

2 CROSS-EXAMINATION

3 BY MR. DUTKO:

4 Q. Hi, Mr. De La Garza. How are you?

5 A. Fine. Thank you. How are you?

6 Q. Mr. De La Garza, you testified a moment ago
7 that you were familiar with the Texas Whistleblower Act,
8 correct?

9 A. Yes, I did.

10 Q. And you understand that the Texas Whistleblower
11 Act affords protection to people that go to law
12 enforcement so they can go to law enforcement without
13 retribution, right?

14 A. Yes.

15 Q. And as part of the Texas Whistleblower Act,
16 that protection only extends to people who still have
17 their job?

18 A. Yes, they are -- yes.

19 Q. Right. So what I mean is if you report someone
20 to law enforcement and they still have their job and then
21 they're retaliated against, they are protected by
22 whistleblower, correct?

23 A. If they -- yes, if they comply with the
24 retaliatory -- the requirements in the Texas
25 Whistleblower Act, yes.

1 Q. But if they get fired before they go to law
2 enforcement, they're not afforded the protection of the
3 Whistleblower Act, correct?

4 A. Right. It has to be -- right.

5 Q. Right. So before you go to law enforcement,
6 you don't want to tell your boss: I'm going to law
7 enforcement?

8 MS. HILTON: Objection. Speculation.

9 PRESIDING OFFICER: Sustained.

10 Q. (BY MR. DUTKO) Under the Whistleblower Act, if
11 you tell your boss you're going to law enforcement, you
12 get terminated, then you go to law enforcement, you're
13 not entitled to the whistleblower protection, correct?

14 MS. HILTON: Objection. Speculation. It's
15 the same question, Your Honor.

16 MR. DUTKO: He just said he knew this.

17 PRESIDING OFFICER: You can answer, if you
18 know.

19 A. All right. Could you just repeat the question,
20 please?

21 Q. (BY MR. DUTKO) Sure. Under the whistleblower
22 statute that you said you're familiar with, if you tell
23 your boss, I'm about to go to law enforcement, then you
24 go to -- before you go to law enforcement you get fired,
25 then you go to law enforcement, you're not entitled to

1 the protections of the whistleblower statute, are you?

2 A. I guess you could make the argument in court.
3 I'm not sure how successful you'd be.

4 Q. But you agree with my statement, correct?

5 A. Probably wouldn't be the -- the best way to do
6 it.

7 Q. So if someone were to stand up here over and
8 over --

9 PRESIDING OFFICER: Witness needs to speak
10 up when you speak.

11 THE WITNESS: Excuse me.

12 Q. (BY MR. DUTKO) If someone were to stand up
13 here over and over and say, Why didn't you just call your
14 boss; before you went to law enforcement, why didn't you
15 just call your boss, under the Whistleblower Act that
16 wouldn't be a good idea, would it?

17 A. I mean, if your plan was to file a lawsuit,
18 then, yes, you should -- you shouldn't do that.

19 Q. You should not go to your boss first?

20 A. If you were planning to file a lawsuit. I
21 mean, it depends on the situation.

22 Q. I'm not talking about a lawsuit. I'm talking
23 about whistleblower protection. It would not be a good
24 idea to call your boss first, right?

25 MS. HILTON: Objection. Asked and

1 answered.

2 PRESIDING OFFICER: Overruled.

3 Q. (BY MR. DUTKO) Right?

4 A. You're asking me to speculate. I'm not sure
5 what a plaintiff should or shouldn't do.

6 Q. You don't want to answer that, do you?

7 A. I -- I'm -- I'm -- I'm not a -- I'm not here
8 to, you know, speculate as to what a potential plaintiff
9 under the Whistleblower Act should do or could do.

10 Q. Just so we're clear, you're not here now. A
11 moment ago you were okay with it, right?

12 MS. HILTON: Objection, Your Honor. It's
13 argumentative.

14 PRESIDING OFFICER: Sustained.

15 MR. DUTKO: Let's put up AG 120, please.

16 Q. (BY MR. DUTKO) Can you see AG 120?

17 A. Yes.

18 Q. This is a document that you created an email,
19 right?

20 A. Yes.

21 Q. And in this email, it says: Here are my lists
22 of why Vassar, Maxwell, Penley, Brickman should be
23 considered high-level policymakers who are exempt from
24 whistleblower protection. Correct?

25 A. Yes.

1 Q. This is your analysis?

2 A. This was a privileged and confidential document
3 that we were -- we are brainstorming.

4 Q. I appreciate that, but I think I wrote down
5 your words and what you said was, This is my analysis.
6 You still stand by that?

7 A. Yes, sure.

8 Q. And you said, I stand by that today?

9 A. Yes.

10 Q. And you said to the senators here, This is the
11 correct analysis, right?

12 A. At the time, I believed it was the correct
13 analysis, sir.

14 Q. This argument, this exact argument that's in
15 this document right here, was made in the court, right?

16 A. I'm not sure. I wasn't involved in that.

17 Q. You're not familiar with the Court of Appeals
18 case, Office of the Attorney General versus Blake
19 Brickman, Mark Penley, David Maxwell and Ryan Vassar?
20 You're not familiar with that?

21 A. I'm familiar, but I wasn't involved. I didn't
22 work on that appeal.

23 Q. Are you familiar with the decision that came
24 out in that appeal?

25 A. I would have to read it and -- and --

1 Q. You don't remember?

2 A. I -- to be honest, I'm not sure if I
3 carefully -- that was not something that I needed to
4 read.

5 Q. Well, if you had read it, you would know that
6 the Court of Appeals said all of your analysis in AG 120
7 was wrong.

8 MS. HILTON: Objection. Argumentative.

9 MR. DUTKO: He knows.

10 PRESIDING OFFICER: Overruled.

11 Q. (BY MR. DUTKO) Right?

12 A. It -- it happens as -- as lawyers. You know,
13 we make arguments and -- and courts don't agree with
14 them. And so, you know, there's always going to be a
15 winning side and a losing side, and at the time, I was
16 just coming up with potential arguments. That's what,
17 you know, we do.

18 Q. Right. So when the senators are deciding
19 whether or not this is a valid argument, they can
20 disregard it because the Court of Appeals already decided
21 it was not?

22 MS. HILTON: Objection. This misstates
23 testimony, and it's going outside of direct. This also
24 is talking about a document that is not in evidence, and
25 there's been no testimony before this witness about.

1 PRESIDING OFFICER: Overruled.

2 Q. (BY MR. DUTKO) Right?

3 A. I defer to the Senate to do the right thing.

4 Q. You spent a lot of time telling us about how
5 people were involuntarily separated. That means fired,
6 right?

7 A. Yeah. We just like to use involuntary
8 separation.

9 Q. Okay. I just want to make sure we're on the
10 same page. That means fired?

11 A. It does.

12 Q. You also spent a lot of time using the phrase
13 "based on facts presented to me," right?

14 A. Yes.

15 Q. And those facts were presented to you by
16 Brent Webster?

17 A. For the most part, yes.

18 Q. Doesn't it seem like you had a Brent Webster
19 problem?

20 A. Well, he was the -- the new first assistant,
21 and these employees were reporting to him.

22 Q. I mean, you've heard the term "garbage in,
23 garbage out," right?

24 A. I've heard the expression.

25 Q. So if Brent Webster's giving you information

1 that's not true, then your analysis is wrong, correct?

2 A. I -- I have to rely on the information given to
3 me.

4 Q. I appreciate that. My question is a little bit
5 different.

6 If Brent Webster's not telling you accurate
7 information, then all the analysis you gave on direct
8 examination is all incorrect?

9 MS. HILTON: Objection. Speculation.

10 MR. DUTKO: He knows.

11 PRESIDING OFFICER: Overruled.

12 Q. (BY MR. DUTKO) Correct?

13 A. I have to rely on -- on the facts presented to
14 me, and so I --

15 Q. Is my question difficult?

16 A. It's -- you're saying that if he presented a
17 false -- if somebody present -- if he presented false
18 information to me and I'm using that false -- yes, it
19 could affect my analysis.

20 Q. Well, let's talk about the real reason why
21 these people got fired.

22 MR. DUTKO: Stacey, can you put the
23 timeline up, please? I'm going to use this for
24 demonstrative purposes, so --

25 MS. HILTON: Your Honor, I'm going to

1 object. I've never seen whatever this is before.
2 Counsel and I discussed exhibits during the break. This
3 was not provided to me, so I would request that we get a
4 copy of whatever this is to quickly review.

5 MR. DUTKO: Not an exhibit, Your Honor.
6 Simply demonstrative purposes. Not going back based on
7 dates that this witness provided on direct examination.
8 If the dates are wrong, Counsel can correct me.

9 MS. HILTON: Well, Your Honor, I mean, we
10 might have an objection to whatever -- I mean, whatever
11 he's going to put on this timeline. I don't know what it
12 is, and I don't have an opportunity to verify it. And
13 it's being published to this jury as if it's fact, so I'm
14 going to object to displaying this to the jury.

15 MR. DUTKO: Your Honor, this -- they're
16 making evidentiary arguments. I'm not offering this into
17 evidence. It's purely demonstrative.

18 MS. HILTON: Your Honor, this --

19 PRESIDING OFFICER: Hold on. Hold on.
20 Don't talk over each other. I think you can provide
21 Counsel with what you're about to show.

22 MR. DUTKO: May I go to Counsel?

23 PRESIDING OFFICER: Yes.

24 MS. HILTON: Thank you.

25 Your Honor, I might have objections as this

1 goes along because I don't think there's any foundation
2 that he's laid yet, at least to ask -- to publish these
3 as something that's within this witness' personal
4 knowledge. But subject to that, I appreciate counsel
5 providing this copy, and we can move along.

6 PRESIDING OFFICER: Move along.

7 Q. (BY MR. DUTKO) Mr. De La Garza, on
8 September 30th -- and just before we get started, I want
9 to point out, this timeline is --

10 PRESIDING OFFICER: Stay at the microphone.

11 MR. DUTKO: Yes.

12 Q. (BY MR. DUTKO) I want to point out, Mr. De La
13 Garza, that this timeline is roughly a month and a half,
14 less than a month and a half.

15 Do you see that?

16 A. Yes.

17 Q. And as you are familiar with the whistleblower
18 statute, as you testified on direct examination, I'm sure
19 you're familiar with 554.004, right?

20 A. Is that -- could you remind me?

21 Q. Sure. It says, In an adverse action if, within
22 90 days of reporting to law enforcement, there is a
23 presumption of retaliatory contact.

24 A. There is a presumption that can be rebutted.

25 Q. And so the law says if within 90 days of

1 reporting something to law enforcement you're terminated
2 or have an adverse action, we are to presume that was
3 retaliatory, right?

4 A. There's a presumption.

5 Q. So September 30th, the whistleblowers go to the
6 FBI, right?

7 A. I'm not sure. I have no personal knowledge of
8 what they did.

9 Q. The head of HR, you don't know?

10 A. I mean, I -- that's what I heard. That's what
11 they presented to -- to my boss, a letter saying that
12 they had gone there.

13 Q. Let's start over. You're the head of HR,
14 right?

15 A. Now, yes.

16 Q. You know that they went to FBI on
17 September 30th, right?

18 A. I -- I have received information that they did.
19 I have no reason to disbelieve that.

20 Q. You also know on October 1st the whistleblowers
21 notified HR and the AG Paxton of the FBI report, correct?

22 A. Yes. I believe it was the 1st.

23 Q. The next day, Mark Penley and David Maxwell
24 were placed on administrative leave?

25 A. That's correct.

1 Q. On October 13th, David Maxwell made his formal
2 complaint against Ken Paxton?

3 A. I -- I'm not aware of exactly when he did.
4 Formal complaints go to the formal complaint officer, so
5 if -- if you say it was the 13th.

6 Q. You spent a lot of time telling us about David
7 Maxwell. You reviewed all of the file. You're telling
8 me you don't know when David Maxwell made his formal
9 complaint?

10 A. I -- I don't have personal knowledge of that
11 because formal complaints go to the formal complaint
12 officer. They don't go to HR.

13 Q. Well, we can assume by the fact that your
14 lawyer hasn't stood up and objected that that's the day
15 he made his formal complaint, okay?

16 A. That's -- I have no reason to disbelieve that.

17 Q. October 15th, Brickman, Vassar, Bangert,
18 McCarty and Penley all filed formal complaints. You know
19 that as well, right?

20 A. I understood that they all filed formal
21 complaints.

22 Q. October 20th, so 20 days after going to the
23 FBI, 19 days after the whistleblowers notify of the fact
24 that they went to the FBI, Blake Brickman was fired,
25 right?

1 A. Yes.

2 Q. Lacey Mase was fired?

3 A. Yes.

4 Q. November 2nd, a month after going to the FBI,
5 David Maxwell was fired?

6 A. Yes.

7 Q. November 2nd, a month after going to the FBI,
8 Mark Penley was fired?

9 A. Yes.

10 Q. November 17th, six weeks after going to the
11 FBI, Ryan Vassar is fired?

12 A. Yes.

13 Q. Have you ever heard of the expression, "there's
14 no coincidences in Austin"?

15 A. (No verbal response.)

16 MR. DUTKO: Pass the witness.

17 PRESIDING OFFICER: Redirect.

18 MS. HILTON: Just briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. HILTON:

21 Q. Mr. De La Garza, were there -- did agency
22 policy support the termination of Lacey Mase?

23 A. Yes.

24 Q. And did you recommend that termination?

25 A. I did.

1 Q. Do you stand by that recommendation today?

2 A. I do.

3 MS. HILTON: No further questions, Your
4 Honor.

5 PRESIDING OFFICER: Are you --

6 MR. DUTKO: No need for it.

7 PRESIDING OFFICER: Okay. We can
8 exclude -- excuse the witness?

9 MS. HILTON: Yes, Your Honor.

10 PRESIDING OFFICER: Yes. You may step
11 down. Thank you.

12 A little housekeeping before the next
13 witness. I said that after the break I would admit 702
14 into evidence. We did not do that, so 702 is admitted
15 into evidence.

16 (AG Exhibit 720 admitted)

17 PRESIDING OFFICER: Mr. Donnelly, I think
18 that was the correct number.

19 Also, if both parties would like to come to
20 the bench for a moment.

21 (At the bench, off the record.)

22 PRESIDING OFFICER: The court will come to
23 order. Members of the jury, there was a motion filed
24 yesterday by the House to amend the rules to collapse a
25 vote into one vote. That motion has been withdrawn.

1 Will the defense call their next witness?

2 MR. OSSO: Defense calls Grant Dorfman to
3 the witness stand.

4 PRESIDING OFFICER: Please bring in Grant
5 Dorfman.

6 Mr. Dorfman, if you'd raise your right
7 hand.

8 (Witness sworn by the Presiding Officer)

9 PRESIDING OFFICER: Please have a seat.
10 Your witness.

11 MR. OSSO: May I proceed?

12 GRANT DORFMAN,

13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. OSSO:

16 Q. It's Anthony Osso, O-S-S-O, on behalf of
17 Attorney General Paxton.

18 Sir, would you please state and spell your
19 name for the record?

20 A. It's Grant Dorfman, G-R-A-N-T. Dorfman is
21 D-O-R-, F as in Frank, M-A-N.

22 Q. Okay. And I understand you're a judge, but
23 just to keep the record clear, I'm going to call you
24 Mr. Dorfman, if that's all right.

25 A. I appreciate that.

1 Q. Okay. Mr. Dorfman, could you please tell these
2 senators how you're currently employed?

3 A. I'm the deputy first assistant at the Office of
4 the Attorney General.

5 Q. Okay. And I'm going to ask that you lean into
6 that mic and speak loud and clear so that everybody in
7 the courtroom can hear you. Now, before we talk about
8 your role as the deputy first assistant, I want to talk
9 to you a little about your background and who you are.

10 Can you tell us where you're from?

11 A. Grew up in Dallas, Texas.

12 Q. Okay. And where did you end up going to
13 school?

14 A. Brown University in Providence, Rhode Island.

15 Q. Okay. And then was that for undergraduate?

16 A. Sorry?

17 Q. Undergraduate?

18 A. That was my undergraduate, yes.

19 Q. Did you go on to do law school?

20 A. I did.

21 Q. Okay. Can you tell us where you went?

22 A. Yale Law School.

23 Q. And what did you do after you completed your
24 time at Yale?

25 A. I accepted a clerkship with a federal judge in

1 Houston, Texas; brought me back to Texas after ten years
2 on the east coast. I also had -- took two years out
3 before law school, got a graduate degree there, not -- in
4 England, as well, and then had a one-year clerkship
5 opportunity in Houston. Thought I was going back to D.C.
6 to join the Department of Justice for the second term of
7 the George Herbert Walker Bush administration. That
8 never materialized, so I ended up staying in Houston.

9 Q. Okay. So after that didn't work out, what did
10 you end up doing next?

11 A. I went to work for a commercial litigation
12 boutique and continued in that line, went to a second
13 firm where I made partner in, I think, 1999.

14 Q. Okay. Which firm was that?

15 A. Ogden, Gibson, White & Broocks. And the first
16 firm was Susman Godfrey.

17 Q. Okay. And while you were working as a partner,
18 can you describe to us, kind of, what type of law you
19 were practicing?

20 A. Commercial litigation generally, that's a big
21 area, but civil trial work.

22 Q. Okay.

23 A. And appeals and a lot of energy work, a lot of
24 employment cases, and just the -- the things that Houston
25 trial practice is made out of.

1 Q. Understandable. What did you do after you
2 spent your time working as a partner of a law firm?

3 A. Well, I had a desire for government service.
4 I'd never really set it out (sic) to be a partner at a
5 law firm and continue that for the next -- last 30 or 40
6 years of my career, so I'd applied to the Department of
7 Justice when the George W. Bush administration came
8 around, went up to interview for two vacancies in deputy
9 AGs in the civil division.

10 I ended up withdrawing a -- within one week
11 of the interview because my daughter was on the autism
12 spectrum disorder. She was then four or five years old,
13 and it turns out to my surprise but after exhaustive
14 research, the school she was in in Houston did not have
15 any counterpart, incomparable service in either the
16 Washington or Baltimore metro area, so I had to withdraw
17 from consideration for that. That lit a fire under me.
18 Reminded me that's kind of what drew me to law in the
19 first place. And so --

20 Q. Let me stop you real quick. So that's back to
21 Houston, right?

22 A. I'm still in Houston.

23 Q. Okay.

24 A. Never left. But then I put in for an
25 application to Governor Perry's office for two district

1 court vacancies in 2002.

2 Q. Okay. And can you tell us what happened with
3 that application?

4 A. Successful. I was appointed to the 129th
5 District Court in Harris County, it's a civil district
6 court, in May of 2002.

7 Q. Okay. And can you tell us what happened after
8 that term and further on in your career?

9 A. I'm sorry. I didn't catch that last part.

10 Q. After you served as a judge, a civil court
11 judge in Houston, what did you do next in your career?

12 A. Well, involuntarily, the voters decided in
13 2008, that the -- they liked President Obama better than
14 the rest of the ticket. I went in-house with Nabors
15 Drilling as an independent oil and gas contractor -- an
16 oil and gas contractor, I should say, with worldwide
17 operations, based out of Houston, with about 25,000
18 employees and managed their civil -- all their
19 litigation.

20 Q. Okay. And then at any point, did you serve
21 another term as a judge in Houston?

22 A. Got remarried in 2013, wanted to do something
23 different and reapplied to Governor Perry for a district
24 court bench and was appointed in November of 2013 to the
25 334th District Court, also in Harris County, same kind of

1 court I presided over before.

2 Q. Okay. And so in total, about how long did you
3 serve as a judge?

4 A. I think altogether ten years.

5 Q. Okay.

6 A. Not including visiting judge service
7 afterwards.

8 Q. Okay. And then at some point, you become
9 deputy first assistant at the attorney general's office.
10 Can you talk to us about what took you from Houston to
11 Austin for that job?

12 A. Yeah. Not to dwell on bad news, but in 2016, I
13 along with most of my Republican colleagues on the bench
14 in Henderson County lost, and -- and I went back in
15 private practice for a couple of years. My father passed
16 in that time frame, and I stepped into a family business
17 that needed more care than I could give it as a full-time
18 litigator, so I juggled that with having left the law
19 firm being in -- a mediator, an arbitrator, available to
20 parties to resolve their disputes and also a visiting
21 judge when the administrative presiding judge in Houston
22 appointed me to service in that capacity.

23 Q. Okay. So what brings you to the attorney
24 general's office then? How does that -- how do you go
25 about applying for that job?

1 A. Well, it came, sort of, out of the blue. I had
2 a call from my friend Austin Kinghorn, who I'd known for
3 several years as a law clerk to one of the justices on
4 the Supreme Court before that on the Court of Appeals,
5 and he asked if I knew anyone who might be interested in
6 working for the attorney general, and I said, yeah, me.

7 Q. Okay. I want to talk to you about that.
8 Obviously, it's no surprise we're here because there have
9 been a lot of allegations made against Attorney General
10 Paxton. You're aware of this, I assume?

11 A. Sure.

12 Q. So when you get that call from Austin Kinghorn,
13 you're interested in the job, were you aware of all these
14 allegations at the time?

15 A. Yes.

16 Q. Okay. And can you talk to us a little bit
17 about -- a little bit about how you became aware of what
18 was going on?

19 A. News reports --

20 Q. Okay.

21 A. -- as probably most others did.

22 Q. Was that concerning for you?

23 A. Yes, it was.

24 Q. Can you talk to us a little bit about the
25 concerns that you had after reading the news reports?

1 A. Well, I knew the reason they were calling and
2 looking for people was because they had openings, and
3 that was the good news. The bad news was these were
4 serious allegations, serious charges that concerned me.
5 And when I -- I did -- go up to interview in Austin. And
6 for that reason, probably unlike any other interview I've
7 had, I took special time to press, in this case, First
8 Assistant Brent Webster on these charges.

9 Q. Okay. What were -- what were your --

10 A. Normally, the interviewee is the one trying to
11 sell --

12 Q. Right.

13 A. -- him or herself.

14 Q. You got to cross your T's and dot your I's.

15 Can you talk to us about what your main
16 concerns were coming into the Office of Attorney General?

17 A. Well, less -- you might be less interested in
18 this, but I have -- I had kids at the time in high school
19 and in junior high, so commuting back and forth to work
20 was a concern, where to live in Austin -- it's not
21 cheap -- was a concern, as well. So those were -- I
22 think you're asking something else.

23 Q. Well, that's a fair concern.

24 But I'm also interested, like, legally
25 speaking. You're walking into an office where the

1 attorney general himself is -- there have been
2 allegations made to the FBI?

3 A. Right.

4 Q. And so what about that was specifically
5 concerning to you in that situation?

6 A. Well, as I said, I spoke with Brent Webster
7 when I interviewed. And I was much more pointed and
8 brusque than I would normally be when I'm trying to get
9 the job. And I knew he was a prosecutor and, by all
10 counts, a good one. So I pulled no punches. I pressed
11 him, asked what I thought were fairly pointed, direct
12 questions as to, okay, this is the allegations I'm seeing
13 in the paper. What's the answer to that?

14 Q. Kind of like a cross-examination a little bit?

15 A. A little bit. And it had an evidentiary
16 quality to it as well because he -- very patiently, I
17 thought, given the busy nature of the office, the
18 constraints he was under, took the time with me to walk
19 me through the documents he'd assembled at that point.

20 Q. Okay. Now, after leaving that conversation,
21 can you talk to us about what your opinion was with
22 regard to taking the job as deputy first assistant
23 attorney general?

24 A. Well, I satisfied myself that these charges
25 were, in my opinion then, not well founded. I knew, as

1 part of my job, there were a number of interesting things
2 going on in the office, but I also knew, as part of that,
3 like the Google AdTech lawsuit was coming. In addition
4 to that, I'd be in charge of defending -- I think it was
5 then pending -- the Whistleblower Act lawsuit involving
6 these charges. So that was also a concern.

7 Q. Right. So I assume you take the job because
8 we're here right now?

9 A. I did.

10 Q. Okay. And I want to talk to you about -- well,
11 when exactly was it that you started as the deputy first
12 assistant?

13 A. December 3, 2020.

14 Q. Okay. So that's after everything kind of went
15 down with regard to October and the reports to the FBI,
16 right?

17 A. Yes.

18 Q. You mentioned that you were a part of,
19 ultimately, the whistleblower suit. Are you aware of
20 reports that were drafted within the office?

21 A. Yes.

22 Q. How many reports were there?

23 A. Two.

24 Q. Can you distinguish the two different reports
25 that were drafted on behalf of the Office of Attorney

1 General?

2 A. Yes. The first one started almost from the
3 time I was there. First, I remember seeing a draft
4 was -- sometime in January, I think early January,
5 because I was still working from home right after the
6 holiday. I remember that -- going through edits of 2021.
7 And that was released by our office in August of 2021,
8 publicly on our website.

9 Q. Okay.

10 A. The -- and that detailed the main whistleblower
11 allegations and what our office, after forensically
12 collecting documents, emails, exhaustively compiling
13 everything was able to put together to address these
14 allegations.

15 Q. And can you tell us who actually authored or
16 published that report?

17 A. The Office of the Attorney General.

18 Q. Okay. Now, is it safe to call that the
19 internal report?

20 A. Yes.

21 Q. Was there a secondary report that was drafted?

22 A. Yes. And if you have a copy, that would help
23 me be clear and precise. But I believe it is on Lewis
24 Brisbois' letterhead or in the format of a memo to the
25 Office of the Attorney General.

1 MR. DUTKO: Objection, Your Honor.
2 Testifying from a document not in evidence. Testifying
3 about a document not in evidence and hearsay.

4 PRESIDING OFFICER: Sustained.

5 Q. (BY MR. OSSO) There is a report in existence,
6 correct?

7 MR. DUTKO: Same objection, Your Honor.

8 A. There are two reports.

9 MR. OSSO: He's not testifying with regard
10 to what is stated in the document.

11 PRESIDING OFFICER: I'll overrule that. Go
12 ahead.

13 Q. (BY MR. OSSO) Okay. There is an existence of
14 a Lewis Brisbois' report, correct?

15 A. Yes.

16 Q. All right. We'll get there, but before we do,
17 I want to be very clear. You started in December
18 of 2020, right?

19 A. Yes.

20 Q. Your -- you've looked at both of these reports,
21 the internal report and the Lewis Brisbois' report,
22 right?

23 MR. DUTKO: Objection. Leading, Your
24 Honor.

25 MR. OSSO: It's only in the way of

1 foundation, Judge.

2 PRESIDING OFFICER: I'm going to sustain.

3 MR. OSSO: Yes, Judge.

4 PRESIDING OFFICER: Just, you know, ask the
5 questions one at a time.

6 MR. OSSO: Certainly.

7 THE WITNESS: It's hard for me not to rule,
8 by the way.

9 MR. OSSO: It's in their allegation, so
10 I'll talk about it.

11 Q. (BY MR. OSSO) Are you aware of the two
12 reports?

13 A. Yes.

14 Q. Have you read the two reports?

15 A. Yes.

16 Q. Now, were you present at the Office of Attorney
17 General during any of the subject matter involved in
18 those reports?

19 A. I want to answer no, and I think that's right.
20 But I would have to look at the reports to absolutely
21 confirm, but I think everything that was detailed in both
22 reports --

23 Q. Okay.

24 A. -- predates December of 2020.

25 Q. Sure. Well, let me be more specific. Are you

1 aware that the Office of Attorney General was involved in
2 an open records request involving Nate Paul?

3 A. From -- historically, I'm aware. I wasn't
4 there at the time.

5 Q. Okay. Are you aware that they were involved in
6 litigation with the Mitte Foundation?

7 A. Yes, again, historically.

8 Q. And are you aware that there was a non -- or an
9 informal guidance letter with regard to nonjudicial
10 foreclosures?

11 A. Yes.

12 Q. Now, were you present at the office during any
13 of those events?

14 A. No.

15 Q. Were you present at the office during the
16 hiring of Brandon Cammack?

17 A. No.

18 Q. So is it safe to say that you don't have
19 personal knowledge of any of those events that are
20 authored in the reports?

21 A. Yes.

22 Q. All right.

23 MR. OSSO: Give me one second, Judge. I
24 intend to get an exhibit for the witness. Copy for the
25 Court. Copy for Counsel.

1 Q. (BY MR. OSSO) Mr. Dorfman, would you take a
2 second to look at the copy of -- my exhibit numbers got
3 off -- attorney general Exhibit 23, and let me know
4 whether you recognize the document.

5 A. I have looked at it, and I do recognize it.

6 Q. What is this document?

7 A. This is what you're referring to as the -- or
8 referred to as the Lewis Brisbois' report, the second
9 report in time that our office released on these matters.
10 Well, I say "our office." This was outside counsel
11 sending it to the office.

12 Q. Okay. And is this a fair and accurate copy of
13 the report issued by Lewis Brisbois on behalf of the
14 attorney general?

15 A. Near as I can tell.

16 MR. OSSO: Okay. At this time, Judge, I
17 would offer attorney general Exhibit 23.

18 MR. DUTKO: Your Honor, this is -- there's
19 so much hearsay in there I don't know where to begin.
20 This is -- the document itself is hearsay. Within this
21 document are conversations between people that are
22 out-of-court statements that are hearsay. It relies on
23 documents that are out-of-court statements that are
24 hearsay. It also relies on people talking to other
25 people who talk to other people, which is three layers of

1 hearsay.

2 So my objection, Your Honor, is hearsay
3 squared.

4 PRESIDING OFFICER: Sustained.

5 MR. OSSO: May I respond briefly? My
6 understanding -- and, Mr. Arroyo, if you would pull up
7 Article VII, please. My understanding is that the House
8 Board of Managers' allegation in this case is that
9 Ken Paxton and the Office of Attorney General issued a
10 report that basically alleged false and misleading facts.
11 This is a legally operative document in this case.

12 MR. DUTKO: Your Honor, may I respond?

13 MR. OSSO: And the House doesn't want it in
14 evidence. I don't understand how they can argue it's a
15 lie if it's not even in evidence before the jury.

16 MR. DUTKO: Your Honor, I hope Counsel is
17 not trying to mislead this Court because this Article of
18 Impeachment is based on the internal AG report. This
19 report, the Lewis Brisbois' report, came out after the
20 Article of Impeachment, and so I'm sure Counsel would
21 like to retract his statement and not mislead this Court.
22 Regardless, this is so much levels of hearsay, and this
23 thing up on the screen doesn't get around that.

24 MR. OSSO: I don't wish to retract my
25 statement at all. I don't think that the allegation is

1 necessarily clear, and I'm going to continue to argue
2 that this is an -- this is a legally operative fact.

3 MR. DUTKO: I would suggest, as an officer
4 of the court, that he retract it because this report has
5 nothing to do with this article.

6 PRESIDING OFFICER: Come forward,
7 gentlemen.

8 (At the bench, off the record.)

9 PRESIDING OFFICER: For the record, I
10 sustained that objection and it stands.

11 Go ahead.

12 MR. OSSO: May I proceed, Judge?

13 PRESIDING OFFICER: Pardon?

14 MR. OSSO: May I proceed?

15 PRESIDING OFFICER: You may proceed.

16 MR. OSSO: Okay.

17 PRESIDING OFFICER: Hold on one second.
18 Our jurors left the building for a moment. I did not
19 notice. Give a Senator a minute and they're gone. We
20 will be taking a break shortly, members, okay? We've
21 just been back 90 minutes, and we normally take a break
22 between 90 minutes and a little bit more. I think we're
23 still missing a few. That was a short meeting at the
24 bench compared to other ones, so they were basing their
25 exit on their experience here in the last two weeks.

1 MR. OSSO: I could tell where it was going
2 so...

3 PRESIDING OFFICER: Good news is the
4 cricket also left the chamber.

5 MR. OSSO: I just think we're more
6 entertaining, Mr. Dorfman and I, so the cricket's out of
7 here.

8 PRESIDING OFFICER: I believe all are
9 present and accounted for.

10 You may proceed.

11 MR. OSSO: Thank you, Judge.

12 Q. (BY MR. OSSO) Before we talk about the
13 internal report, I want to talk to you about your time at
14 the Office of Attorney General in December of 2020.

15 Can you talk to us about what was going on
16 as far as it relates to the productivity in the office at
17 that time?

18 A. It was a very busy time. I think I mentioned
19 the Google AdTech lawsuit. That had been years, as I
20 understood it, in the making. We were about to release
21 the complaint at long last in federal court. It was a
22 huge and extraordinarily complex case. You're taking on
23 Google. So I was told if I took the job, I would have
24 front-line responsibility for at least overseeing that,
25 and we intended to hire outside counsel so that was a big

1 part of that.

2 At the time, of course, the election was
3 still going on. There were still election challenges.
4 And I know people were talking to the office about that.
5 That ended up resulting in the Texas versus Pennsylvania
6 lawsuit. So my first week on the job -- I think my first
7 day on the job, we went to --

8 Q. I'm going to slow you down. I'm going to break
9 that up, Mr. Dorfman.

10 A. Sorry.

11 Q. So you're talking about the election. I assume
12 it's the presidential election, correct?

13 A. Yes.

14 Q. And can you talk about the affect that that had
15 on the workload of the Office of Attorney General at the
16 very beginning of 2021?

17 A. Well, I had nothing to gauge it by, but it was
18 an extraordinarily busy time.

19 Q. And did it appear that the morale -- that
20 people were working hard at the Office of the attorney
21 general?

22 A. Oh, absolutely.

23 Q. And despite the allegations that were made
24 against Attorney General Paxton, people were still
25 working at the office?

1 A. Yes. In my first two weeks there, I don't
2 think I made it home before 8:00 p.m. certainly.

3 Q. Did you have any --

4 A. I --

5 Q. Sorry to cut you off. But did you have any
6 concerns about the work pace and work flow at the office?

7 A. No, it was fun. I mean, if that had been for
8 the next two years, I would have had concerns.

9 Q. Okay. As far as burnout goes or things like
10 that, were there any concerns about anything like that?

11 A. Specifically, December 2020?

12 Q. More into 2021.

13 A. Yes. As 2021 went on, obviously, the Biden
14 administration came into office. Day one, people may
15 remember this, a list, a raft of executive orders -- we
16 were the first -- and I'm proud of this. We were the
17 first attorney general -- state attorney general's office
18 to obtain a preliminary injunction against one of those
19 executive orders.

20 It was the day one immigration order that
21 imposed a hundred-day moratorium on deportations even
22 where congressional statute dictated that removal must
23 take place of a deportable alien within 90 days. And so
24 we challenged that in court -- federal court here in
25 Texas and won. And, of course, there were other

1 executive orders that we were challenging and filing
2 lawsuits against.

3 I was the voice in the office from the
4 beginning then. But throughout this time, and as we
5 continued to do the work that, look, it's great to be in
6 court. It's great for our lawyers to go into court in
7 the daytime and spend the whole day and file briefs at
8 night, but you can only do that pace for so long. So I
9 wanted us to be careful, husband our resources, use them
10 wisely, pick the right cases, prioritize appropriately.

11 Q. Utilize your resources?

12 A. To maximize the good work we were doing.

13 Q. During that time in fall of 2020, winter 2020
14 and into spring of 2021, are you guys working in the
15 office, or are you working at home at this point?

16 A. Where I was, everyone was in the office. Now,
17 some of the attorneys in the divisions, the litigation
18 divisions, did a combination.

19 Q. Okay.

20 A. In a lot of the cases, the courts were shutdown
21 due to COVID, still, in many cases. So even though we
22 had cases all over the state, you might have a hearing in
23 San Antonio --

24 Q. Right.

25 A. -- on this computer in your office, and then

1 you turn and have a Zoom hearing in Midland or El Paso 30
2 minutes later.

3 Q. Understood. And --

4 A. Which helps. Less travel.

5 Q. Right. You said that you were deputy first
6 assistant attorney general. Are you aware of who your
7 predecessor in that position was?

8 A. I believe it was Ryan Bangert.

9 Q. Okay. Can you talk to us about your role, at
10 the time, as the deputy first assistant attorney general?

11 A. The core responsibility I had is to oversee the
12 litigation divisions, both criminal and civil. As I'm
13 not a criminal lawyer, never have been, never was a
14 criminal judge for that matter, I rely very heavily on my
15 criminal division deputy, that's Josh Reno, and -- to
16 manage those responsibility (sic) and report up to me and
17 -- as needed. But the civil litigation divisions, I feel
18 very comfortable overseeing them.

19 In addition to that, I have overall
20 responsibility at the executive level for policies,
21 procedures. From time to time, I've also had direct
22 report responsibility over human resources, as I do
23 currently, and also over the communications team.

24 Q. So a wide array of divisions?

25 A. Yes.

1 Q. Now, are you familiar with whether, at any
2 point, special litigation was under the oversight of your
3 position, deputy first assistant attorney general?

4 A. I don't think it has been since I've been
5 there. I think it was at one time. Again, I don't know
6 this personally.

7 Q. And can you tell us now who oversees the
8 special litigation division?

9 A. Ralph Molina.

10 Q. Okay. And then under Ralph Molina, or at any
11 point in time, was it a Patrick Sweeten?

12 A. Yes.

13 Q. Is he still working in that position, moved to
14 a different position?

15 A. He's currently our lead counsel in the buoys --
16 the buoys case in the Rio Grande River, but that's on
17 loan from the Governor's office.

18 Q. Did you have the occasion of working at the
19 Office of Attorney General while he was in charge of
20 special litigation?

21 A. Absolutely, yeah. I mean, until, I think,
22 earlier this year, he joined the Governor's office. Up
23 till that point, he was there the entire time I was
24 there.

25 Q. Okay. Did you feel like you had to help him

1 with his job, or did he appear to be qualified in
2 handling his business in that position?

3 A. Patrick?

4 Q. Patrick.

5 A. Very talented lawyer.

6 Q. Okay.

7 A. Very experienced. Very capable. If I had one
8 criticism of him, it's that he's in court more and
9 managing less. We wanted him to clone Patrick Sweeten,
10 so we had a team of Patrick Sweetens. But Patrick is so
11 good and so natural in the courtroom, I think he -- he
12 longed to be there.

13 Q. Okay. Does it feel -- do you feel that Patrick
14 is the kind of guy that takes pressure off you if you
15 didn't have to watch the special litigation division?

16 A. Certainly. Those are -- they're the special
17 litigation division for a reason. I think that was a
18 creation of Attorney General Abbott to have the tip of
19 the spear. We have a lot of litigating divisions. We
20 have our general litigation division, which are
21 outstanding. All our divisions are very good, do
22 different things.

23 And special litigation is the -- you know,
24 you need to be at the courthouse in 30 minutes; we just
25 found out the Obama administration has filed -- is doing

1 this. They've issued that executive order. No time.
2 Let's go.

3 Q. Okay.

4 A. And so if I had to oversee that as well as
5 everything else, you're right. It would put more
6 pressure on me.

7 Q. I want to fast-forward and talk to you about
8 the internal investigation report. You said you had no
9 personal knowledge of the contents of the subject matter
10 of that report, right?

11 A. Say that again, please.

12 Q. You had no personal knowledge. You weren't
13 personally there for the subject matter that is in the
14 internal report authored by the Office of Attorney
15 General?

16 A. I wasn't there at the time these events
17 happened.

18 Q. Were you present at the Office of Attorney
19 General when the report was being drafted?

20 A. Yes.

21 Q. Can you talk to us about who was responsible
22 for that and, if you know, what process went into
23 drafting that report?

24 A. I think in the first instance, we relied on an
25 office-wide forensic compilation of documents, emails, et

1 cetera, that were relevant. Brent Webster took the lead
2 in compiling that, and then we had a team. And again, as
3 early as January I was editing drafts with others, Josh
4 Reno; later Murtaza Sutarwalla, a deputy for legal
5 counsel -- legal policy; Austin Kinghorn, Enrique Varela.
6 There were others, but I may have left them out.

7 Q. Okay. And can you talk to us about what your
8 role was with regard to the publishing of that report, or
9 at least getting the report ready to be published?

10 A. Well, I don't think we published it until
11 August of 2021, and that probably is a reflection, one,
12 of just how busy the office was and how much other stuff
13 there was to attend to. But I'm sure I revised and
14 edited and redlined, at least five or six times, the
15 entire document front to back.

16 Q. Okay. Now, understand --

17 A. And others did as well.

18 Q. Right. Understandably, you weren't present for
19 these events that the document summarizes. Did you play
20 a hand in trying to find documentation to support the
21 positions taken in that report?

22 A. More oversaw that process.

23 Q. Can you talk to us about your oversight of that
24 process?

25 A. Yeah. I felt very strongly this had to be --

1 it was going out as a report of the office. I believe
2 the attorney general had said that these allegations are
3 baseless, and I will investigate and present the facts
4 and let the voters decide, words to that effect.

5 Q. Sure.

6 A. I wasn't there. And so this was a fulfillment
7 of that commitment. I took it as our charge to lay it
8 out there, and I think it's fair to say that the
9 document -- my emphasis throughout this process of
10 editing was, Look, this needs to be the voice of the
11 agency. It's not any one person. It's all of us, and
12 it's objective; it's factual both in tone and substance.
13 If we make a conclusion or -- from the facts that we
14 presented from the documents that isn't supported by the
15 document, let's not make that conclusion. Let's take
16 that out and let the -- let the people reading it make
17 their own decisions.

18 Q. And so, really, you were just trying to make
19 sure that they weren't making allegations that they can't
20 back up?

21 MR. DUTKO: Objection. Leading.

22 PRESIDING OFFICER: Sustained.

23 Q. (BY MR. OSSO) Would you agree that your job
24 was to make sure that the claims were verified?

25 MR. DUTKO: Same objection, Your Honor.

1 PRESIDING OFFICER: Restate.

2 MR. OSSO: Sure.

3 Q. (BY MR. OSSO) Was it your job to make sure
4 that there was evidence or at least something to
5 corroborate statements that were made?

6 PRESIDING OFFICER: Was there an objection
7 there?

8 MR. DUTKO: Not to that, Your Honor.

9 PRESIDING OFFICER: I didn't think so,
10 okay.

11 A. I certainly viewed that as my job, yes.

12 Q. (BY MR. OSSO) All right. Now, you mentioned
13 earlier that, at some point, you get involved into the
14 lawsuit in this case, and I want to talk to you about the
15 lawsuit, okay.

16 Can you tell us your understanding of when
17 the whistleblower lawsuit was first filed against the
18 Office of Attorney General?

19 A. I think it was November of 2020.

20 Q. Can you tell us who the named parties within
21 that lawsuit are?

22 A. I'm going to struggle on their first names.

23 Q. No problem.

24 A. Ryan Vassar.

25 Q. Okay.

1 A. Mr. Maxwell's first name is --

2 Q. David Maxwell?

3 A. David Maxwell. Thank you.

4 Q. All right. Mark Penley ring a bell?

5 A. Mark Penley and Blake Brickman. Sorry.

6 Q. Okay. And more focused on who is the named
7 party or the named defendant in that lawsuit?

8 A. There's just one defendant. The Office of the
9 Attorney General.

10 Q. Okay. Was Ken Paxton specifically named as the
11 party to the lawsuit?

12 A. No.

13 Q. All right. So it's the Office of Attorney
14 General on the filing?

15 A. Yes.

16 Q. And what is the first thing that you-all do --
17 who all's working on the lawsuit with you at this time?

18 A. About the same time I was interviewing, I think
19 they were interviewing for outside counsel, so I knew
20 Lewis Brisbois had been hired. And either the first or
21 second week, we might have had a phone conference or
22 meeting with them. At that point, I think the lawsuit
23 had been amended at least once. There was later a second
24 amended, and so I was working on it. Austin Kinghorn was
25 working on it. The first assistant would have been

1 involved.

2 Q. How about Chris Hilton? Was he working on it?

3 A. I think that's right. I think Chris Hilton was
4 also from the start there. He certainly was later.

5 Q. Sure.

6 A. Enrique Varela, as well, who worked with
7 Austin Kinghorn.

8 Q. And I'm going to cut you off. You mentioned
9 Lewis Brisbois. Can you explain to us what Lewis
10 Brisbois' job was with regard to the whistleblower
11 lawsuit against the Office of Attorney General?

12 A. To be outside counsel. Bill Helfand is an
13 attorney I'd known in Houston for at least 20 years.
14 Very good lawyer specializing in government work,
15 especially defense like Section 1983 federal court
16 lawsuits; many of which, if not most, have an employment
17 quality to them, the sheriff being sued by his deputy,
18 something like that.

19 Q. And just without getting into the contents of
20 the document that I showed you earlier, the Lewis
21 Brisbois' report, was that authored by the attorneys that
22 were outside counsel for the Office of Attorney General?

23 A. Yes, Mr. Helfand and others.

24 Q. Okay. Now, in that litigation, did you-all
25 file a plea to the jurisdiction?

1 A. Yes, we did.

2 Q. Okay. Can you explain to us what a plea to
3 jurisdiction is?

4 A. A plea to the jurisdiction is a document that
5 says to the court, every court must first assess whether
6 it has --

7 Q. Speak into the microphone.

8 A. Every court must first assess -- that was too
9 loud -- whether it has jurisdiction to entertain a
10 lawsuit. And the State of Texas cannot be sued for money
11 damages without its consent, and this body and the House
12 are the ones that must expressly waive, by statute, the
13 immunity from lawsuit, the sovereign immunity of the
14 State of Texas, in order for plaintiff to recover money
15 damages. They argued the plaintiffs in this case that
16 the whistle --

17 Q. I'm going to -- I'm going to stop you, and I'm
18 going to break that down.

19 A. Sure.

20 Q. You know, I didn't go to Yale, so you got to
21 make it slow for me.

22 MR. OSSO: Mr. Arroyo, would you please put
23 up Article VIII onto the overhead screen.

24 Q. (BY MR. OSSO) So essentially, plea to
25 jurisdiction -- well, let me ask you this: Is that

1 something that is commonly filed in lawsuits in your
2 experience as a civil litigator? Or at least with regard
3 to Office of the Attorney General?

4 A. I was going to say at the Office of the
5 Attorney General, I'd say probably 90 percent of our
6 defensive cases, at least the ones I'm most familiar
7 with, we file plea to the jurisdiction in almost every
8 case challenging the most recent enactments of the
9 Legislature arising out of the last session, which have
10 been all those legal challenges that have been brought in
11 the last few months. We filed pleas of jurisdiction, I
12 think, in every one of those, saying this suit -- this
13 suit can't go forward. The Court has no jurisdiction.
14 The state is immune.

15 Q. Okay.

16 MR. OSSO: Now, Erick, if you could just
17 blow up the second paragraph, specifically all the way
18 down to -- well, this part's fine right here, if you
19 could blow that up.

20 Q. (BY MR. OSSO) Okay. So I'm just going to read
21 the article, Article VIII to you, Mr. Dorfman, which
22 states that, Specifically, Paxton entered into a
23 settlement agreement with whistleblowers that provides
24 for payment of the settlement from public funds. The
25 settlement agreement stayed the wrongful termination suit

1 and conspicuously delayed the discovery of the facts.

2 The next page goes on to say, And testimony
3 at trial to Paxton's advantage -- sorry.

4 PRESIDING OFFICER: Let me get it up on the
5 screen.

6 MR. OSSO: Yep.

7 PRESIDING OFFICER: Okay. Continue.

8 Q. (BY MR. OSSO) To Paxton's advantage which
9 deprived the electorate of its opportunity to make an
10 informed decision when voting for attorney general.

11 So at what time did you -- we know that the
12 lawsuit was filed in November of 2020. When was it that
13 the Office of Attorney General actually files the plea to
14 jurisdiction?

15 A. Not exactly sure, but I believe it was
16 January of 2021.

17 Q. Okay. And when did the Office of Attorney
18 General engage in settlement agreements with the
19 whistleblower plaintiffs in this case?

20 A. Almost exactly two years later.

21 Q. Okay. So when we're talking about the plea to
22 jurisdiction, we are two years before settlement
23 discussions even come into play, right?

24 A. Right.

25 Q. Now, what was -- I think in your motion for

1 plea to jurisdiction it was in two parts, correct?

2 A. I'd have to see it.

3 Q. Well, did you talk about sovereign immunity?

4 A. Absolutely.

5 Q. Can you explain to us how sovereign immunity
6 comes into play in your plea to jurisdiction?

7 A. Well, I think I covered that. The suit -- the
8 State is immune from suit unless there's an express
9 statutory waiver from the Legislature.

10 Q. Okay. And then the second part of that was
11 that you talked about separation of powers?

12 A. Yes.

13 Q. Can you talk about that to us?

14 A. Well, let me go back and cover the first one,
15 if you don't mind.

16 THE WITNESS: May I, Your Honor?

17 Q. (BY MR. OSSO) If you'd please go back and --

18 A. I need to qualify my comments. What you're
19 describing is -- you've reminded me and refreshed my
20 memory that the -- yes, the Whistleblower Act is exactly
21 the type of express statutory waiver of sovereign
22 immunity that allows one to sue the state, in this case
23 for money damages. But the case law has been clear, and
24 we argued it, that unless you meet all the elements of a
25 Whistleblower Act claim, there is no waiver of sovereign

1 immunity. There's no jurisdiction for the court to
2 proceed, and we alleged that they -- the plaintiffs in
3 the case had not met their burden of establishing all the
4 elements of the whistleblower claim, and therefore
5 sovereign immunity still applied.

6 Q. Okay. And was that file in the plea of
7 jurisdiction -- plea to jurisdiction, was that made in
8 good faith and based on your legal research?

9 A. Yes.

10 Q. All right. Now, I want to focus back onto the
11 article that states specifically --

12 MR. OSSO: If you would go back to the
13 other page, Erick. It talks about -- I need you to zoom
14 in.

15 Q. (BY MR. OSSO) The settlement agreement stayed
16 the wrongful termination case. I just want to be clear,
17 when you-all filed the plea to jurisdiction, that had
18 nothing to do with the settlement agreement, right?

19 A. We weren't even discussing settlement at that
20 time, no.

21 Q. Okay. Now, what is the result of a plea to
22 jurisdiction with regard to discovery in a lawsuit?

23 A. The plea to jurisdiction -- again, every court
24 must first assess whether it has jurisdiction. If it
25 doesn't, its powerless to order discovery or proceed any

1 further. And the -- this -- the Legislature has passed
2 an interlocutory appeal so that even if we lose the plea
3 to the jurisdiction -- if we win, the case is over and
4 dismissed. If we lose the plea to the jurisdiction, we
5 have the right to immediately appeal, when normally you
6 would have to wait till the end of a case to file your
7 appeals.

8 Q. And --

9 A. And the immediate appeal stays the -- the
10 Court's jurisdiction. It can't proceed further in any
11 capacity until the appeal is resolved.

12 Q. Okay. Now, was that plea to jurisdiction filed
13 to stop the discovery getting out to the public in this
14 case?

15 A. I don't understand your question.

16 Q. You just said that a plea to jurisdiction
17 essentially stops the discovery from occurring in a
18 lawsuit, right?

19 A. It stops anything from occurring in the trial
20 court.

21 Q. Okay. So my question to you is: When you-all
22 filed the plea to jurisdiction, did you do so because you
23 felt that the law applied in that situation, or did you
24 do so because you wanted to stop discovery from getting
25 out to the public?

1 A. We did it because we thought the State had
2 sovereign immunity, and it was our duty to assert that as
3 we do in so many of our cases. That does have the effect
4 of stopping discovery from going forward and saving the
5 taxpayers the expense of that discovery and our lawyers
6 the time. You know, discovery is really where the time
7 gets taken in trial cases.

8 Q. Okay. I want to talk to you about the
9 procedural posture of the plea to jurisdiction. Can you
10 talk to us about the first court that ultimately ruled on
11 you-all's plea to jurisdiction in the whistleblower
12 lawsuit?

13 A. The first court.

14 Q. Yes.

15 A. That was the Third Court of Appeals here in
16 Austin.

17 Q. Well, did it -- did it go to the district court
18 prior to -- prior to that filing?

19 A. Oh, I'm sorry. Yes, you're right.

20 Q. Can you talk to us about that?

21 A. We had some discussions back and forth. I
22 don't know how much detail you want to go into, but with
23 the plaintiffs' attorneys about scheduling a hearing on
24 two things; they wanted to have a temporary injunction
25 hearing. I think initially they said they needed four

1 days. The only purpose of a temporary injunction hearing
2 in this context would be to -- for Mr. Maxwell and
3 Mr. Vassar to seek reinstatement under the Whistleblower
4 Act. So to be reinstated to their position with the
5 Office of the Attorney General.

6 Q. So are you saying that Mr. Maxwell and
7 Mr. Vassar actually wanted to come back to the Office of
8 the Attorney General?

9 A. Yes. And I think that's still in their live
10 pleading.

11 Q. Okay.

12 A. Well, their pleading. I shouldn't say live.

13 Q. Now, what was the ultimate decision by the
14 district court with regard to that plea to jurisdiction?

15 A. Well -- so we were trying to schedule the plea
16 to the jurisdiction before, one week before, something,
17 one day, whatever, because the Court can't have a
18 temporary injunction hearing until it's heard and ruled
19 on the plea to jurisdiction.

20 The plaintiffs requested and the court
21 agreed to set them on the same day, but that had the
22 effect of -- meaning before the Judge ruled, we were set
23 to a temporary injunction hearing, which got underway and
24 started. And there was even testimony taken I think from
25 Mr. Mateer for some time before we got the Court of

1 Appeals to agree that by proceeding with the temporary
2 injunction, she had implicitly ruled, the Judge, and
3 implicitly ruled that she had jurisdiction.

4 Q. So ultimately -- and I'm going to cut you off.

5 Ultimately, the case goes up to the Third
6 Court of Appeals?

7 A. Yes.

8 Q. Okay. So the district court didn't rule on the
9 plea to jurisdiction necessarily?

10 A. I'd have to go back and check. I think she may
11 have written an order expressly denying it, but -- but
12 not until after we're already gone up to the third court
13 and said we need an intervention.

14 Q. Okay. And can you talk to us about what
15 happened at the Third Court of Appeals?

16 A. They set oral argument and I can't remember
17 exactly when that was, but I believe it was in October
18 of 2021 when they issued their opinion, maybe 30 pages.

19 Q. So almost a year later while that plea to
20 jurisdiction is still pending, right?

21 A. Well, the plea would have been filed in
22 January, I think, and so you're talking nine months
23 later.

24 Q. Okay. And can you tell us how the Court ruled,
25 the Third Court of Appeals ruled?

1 A. Third Court of Appeals agreed with the
2 plaintiffs that the trial court had jurisdiction that our
3 reading of the Whistleblower Act on the two prongs you
4 mentioned was not -- was wrong. Well, they -- they
5 disagreed with it.

6 Q. Okay. And in response to the Third Court of
7 Appeals ruling in that case, what did you-all do on
8 behalf of the Office of attorney general?

9 A. We appealed that to the Supreme Court of Texas
10 by filing a petition for review, asking them to take the
11 case and reverse the third court's ruling.

12 Q. Okay. Now, do you recall when the appeal to
13 the Supreme Court of Texas was filed?

14 A. Not exactly. It would have been within 30
15 days, maybe 45, of that October, I think, '21, 2021
16 opinion from the third court.

17 Q. Okay. And at this point in time, what is going
18 on with the litigation in the whistleblower lawsuit?

19 A. Only the appeals process.

20 PRESIDING OFFICER: Counsel, excuse me. I
21 promised a break about 15 minutes ago for the jurors.
22 They've been in a two-hour sit down.

23 MR. OSSO: Now's an okay time to stop.

24 PRESIDING OFFICER: I don't want to
25 interrupt but is this a good time?

1 Members, it's five minutes to 4:00. Come
2 back at 4:15. 20-minute break.

3 (Recess taken from 3:55 p.m. to 4:23 p.m.)

4 PRESIDING OFFICER: Bailiff can bring in
5 the witness, please. Do we all have the jurors?
6 Mr. Osso is the correct pronunciation? I want to be sure
7 I have that right.

8 MR. OSSO: Thank you, Judge.

9 Q. (BY MR. OSSO) Mr. Dorfman, we were just
10 talking about the effect that a plea to jurisdiction
11 actually has on the discovery in the case. Now, I want
12 to focus --

13 MR. OSSO: Erick, if you wouldn't mind
14 focusing on the next page, top paragraph, which is the
15 bottom paragraph of Article -- excuse me, bottom
16 paragraph of Article VIII.

17 Q. (BY MR. OSSO) I want to read that to you.

18 Testimony at trial to Paxton's advantage,
19 which deprived the electorate of its opportunity to make
20 an informed decision when voting for attorney general.

21 Now, throughout the course of the lawsuit
22 that the whistleblowers filed, are you aware of whether
23 specific facts or allegations became public?

24 A. Yes.

25 Q. And could you turn your mic on, sir?

1 PRESIDING OFFICER: Hit that white button.

2 MR. OSSO: Better. Okay. I'm going to
3 reask that question.

4 THE WITNESS: Please.

5 Q. (BY MR. OSSO) Were you aware of whether the
6 specific facts or allegations with regard to the
7 whistleblower suit became public?

8 A. Yes.

9 Q. Can you tell us about in which ways, if you
10 know, they became public?

11 A. Well, we talked about that earlier. Before I
12 came to interview at the office, there were news stories
13 that contained allegations made by the whistleblowers.
14 It was about that same time, maybe a little later, that
15 the lawsuit was filed. That was a news story and a very
16 detailed state court petition, that's public record,
17 public filing, covered in press accounts. And then I
18 think they amended that petition twice between the
19 original filing and early February.

20 So there was a first amended maybe in
21 December and then in February, just before the plea to
22 jurisdiction hearing and the temporary injunction
23 hearing, they filed a second amended petition which I
24 think is the last one, but that's 63 pages, very detailed
25 allegations.

1 Q. I'm going to stop you real quick just to
2 clarify. When you say "they filed and amended
3 petitions," can you talk to us a little bit about --
4 well, who filed those petitions?

5 A. The four plaintiffs through their lawyers.

6 Q. So David Maxwell, Mark Penley, Ryan Vassar, and
7 Blake Brickman?

8 A. Yes.

9 Q. And did those petitions include specific facts
10 that they were alleging --

11 A. Yes.

12 Q. -- Attorney General Paxton and the Office of
13 Attorney General committed?

14 A. Yes.

15 Q. Okay. And those pleadings were actually
16 available to the public, correct?

17 A. Yes.

18 Q. You can look them up online?

19 A. Yes.

20 MR. OSSO: So, Erick, if you don't mind
21 going back one page to the bottom paragraph, bottom
22 clause.

23 Q. (BY MR. OSSO) Article VIII alleges that,
24 Paxton entered into a settlement agreement with
25 whistleblowers that provides for payment of the

1 settlement from public funds. This settlement agreement
2 stayed the wrongful termination suit and conspicuously
3 delayed the discovery of facts.

4 Is that allegation true?

5 A. No. Can I explain?

6 Q. Please do.

7 A. The settlement agreement didn't stay the
8 wrongful termination suit. It was on appeal. And our
9 petition for review was pending with the Supreme Court of
10 Texas. That court doesn't have to take any case it
11 doesn't want to, so you have to convince it to take the
12 case. We had made a case. We'd made -- filed two briefs
13 to do that.

14 Q. I'm going to stop you, because we're going to
15 get there. And I want to break that down.

16 A. All righty.

17 Q. But with regard to conspicuously delaying the
18 discovery of facts --

19 A. The settlement agreement didn't do that.

20 Q. And weren't the facts available to the public
21 at this point anyway?

22 A. More than we discussed. Obviously the
23 petitions I mentioned, but the Court of Appeals' decision
24 is 30 pages and has bullet point, block-paragraph
25 recitals from the pleadings. So it was restated. The

1 most serious allegations that the complaints -- the
2 petitions made were restated in the Court of Appeals'
3 decision which also garnered news attention when it came
4 out.

5 Q. Right. And you had talked about -- I think
6 opposing counsel actually held up a document that was the
7 Third Court of Appeals' decision against the Office of
8 Attorney General in this case, correct?

9 A. I'm sorry. What was your question?

10 Q. Essentially that the Third Court of Appeals
11 ruled against the Office of Attorney General?

12 A. Correct.

13 Q. So you filed what with the Supreme Court?

14 A. Petition for review. An appeal, notice of
15 appeal at the Third Court's decision with a petition for
16 review, asking the Supreme Court to take the case.

17 Q. Can you explain to us -- I deal predominantly
18 with criminal law. Can you deal -- can you explain to us
19 kind of how the process works when you file a petition
20 for review with the Supreme Court of Texas?

21 A. It's in the form of a brief and very much like
22 what we would call a merits brief, but it's not. It is
23 simply an argument for why this case is sufficiently
24 important to be one of the 100 or 110 cases that the
25 Supreme Court can take from the entire state and rule on.

1 They only hear so many oral arguments or take so many
2 cases so you have to convince them this is worthy of
3 their attention. We tried to do just that.

4 Q. Okay.

5 A. And our opponents filed a brief between our
6 initial and reply brief, explained to the Court they
7 should not and they should let the Third Court of Appeals
8 case stand in which case the case would have then gone
9 back to the trial court.

10 Q. Okay. And so the Third Court of Appeals'
11 ruling was actually up for appeal, right?

12 A. Yes.

13 Q. Was that ultimately ruled on, that appeal?

14 A. Not to this day, no.

15 Q. Okay. Can you talk to us -- are there certain
16 sessions or time periods where the Supreme Court tends to
17 hear cases?

18 A. I think that's right. I would defer to
19 people -- bless you -- who -- who argue in front of the
20 Supreme Court for a living, but yes.

21 Q. Okay. Do you feel that -- I guess at any time
22 the Supreme Court can pull your case out of a hat to hear
23 it, right?

24 A. I think that's right.

25 Q. Is that --

1 A. They usually confer as a body, I think, in
2 person, although maybe by remote sometimes, too --

3 Q. Right.

4 A. -- especially during COVID.

5 Q. Okay. Does that have an affect on your ability
6 to negotiate or work out a settlement with another party,
7 or does it affect the other party's, maybe, goal or them
8 wanting to settle?

9 A. I don't know what the "what" is in your
10 sentence.

11 Q. The potential for the Supreme Court to pull
12 your issue out of a hat and have it come before them?

13 A. Absolutely. It's a significant moment in a
14 case. If they take it, I think the common -- with
15 conventional wisdom would be, they're not taking the
16 third court's case if they decide to take it to affirm it
17 because they could just do that by denying the petition
18 for review, save themselves time.

19 Q. So what does that mean to you in the event that
20 they might decide to take your case for --

21 A. It would have altered our assessment of the
22 case and made it -- we would have felt very good about
23 our chances for winning the appeal and dismissing the
24 case outright.

25 Q. Would that give you the upper hand potentially

1 in settlement negotiations?

2 A. So much so that it might make settlement
3 impossible.

4 Q. Okay. Do you think, if you know, that that had
5 any effect on this case coming to a settlement or at
6 least settlement discussions starting in this
7 whistleblower lawsuit?

8 A. I think that's why settlement negotiations
9 started.

10 Q. Okay. About what time did settlement
11 negotiations actually begin in this case?

12 A. I'm not sure whether it was the very end of
13 December or the first week or so in January of 2021.
14 About -- somewhere in that time.

15 Q. 2021 or 2022?

16 A. Sorry. 2023.

17 Q. 2023?

18 A. December 2022 and January 2023. Thank you.

19 Q. Now, just to clarify for the Senators, the
20 petition for review probably sat with the Supreme Court
21 for quite a while, did it not?

22 A. Yes, I think we filed our initial petition,
23 our -- yeah, initial brief in July of 2022.

24 Q. Okay. Who reached out to who to discuss
25 settling the whistleblower lawsuit?

1 A. They reached out to us, my recollection.

2 Q. And when you say "they," you mean the
3 whistleblowers' attorneys?

4 A. Yes.

5 Q. Okay. And can you talk to us about when -- if
6 you know, when that occurred?

7 A. Same time, late December, early January
8 of 2023.

9 Q. And what did you do in response to them
10 reaching out?

11 A. We discussed internally whether we wanted to --
12 as they were requesting, go to mediation with a
13 professional mediator in the Austin area.

14 Q. Did -- what kinds of things were you discussing
15 within your office as to why or why not settle a case?

16 A. We certainly wanted to discuss the pending
17 petition for review and when it might be ruled on and
18 what that might do to the parties' willingness to mediate
19 at that point if it happened, whether we could get a
20 professional mediator worth his or her salt on that short
21 of notice because I think the plaintiffs wanted to
22 mediate in the next 7 to 10 days maybe 14 at the out set
23 at the latest, because they were concerned that the
24 Supreme Court might rule and either way it ruled, the
25 other side would feel good and the other side would feel

1 bad and maybe couldn't -- risk creates settlement --

2 Q. Okay.

3 A. -- potential, so that would take out some of
4 the risk.

5 Q. Risk for the plaintiffs, right?

6 A. Risk to the plaintiffs that the Court would
7 grant it and that might indicate their case was going to
8 be dismissed maybe in a year, maybe in nine months. They
9 may have assessed it differently. That's how I would
10 have seen it. And risk for us that if the Court declined
11 to accept our petition for review, the third court ruling
12 stands and we're back in trial court and we have years
13 perhaps of lawsuits and appeals, litigation and appeals
14 and the accompanying expense and time.

15 Q. Who found the mediators?

16 A. The plaintiffs' lawyers did that. I remember
17 clearly because I was very skeptical that on that short
18 of notice we would get any good mediators and they told
19 us in response to that, I think, that not only they had
20 two or three who had available dates in the next week or
21 two, which indicated to me -- I told people at the office
22 that's a good sign that they're eager to mediate because
23 they must have called 10 or 12 people if they could find
24 two or three available on that short of notice.

25 Q. Okay. So it appeared to you that they intended

1 to reach a settlement?

2 A. I think they were highly motivated to settle.

3 Q. Okay. And that's based on your years of
4 commercial litigation experience, I assume?

5 A. And as a mediator and trying to get a mediator
6 on short notice.

7 Q. Fair enough.

8 A. In fact, that was kind of my speciality as I
9 didn't mediate full-time, so if parties couldn't get one
10 of the regular mediators they knew I was probably
11 available.

12 Q. Now, I want to zoom out a little bit. Just
13 generally speaking in your years of experience as both a
14 mediator, a judge and a litigator, does a party's
15 willingness to settle a case indicate that maybe they
16 think they're liable or that they think that the other
17 party is correct? Can you talk to me about that?

18 A. Sure. In my experience, especially mediating
19 and representing parties who mediate their cases, both
20 sides at least will say they like their case and they
21 may. They frequently do. Mediation takes place when
22 there's risk and uncertainty and the only way to control
23 the outcome is for the parties to reach an agreement and
24 take it out of a jury's hands. You never know what a
25 jury's going to do. You don't know who the jurors are.

1 Q. Right.

2 A. And maybe two years from now, it may be --
3 again, 12 people pulled off the street. That's -- if you
4 want to subordinate your control of your affairs to those
5 people, that's your choice, but that's expensive and
6 risky.

7 Q. Okay. And I want to --

8 A. I'm not sure I answered your -- did I answer
9 your question?

10 Q. You did answer my question. I appreciate it,
11 and I want to bring your answer and apply it to the fact
12 of this case. Did you have a conversation without
13 getting into specifics with other OAG employees about
14 settling -- or at least going to a mediation with the
15 plaintiffs in this case?

16 A. Oh, yes.

17 Q. Okay. Now, when you entered those discussions,
18 did you have a viewpoint on the strength of your case for
19 the defense, the Office of Attorney General in this case?

20 A. Yes.

21 Q. And what was your viewpoint?

22 A. Well, we hadn't probably looked at it in
23 sometime since filing the briefing so we reconvened,
24 revisited, reminded everybody where things were and what
25 the arguments were, so we could assess that. I remember

1 being a voice as I am generally and maybe professionally,
2 look, let's go to mediation, compared to years of trial
3 and discovery and outside counsel on both sides, the
4 expenses -- the time is short. We can do it in a day,
5 maybe two, and the expense is a rounding-error in the
6 budget. It's the responsible thing to do, especially in
7 this case. It's one thing if you're a private plaintiff
8 or a defendant. It's another when you are dealing with
9 the state's money. I think you're -- I felt and
10 articulated that we kind of have a duty to explore
11 settlement. Maybe it can't happen, but we should -- we
12 should give it a try.

13 Q. Right.

14 MR. OSSO: Your Honor, at this time, may I
15 approach the witness and the court and opposing counsel?

16 Q. (BY MR. OSSO) Mr. Dorfman, I'm showing you
17 what's been premarked as attorney general Exhibit 335.
18 Do you recognize this document?

19 A. Yes.

20 Q. And what do you recognize this document to be?

21 A. This is an internal memo prepared by Chris
22 Hilton, the chief of our general litigation division,
23 assessing after we'd received settlement statements from,
24 I think, three of the plaintiffs in the Whistleblower Act
25 case, explaining why they thought their case was strong

1 and what they thought they would recover at trial.

2 Q. And let's not talk about the contents of the
3 document, but could you tell me when this document was
4 authored?

5 A. This, on its face, it says February 1, 2023. I
6 don't have any reason to doubt that's the date. That's
7 the date, by the way, we mediated the case.

8 Q. Okay.

9 A. So whether it was circulated before that date
10 in draft form -- I think it was, my recollection. We
11 certainly discussed the contents of it internally before
12 it was put into final form.

13 Q. Okay. And did the findings without getting
14 into what the findings were or the subject matter of what
15 the document is, did this have an effect on your mindset
16 going into the negotiations?

17 A. I don't know if it -- it certainly informed me
18 and I relied upon it and had -- I think it summarized the
19 state of play well.

20 Q. Okay. And is -- is -- AG Exhibit 335 is that a
21 fair and accurate copy of the memo that you received from
22 Chris Hilton?

23 A. Give me one second.

24 Q. Sure.

25 A. Yes.

1 MR. OSSO: Your Honor, at this time, I
2 would offer AG Exhibit 335 into evidence.

3 PRESIDING OFFICER: Any objection?

4 MR. DUTKO: I just want to make sure I have
5 the right document. Is this the one with the OAG seal
6 but with Ken Paxton's name removed?

7 MR. OSSO: Yep, that's it.

8 MR. DUTKO: Then no objection.

9 PRESIDING OFFICER: Admit.

10 MR. OSSO: May I proceed?

11 PRESIDING OFFICER: 335 AG Exhibit into
12 evidence. You may continue.

13 (AG Exhibit 335 admitted)

14 MR. OSSO: Thank you, Judge.

15 Q. (BY MR. OSSO) Now, I don't want to go line by
16 line in this report, but would you mind just summarizing
17 the -- kind of what this document is and what you and
18 Mr. Hilton's thought process was with regard to the
19 financial aspect of this mediation in the case.

20 A. Sure. It's important to realize the mediation
21 -- we were told in no uncertain terms Blake Brickman
22 would not participate in mediation. He would not come to
23 mediation. He would not be there. He was going to trial
24 come hell or high water, so the opportunity was to settle
25 with three, not all four of the whistleblower plaintiffs,

1 and this -- so we received settlement statements from
2 demands basically, this is what we're going to present
3 the week before -- maybe a few days before the mediation
4 date and this was kind of a summary. I think
5 collectively they were -- their attorneys argued for over
6 \$5 million in damages if they settled today. Of course,
7 prejudgement interest and attorneys' fees, as they said,
8 would go up if the case continued, et cetera. But -- so
9 for three of them, that was the -- and we didn't to want
10 take their word for it so we asked one of our top
11 attorneys to read those carefully, review the case law
12 and report back on what a more -- what we would consider
13 a more realistic assessment of the case's value was.

14 Q. And just a brief question: This is just an
15 inner office memorandum, right?

16 A. Yes.

17 MR. DUTKO: Objection. Leading.

18 Q. (BY MR. OSSO) Was this --

19 PRESIDING OFFICER: Overruled.

20 MR. OSSO: I'm going to ask the question
21 again.

22 Q. (BY MR. OSSO) Was this an inner office
23 memorandum?

24 A. Yes.

25 Q. Did you send this out to anybody outside of the

1 attorney general's office?

2 A. No, we would not have done that.

3 Q. Did you represent that you were the attorney
4 general, or that you had the authority to act without Ken
5 Paxton's, I don't know, authority in this document?

6 A. By this memo?

7 Q. Yeah, by this memo.

8 A. No.

9 Q. No, okay. So can you tell us whether or not
10 you felt that there was an ability to potentially save
11 the State of Texas, the public of Texas, money by
12 engaging in a mediation and potentially a settlement?

13 A. Well, I certainly thought that was the case.
14 Otherwise, it wouldn't have been advisable to go to
15 mediation.

16 Q. Okay. Now, which specific plaintiffs in the
17 whistleblower lawsuit were involved in the initial
18 willingness to settle or request to settle the case?

19 A. Ryan Vassar, Mark Penley, and David Maxwell
20 through their attorneys. I don't think we ever talked
21 directly to them during this process.

22 Q. What about Blake Brickman?

23 A. Well, as I said, Mr. Brickman's attorney told
24 us -- and the -- actually the attorneys for the other
25 three plaintiffs told us Blake Brickman will not come to

1 Austin. He will not participate in the mediation. He
2 doesn't care. He -- he wants his day in court.

3 Q. Did you have a reason or idea as to why
4 Mr. Brickman wanted his day in court?

5 A. Yeah. Well, this is secondhand, so I
6 understand Mr. Brickman is financially secure.

7 MR. DUTKO: Objection. Hearsay. This is
8 secondhand.

9 PRESIDING OFFICER: Sustained.

10 MR. OSSO: Your Honor, I'd actually argue
11 that it goes towards settlement agreements in this case,
12 and under 408(b), it should come into play.

13 MR. DUTKO: And my objection is 408. This
14 goes to settlement and it's also hearsay.

15 MR. OSSO: Which is an -- which is --
16 408(b) is the exception to the rule and --

17 PRESIDING OFFICER: We've had this
18 discussion I think yesterday or the day before, so I
19 sustain the objection.

20 MR. OSSO: Yes, Judge.

21 Q. (BY MR. OSSO) Needless to say, Brickman's not
22 there, is he?

23 A. Wasn't there. Wasn't going to be there. Well,
24 and I say wasn't there. It -- we didn't anticipate this
25 or plan this, but February 1st, the date we set for the

1 mediation, it ended up being the winter freeze.

2 Q. Did Mr. Brickman's attorneys come to you with
3 additional demands -- well, we'll get there.

4 Talk to us how the mediation went. What
5 day do you recall you started mediation?

6 A. I believe it was a Wednesday, February 1st.
7 And -- and I -- we had planned to be in Austin in person
8 at Patrick -- the mediator Patrick Keel's, former Judge,
9 office. As it happened when the freeze set in, I stayed
10 in Houston and we were all on a Zoom.

11 Q. And, Mr. Dorfman, it's been a few years. Is it
12 possible that the dates may be...

13 A. Might not have been a Wednesday.

14 Q. Fair enough.

15 MR. OSSO: Judge, may I approach
16 Mr. Dorfman?

17 THE WITNESS: I think it was a Wednesday.

18 Q. (BY MR. OSSO) Was this a one-day mediation or
19 a two-day mediation?

20 A. Ended up being -- initially, planned to be one
21 day, February 1st. We ended up, I think, on February 8th
22 having a second day by agreement --

23 Q. Okay.

24 A. -- with the party -- the plaintiffs' attorneys.

25 Q. Okay. Can you talk to us -- and we'll get to

1 the document in a second, but can you talk to us about
2 how the first day of mediation went?

3 A. It went long. I think we broke sometime around
4 midnight. I want to give Patrick Keel all the credit in
5 the world. We didn't know until it started turning dark
6 that he didn't have power in his house. And at some
7 point he was on his laptop and lost that power, couldn't
8 recharge, so he's now on his phone on the Zoom call.

9 Q. All -- this is all happening online, right?

10 A. All happening online till midnight and I think
11 his juice gave out at some point.

12 Q. Was it a -- was it a good day of mediation, or
13 was it a bad day of mediation?

14 A. I didn't have a whole lot of expectations that
15 this would settle. It didn't obviously on that first
16 day, but we got real close and again we came in with the
17 expectation that we -- the option today is to settle with
18 three plaintiffs. Sometime between 5:00 and 6:00 p.m.,
19 Mr. Brickman showed up again remotely, so I don't know if
20 he was physically present.

21 Q. Sure. I'm going to stop you real quick. Was
22 this the first day that it got real close and
23 Mr. Brickman showed up or the second day of mediation?

24 A. First day.

25 Q. All right. So you guys are making headway.

1 You said Mr. Brickman showed up. Can you talk to us
2 about any effect that only three of the four plaintiffs
3 were present that it had on you and then what happens
4 when Mr. Brickman shows up?

5 A. Well, I think Mr. Hilton's memo, Exhibit 335,
6 speaks of the fact that it's more valuable to us to
7 settle the entire case.

8 Q. Okay. And why is that?

9 A. Because if we're settling with three of them,
10 we're paying money out. Yet, we still have to pay our
11 lawyers and outside counsel on top of that to go to
12 trial, to go to discovery, all the expense, maybe less
13 time, maybe less discovery because it's just one
14 plaintiff, but still time, resources that we would like
15 to save ideally by getting rid of the whole case at once.

16 Q. Because what is the point of settling this case
17 to you guys?

18 A. We have to be good stewards of the taxpayers'
19 money, the state fisc. And so we viewed this as any
20 other case. One, that's why I argued for mediation is we
21 should at least try if it's cheap and inexpensive to try
22 and settle this and save that money and time and
23 resources. And then settling with three, I think
24 that's -- it would be less valuable, but by the same
25 token, we would offer less money and I think Mr. Hilton

1 says it in the reverse way in his memo that if they're --
2 if Mr. Brickman would come to the table and we could make
3 sure we don't have to expend any money after a
4 settlement, that would -- I think his word is a pre --
5 that would be worth a premium.

6 Q. Okay. Talk to us about what happens when
7 Brickman joins the negotiation table. How did that go
8 down? Did you -- did you-all reach out to Mr. Brickman,
9 or did somebody else reach out to Mr. Brickman? What is
10 your understanding?

11 A. I don't recall real clearly. I think it was a
12 surprise to us.

13 Q. And how did you take that surprise?

14 A. Good and bad.

15 Q. Can you tell us about that?

16 A. The good is, look, we've all along preferred to
17 settle with all four rather than piecemeal. It's more
18 valuable. It's worth the premium for the reasons
19 Mr. Hilton stated in the memo, in the exhibit. So that
20 was good.

21 Bad is, wait a second. You told us all
22 along all week, maybe two weeks now, Blake Brickman is
23 not interested in settlement. Blake Brickman is not
24 going to participate in the mediation. He's not
25 available. He's going to trial. And now -- now that

1 we're talking real dollars and it looks good that we
2 might actually settle, now he's interested. All that --
3 was that posturing? Were we being sold a bill of goods?
4 That suspicion crossed my mind.

5 Q. Did you-all reach a settlement that night?

6 A. No. We got real close, but no.

7 Q. Now, I want to talk to you about AG
8 Exhibit 423. Do you recognize this document?

9 PRESIDING OFFICER: Mr. Osso, make sure you
10 speak up and stay on that microphone.

11 MR. OSSO: Yes, Judge.

12 Q. (BY MR. OSSO) Do you recognize AG Exhibit 423?

13 A. Yes, I do.

14 Q. What do you recognize that document to be?

15 A. This is General Paxton conferring on --

16 MR. DUTKO: Objection, Your Honor.
17 Testifying from a document not in evidence.

18 MR. OSSO: I'm going to lay the predicate
19 right now, Judge, and I'll instruct the witness.

20 PRESIDING OFFICER: Overruled.

21 Q. (BY MR. OSSO) Without getting into the
22 contents of the document, what do you recognize this
23 document to be?

24 A. It's a memo from Attorney General Paxton to me
25 and to Chris Hilton. Subject line: Settlement

1 Authority, dated February 8.

2 Q. Okay. And did this email have an effect on
3 your abilities and your thought process when going into
4 the mediation on day two?

5 A. It confirmed what we had discussed internally,
6 yes.

7 Q. Okay. Did it grant you any form of authority?

8 A. Yes.

9 Q. All right. Is this email that you see in AG
10 423 a fair and accurate copy of the email that you
11 received from Ken Paxton on February 8th of 2023?

12 A. Yes.

13 MR. OSSO: At this time, Judge, I would
14 offer AG Exhibit 423 into evidence.

15 PRESIDING OFFICER: Any objection?

16 MR. DUTKO: Yes, Your Honor. I have three
17 objections. First, it was never produced. Second, it
18 was listed on their privilege log, so it was never
19 produced, and three it's hearsay. So it is inadmissible.

20 MR. OSSO: I can address the objections.

21 I didn't hear your second objection. Could
22 you repeat that?

23 MR. DUTKO: Yes. This document was
24 identified on your privilege log, so you never gave it to
25 us and now you're bringing it to the Court for the first

1 time and showing it to us for the first time.

2 MR. OSSO: Let me address the privilege log
3 first. As an attorney for Ken Paxton, I think at this
4 time we'd be willing to waive any privilege.

5 MR. DUTKO: I appreciate that. But the
6 fact is --

7 MR. OSSO: I'm not done. And if I could
8 just finish my response, then I'd be happy to be quiet
9 and let opposing counsel go.

10 So first and foremost, as Ken Paxton's
11 attorney, I'll waive the privilege. With regard to
12 hearsay, it's not offered for the truth of the matter
13 asserted. It goes towards the effect on the listener and
14 the mediation the next day. We heard Mr. Dorfman just
15 state that on the record. And his first objection with
16 regard to it being -- not being on the witness list -- or
17 excuse me -- the exhibit list, Judge, this is a rebuttal
18 case at this point and arguably we don't even have to put
19 a case on. Most of our exhibits are rebuttal exhibits,
20 but we did give them the list. I am arguing that this is
21 a rebuttal exhibit, and for that reason it is not covered
22 by the witness -- the exhibit list rule and it should
23 come into evidence.

24 MR. DUTKO: Your Honor, may I respond?

25 PRESIDING OFFICER: Yes, you may.

1 MR. DUTKO: Just so we're clear, the
2 process that occurred was they produced a privilege log,
3 never gave us this document, and now for the first time
4 they're sandbagging us with this document without giving
5 it to us. As the Court is aware, you've ruled several
6 times the documents that we did not produce would not
7 come into evidence. They never gave this document to us.
8 This is the first time we're ever seeing it. If they
9 want to take every document off their privilege log and
10 put it into the record, we're good with it. Otherwise,
11 we have a valid objection.

12 Second, Your Honor, it is clear hearsay.
13 There is no business record. The predicate laid was --
14 was not the standard for hearsay, and so it is
15 inadmissible on all of those grounds.

16 MR. OSSO: If I -- and just briefly, yes,
17 Judge.

18 PRESIDING OFFICER: Go ahead.

19 MR. OSSO: Well -- and I'm not aware of a
20 privilege log that we came up with or provided to the
21 House Board of Managers first and foremost. This was on
22 our fourth supplemental notice of the exhibit list. I
23 think the Court is aware that the managers have given us
24 plenty of exhibits throughout the course of this trial.
25 I mean, if I remember correctly, Mr. Bangert dumped phone

1 exhibit -- text messages between him and the attorney
2 general during the middle of trial. So to say that I'm
3 sandbagging them, it's just simply not an accurate
4 reflection of what's going on throughout this case or
5 with regard to this exhibit.

6 PRESIDING OFFICER: Okay. I've heard both
7 arguments. Give us a moment.

8 (Brief pause.)

9 PRESIDING OFFICER: Jurors, please take
10 your seat.

11 After consultation with my team here, we
12 will sustain the objection on hearsay.

13 Continue.

14 MR. OSSO: Yes, Your Honor.

15 Q. (BY MR. OSSO) Did General Paxton delegate you
16 the authority to engage in a settlement agreement with
17 the whistleblowers?

18 A. Yes.

19 Q. Okay. Did he do so on February 8th of 2023?

20 A. On or about that date.

21 Q. Where was Ken Paxton while the settlement
22 agreement was going on?

23 A. I don't recall. I know he wasn't in Austin.
24 And I believe he was traveling, which is in part why we
25 needed to formalize my authority and the scope in case we

1 weren't able to reach him on short notice if it appeared
2 that we had an agreement subject again to his
3 confirmation.

4 Q. But to be clear, you guys formalized that
5 delegation of duty, right?

6 A. Yes.

7 Q. All right. So then you go into the second day
8 of mediation, right?

9 A. Yes.

10 Q. Will talk to us about the second day of
11 mediation?

12 A. I believe it was also remote by Zoom even
13 though the weather had cleared up. And I can't remember
14 exactly when it was, we agreed we had a deal. But the
15 same dynamic had played out the -- Mr. Brickman was
16 participating from the start on the second day at least,
17 and so we were now dealing with four plaintiffs rather
18 than a settlement for three as we had most of the first
19 day of mediation.

20 Q. And did you-all reach a settlement agreement?

21 A. We did.

22 Q. What was the settlement agreement that you-all
23 came to?

24 A. And to be certain, I can't -- I think we
25 reached it that day. It may have been the next

1 morning --

2 Q. Okay.

3 A. -- before it was finalized.

4 Q. Fair enough. What was the settlement
5 agreement?

6 A. It was in the form of a mediated settlement
7 agreement, a payment of \$3.3 million to the four
8 plaintiffs in exchange for full and complete releases of
9 liability against the Office of the Attorney General.
10 There was other components. We had agreed to -- and if
11 you have a copy of it, that might help me, but we had
12 agreed to attempt with ERS to reinstate Mr. Vassar in his
13 retirement plan. I think that was the only fringe
14 benefit that was addressed, but I recall that.

15 And then Mr. Maxwell had an -- separate F5
16 administration hearing case in SOAH, State Office of
17 Administrative Hearings, which was abated pending the --
18 in pendency of the whistleblower case. So that stayed --
19 their filing stayed that proceeding which was an attempt
20 to reclassify him from a plain discharge to an honorable
21 discharge without which his employment as a -- according
22 to them as a law enforcement officer in Texas was
23 problematic.

24 Q. Okay. How did you feel about this agreement on
25 behalf of the Office of Attorney General and the public

1 of Texas?

2 A. I felt overall especially now that it was a
3 settlement of all four plaintiffs and the case would not
4 go forward, it was a good assessment of our risk.
5 It's -- to be honest, it's more than we would have liked
6 to have settled for. I'm sure it's less than the --
7 certainly it was less than the plaintiffs' lawyers were
8 telling us they should settle for, so that's probably --
9 again, 90, 95 percent of mediation settlements fall under
10 that category.

11 Q. Now, after this case comes to an agreement, you
12 still have this petition for review in the Supreme Court,
13 right?

14 A. It's still pending, yes.

15 Q. And did you-all file any motions with the
16 plaintiffs' attorneys in regard to that petition for
17 review?

18 A. I think the next day.

19 Q. Can you tell us what motion you filed with the
20 plaintiffs' attorneys in regard to that petition for
21 review?

22 A. I believe it was styled as a joint motion to
23 abate in the Supreme Court.

24 Q. Can you tell us what the joint motion to abate
25 did in this case?

1 A. Very short motion. It was simply telling the
2 Court, look, we've reached a settlement agreement that's
3 binding and disposes of the case. If the Supreme Court
4 went ahead and conferred and spent time deciding whether
5 to take our case or not and made a decision, they'd be
6 very peeved if they found out later that that was wasted
7 energy on their part, so we didn't want to -- we didn't
8 want to upset the Court, so we let them know, Hey, we
9 reached a settlement. We're going to paper it up and
10 finalize a larger document. That's all the bells and
11 whistles, dot some I's, cross some T's, but you don't
12 need to do anything now and the parties are jointly
13 asking you to -- to put it aside for now.

14 Q. Okay. Now, I want you to focus your attention
15 on the Article of Impeachment that is on the screen right
16 now. And it states, The settlement agreement stayed the
17 wrongful termination suit and conspicuously delayed the
18 discovery of facts; is that true?

19 A. No.

20 Q. Why is that not true?

21 A. Well, the plea to the jurisdiction stayed the
22 termination suit pending the Supreme Court -- at that
23 point the Supreme Court's consideration. It didn't --
24 whether it was conspicuous or not, it didn't delay the
25 discovery of facts by settling. There was no discovery

1 ongoing at that time. And, you know, the way this is
2 written, it's sort of passive voice. But who's doing the
3 delaying is the suggestion here that the whistleblowers
4 by filing a motion to abate with the Supreme Court are
5 trying to delay the discovery effects?

6 Q. Mr. Dorfman, I don't know. I didn't -- I
7 didn't draft the Articles of Impeachment.

8 Okay. So I want to move on to who pays
9 this lawsuit. Who pays this lawsuit? Who pays the
10 settlement?

11 A. Well, the defendant is the Office of Attorney
12 General. That's the party that would be liable and would
13 pay any settlement. Obviously, the Legislature has to
14 fund that. So those --

15 Q. And why is that? Why does the Legislature have
16 to fund that settlement?

17 A. Goes back to our discussion about sovereign
18 immunity. You can't sue the state without its consent.
19 And if -- even if you have a waiver of sovereign immunity
20 like the Texas Tort Claims Act or the Whistleblower Act
21 and you go get a judgment from a court, jury, verdict,
22 all the way hold it up to appeal, you have a final
23 unappealable judgment that entitles you to, let's say,
24 \$2 million against any state entity, this Legislature,
25 this body can still decline to pay it. They have to

1 agree.

2 Q. Okay. And are you aware of whether that
3 lawsuit has been paid?

4 A. No, it has not been paid. Not been funded.

5 Q. Now, did you engage without getting into
6 specific conversations of what was said, did you engage
7 in discussions with the plaintiffs' attorneys about
8 getting the Legislature to pay for this lawsuit?

9 A. Yes.

10 Q. Were they for or against that?

11 A. For it. Excuse me. For it.

12 Q. Now, were you a part of any specific
13 discussions with any legislators about getting this
14 lawsuit funded?

15 A. Yes, I was.

16 Q. Okay. Can you talk to us without getting into
17 the specific conversations you had, can you talk to us
18 about who -- who it was that you met with to talk about
19 the settlement?

20 A. I think there were two separate meetings that I
21 participated in. Other people in our office had more.
22 Both on the House side and the Senate side. I recall
23 meeting with Senator Hughes where we discussed it and
24 with Senator Huffman.

25 Q. And so you also mentioned that other people

1 were meeting -- or were other people meeting with other
2 legislators about getting the settlement paid?

3 A. I believe our head of government relations at
4 the time Ryan Fisher and his deputy Colleen Tran were
5 having such meetings, formal or informal, and Mr. Hilton,
6 I think, too, had some.

7 Q. And if you know, were the plaintiffs' attorneys
8 in this case aware of these conversations happening with
9 legislators?

10 A. Absolutely. They were adamant. There's email
11 traffic where they're saying we're not doing enough. We
12 need to do more. This person wants to meet with you.
13 That person wants to meet with you and we said we're
14 doing our best. We agree we have an obligation to act in
15 good faith and make reasonable efforts, but to really --
16 you should be highly motivated to do what you can and
17 have the meetings you need to have as well and we'll --
18 we'll show up with you.

19 Q. Okay.

20 A. But let us know.

21 Q. And just because they haven't agreed to pay yet
22 doesn't mean they can't at a later date, right?

23 A. Of course.

24 Q. Do you -- and you still believe that -- that it
25 is the State of Texas, the public funds that should fund

1 this settlement agreement, right?

2 A. I believe that initially. I -- you know, I
3 believe it now if the case goes back to trial, which I
4 think it settled but others may feel differently. All
5 the reasons that were there before, again, we'll go back
6 to the Supreme Court presumably. So -- but the risk
7 return of time -- the certainty of time, litigation,
8 resources, lawyers being devoted to this when they could
9 be doing Biden administration lawsuits or something.

10 Q. Let me stop you real quick. And just to be
11 clear, you said "if the case went back to trial." If the
12 case had gone to trial and there was a judgment entered
13 against the Office of Attorney General, would it still
14 be -- should that still be paid from public funds?

15 A. That would be up to the Legislature to decide.

16 Q. Okay.

17 A. No one can make them.

18 Q. Would Ken Paxton ever be personally liable for
19 that lawsuit?

20 A. No, he's not a defendant.

21 Q. Okay. You were at the Office of Attorney
22 General -- you're currently still working there, right?

23 A. Yes.

24 Q. My understanding is you took leave for a little
25 bit of time.

1 A. Yes.

2 Q. Okay. About how long were you gone from the
3 office?

4 A. From roughly early May -- I -- I returned to
5 work remotely probably around the July 4th holiday.

6 Q. So just recently, right?

7 A. Just recently.

8 Q. Okay. I want to talk to you about the time
9 period from where when you started at the Office of the
10 Attorney General in December of 2020 up until you took
11 leave in May of 2023, okay?

12 A. Okay.

13 Q. Can you talk to us about some of the
14 accomplishments made by the attorney general's office
15 under the leadership of Ken Paxton while you were there?

16 A. Well, I've referenced the Google AdTech
17 lawsuit, one of the biggest antitrust cases not just in
18 the country, but in decades. That's still ongoing.

19 MR. DUTKO: Objection. I apologize for
20 interrupting. Anything after this lawsuit is irrelevant.

21 MR. OSSO: Actually, Judge, if I may be
22 heard on the matter. Yesterday, the House Board of
23 Managers elicited testimony from Blake Brickman. I have
24 a transcript here and I'd be happy to show the Court, but
25 they've opened the door to the Office of the Attorney

1 General's productivity after this whistleblower's
2 lawsuit, after these terminations occurred. They talked
3 about the fact that there was not productivity and that
4 the office wasn't functioning well. As a result, they've
5 opened the door. That would leave a misimpression on the
6 jury, and as a result, Mr. Dorfman should be able to talk
7 about how the office is functioning.

8 PRESIDING OFFICER: Overruled.

9 Q. (BY MR. OSSO) Okay. So you talked to us about
10 one of the lawsuits. Would you please continue to talk
11 about the other accomplishments and the functioning of
12 the Office of Attorney General?

13 A. I should have started with our immigration
14 cases which I'm probably the most proud of.

15 Q. Would you please tell us about your immigration
16 cases?

17 A. Day one -- I mentioned this maybe earlier -- of
18 the Biden administration, all the executive orders that
19 came out, one was the hundred-day moratorium. We were
20 the first to get a nationwide injunction requiring the
21 Biden administration to abide by congressional directive
22 that, no, if you have a deportable alien, they must be
23 deported within 90 days, no exceptions.

24 And that -- we continued to file and
25 challenge and try to hold the Biden administration to the

1 letter of the law and the rule of law on our border.
2 Title 42 is one of those cases. DACA is a continuation
3 of the case that attorney general Abbott brought years
4 ago against the Obama administration. We just won, I
5 think, in the last week a ruling out of a federal court
6 in Houston that the revised Biden administration DACA
7 policy is just as illegal -- unlawful, I should say, as
8 that in our favor.

9 Q. Okay. I'm going to bring -- you talked about
10 AdTech already. You talked about the Google case.

11 A. That's one of the Google cases. Another Google
12 case we settled before I took leave. We broke away from
13 a multi-state -- all the states suing in one location.
14 We broke out of that, filed our own lawsuit in Texas
15 State court. We settled with Google for \$8 million when
16 all the other states put together settled for \$9 million
17 over the Google pixel phones and that was to the relief
18 of Texas consumers who were deceived by misleading
19 advertisements.

20 Q. Any litigation with regards to opioids?

21 A. This is mostly before my time. The money has
22 come in since I've been at the agency --

23 Q. Okay.

24 A. -- but I can't claim credit.

25 General Paxton himself led the nationwide

1 negotiations on that, worked very hard on that, deserves
2 the credit for that. And it's been billions in money
3 from those manufacturers, distributors, marketers,
4 consultants, pharmacies that were responsible for the
5 opioid crisis that was so devastating.

6 Q. And so based on what you've seen at the office
7 during your time there, have they been successful in
8 their efforts in their litigation under the leadership of
9 Attorney General Ken Paxton?

10 A. I think so. I've been amazed at what we've
11 accomplished. It's -- we -- we've worked our lawyers
12 very hard, and they've done very well. They deserve the
13 credit. They're the ones going to court, making the
14 winning arguments and filing the winning briefs, not me.
15 So I don't want to seem like I'm tooting my own horn when
16 I say CNN, no great fan of Attorney General Paxton or our
17 office had to concede in a news article that Texas had
18 become the legal graveyard for Biden administration
19 policies and executive orders.

20 MR. OSSO: Well, thank you, Mr. Dorfman.
21 I'll pass the witness, Your Honor.

22 PRESIDING OFFICER: Your witness.

23 That sound you're hearing you have not
24 heard in a long time. It's called rain.

25 CROSS-EXAMINATION

1 BY MR. DUTKO:

2 Q. Hi, Mr. Dorfman. How are you?

3 A. I'm very good. Thank you.

4 Q. I was --

5 PRESIDING OFFICER: The mic's not on, Mr.
6 Dutko.

7 MR. DUTKO: Can you hear me?

8 PRESIDING OFFICER: Yes, sir.

9 Q. (BY MR. DUTKO) Mr. Dorfman, we were looking at
10 Exhibit 335 that was introduced by your counsel or
11 counsel for Mr. Paxton.

12 MR. DUTKO: Can you pull that up for me,
13 Stacey?

14 PRESIDING OFFICER: Check your mic one more
15 time. It doesn't sound --

16 MR. DUTKO: Is it not working?

17 THE COURT: No. It is now, but you're tall
18 enough that you're going to have to bend down a little
19 bit.

20 MR. DUTKO: Yes, Mr. President.

21 Q. (BY MR. DUTKO) Is this the memo you were
22 talking about on 335 with the counsel a moment ago?

23 A. It's one of them, yes.

24 Q. And this memo was created by Chris Hilton?

25 A. I believe so, yes.

1 Q. And one of the lawyers standing over there --
2 sitting over there?

3 A. Sitting, yes.

4 Q. Sitting, yes.

5 When you got this memo, were you shocked?

6 A. By what?

7 Q. By the fact that Mr. Hilton was attempting to
8 usurp the power of Ken Paxton by removing his name from
9 the letterhead.

10 A. No.

11 Q. Did it appall you?

12 A. No.

13 Q. Was it simply a matter of Mr. Hilton picking
14 out this letterhead that is available to every employee
15 of the AG's office?

16 A. I think you'd have to ask Mr. Hilton about
17 that. I -- I don't know.

18 Q. You talked about the internal investigation
19 that was conducted by the attorney general's office,
20 correct?

21 A. Yes.

22 Q. And you talked about the fact that it needed to
23 be fair?

24 A. Yes.

25 Q. It needed to be unbiased?

1 A. Well, it needed to be objective, I think is the
2 word I used.

3 Q. And the subject of that investigation was
4 Ken Paxton?

5 A. One of the subjects of that investigation.

6 Q. It certainly was a big part of it, right?

7 A. The allegations against him were a big part of
8 it.

9 MR. DUTKO: Your Honor, may I approach the
10 witness?

11 PRESIDING OFFICER: You may.

12 Q. (BY MR. DUTKO) Mr. Dorfman, I am showing you
13 what has been marked as 524, Exhibit 524. Do you
14 recognize this document?

15 A. Give me one minute to read it quickly.

16 Can you restate your question, please?

17 Q. Yes, maybe I can make it easier. You see your
18 email address right there halfway down the page?

19 A. I do.

20 Q. This is an email exchange that you received,
21 you were on?

22 A. Yes.

23 Q. And so as a result, you recognize this
24 document?

25 A. Yes.

1 Q. And, you know, to use a predicate that's being
2 laid by your counsel, this fairly and accurately
3 represents the email as well as the attachment?

4 A. I think that's right.

5 MR. DUTKO: Your Honor, at this time we
6 offer Exhibit 524.

7 PRESIDING OFFICER: Any objection?

8 MR. OSSO: Yes, Judge. I'd object to
9 hearsay, and they haven't provided a proper foundation
10 for this witness to sponsor this document.

11 MR. DUTKO: Your Honor, we have a business
12 record affidavit that overcomes hearsay. That gets by
13 that, and the predicate is this witness was part of this
14 email exchange, is a proper sponsoring witness, testified
15 it fairly and accurately represents the email exchange
16 that he was a part of.

17 MR. OSSO: Judge, I'm just confused. I
18 don't have a copy of a business record affidavit.

19 MR. DUTKO: You do have a copy of the
20 business record affidavit. I didn't hand it to you but
21 if you want I can get it for you.

22 MR. OSSO: Well, that would be great. I
23 think part of the rule is it's got to be provided to
24 counsel so that would be good.

25 MR. DUTKO: I will --

1 PRESIDING OFFICER: Would you provide him a
2 copy?

3 MR. DUTKO: Yes.

4 MR. OSSO: Judge, if I could just have a
5 moment to look at business record affidavit.

6 PRESIDING OFFICER: Take a moment.

7 MR. OSSO: Thank you.

8 MR. DUTKO: Your Honor, I assume we're
9 stopping the clock respectfully?

10 MR. OSSO: Judge, I mean, I don't see why
11 it should. They -- they're offering it.

12 PRESIDING OFFICER: If it's a minute, we're
13 not stopping the clock. But if it's longer than that,
14 I'll stop it.

15 MR. OSSO: Judge, I have to -- I have to
16 reurge my objection. This business record affidavit is
17 not the correct affidavit for these documents. It
18 references Office of Attorney General numbers that are
19 just not contained on the documents that counsel has
20 provided me, and so I can't verify that it's the document
21 that he's purporting it to be.

22 PRESIDING OFFICER: And we don't have a
23 copy either of the business affidavit.

24 MR. DUTKO: I can get you a copy.

25 PRESIDING OFFICER: That would be good.

1 It's supposed to be attached so that we know.

2 MR. DUTKO: I appreciate that, Your Honor.
3 It was attached to a bigger swathe of documents. This is
4 just one of the documents that's part of it.

5 PRESIDING OFFICER: We will stop the clock
6 and give you credit for a couple minutes here.

7 Mr. Dutko, I will say I stopped the clock,
8 but when either side has not been ready to present us
9 what is needed, we have not stopped the clock previously
10 so I'm giving you two minutes here, but I don't know how
11 long you're going to take.

12 MR. DUTKO: Yes, Your Honor.

13 PRESIDING OFFICER: It does not seem you
14 have your paperwork together.

15 MR. DUTKO: Yes.

16 PRESIDING OFFICER: So can we continue and
17 get the clock running and come back to that, if you'd
18 like?

19 MR. DUTKO: Yes.

20 PRESIDING OFFICER: All right. Resume the
21 clock. Resume your questioning.

22 MR. DUTKO: May I proceed?

23 PRESIDING OFFICER: You may.

24 Q. (BY MR. DUTKO) Mr. Dorfman, when you were on
25 direct examination, you spent a lot of time talking about

1 the fact that -- the quality of attorney that is
2 currently at the attorney general's office. Do you
3 remember that?

4 A. Yeah, I think so.

5 Q. And you said how you were proud to walk through
6 the halls and the lawyers and the high caliber of
7 lawyers?

8 A. I don't recall saying that. It's certainly
9 true, but I don't recall saying it.

10 Q. And you were talking about how good the lawyers
11 are and how hard they work. Do you remember that?

12 A. Yes.

13 Q. Yet, despite the fact that there's the high
14 quality of lawyer that currently exists at the attorney
15 general's office, you had to -- Ken Paxton had to hire
16 Lewis Brisbois as outside counsel?

17 A. Didn't have to. He did.

18 Q. And it was certainly something that could have
19 been handled internally?

20 A. I'm not going to agree with you on that. Now,
21 I have an explanation why.

22 Q. Okay. Are you aware of the fact that Lewis
23 Brisbois has billed the Texas taxpayers \$524,000 for the
24 work that was done?

25 A. Yes, I am.

1 Q. And that doesn't bother you?

2 A. I think I've been very clear that I view the
3 Texas fisc is a sacred calling for us. It's very
4 important for us to preserve it and spend it wisely.
5 Again, I had a reason why I supported the hiring of Lewis
6 Brisbois as outside counsel, but part of the motivation
7 for settlement was to stop paying Lewis Brisbois as
8 outside counsel.

9 MR. DUTKO: Your Honor, we have a business
10 record affidavit that we were going to present to
11 opposing counsel.

12 PRESIDING OFFICER: Okay.

13 MR. OSSO: Is this for this document?

14 MR. DUTKO: Yes.

15 MR. OSSO: Just got extra copies of BRAs.
16 Again, Judge, I got to reurge the -- the objection. The
17 -- the document that they've handed me doesn't have a
18 single Bates label on it, and this business record
19 affidavit talks about Bates-labeled documents. No way
20 for me to verify the validity of these documents.

21 MR. DUTKO: Your Honor, just so we're
22 clear, these are documents that --

23 PRESIDING OFFICER: Could I have a copy of
24 that?

25 MR. DUTKO: Yes.

1 PRESIDING OFFICER: And before you answer
2 his objection, let us look at this.

3 (Brief pause.)

4 PRESIDING OFFICER: We're ready to resume.
5 I'm going to sustain the objection because we don't find
6 a way to identify this affidavit with the document.

7 MR. DUTKO: Yes, Your Honor.

8 Q. (BY MR. DUTKO) Remember when you talked about
9 the plea with the jurisdiction a while ago?

10 A. Yes.

11 Q. One thing is clear, a plea to the jurisdiction
12 stays the case?

13 A. Once it's denied or granted.

14 Q. Right. And so when you filed that plea to the
15 jurisdiction, you, as the attorney general's office knew
16 that the case would be stayed?

17 A. Yes.

18 Q. That meant there would be no written discovery?

19 A. Yes.

20 Q. That meant there would be no deposition
21 discovery?

22 A. Right.

23 Q. That means that Ken Paxton did not have to
24 testify under oath for the entire time that that plea to
25 the jurisdiction was being determined?

1 A. No one had to testify, yes.

2 Q. Right. But Ken Paxton didn't as well, right?

3 A. Yes.

4 Q. And so when you filed it, you knew that was
5 going to happen?

6 A. Once a ruling was made, yes.

7 Q. Right. And even though you lost at the trial
8 court, instead of going back to the case and conducting
9 discovery, you appealed it to the Court of Appeals?

10 A. Well, we didn't lose the case at the trial
11 court. We lost the plea.

12 Q. Right. You lost the plea to the jurisdiction?

13 A. We disagreed with that and we appealed it, yes.

14 Q. Which means that when you lost that case, that
15 plea to the jurisdiction, that meant if you did not
16 appeal it, you could go back to the trial court and take
17 discovery?

18 A. If we chose not to appeal it?

19 Q. Right.

20 A. I supposed that's true.

21 Q. And then you appealed it?

22 A. We did.

23 Q. And lost?

24 A. We lost in the third court.

25 Q. So then instead of going back to the trial

1 court to conduct discovery where Mr. Paxton would have to
2 give his deposition, you took a flyer and took it to the
3 Supreme Court?

4 A. I disagree with you that we took a flyer. We
5 urged the constitutional separation of powers, which is a
6 pretty important constitutional doctrine and we also
7 relied on the sovereign immunity of the state which this
8 body thinks pretty importantly of as well.

9 Q. Right. And then while the case was pending at
10 the Supreme Court, there was an appeal -- I mean, a
11 election, right?

12 A. Yes.

13 Q. And after the election, before the Supreme
14 Court where you say you had a good-faith basis to go,
15 immediately after that's when you guys settled, right?

16 A. Not immediately, no.

17 Q. Shortly thereafter?

18 A. We settled three months later, a little more
19 than three months later.

20 MR. DUTKO: Your Honor, I was told that the
21 document that was printed for everybody had the Bates
22 label that ran off the bottom and so now I have a version
23 that has the Bates label that identifies it as a document
24 within the range on the attorney general's -- I mean, on
25 the business record affidavit. Since it was on short

1 notice, I have one copy. I would like to show it to
2 opposing counsel and then bring it to the Court if that
3 is okay.

4 PRESIDING OFFICER: Can I see it first?

5 MR. DUTKO: Yes, Your Honor.

6 PRESIDING OFFICER: You can come forward if
7 you'd like. Come forward if you'd like.

8 Y'all can take a stand-up break, but don't
9 leave because we're moving forward.

10 (At the bench, off the record.)

11 PRESIDING OFFICER: Members, please take
12 your seats. Give them a second to settle down here for a
13 moment.

14 You may continue.

15 Q. (BY MR. DUTKO) Mr. Dorfman, I'm going to make
16 this short because everyone is ready to be done. You
17 started in December of 2020?

18 A. Yes, sir.

19 I went off.

20 That's a yes.

21 Q. And when you started, all of the whistleblowers
22 had already been fired or resigned, correct?

23 A. Yes.

24 Q. You didn't interview Mr. Vassar?

25 A. No, I did not.

1 Q. You didn't interview Mr. Bangert?

2 A. No.

3 Q. You didn't determine the veracity of what their
4 testimony is in front of this Senate?

5 A. I hadn't been allowed to watch their testimony,
6 so I -- I don't know.

7 Q. Right. But you didn't determine the
8 truthfulness of what they were saying?

9 A. To the Senate?

10 Q. No, as far as whistle blowing allegations.

11 A. We took their pleadings at face value and
12 addressed those in the report.

13 Q. I appreciate that. But you didn't make a
14 determination yourself?

15 A. I never interviewed them, but the -- the report
16 is the -- I don't know if you call it a determination.
17 It's a report of our office.

18 Q. Right. But when it comes to determining
19 personal knowledge about the allegations that are made
20 here in the Senate --

21 A. Yeah.

22 Q. -- the allegations that are made before you got
23 there, your testimony would not be helpful as far as
24 personal knowledge goes?

25 A. I have no personal knowledge of what happened.

1 I didn't hear any conversations in September or October
2 or prior to that at the agency. That's true.

3 MR. DUTKO: Pass the witness, Your Honor.

4 MR. OSSO: No redirect, Your Honor.

5 PRESIDING OFFICER: Can we excuse the
6 witness, both sides?

7 MR. OSSO: Yes, Judge.

8 THE WITNESS: Thank you, Judge.

9 PRESIDING OFFICER: Mr. Buzbee, who is the
10 next witness?

11 MR. BUZBEE: Your Honor, Attorney General
12 Ken Paxton rests.

13 PRESIDING OFFICER: Would the parties
14 approach the bench.

15 (At the bench, off the record.)

16 PRESIDING OFFICER: You can still stand. I
17 just need a little quiet. Both parties come back.

18 (At the bench, off the record.)

19 PRESIDING OFFICER: Parties can come back.

20 (At the bench, off the record.)

21 PRESIDING OFFICER: Parties, I need someone
22 from each side to announce that you're going to have
23 closing arguments in the morning before I adjourn for the
24 day.

25 MR. MURR: Mr. President --

1 PRESIDING OFFICER: Do you close tomorrow?

2 MR. MURR: Yes, Mr. President, the House
3 will -- will have closing argument.

4 PRESIDING OFFICER: On the record.

5 MR. BUZBEE: Yes, Your Honor, the attorney
6 general will close tomorrow, closing argument.

7 PRESIDING OFFICER: For the record.

8 9:00 a.m. As always, 9:00 a.m. We are
9 adjourned for today.

10 (Off the record at 6:18 p.m.)

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C E R T I F I C A T E

STATE OF TEXAS)
COUNTY OF TRAVIS)

I, Tami G. Lewis, 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 me by this 5th day of October,
2023.

Tami Lewis

Tami G. Lewis, RDR, CRR, CRC
Texas Certified Shorthand Reporter
CSR No. 7494 - Expires 10/31/25
email: realtimedepos@gmail.com