

Astey Law

JUL 17 2023

July 17, 2022

CLERK OF THE COURT

The Honorable Dan Patrick

Via Electronic Mail

Re: Warren Kenneth Paxton Jr.'s July 16, 2023 Discovery Dispute Letter

Dear Lieutenant Governor Patrick:

Just minutes before midnight last night, Mr. Paxton's counsel filed a letter positing a nonexistent discovery dispute. We request that you await any consideration until we more fully respond to counsel's lengthy (and ludicrous) accusations, which we will do by the end of the day.

The House Managers have turned over in excess of 18,000 pages of documents thus far, and that production is continuing with a commitment to complete production of documents in the House Managers' possession by July 21st—as Mr. Paxton's counsel well knows. See Exhibit 1. Mr. Paxton's obvious ploy is to pretend to engage in good faith discussions with the House Managers' counsel on document production, then lob frivolous interim salvos in hopes of driving a false press narrative.

Mr. Paxton's counsel's accusation that the House Managers are in some way ignoring the July 12 Discovery Order is pure fiction. As we will detail later today, Mr. Paxton is once again seeking to obfuscate the facts rather than address them straight on.

Sincerely,



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The Honorable Dan Patrick
July 17, 2023
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cc: Tony Buzbee
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EXHIBIT 1

July 16, 2023

Via Email: christopher.d.hilton@proton.me and judd.e.stone@proton.me

Judd E. Stone II, Esq.
Christopher D. Hilton, Esq.
Stone|Hilton PLLC
1115 W. Slaughter Lane
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Re: 7/13/23 Discussions regarding document production

Chris,

It is truly a shame that your desire to provide a media sound bite has interfered with your good judgment and ability to act professionally. However, we will not litigate this case by one-liners. The manner in which you have chosen to make demands of the House Managers and then misrepresent the House Manager's willingness and commitment to the rule of law is unprecedented and unlike anyone we have ever encountered in the practice of law. You all have repeatedly and falsely claimed that the House has ignored the law and your "demands" for documents. While Mr. Paxton and others on his behalf have engaged in false attacks against the House for months now, your recent involvement cannot go without comment. By way of example, we raise the following:

- You served the first demand for documents on the House Managers at 5:55 pm on July 6 wherein you "demand[ed] per Article 39.14 [of the Texas Code of Criminal Procedure] that the House Board of Managers produce to his attorneys any and all evidence related to the Articles of Impeachment issued by the Texas House of Representatives within seven calendar days [July 13]."
- However, the next day, you not only backtracked on this demand, but you also falsely told the Senate in a motion seeking production of the same documents (now asking for production by July 11), that the House Managers were allegedly involved in "ongoing intransigence regarding providing even minimal disclosures to Attorney General Paxton."
- Notably though, the House Managers responded to the demand for documents on July 11 (two business days after you sent the first demand) and stated that they were willing to "voluntarily supply you with copies of all relevant documents in our possession, in exchange for Mr. Paxton agreeing to provide us with the same. If agreement is reached, we can commence a rolling production of materials this week."
- You never responded to the House Managers' letter. Instead, Paxton's counsel Mr. Buzbee issued a public statement on July 12 that again falsely claimed that "[t]he House has ignored our demands and the

Attorney General's constitutional rights. Due to these refusals, the House Managers have abandoned the rule of law and have demonstrated nothing but contempt and disrespect for the Texas Senate as they openly mock the process and rules adopted by the upper chamber."

Of course, we did not and have not ignored your request for documents nor "disrespected" or "openly mocked" the Senate Rules. Indeed, the Rules did not contain any provisions regarding pretrial discovery between the parties, much less a requirement that we meet the dictates of Texas Code of Criminal Procedure art. 39.14.¹

Your bullying and overbearing tactics and misrepresentations did not stop there. After Lt. Gov. Patrick issued the Discovery Order on July 12 at 5:02 pm, wherein he ordered the parties to confer about producing documents "as soon as practicable," you sent two emails demanding an immediate production of documents and a meet and confer less than 24 hours from the issuance of the Order. We responded within a few hours, agreeing to your time for a meet and confer and further confirming that we would start the production of documents the very next day. However, this commitment in writing, did not stop you from belligerently and unprofessionally accosting us during the meet and confer. Despite reiterating, without equivocation, that we would fully comply with the order, that we would start a rolling production the very next day, and that we would complete the production of documents presently in our possession by sometime next week, you refused to accept these answers. You continued to ask uninformed questions and you could not help yourself from continuing to lodge false and inflammatory allegations that we had delayed in providing documents, were attempting to "sandbag" your client, and were trying to conduct a "sham impeachment prosecution by ambush." Your antics and insistence upon lodging false allegations against our clients were so over the top, we even questioned whether you were putting on some type of show for others.

You will not find anyone that is responsive to such outrageous behavior, and we will not be the first to start doing so. Your conduct is all the more troubling because at one time you professed to be a public servant. You seem to have taken a page out of your client's book and prefer to abuse and belittle people rather than be professional or legally accurate. Regardless, and in spite of your lack of professionalism, we have calmly provided you with more than sufficient information about the production of documents pursuant to the Discovery Order. As your own email acknowledges, we have given you detailed information about the timing of our production: we started producing "documents [Friday], followed by rolling productions that will be completed 'sometime next week.'"

In marked contrast to the House Managers' actions—and what you do not explain in your email or in your public rants against the House Managers—is the fact that while Mr. Paxton continues to clamor about the alleged inability to tell his side of the story, his

¹ Your letter and briefing note that the issue of whether Texas criminal procedure applies to these impeachment proceedings is unclear because the impeachment proceedings are only "quasi-criminal" and in fact Mr. Paxton can be both removed and disqualified for the actions at issue in the impeachment, as well as criminally prosecuted.

actions tell a different tale. Paxton is doing everything in his power to shield himself from public scrutiny. He has declared that he will not take the opportunity to personally testify, and as you stated during our call, transparency is a one-way street where the House produces relevant discovery and Mr. Paxton refuses to turn over anything. We suggest that these are not the actions of someone with nothing to hide.

Your revisionist email on July 13 contains several inaccuracies. We stand behind every word we said during the meet and confer. The House Managers have always and will remain committed to a transparent and fair process for proceeding to try Mr. Paxton pursuant to the Articles of Impeachment preferred to the Senate. Once again, we state unequivocally that we will and are fully complying with the Senate's Discovery Order. Indeed, as we voluntarily offered last week, before the Senate ever issued the Order, we began a rolling production on Friday. Your attempt to create false deadlines and obligations solely to generate headlines and gen-up campaign donations is unprofessional and offensive. It is unfortunate that we are having to spend time refuting such nonsense when we agreed on the call to provide the information set forth in the Discovery Order and started doing so two days ago. Be that as it may, please see specific responses to your July 13 email below:

- As stated, we began our rolling production Friday. It contained more than 18,000 pages of documents. We intend to complete the production of documents the House Managers' presently possess by Friday, July 21.
- We did NOT agree that the "disclosures" required by the Discovery Order would be "complete" by the end of next week. Nor can we. First, the information required to be disclosed is inherently information that comes from decisions made closer to trial. For example, the House Managers have not decided who their witnesses will be, and the Senate rules do not require us to submit a witness list until August 22, 2023. Second, to the extent we come into possession of information detailed in the Discovery Order, we will timely disclose it.
- During the call, we explained that we have not received any paper or hard copies of documents. Rather, we received all documents electronically.
- During the call we also explained, and we are now confirming, that the production includes files in native formats as well as pdfs.
- As we stated on the call and you can see, the production IS stamped with Bates numbers.
- Per your request, we provided you with a load file.

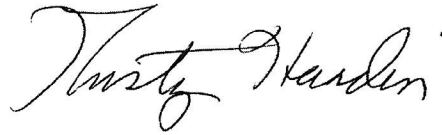
- We never discussed when we would finish “gathering” documents. We will continue to investigate as the Senate Rules contemplate and again, we will continue to comply with the Discovery Order.
- To be clear, we stated during our conversation that there was no value in discussing the substance of the documents we were producing because the production would speak for itself. Conversely, it is you all that stated that your client isn’t going to produce a single document.
- With regard to your request for a privilege log, we noted that our initial thoughts are that a privilege log is not required by the Discovery Order nor the law (we have never had a prosecutor produce a privilege log or even heard of one being ordered in a criminal matter, and civil law is clear that parties are not required to log core work product or attorney-client communications), but we committed to look at the issue further and will let you know our position on Monday.
- You never mentioned during the call any request regarding the timing of supplementing our production. And your attempt to self-impose an arbitrary 48-hour rule is without basis. As with our present production, we will produce supplemental documents required by the Discovery Order as soon as practicable.
- At the risk of being repetitive, we are committed to fully complying with the Discovery Order, which includes producing documents “in possession of the Managers or their agents or the Committee or its agents that contain or constitute evidence relevant to any Article of Impeachment” or are “expected to be introduced at trial by the Managers or their employees.” To the extent you believe that we have an obligation to turn over all documents “collected in the course of” the continued investigation, including documents that do not “contain or constitute evidence relevant to any Article of Impeachment,” we disagree. The Order is clear: our obligation is to produce documents that “contain or constitute evidence relevant to any Article of Impeachment” or that we expect to introduce at trial.
- Your contention that we “committed to construing your obligations under the Court’s order in the broadest way possible to maximize the disclosure of documents and information,” is a perfect example of your continued attempts to misrepresent our statements. We do not dispute that **you** stated that you would like for use to construe the Discovery Order in “broadest way possible.” But we made no such representation. Nor would we. We have an ethical obligation to follow the Discovery Order as written. And as we stated from the beginning of the call and throughout it, we will fully comply with the Order.

- Particularly in light of your repeated comments about the need for transparency, we do not understand how you can claim that we are not entitled to a copy of the correspondence you sent to then acting AG John Scott, wherein you took the position that the provisional AG lacks the authority to act on behalf of the OAG, and instead, Mr. Paxton, while being constitutionally prohibited from acting as the State's AG, somehow does.
- We have not only repeatedly offered to work with you in good faith, but our actions also support this commitment. Again, even before the Senate issued the Discovery Order, we voluntarily offered to produce relevant documents. And we started our production on Friday, even though the Court issued its order less than 2 days before we started production. Unfortunately, your contention that you all are willing to work together in good faith is nothing more than a hollow words. Your actions speak much louder than your words.
- Your bizarre claim that we did not discuss the "category" of documents listed in the Discovery Order reflects either a fundamental misunderstanding of document productions or an intentional attempt to misstate the House Managers' compliance with the Discovery Order. We stated, as to each "category" set forth in the Order, that we would produce such documents, if they existed. And the Order tracks the requirements set forth in Texas Code of Criminal Procedure art. 39.14. As you know, we do not have any obligation to produce documents divided by "category."

There is an old adage among lawyers that says, "if you have the facts on your side, pound the facts; if you have the law on your side, pound the law; if you have neither the facts nor the law, pound the table." While you sir, are content to pound the table, we will continue to pound the law and the facts.

In the end, we hope that you will reconsider the manner in which you are choosing to litigate this case. Lodging false allegations about us and our clients, as you continue to do, is the antithesis of "simply trying to confer with you as ordered by the Court." We all appreciate the urgency and importance of the matters we are dealing with. We suggest that you all treat them with the professionalism and respect they are due as well.

Sincerely,



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