

# **RECORD OF PROCEEDINGS**

## **of the**

# **HIGH COURT OF IMPEACHMENT**

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On the Trial of  
Warren Kenneth Paxton Jr, Attorney General of Texas

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### **THE SENATE OF THE STATE OF TEXAS**

### **SITTING AS A HIGH COURT OF IMPEACHMENT**

#### **SECOND DAY**

(Wednesday, September 6, 2023)

#### **APPEARANCES**

Mr. Rusty Hardin, Ms. Lara Hudgins Hollingsworth, Ms. Jennifer Brevorka, Ms. Megan Moore, Mr. Daniel Dutko, Ms. Leah M. Graham, Mr. Armstead Lewis, Ms. Aisha Dennis, Mr. Dick DeGuerin, Mr. Mark White, III, Ms. Harriet ONeill, Ms. Erin M. Epley, Mr. Mark E. Donnelly, Ms. Terese Buess, Mr. Ross Garber, Ms. Lisa Bowlin Hobbs, on behalf of the House Board of Managers.

Mr. Tony Buzbee, Mr. Dan Cogdell, Mr. Anthony Osso, Mr. Judd E. Stone II, Mr. Christopher D. Hilton, Ms. Allison M. Collins, Ms. Amy S. Hilton, Ms. Kateland R. Jackson, Mr. Joseph N. Mazzara, Attorneys for Respondent.

#### **PROCEEDINGS**

(9:46 a.m.)

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

PRESIDING OFFICER: Good morning, everyone. The bailiff will bring in the jury.

(Senate members enter the Senate chamber)

PRESIDING OFFICER: We begin every day with a prayer. Senator Campbell, please come forward.

SENATOR CAMPBELL: Let's go to the Lord in prayer. Gracious Heavenly Father, Lord God of Abraham, Isaac, and Jacob, bless this body, bless everybody in this chamber, for with your blessing we need nothing more. In Jesus' name, amen.

PRESIDING OFFICER: Thank you, Senator. Y'all may be seated.

House Managers and Paxton defense team, I understand you have come to an agreement on exhibits.

MR. BUZBEE: That is true, Your Honor. Good morning.

PRESIDING OFFICER: Good morning.

MR. BUZBEE: We have a couple of our colleagues that would like to read into the record, I believe, the agreement, if we could do that.

PRESIDING OFFICER: Yes. Yes. Please state your name.

MS. BREVORKA: Jennifer Brevorka.

PRESIDING OFFICER: Thank you, Jennifer.

MS. BREVORKA: The first ones that I'll read are the Attorney General's exhibit numbers. And those that we have agreed to preadmission are 4, 5, 11, 17, 19, 20, 21, 22, 24, 33, 37, 39, 40, 43, 44, 46, 47, 48, 56, 57, 69, 72, 74, 75, 87, 90, 95, 100, 103, 105, 107, 108, 109, 111, 112, 113, 121, 122, 127, 131, 134, 135, 136, 139, 144, 146, 147, 151, 154, 155, 156, 164, 166, 169, 170, 174, 175, 182, 191, 192, 193, 194, 198, 203, 205, 211, 216, 227, 235, 241, 252, and 273.

I will now read the House Board of Managers exhibits to which both sides have agreed to preadmission.

MR. BUZBEE: And, Your Honor, I'd like to formerly offer the exhibits that my colleague just read out into evidence and have them be accepted.

PRESIDING OFFICER: Accepted. Thank you.

(Attorney General Paxton Exhibit Nos. 4, 5, 2411, 17, 19, 20, 21, 22, 24, 33, 37, 39, 40, 2543, 44, 46, 47, 48, 56, 57, 69, 72, 74, 75, 187, 90, 95, 100, 103, 105, 107, 108, 109, 2111, 112, 113, 121, 122, 127, 131, 134, 135, 3136, 139, 143, 144, 146, 147, 151, 154, 155, 4156, 164, 166, 169, 170, 174, 175, 182, 191, 5192, 193, 194, 198, 203, 205, 211, 216, 227, 6235, 241, 252, and 273 were admitted.)

MR. BUZBEE: Thank you.

MS. BREVORKA: The House Board of Managers' exhibits to which the parties have both agreed to preadmission are 92, 126, 213, 291, 450, 457, 466, 516-A, 558, 45, 39, 233, 90, 110, 614, 109, 51, 305, 319, 389, 565, 134, 131, 130, 41, 145, 232, 210, 32, 36, 88, 162, 233, 239, 306, 357, 308, 309, 314, 375, 317, 319, 423, 434, 472, 163, 231, 227, 445, 71, 86, 77, 71, 62, 85, 67, 64, 91, 226, 90, 74, 96, 97, 98, 223, 225, 230, 290, 372, 137, 142, 578, 30, 115, 108, 104, 103, 293, 48, 376, 383, 565, 169, 131. That is the list.

PRESIDING OFFICER: For the record, these exhibits are admitted into evidence.

(House Managers' Exhibit Nos. 30, 32, 36, 39, 2141, 45, 48, 51, 62, 64, 67, 71, 74, 77, 85, 86, 88, 90, 91, 92, 96, 97, 98, 103, 104, 108, 109, 110, 115, 126, 130, 131, 134, 137, 142, 145, 162, 163, 169, 210, 213, 223, 225, 226, 227, 230, 231, 232, 233, 239, 290, 291, 293, 305, 306, 308, 309, 314, 317, 319, 357, 372, 375, 376, 383, 389, 423, 434, 445, 450, 457, 466, 472, 516-A, 558, 565, 578, 614 were admitted.)

MS. BREVORKA: I'm sorry, sir?

PRESIDING OFFICER: I was – just for the record.

MS. BREVORKA: For the record?

PRESIDING OFFICER: All of these exhibits are admitted into evidence.

MS. BREVORKA: Thank you, sir.

PRESIDING OFFICER: Thank you. Yes?

SENATOR GURIERREZ: We received the House Managers' response on privilege, and it seems the last page on several copies is missing on several of my colleagues'.

PRESIDING OFFICER: Let me take a look at that.

MR. BUZBEE: Your Honor, may I be heard on this?

PRESIDING OFFICER: Yes.

MR. BUZBEE: In the interest of time for Your Honor and for our jurors, and because Attorney General Ken Paxton has nothing to hide, we're going to withdraw our objection and save us all a lot of time.

PRESIDING OFFICER: Mr. Buzbee, are you saying you're withdrawing your objection to all documents that will be submitted, or just to this one?

MR. BUZBEE: We're withdrawing our privilege objection, the one that's been briefed, the one that we were going to argue. The Attorney General has nothing to hide.

We will be focused on hearsay. We'll raise hearsay issues that will come up, you know, question by question. But as far as the issue about who holds the privilege, whether something the Attorney General said was privilege, which we believe it is, obviously, but we're going to withdraw that so we can proceed with this trial.

PRESIDING OFFICER: So to be clear, there will be no further objection on privilege?

MR. BUZBEE: Correct.

PRESIDING OFFICER: Okay.

MR. BUZBEE: Now, again, Your Honor, just so we're clear, I don't want you to think that I'm playing games with you, obviously. Anything that a witness said or claims to have said to Attorney General Paxton would be hearsay. I know there's issues with regard to what Mr. Paxton might have said, and they're going to argue that's non-hearsay, but we're not going to make a privilege objection.

MR. HARDIN: Your Honor, may I be briefly heard when you get ready? Before you rule, if I could be heard just – I don't have to be right this second, but –

PRESIDING OFFICER: Pardon?

MR. HARDIN: I think you were about to address him. I just wanted to make sure I make an observation before you rule.

PRESIDING OFFICER: You may make an observation, Counselor.

MR. HARDIN: Thank you. For clarification, I want to make sure some witnesses –

PRESIDING OFFICER: Speak up if you can. Speak a little louder.

MR. HARDIN: Pardon me?

PRESIDING OFFICER: Just speak a little louder.

MR. HARDIN: Sure. Some witnesses and their lawyers have been concerned in light of the fact they were afraid that the privilege was going to be claimed, and that it was yesterday. So if I could have a clarification from Mr. Buzbee, are we to understand that those lawyers are free to tell their clients that the Attorney General's Office nor Mr. Paxton are claiming privilege on any conversations they had?

And I understand him to say they may still object to those conversations on hearsay but that the lawyers are free to advise their clients that the Attorney General's Office – they do not have to worry about the Attorney General's Office or Mr. Paxton individually claiming privilege on any of their conversations.

PRESIDING OFFICER: Mr. Buzbee?

MR. HILTON: Your Honor, I don't think we can comment on what other lawyers should advise their clients, and we certainly can't make any representations on behalf of the Attorney General's Office right now given the constitutional suspension.

What we're saying is that we, on behalf of Attorney General Paxton, will not assert privilege objections in response to their attempts to admit exhibits or in response to witness testimony. There may be other objections that we have to raise through the course of this trial, but we are not going to burden the Court and burden the jurors with deciding these extremely complex legal issues related to the privileges that we've been discussing and that we briefed last night. So we're withdrawing the motion that we filed last night, and we're not going to continue to assert those privileges.

MR. HARDIN: My problem is – I don't want to be obstreperous here, but this is important for everybody to understand. I think witnesses and we have a right to expect that this issue of privilege is dead. And if they're going to head off a ruling by the Senate at-large or by the president in his capacity temporarily but those people – but everybody is still uncertain as to whether they intend to assert it in the future, that's our problem.

And we would hope and want – intend to ask that there be a ruling definitively from the Senate that that privilege, whatever basis that we've urged, whether it's been waived or on the law itself, so that people go forth – forward knowing they're not going to have grievances filed against them claiming they violated the privilege; they're not going to be accused of violating the privilege. We need a determination as to whether or not those people are safe for the future.

MR. BUZBEE: Your Honor, I don't know how much clearer we can make it. We can think about future fights and argue about things that I don't think we're arguing about. Attorney-client privilege, we're not raising that with regard to Attorney General Paxton and the witnesses that they're going to bring. I don't know how much more clearer I can make that.

PRESIDING OFFICER: I think the Court is satisfied with their withdrawal of their motion. They're not going to raise privilege. If they do, then I will stop that.

MR. HARDIN: Thank you.

PRESIDING OFFICER: Bailiff, call Jeff Mateer back to the witness stand. Mr. Mateer, you're still under oath that you took yesterday.

JEFFREY MATEER,

having been previously duly sworn, testified as follows:

**DIRECT EXAMINATION (CONTINUED)**

BY MR. HARDIN:

Q. Good morning.

A. Good morning, sir.

Q. Mr. Mateer, since you and I had a partial trial run yesterday dealing with the circumstances and the microphone, I've been informed by numerous people that I would back up sometime from the microphone and no matter how loud it sounded to me here, some people couldn't hear. So I'm going to stay here.

By the same token, I want to make sure that you are allowed to finish your answers; and you, in turn, will try to answer only that one and trust that we get to the points of concern. Let me – that you're concerned.

Let me back up a moment. Is one reason that you wanted to make sure that everything you knew about the things as I went along and asked you questions is because this is the first time in three years you've been able to tell your side to the world?

A. Yes, sir.

Q. What's that been like for you in terms of frustration? And so as you read and heard the allegations about you and the others and who you supposedly were and who you – what you supposedly did and why, what's that been like?

A. Well, you know, I guess –

Q. You need to pull the microphone to you now.

A. Okay. Sorry. Is that better?

I guess at a core, I mean, I am an advocate, and I think one of the things is I believe in truth. And when you hear people saying things that you know that aren't true, I mean, your tendency is you want to correct that, but I was advised that I shouldn't say anything. And so for – since he events that we've been discussing the last day –

Q. Without going into details – excuse me. I interrupted you. Go ahead.

A. No, I mean, I finished. I was pausing.

Q. And without going into details, have you been introduced – have you been interviewed over the years by law enforcement about some of these matters?

A. I have been, yes.

Q. And were you asked by law enforcement – though they couldn't order you, were you asked by law enforcement to not talk publicly about the matters you talked to them?

A. Yes.

Q. And you have followed that request?

A. To the best of my ability.

Q. That request doesn't apply here today. Do you understand that?

A. I do understand that, sir.

Q. All right. I want to go now to some dates, and I'm going to try about a time line. You know, I – like you, but not quite the number of years, quite a number of years more, but like you as a trial lawyer, I've always relied on some type of whiteboard or something that was on the wall or what – and for those of us who are still technologically challenged, I'm going to try as we go forward here, when we hit dates that are important, I'm going to mention them and Ms. Manela is going to try to use the equipment over there to make an entry that it will be on the iPad.

And then at the end of your testimony, I want to ask you to glance at the list of dates that we may put up there and tell us whether those are true and accurate and reflect your testimony about the events and dates that occurred. Are you with me?

A. Okay. Yes, sir.

Q. Okay. Now, I want to apologize to you also in asking these questions that one of the difficulties here is about for every exhibit we show and discuss, it takes a little bit of time, correct? And are you aware that we're on some very strict time requirements here?

A. Yeah, I read the –

Q. You lost the microphone.

A. I've read the president's order.

Q. All right. If you pull it just a little bit further, just the top of it, move that.

A. This way?

Q. There you go.

A. All right. Sorry.

Q. Right there. That's good. All right. Now, for instance, we talked about the date of July the 22nd of 2020 in which you had conversations with the Attorney General. Do you recall?

A. Yes, I do recall.

Q. All right. And the original reason for that meeting was what?

A. Well, the original reason was that the Attorney General was going to appear in Travis County district court on that day. And Darren McCarty, the deputy for civil litigation, had advised me.

Q. All right. And so as the meeting started – by the time the meeting started, had you learned that Mr. McCarty, I think you said yesterday, had already talked the Attorney General out of it?

A. That is correct.

Q. Did you then still take the occasion of that meeting to have several conversations with him?

MR. BUZBEE: Your Honor, I'm going to object. Almost every question is leading, and I'm just going to ask Mr. Hardin not lead this witness.

MR. HARDIN: I'll be glad not to.

PRESIDING OFFICER: Sustained.

MR. HARDIN: And I'll hopefully remember that later.

Q. (BY MR. HARDIN) All right. Now, having said – in that particular meeting, what subjects did you want to make sure that he understood what your position and concerns were?

A. I wanted to have a meeting with the Attorney General to discuss why he was involving himself in the affairs of Nate Paul; why would he, you know, an Attorney General, want – feel like he had to go to Travis County district court on behalf of someone.

Q. All right. And by the time that July 22nd came around of 2020, had you begun – you, yourself, started to have very much concerns about his relationship with Nate Paul?

A. I had – that memo reflects that I had already raised concerns with the Attorney General. So this was reiterating concerns that – not only that I had, but all the staff, all the senior staff had about being involved with Mr. Paul and his companies.

MR. HARDIN: Can I have Exhibit 87 back up please, Stella?

Q. (BY MR. HARDIN) Now, this is in evidence. It was admitted yesterday. When did you prepare this memo that is dated July the 22nd, 2020?

A. I prepared it that day.

Q. All right. I'm going to ask you to publish it to the jury. And what I mean by that is I want you to read relevant portions. Well, first of all, the first two paragraphs talk about what you have described, do they not, as the purpose – the initial purpose of the meeting?

A. Correct.

Q. And in those two paragraphs, what is your testimony as to whether it accurately describes your original concern?

A. It does.

Q. I would ask you then to read to the jury out loud the last two paragraphs of this exhibit.

A. Okay.

MR. BUZBEE: Objection, Your Honor. The document speaks for itself. It's on the screen of every Senator here. I'm sure they can read it for themselves.

MR. HARDIN: That may be, but I'm allowed to publish it and have the jury read it.

MR. BUZBEE: It is published because it's on their screens.

PRESIDING OFFICER: Overruled. Continue.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) Would you please.

A. Yes, sir. During the course of the meeting, I relayed concerns that I previously raised to General Paxton –

Q. Now, remember, I'm going to slow you down here for her. She's got to get that.

A. That Yankee comes out in me occasionally. Let me start again.

During the course of the meeting, I relayed concerns that I had previously raised to General Paxton about his personal involvement in any matters related to Mr. Paul. General Paxton agreed that going forward, he would not have any further personal involvement with any matters that this office is handling that relate to Mr. Paul or his companies and partnerships. Instead, as any – as any other matter, paren, civil or criminal, closed paren, our division attorneys would handle as they deem appropriate with oversight by their division chief and the appropriate deputy.

Q. At the time you wrote that memo, had you become – and had that conversation that you are memorializing, had you become aware that he, in the Mitte Foundation case, had begun going around the shop supervision and been dealing and pressuring line employees?

A. I had.

Q. Is that, in fact, one of the things you're referring to in the last sentence of that memo?

A. It is.

Q. And what's the problem with that?

A. Well, the problem is the office is being used for on behalf of one person. And by this time I knew that he was a campaign donor. And so that – I mean that concerned me because there have been allegations in the past made against the office and against the Attorney General that he had taken actions on behalf of campaign donors. So, I was super sensitive to that.

Q. If in fact – in addition to being to the advantage of a campaign donor, by definition, does that mean it was also to the disadvantage of other citizens?

A. Absolutely.

Q. All right. Now, after July the 22nd, did you discover whether or not he had kept – let me back away. How would you – back up.

How would you describe his representation to you at this meeting in terms of whether you considered it an actual promise or commitment? How would you describe it?



A. I mean, I believed that he would allow the professionals, the lawyers in the Office of Attorney General, that they would do their jobs. And so I believed he would commit – I believed that he would do that as of July 22nd. Let's say this, I hoped he would do that.

Q. Did you believe he had given you his word?

A. I did.

Q. And did you believe he would keep it?

A. I hoped he would keep it.

Q. Did you discover differently after that meeting?

A. I did.

Q. Do you recall the first time you became aware he was continuing to pursue activities on behalf of Mr. Nate Paul?

A. Yeah. What I recall is I think the first week in August, I – for the weekend, I rented a house out in east Texas where I met my son and his wife, and we took the weekend at a lake house. When I returned to the office on Monday, I learned that the office had issued an opinion letter with regard to foreclosures.

Q. Now, let me ask you, you were not involved in that process, were you?

A. I was not involved at all and was not alerted to it until after the fact.

Q. At the time that opinion was issued, what had the unrelenting position of the Attorney General's Office been to the public and anyone affected that asked for opinions as to the issue of openness during COVID?

A. I was proud of the office and, quite frankly, proud of the Attorney General. We were at the forefront of having Texas reopen and to stop COVID restrictions. We did it with regard to churches. We did it with regard to entertainment. So we were the ones pushing to open Texas back up. That was General Paxton's policy; that was the office's policy.

Q. What did you – what was wrong, then, with this opinion that – wait a minute. You don't have to lean back.

A. I won't talk if I back up.

Q. Just bear with me. Okay? What did you – what was wrong, then, with this opinion?

A. The opinion took the complete opposite view. It was if Anthony Fauci had written it. And it was shut down, you know, that you can't do outside foreclosure sales. I remember coming back and talking to Mr. Bangert, like, what was this? This is completely contrary.

Q. All right. So for those who believed that it should shut down, that would have been a good opinion, right?

A. Well, I mean, but, again, this is August. This isn't April. I mean, we've been through that. I mean, COVID is March, the shutdown, the 14 days, we've been through that. We had issued opinions with regard to churches that said, you know, that no county judge can shut down a church, no government can shut down a church. We had done that with entertainment. I mean, this – to me, this was in line with all that.

Q. And my question is based no matter what side of that issue a member of the public, Senate, or anyone else came down on, are you testifying that to help Nate Paul, Mr. Paxton directed an opinion that was totally contrary to his and his administration's policy and his public statements on a regular basis?

MR. BUZBEE: Your Honor, I'm sorry to interrupt again, but that is leading, absolutely leading.

MR. HARDIN: I'll rephrase it.

PRESIDING OFFICER: Sustained. Please rephrase.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) Put it in your words as to whether – no matter which way one person came down on the issue, what was the import of the seriousness of that opinion?

A. Well, it was contrary to what I believed Attorney General Paxton believed and what had been the office policy. It was completely contrary. I mean, we were not for shutting things down, certainly not shutting down outside foreclosure sales.

Q. All right. Now, when the opinion on foreclosures comes out, at that time were you aware of any – any benefit it might carry for Mr. Paxton – I mean, for Mr. Paul?

A. That I do not remember.

Q. All right. So was your objection initially the substance of what the opinion was?

A. That was my objection, the substance.

Q. And you were not aware one way or the other as to whether it carried a side benefit to Mr. Paul?

A. Not during that week, which I guess was the first full week of August.

Q. All right. Then after the August 1st, 2nd, 3rd period of time, when is the next time you became concerned about what Mr. Paxton was doing in terms of positions that might aid a donor, Mr. Nate Paul?

A. Yeah. My wife and I went to Maine to visit my daughter who works in Boston. On the first night there – and we were at a cabin on Mount Desert Island. And sometime during that evening, I got two texts from Mrs. Paxton, Senator Paxton. And the first one was asking me –

MR. BUZBEE: Objection, Your Honor, hearsay.

MR. HARDIN: Let me – let me – let me try it this way.

Q. (BY MR. HARDIN) Did you – do you recall the date?

A. August 14th, 15th.

Q. August 14th, 15th. And did you get an inquiry from anyone?

A. I did.

Q. And from whom was the inquiry from?

A. From Mrs. Paxton.

Q. From whom?

A. Mrs. Paxton.

Q. Mrs. Paxton. What was the nature of the inquiry?

MR. BUZBEE: Again, Your Honor, he's just trying to get around what's clearly hearsay. He wants to talk about what maybe Senator Paxton said to him via text. That's hearsay.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) When you got that particular message from her, did you become concerned about where –

MR. BUZBEE: Again, Your Honor –

MR. HARDIN: Let me just finish the question.

Q. (BY MR. HARDIN) Did you become concerned about where Mr. Paxton might be?

MR. BUZBEE: Again, Your Honor, I would object to this as hearsay. He's trying it all different ways, but it's still hearsay.

PRESIDING OFFICER: Sustained. Continue.

Q. (BY MR. HARDIN) Mr. Mateer, later did you get an inquiry – did you get a response that made you no longer concerned?

A. Yes.

MR. BUZBEE: Again, Your Honor, I'm sorry to keep interrupting. The witness knows this too. This is all hearsay.

MR. HARDIN: That is not hearsay. I'm not asking him for an answer on a matter trying to prove the truth of the matter asserted outside of the courtroom, which, of course, is what hearsay is. I've asked just simply about his state of mind.

PRESIDING OFFICER: Overruled. Continue.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) You can answer.

A. Yes, I was no longer concerned.

Q. But do you recall about what time that you got that call?

A. I would have seen it the next morning, but in the middle of the night.

Q. All right. Now, after that date, when is the next time that you became concerned about Mr. Paxton's dealings with Mr. Paul?

A. I think it then fast-forwards to sometime in September.

Q. All right. Can you give me an idea – by the way, at the time that you were going through – let's take the first week in September. First week in September, can you describe for the jury what your state of mind and concern was by then in terms of Attorney General versus Mr. Nate Paul?

A. Well, the Attorney General had made a promise to me—

Q. Keep your –

A. I'm sorry. The Attorney General had made a promise to me and to other senior staff that he wouldn't have any more dealings with Nate Paul. It became apparent by September, in light of Mrs. Paxton's text, in light of the foreclosures sale, that he wasn't – he was not honoring that commitment any longer.

Q. By that time, were you having any conversations with – without going into what was said at the time, were you having any conversations with Mr. Penley about his concerns over in the criminal justice area?

A. Yes.

Q. Without going into the conversations specifically, what were your concerns?

A. The concerns were that Mr. Penley was attempting to follow up on a request of Mr. Paul at the Attorney General's urging to conduct an investigation with regard to Mr. Paul's allegations that federal and state law enforcement had engaged in improper conduct towards Mr. Paul.

Q. Now, we'll get to the facts of those kinds of circumstances with other witnesses. But as of the time you hit about the first week in September, had you had any – were you involved in any of the details of investigating Mr. Paul's allegations?

A. No.

Q. You, yourself?

A. I was not.

Q. All right.

MR. HARDIN: Your Honor, I left my glasses over, if I could go get them.

Q. (BY MR. HARDIN) Let me ask you, if I can go back to the latter part of August. In August of 2020, did you have occasion to meet a man named Mr. Brandon Cammack?

A. I did.

Q. And what were the circumstances?

A. What I recall is I was in my office on the 8th floor, probably with the door closed, probably working on either Google or opioids, and either my assistant or actually probably the Attorney General –

Q. I'm going to apologize. This is not your fault or anything, but I need to kind of shorten –

A. I'm sorry.

Q. That's okay. So did you have occasion to meet him? Where were you when you met him?

A. I was in my office on the 8th floor.

Q. All right. And how is it that you met Mr. Cammack?

A. The Attorney General brought him by my office.

Q. And I hope you understand, sir, going forward, I really apologize when I interrupt you. Under the old days without time limits, I would love to not have to do that, okay? So I'm just apologizing –

PRESIDING OFFICER: Counselor, I remind you that the parties agreed to the time limits. Continue.

MR. HARDIN: Thank you very much. I appreciate it. And I want you to understand I'm not complaining about them, I was just explaining them.

Q. (BY MR. HARDIN) All right. Now, how long did you visit with him?

A. I mean, must have been 15, 20 minutes.

Q. Who brought him into your office?

A. The Attorney General, Mr. Paxton.

Q. And what – do you recall what you talked to Mr. Cammack about? Without saying what it was, do you recall the conversation one way or another?

A. I mean, vaguely recall the conversation.

Q. Did you interview him at all?

A. It was not an interview.

Q. And did you offer him a job?

A. I did not offer him a job.

Q. And at that time did you have any idea that he was going to later be employed by the Attorney General?

A. I did not.

Q. Okay. And so after that meeting, what was your understanding as to whether Brandon Cammack was going to be ultimately one day an employee of the Attorney General's Office?

A. I had no expectation of that.

Q. All right. Now, after that meeting – let's move now into September. I want to – at some time did you become aware that the Attorney General wanted to hire Mr. Cammack?

A. I did become aware of that.

Q. How did you become aware?

A. I believe Mr. Penley told me and then sent me a memo or an e-mail.

Q. All right. And did you, yourself, have a position as to whether Mr. Cammack should be hired?

A. I supported Mr. Penley's position, which he did not support him being hired.

Q. And the reason for not hiring Mr. Cammack was what?

A. Well, Mr. Cammack was a five-year lawyer who didn't have any prosecutorial experience.

Q. And what was it the Attorney General wanted Mr. Cammack to do?

A. He wanted him to, I guess, assist with or perhaps lead an investigation into the allegations that Mr. Paul was making against federal and state law enforcement.

Q. What was the position of your criminal justice division as to whether they wanted Mr. Cammack hired? I mean, more specifically, Mr. Penley, what was his position?

A. Mr. Penley's position was he did not want Mr. Cammack hired because he felt like he could do the job.

Q. And Mr. Maxwell's position?

A. The same.

Q. All right. Had that position been made clear to the Attorney General?

A. Yes.

Q. Were you aware one way or the other as to whether the Attorney General was then contacting other deputy levels to try to get them to agree that Mr. Cammack be hired?

A. I learned that after the fact that that was the case.

Q. And what would you tell the jury unanimously was the position of the deputies as to whether Mr. Cammack would be hired to conduct an investigation?

MR. BUZBEE: Objection, Your Honor, hearsay. We're going to hear from Penley and Maxwell. They can tell us their position.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Let me ask you this: Did you, yourself, ever have conversations with the Attorney General expressing your opposition to Mr. Cammack being hired?

A. Several.

Q. Do you recall when those conversations were? And that last answer, I think the microphone missed it. There you go.

A. Several.

Q. And do you know when they were and where they were?

A. They would have been in September, and they would have been in various locations. They would have been –

Q. All right. Where was the first conversation you remember having with Mr. Paxton expressing your opposition to Mr. Cammack being hired?

A. I don't know if it was the first one, but the first one that I – sitting here right now that I recall was I remember I was driving to Houston, actually to The Woodlands, for a Federal Society Leadership event, and the Attorney General called me. He was on an airplane; I was driving. And we had a discussion about Mr. Penley not being for hiring Cammack.

Q. And can you give us a date for that conversation?

A. Yes. It was Friday, September 25th.

Q. All right. And on Friday, September 25th, you were in your car. Who was with you?

A. My wife.

Q. And were you informed very quickly in the conversation who was accompanying the Attorney General for this September the 25th conversation?

A. Well, I know that the Attorney General was in Washington, D.C. with Mr. McCarty, the deputy for civil lit, for a – I believe it was a Google meeting. And they were on a plane coming – they were literally on a plane coming back from D.C.

Q. What did Mr. Paxton tell you in that phone conversation?

A. Well, he was upset at Mr. Penley because Mr. Penley had expressed that he was not in favor of hiring Mr. Cammack, but the Attorney General wanted Mr. Penley to sign the contract.

Q. Do you recall what he said and what tone he said it in?

A. You know, I – in my time, you know, over four years and – over four and a half years with the Attorney General, I think he only raised his voice to me and we had a heated discussion on two occasions. This was the first occasion. He was not happy.

Q. And what did you tell him?

A. I told him I would support Mr. Penley –

MR. BUZBEE: Objection, Your Honor, hearsay.

MR. HARDIN: This is a response not being offered for the truth of the matter, but that he simply stated this to the Attorney General.

PRESIDING OFFICER: Overruled.

MR. HARDIN: We're not seeking to prove the truth one way or the other. So my argument is it is not hearsay.

PRESIDING OFFICER: Overruled.

MR. HARDIN: Thank you, Your Honor.

Q. (BY MR. HARDIN) Go ahead.

A. Yeah. I mean, so the Attorney General was upset that Mr. Penley wouldn't sign the outside counsel contract for Mr. Cammack.

Q. What did he want you to do as it applied to Mr. Penley?

A. Well, he wanted me to talk to Mr. Penley and have him sign the contract on this conversation.

Q. And what did you tell him as to whether you would do that or not?

A. I told him I would not do that.

Q. And why did you tell him you would not do that?

A. Because I was going to back my deputy. Mark Penley is a 20-plus year law enforcement prosecutor, and he told me he could do the job that he was being requested to do.

Q. And then how long did you say that conversation lasted?

A. It couldn't have been that long because he was on an airplane, and I think he was told to get off.

Q. And then when is the next – when was the next conversation that you had with Mr. Paxton again about whether Mr. Cammack should be hired?

A. Now, this was a – this was in my office on the following Monday, so that would have been the 28th.

Q. And on the 28th when you had this conversation, what was said there and what were the circumstances?

A. Well, the Attorney General came into my office – and actually he came in and he – he didn't raise Cammack or Penley. Instead – and, again, I don't have a strong recollection other than it wasn't those issue. So it was probably he was updating me on the Google meeting, for instance. And I said, But I understand you've got a problem. One thing that I didn't say –

Q. I didn't understand that part. What did – you said this to him?

A. I said this to the Attorney General. So he didn't raise the issue. And then I said to him – I probably said Ken. Ken, I understand you're upset with me.

Q. And how did you understand that? Where did that come from?

A. Mr. Penley had met with Mr. Paxton.

Q. Without going into what they said, let's try to do it this way. Were you aware of a meeting that Mr. Paxton had with Mr. Penley on Saturday the 26th in McKinney?

A. I was aware.

Q. That would have been two days before you having a conversation with him, is that right –

A. Yes.

Q. – in your office?

A. Yes.

Q. So if we have the sequence of these conversations, on the 25th did you say that you were driving to Houston –



A. Yes.

Q. – and had the conversation with Mr. Paxton on the phone?

A. Yes.

Q. All right. And then were you aware – did you inform – without going into what you told him, did you inform Mr. Penley on the 25th after your conversation with Mr. Paxton of the contact – content of the conversation with Mr. Paxton?

MR. BUZBEE: Again, Your Honor, I hate to keep interrupting, but every question is leading this witness.

PRESIDING OFFICER: Sustained. Continue.

Q. (BY MR. HARDIN) Let me ask you this: After you got through with the phone conversation with Mr. Paxton on the 25th that you've described, did you alert any member of your staff to that conversation?

A. Yes.

MR. BUZBEE: Again, Your Honor, leading. If he wanted to ask him, "What did you do thereafter," that would not be leading. But he's just basically telling the witness what he wants him to say. Leading.

MR. HARDIN: I don't know how that question alerts him to anything other than my question is, did you talk about that conversation with anyone else after you had it? That's my question.

MR. BUZBEE: That's a different question, and I have no objection to that one.

Q. (BY MR. HARDIN) Did you?

A. And the answer is yes.

Q. And whom did you talk to?

A. With Mark Penley.

Q. And when and where did you have that conversation with Mr. Penley?

A. I was at the meeting, the Fed Soc meeting in The Woodlands. It would have been that – the evening, Saturday evening.

Q. All right. And as a result of that conversation or anything else, did you become aware that General Paxton had arranged a meeting with Mr. Penley that was scheduled to happen the next day?

A. Actually, I believe it happened that day. This was after that meeting.

Q. You were aware he had one conversation?

A. Yes.

Q. And then after Mr. Penley had the conversation with the Attorney General on the 25th, which followed your earlier plane conversation with Mr. Paxton, did you become aware of a meeting that Mr. Penley was to have with Mr. Paxton the next day on Saturday the 26th?

MR. BUZBEE: Your Honor, objection, leading. He's suggesting the answer to the question in the question, which is classic leading, and I object to it.

PRESIDING OFFICER: Rephrase, please.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) Do you have any knowledge from any source of whether or not on Saturday the 26th –

A. Mr. Hardin, I took notes.

Q. Pardon me?

A. I took some notes –

Q. I know that.

A. – that maybe would help refresh my memory, that I made. So I think I provided those to everyone.

Q. I'm going to show you – I can't put them on the screen copy?

MR. HARDIN: Do we have a separate set of hard copy?

And also can I ask, Your Honor, permission – Ms. Brevorka, is 240 one of those that you agreed to, exhibit? Okay. Ms. Brevorka, the question has been answered by Stella. Thank you. All right. Thank you. Would you provide a copy, please, to the President, please.

Q. (BY MR. HARDIN) All right. I'm going to ask you, first of all, to look at these documents real quickly. We're not going to talk about what's in the contents of them. I'm going to ask you to look and, first of all, authenticate them for me. Are these notes that you, yourself, prepared?

A. Yes.

Q. Keep your voice and microphone –

A. Yes.

Q. Okay. And when you did – when did you prepare these notes?

A. I prepared these notes on the Sunday after I resigned.

Q. All right. And so this is after you had left; is that correct?

A. That is correct, but I resigned – I'm sorry.

Q. Go ahead.

A. I resigned on Friday the 2nd.

Q. Let's talk – the 2nd. All right.

A. And these were written on Sunday morning the 4th.

Q. Now, I'm asking you to look and see if these notes truly and accurately reflect the events that you were recording as you remembered them on that Sunday over several days. Do they?

And do these notes – I want you to look at what we were talking about. We were on the period of the 25th and the 26th. I don't want you to tell me what your notes say. I want you to read and see if that helps refresh your recollection and then I may ask you some questions, but not you reading the notes or anything. I'm going to ask you about your memory.

Would you briefly read and review your memory?

A. Yes.

Okay. Mr. Hardin.

Q. All right. Does that help refresh your memory?

A. It does, sir.

Q. All right. I want to go back, then, to your – you put the notes – just keep them there, but testify from what you remember.

During your conversations with Mr. Paxton on the 25th, was there – did you alert him to your feeling – or let me put it another way. Was there any contention by Mr. Paxton that you had approved the hiring of Mr. Cammack?

A. Mr. Paxton said that – Mr. Paxton said that to me during that phone conversation.

Q. He said what?

A. He said, Well, you approved the hiring of Cammack. And I said, Absolutely not.

Q. And has it been your contention from the very beginning always that you did not approve of the hiring of Mr. Cammack?

A. I never approved the hiring of Mr. Cammack.

Q. Was that – how would you describe that part of your conversation with Mr. Paxton when he suggested you had?

A. I think it's probably the first time I ever raised my voice to the Attorney General in response to him raising his voice to me.

Q. So we've got two raised voices, one on a plane and one in a car?

A. Correct.

Q. Who was driving?

A. I was driving unfortunately.

Q. All right. Now, have you had a chance to look at your notes and refresh your memory as to whether or not – when and where, if you did, call Mr. Penley after that call?

A. Yes. I spoke to Mr. Penley twice, once on the 25th and then I spoke to him again on the 26th.

Q. All right. And when you talked to him the 25th, what – do you have any memory as to whether or not you learned he was going to meet with Mr. Paxton on the 26th?

A. I learned that he was going to meet with Mr. Paxton on the 26th.

Q. And did you have concerns about that meeting?

A. I did, because my concern was – my concern was that General Paxton was going to fire Mr. Penley.

Q. So what did you urge Mr. Penley?

A. I told Mr. Penley, Do not –

MR. BUZBEE: Objection, hearsay.

MR. HARDIN: Okay. That's fair enough. I'll withdraw it, Your Honor.

PRESIDING OFFICER: Sustained.

MR. HARDIN: I'll withdraw it. Thank you.

Q. (BY MR. HARDIN) And during the call, did you and Mr. Paxton have any further conversation concerning why in the world y'all were involved – he was involved with Mr. Paul?

A. During that conversation and then just briefly, but certainly on the meeting the following Monday.

Q. On the 28th?

A. On the 28th.

Q. All right. So – but in the call in the airport – I mean, on the airplane, what I call the airplane call, did you express any concern about why y'all were – why he was involved with Mr. Paul?

A. I mean, I recall that I, again, asked him – this wasn't the first time – but, Ken, why are we involved in this? What – I mean, it just didn't – it just didn't make sense to me. Of all the things going on, why was – why were we involved?

Q. What do you mean with all this going on? What are you talking about?

A. Well, by this time – this is the end of September. So by this time, we knew about – we knew a lot more about Nate Paul. We had learned a lot more about who he was, what was being alleged against him. I mean, he was not a good guy and had a lot of concerns about that. We knew about the Attorney General wanting to appear in court on behalf of Nate Paul by that time. We knew that he – by that time, I knew he had been pressuring the other deputies and actually other line lawyers to do more on behalf of Nate Paul. So all this was starting. By the end of September, all this is coming to fruition.

And of course, this with Penley, Penley just simply saying, I want to investigate it. I've asked him for – Mark Penley was a loyal person. I mean, he was Mr. Paxton's friend for decades. And during one of these – this call, Ken actually says that Mark's lying, that Mark Penley is lying. Well, I mean, that to me – and sort of like the fact that the Attorney General wanted to appear in court, hearing Mr. Paxton saying that Mark Penley of all people was lying, I mean, I just – I mean, you have to know Mark Penley.

Q. Why – why was that such an a-ha moment for you?

A. He –

Q. Hold on. What was that such an a-ha moment for you?

A. Because my experience had never been Mark Penley – I mean, he was – he is honest to the fault, just absolutely honest to the fault. And so when General Paxton says that Mark Penley is lying, I just – I mean, you know, bells and whistles are going off that this is not good. This is bad.

Q. Did you become aware during – after that conversation – do your notes help refresh your memory as to whether you knew that Mr. Penley was then going to meet with the Attorney General on the 26th?

A. I did know that.

Q. Without going into what Mr. Penley told you after that meeting, did you have a conversation with Mr. Penley in which he fills you in on the conversation with Attorney General Paxton?

A. After Mr. Penley met with the Attorney General, Mr. Penley called me.

Q. All right. Now, then after that Saturday the 26th, what happened in terms of conversations with Mr. Paxton after the – on the morning of the 28th?

A. On the morning of the 28th, I was in my office, and the Attorney General came in to meet with me.

Q. What did he want?

A. He – my best recollection is the first part of the conversation was about other cases, probably about Google because he had just been in D.C. He was as friendly as ever. I mean, it was the Ken Paxton that I had known for four-plus years; very friendly, very communitive. And I was actually – I mean, I was actually surprised by that because our last discussion had been so heated and then I knew about what had occurred during the weekend. And I asked him – because he had told Mr. Penley that he was frustrated with me and compared – compared me to my predecessor who had been very frustrated at one time. And so I brought that up. The Attorney General didn't bring it up in that meeting.

Q. What did you say?

A. I said –

MR. BUZBEE: Objection, hearsay.

MR. HARDIN: No, it's with Mr. Paxton. This is a conversation between the two. There's really no hearsay here with an admission against interest of Mr. Paxton that's about to follow. It's a conversation the two of them had.

PRESIDING OFFICER: Overruled. Go ahead.

Q. (BY MR. HARDIN) Go ahead.

A. He doesn't – he didn't address whether he was frustrated with me. Instead, he expressed that he was frustrated with Penley.

Q. What was he upset about again?

A. It was almost a replay of the conversation that we had on Friday, the Friday before, except this one was – it was not a heated discussion. This was, you know, General Paxton one-on-one, just the two of us. And he was – he was what I would say normal Ken Paxton. Just, I don't understand, why won't Penley sign this?

Q. What did he want you to do?

A. Well, he – during – during the conversation, I attempted to explain to him something that I thought he already understood, which is we have policies and procedures at the Office of the Attorney General. We have an executive approval memo process. And I tried to explain to the Attorney General that, you know, that was there – that process is to protect him; it's to protect the agency. And so the hire-an-outside-counsel contract where we're going to spend money that the State has given us, that we have to go through a formal process, part of that process has several steps to it. And the Attorney General acted as if he didn't understand that process.

Q. Was all of these conversations of these about wanting Penley to sign the contract so that Mr. Cammack could be an official employee on a mission for – as outside counsel to investigate things, complaints brought by Mr. Paul?

A. Well, actually, what he wanted to do was Mr. Penley to sign the memo, which Mr. Penley is just one of the persons in the chain of command.

Q. We'll get to that. But was this a memo that would authorize the outside-counsel contract for Mr. Cammack?

A. It would. And eventually it would be actually the first assistant who would sign that contract under normal procedures.

Q. All right. You mentioned earlier yesterday your process for different hirings and things like that. Would his have been a contract that had to go through about eight of you to be approved?

A. I think that's correct. The memo would show that. It went through several layers.

Q. And at that time – what was your understanding as to where the approval rested at that time? How far down the chain or up the chain had it gotten?

A. It stopped at Mr. Penley.

Q. Had it gotten to you at all?

A. It had not gotten to me.

Q. Had you seen the contract?

A. I had not.

Q. Did you know whether or not a contract had already been signed?

A. Signed, no, I had no idea.

Q. Did you know that it was pending and it had been approved by certain levels until it got to Mr. Penley?

A. I mean, it would have to have been approved before it got to Mr. Penley.

Q. All right. Now, when you had this conversation with him, when it ended, how would you describe what the tone was?

A. I mean, again, it was normal Ken Paxton. He asked for copies of our policies and procedures. And so I asked Lacey Mase, who is the deputy for administration, to gather those for him. And at the end of the day, we provided them to him. Actually, I think I gave it to his travel aide, Mr. Wicker, and gave them to General Paxton.

Q. Did you have – did he in that conversation tell you what he wanted you to do with Mr. Penley and Mr. Maxwell?

A. I assumed – in that conversation, no. I assumed that we were back to Penley and Maxwell involved and certainly Penley involved in the investigation.

Q. The conversation on the 28th, at any time did he ever take the position that he wanted you to fire Mr. Penley and Mr. Maxwell?

A. Not in the morning meeting.

Q. All right.

A. That was later.

Q. Okay. You've referred now to a later. So did you have a second conversation on the 28th with Mr. Maxwell – excuse me, with Mr. Paxton?

A. Yes, I did.

Q. And what was the occasion of that conversation?

A. It was – my best guess is it was sometime after 9:00 p.m., because I was in my condo. And this was completely contrary to the morning's conversation.

Q. In what way? How was it different?

A. This was the second time that Attorney General Paxton was very upset, very angry.

Q. Did you form any opinion in your own mind in terms of how he was acting as to what was going on here?

A. I believed he had been – I believed he had been drinking.

Q. All right. Did he sound like that to you?

A. I mean, again, the best you can tell over the phone. It was so unlike any conversation I've ever had with him.

Q. How would you characterize the conversation?

A. I mean, he was angry; he was upset. I felt like perhaps there was someone else with him because he was literally saying the same things that we now had discussed two times before, repeating the same things but in an agitated – I thought maybe he was recording the conversation. I mean, it was a horrible, horrible feeling, especially for someone that –

Q. How long did that conversation last?

A. I mean, 10, 15 minutes.

Q. And in your situation, what was your response?

A. I mean, I didn't – I was – I did not get angry with him. I was really confused. I was troubled because he kept pressing the same things over and over again.

Q. And what were those things over and over again?

A. It was – it all dealt with the hiring of Mr. Cammack.

Q. And what did it have to do with Mr. Penley and Mr. Maxwell?

A. Well, he – at one point in that conversation he wants me to fire them. And he says he's reviewed the policies and procedures, and the first assistant can sign the contract.

Q. I want to ask you about that. So did he suggest – what did he suggest, if anything, about whether you could or should sign the contract?

A. He suggested that I could and I should sign the contract.

Q. And what did you say?

A. I said I would not sign the contract.

Q. Did you tell him why?

A. I said because I – I'm a rule of law guy. I believe in those – those policies and procedures.

Q. And a schedule for that, if the contract would have been approved, if Mr. Penley had approved, where would it go next?

A. I think it goes up – and we'd have to look at the memo, but I think Ms. Mase has to approve it. I think it then either goes up to either Missy or Ryan. It's a couple before it reaches me, but the memo would be the best.

Q. Would it have to work its way up to Mr. Bangert for sure before it got to you?

A. I believe so.

Q. All right. At the end of the day, did he – do you recall whether he ever said anything to you about whether – ask you a question about anything having to do with what if – about him signing?

A. Yeah. He asked – you know, now in retrospect I think I understand why he asked it, but we had this discussion about the policies and the procedures again. This would have been at least the third time that we had it. He urges me to sign it. And then at one point near the end of the conversation he asks me the question, Well, what if I've signed it? And I –

Q. What if he signed it?

A. Yeah. He asked me – he asked me, Well, what if I signed it already?

Q. Right. What if I've signed it?

MR. HARDIN: Stella, what if – what if I signed it. Thank you. Thank you. If you would put that on –



Q. (BY MR. HARDIN) It would be the evening – the evening of 9-28, in that conversation he says to you, What if I had already signed it?

A. What if I had already signed it.

Q. And you're certain of that?

A. Yes.

Q. All right. What did you tell him?

A. I told him that I would consider the contract void.

Q. Did he say to you he had already signed it?

A. He did not say that.

Q. Now, how much – why would you consider a contract void if the Attorney General signed it even if you were opposed to it?

A. Because the policies and procedures were in place in such a way to protect him and to protect the agency. If he had gone so far outside our policies and procedures on behalf of one person against the whole – against your whole staff pursuing – pursuing a private matter using public resources, I mean, to me that's just – that has to be a void contract.

Q. Well, do you think he had the authority to sign a contract hiring Mr. Cammack?

A. I think the Attorney General has the authority to sign contracts. I will say, however, that the policies and procedures of the office, the Attorney General did not sign many contracts.

Q. All right. Had you ever known him to sign one of these types of contracts before?

A. Not an outside-counsel contract.

Q. But more to the point, do you think it was illegal under any circumstances for him to do it or did you think it was a violation of policy that had been running the department since you were there?

A. Well, I thought it was wrong in this case knowing everything I knew. That doesn't mean I don't believe the Attorney General can't sign contracts, but I think –

MR. BUZBEE: Objection, nonresponsive. He asked him whether it was legal for the Attorney General to sign contracts. We would like to have an answer to that question.

MR. HARDIN: He's giving his answer. There's cross-examination for him to explore, in all due respect.

MR. BUZBEE: Nonresponsive, Your Honor.

PRESIDING OFFICER: Sustained.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) Well, let me ask you this –

MR. BUZBEE: Your Honor, we'd like an answer to the question then. Is it legal for the Attorney General to sign a contract? That was the question.

MR. HARDIN: You know, as much as – I've made it this far in life without advice from Mr. Buzbee. I'm going to try to make it the rest of my life. I'll ask my questions; and if he objects, that's fine.

PRESIDING OFFICER: I believe you asked the question.

MR. HARDIN: Yes, I'll be glad to. I was in the process of trying to.

PRESIDING OFFICER: I believe you asked it. Let me go look at the transcript.

MR. HARDIN: Thank you very much.

Q. (BY MR. HARDIN) When do you –

PRESIDING OFFICER: Hold on one second, counsel, I'm looking at the transcript.

MR. HARDIN: Sure, sure.

PRESIDING OFFICER: You asked the question, the witness can answer. Is it illegal for him to sign a contract?

Q. (BY MR. HARDIN) Now, let me ask you this.

MR. BUZBEE: Actually, he needs to answer.

PRESIDING OFFICER: Counselor, you asked the question. We've confirmed it on the transcript. The witness will answer the question.

MR. HARDIN: Thank you very much.

A. Can you – can you restate it? Because if the question is can the Attorney General sign a contract, is that illegal, and that's what I understand the question to be–

PRESIDING OFFICER: Counselor, restate the question. You've asked it once. Restate the question.

MR. HARDIN: Thank you, Your Honor. I was looking back to see what I asked.

PRESIDING OFFICER: It was line 21.

Q. (BY MR. HARDIN) I think the question that I see that I asked through all that exchange was, do you think it was illegal under – was it a violation of policy that had been running the department since you were there?

But my question – let me try to break it down. Did you have an opinion that it was –

MR. BUZBEE: Your Honor, I'm sorry to interrupt. I'd like the witness to answer the question.

MR. HARDIN: I've withdrawn the question. I will proceed to the next, with permission, of course, of the Court.

PRESIDING OFFICER: You asked the question, the witness hasn't answered.

MR. HARDIN: We don't know what the question was anymore. I'm sorry.

MR. BUZBEE: Your Honor, he suggested that it's illegal for the Attorney General of the State of Texas to sign a contract. This witness knows it's not and he should say so.

MR. HARDIN: And I have – I'll be glad to ask that question my way. I'll withdraw the question before and with the Court's permission, proceed.

PRESIDING OFFICER: You may withdraw the question.

MR. HARDIN: Thank you, Your Honor.

Q. (BY MR. HARDIN) Now, but I do want to proceed with the topic. And that is did you believe – or what was your belief as to whether it was legally unlawful for him to sign a contract and hire Mr. Paxton [sic] unilaterally, or did you think it was a violation of your policy? Just explain to us what your thought process was.

A. And I believe you mean Mr. Cammack.

Q. Pardon me?

A. You said Mr. – hiring Mr. Paxton instead of Mr. Cammack.

Q. I'm glad you're following me. You're right. With that correction, Mr. Paxton. Back into the microphone so that both of us – there you go. What's your answer?

A. So I believed at that time in that conversation with the Attorney General on the evening of September 28th that not only did signing that contract – if in fact the Attorney General had signed it, I believed that it violated our policies and procedures. But I also believed in the circumstances of Mr. Cammack, knowing everything that we knew, that it was unlawful.

Q. And why did you mean – why did you think it was unlawful in light of all the circumstances?

A. Because Mr. Cammack was being hired to do something that I did not believe was in the interest of the State and that there wasn't a – I mean, the Attorney General is not above the law. He has to comply with the law like all of us. And so, again, knowing the whole circumstances at this point in time, that's what I believed.

Q. What was your opinion, one way or the other, as to whether – if that signing of that contract was in pursuit of an unlawful purpose, was it in your opinion, therefore, unlawful?

A. Correct.

Q. All right. Now – and the purpose in this matter, were you aware of what your staff, meaning Mr. Penley and Mr. Maxwell, believed as to whether what they were being asked to do –

MR. BUZBEE: Objection, Your Honor, hearsay. We're going to hear from both Mr. Maxwell and Mr. Penley.

Q. (BY MR. HARDIN) Whether what they were being – do you have an opinion or were you aware of one way or the other –

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) – as to what their position was. That's all I'm asking.

PRESIDING OFFICER: Repeat that question.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) Were you aware at this time as to what position Mr. Penley and Mr. Maxwell had taken as to whether what they were being asked to do was unlawful?

MR. BUZBEE: Your Honor, can we hear from Mr. Penley and Mr. Maxwell about their belief of this contract rather than hear him tell us what they told him? This is hearsay.

MR. HARDIN: I'm not asking for communication. Excuse me. I think she was talking, I apologize.

PRESIDING OFFICER: Restate the question.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) Were you aware at that time – and we are in September of – 9-28 of 2020. Were you aware at that time one way or the other as to whether – what Mr. Penley and Mr. Maxwell's position was as to whether or not what the Attorney General and Mr. Paul were asking them to do was lawful? Just whether you were aware of what their opinion was. I'm not asking you if you were – what it was.

MR. BUZBEE: Your Honor, I object to that. He's suggested Mr. Paul was somehow talking about this contract. There's no evidence of any of that. And the – and, therefore, the question is vague and assumes facts that certainly are not in evidence.

PRESIDING OFFICER: You can ask the question, was he aware.

MR. HARDIN: That's all. Was he aware and not what it was. I haven't asked him what it was.

A. I was aware.

Q. (BY MR. HARDIN) All right. And did that have anything to do with your opinion as to what you were telling the Attorney General and how resistant you were to what he wanted to do?

A. Yes, it did.

Q. By the way –

A. Yes, it did.

Q. Thank you very much. All right. Now, how did that conversation end?

A. It ended abruptly.

Q. And then I want to – I want to try to move pretty quickly here through these last matters. That was Monday the 28th, was it not?

A. Correct.

Q. On Tuesday the 29th, did you learn any new information that concerned you greatly?

A. Yeah. I was in a conference call, a Zoom meeting actually, involving all the chief deps across the country, bipartisan meeting. We were dealing with opioids. And I got an urgent message first from my assistant and then from Ms. Mase, the deputy for admin, that there was an emergency.

Q. All right. And what did you do when you got that call – that message, excuse me?

A. I excused – I think I was leading the meeting and I excused myself from the meeting because Ms. Mase and Ms. Hornsey wouldn't interrupt me unless it were really something important because they knew I was on an important call.

Q. What did you learn?

A. I learned that – that a bank had called Ms. Mase and informed her that –

MR. BUZBEE: Objection, hearsay.

MR. HARDIN: All right.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) You don't need to tell what you did, but what did – as a result of the phone call or the conversation, did you talk to Ms. Mase or how did you find out?

A. I talked to Ms. Mase.

Q. All right. And what were you concerned about then?

A. I was concerned that someone was – that Mr. Cammack was saying that he was working for the Office of the Attorney General and was engaged in activities.

Q. What kind of activities?

A. He was serving subpoenas.

Q. What type of subpoenas?

A. He was serving – seeking information from banks that appeared to be related to Mr. Paul and his activities.

Q. And were they grand jury subpoenas?

A. They were grand jury subpoenas.

Q. Did you have any idea how or why he was obtaining grand jury subpoenas?

A. Not on September 29th.

Q. All right. And at that time what did you do as a result of getting that information?

A. I – I debriefed with Ms. Mase. I believe at a certain point Mr. Bangert, perhaps Mr. Brickman and some of the other deputies were actually over here at the capitol meeting with either the Governor's Office or the Lieutenant Governor's Office. I don't remember.

Q. And so what – and what did you do as far as them?

A. I called them back.

Q. All right. So when you called them back, where did you call them back to?

A. Back to the 8th floor.

Q. And then was there a meeting?

A. There was a meeting.

Q. And as best you remember, who all did you have in that meeting?

A. I know it was Mr. Bangert, Ms. Mase –

Q. And we're September the 29th?

A. September the 29th.

Q. Okay.

A. It was Mr. Bangert, Ms. Mase, Mr. Penley. Mr. Maxwell was out of town. Ms. Cary was out of town. Mr. Vassar, Mr. Brickman. I may be missing someone, but that's the best of my recollection.

Q. And what was purpose of this meeting?

A. We were trying to figure out what was going on.

Q. What was your concern?

A. My concern was we had somebody out there that wasn't part of our organization representing that he was an official with the Attorney General's Office.

Q. Now, did you have any idea at that time whether or not there was a signed contract between Mr. Paxton and Mr. Cammack?

A. I had no idea.

Q. All right. Had you ever seen such a contract?

A. Not at that time.

Q. Had everybody ever suggested to you there was such a signed contract?

A. Not at that time.

Q. All right. Now, what – can you describe sort of the atmosphere of this group? I mean, what's happening? I want you to try to describe it for me without going into what each person was saying.

A. I mean, we considered it sort of a crisis moment. I mean, everything regarding Mr. Paul was kind of coming to a head. And so at some point Mr. McCarty joined. I don't think I had mentioned Mr. McCarty. And he wasn't in the original meeting, but eventually he joins. And so it's really the first time that each of the deputies started to share – and without getting into what they shared, but started to share information concern – each bits and pieces about Mr. Paul and his activities with the Attorney General.

Q. What is your testimony, Mr. Mateer, as to whether or not in many ways people shared different things that you had never heard before?

A. I mean, I learned things in that meeting that I hadn't known before.

Q. In terms of relationships with the Attorney General and Mr. Paul?

A. Correct.

Q. All right. Do you have any explanation as to how you, the first assistant, would not know what all had been going on over the last nine months or so?

A. I mean, you know, quite frankly I beat myself up a little bit. I felt like I probably should have known more. But in my defense, we had a lot going on and the way – I mean, we believed, and I believe General Paxton believed, we believed in letting our leaders lead. And so they were each handling and managing their various divisions. And so I would only know what I'm told. And this was really the first time, with everybody in a room together, folks began to share.

Q. How would you describe in terms of their alarm one way or the other?

A. I mean, we were – very serious.

Q. I want to go back to a subject and you know that the allegations here – and all this has been public – about an affair that Mr. Paxton had with another person.

A. Yes.

Q. When did you first – before I go into questions about it, I want you to explain or express in your own way why that is relevant to the bigger picture of Mr. Paxton and Mr. Paul in your mind, if it is.

A. No, it – unfortunately, it is relevant.

Q. Stay with the microphone, please.

A. I'm sorry. Unfortunately, it is relevant. During that week, the last week in the office – and I have to wind back, if I can, a little bit. I have to wind back a little bit, if I can, Mr. Hardin. I first became – I, and other senior leadership in the Office of the Attorney General, became aware that Mr. Paxton was involved in an extramarital relationship sometime in 2016.

Q. In when?

A. In 2016.

Q. All right.

A. Prior to – that's incorrect. No, that is –

Q. And then –

A. I've got to get my – it was before his – I have to think back to his reelection. It's his second – his first reelection.

Q. My question is: Did you become aware of it for the first time in 2018?

A. 2018, that's when he was reelected. He was elected in 2014 the first time, 2018 the second time. So it would have been in August/September time period of 2018, before his fall election.

Q. How did you become aware?

A. I think the first person I heard was someone in D.C. that actually mentioned it.

MR. BUZBEE: Objection, hearsay, Your Honor. And I'm also – this was a prime example of counsel suggesting the date to this witness. The witness – and this demonstrates the witness –

MR. HARDIN: The way – pardon me. The way this should work is simply state an objection. It is –

MR. BUZBEE: Objection to this is hearsay.

MR. HARDIN: Thank you. Let me –

PRESIDING OFFICER: Sustained.

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

Q. (BY MR. HARDIN) So let's go back. Were you present at an occasion when Mr. Paxton confessed the affair to members of his staff?

A. Yes. Mr. Paxton, Mrs. Paxton, Senator Paxton, gathered senior staff from the Office of the Attorney General and senior staff from the campaign. We had a meeting at the campaign office in which Mr. Paxton revealed that he had been engaged in an extramarital affair and asked for our forgiveness.

Q. And was it a very emotional, sympathetic meeting?

A. It was a very emotional meeting, yes.

Q. And that was with both Mr. and Senator Paxton; is that correct?

A. They were both in attendance, yes.

Q. And at that – would it have been a general moment of sympathy for the whole event?

A. Absolutely.

Q. All right. After that – were there any assurances and so made by Mr. Paxton at that time?

A. Yeah. I mean, Mr. Paxton apologized and then, you know, using Christian terminology, I would say, he, you know, repented. And I know that's a Christian term, but from my perspective, that's what I believed.

Q. And was that really the tone and the way the whole encounter –

A. It actually was. And, you know, then we moved on and obviously with the expectation that that – he had – he had made a mistake, he had apologized, and we were moving on from it.

Q. When that meeting was over, did you – what was your assumption going forward as to whether that event was over, the affair?

A. I mean, I assumed it was over because that's what he said.

Q. When did you first become aware that it was not over and how? Without what somebody told you, was there any other personal – I'm only asking you for a time, dates or years, that you became aware that it was not over.

A. It wasn't until –



MR. BUZBEE: Your Honor, this is – unless Mr. Paxton told him something after that meeting, this is all based on rumor or hearsay.

PRESIDING OFFICER: Sustained. Continue.

Q. (BY MR. HARDIN) In your own mind, did you ultimately believe that it had resumed?

A. All during that –

MR. BUZBEE: That would be based on hearsay, and it's not relevant what he believed about Mr. Paxton –

PRESIDING OFFICER: Just state your objection. What is your objection?

MR. BUZBEE: Objection, hearsay and relevance.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) All right. Why did you think, if you believed the affair had resumed, that was relevant to be of concern about the lieutenant – about the Attorney General and Mr. Paul?

A. Because it answered one of the questions that I kept struggling with, is why would General Paxton jeopardize all this great work that we had been doing in the Office of the Attorney General? Why would he be engaged in these activities on behalf of one person? I mean, all these different things. And by this time we knew he had hired Mr. Cammack. Why would he do this against his advice of his – the people who he trusted to run his office, including me? And it answered that why question.

Q. Had you become aware by that time that the woman he was having the affair with had been hired by Mr. Paul?

MR. BUZBEE: Objection, hearsay, Your Honor.

PRESIDING OFFICER: Overruled. You can continue.

MR. HARDIN: Thank you.

A. I learned that – that this person had been hired by Mr. Paul that week.

Q. (BY MR. HARDIN) And why was that relevant to you?

A. Because it answered the question why is he engaging in all these activities. And it was like –

Q. On behalf of Mr. Paul?

A. On behalf of Mr. Paul. Why is he engaged in this? I mean, it seemed to me he was under undue influence. At one – at times I thought is he being blackmailed? I mean, this was so unlike what I experienced with him for four years. Like – and this was part of it. There may have been more, there may have been others, but this was certainly part of it.

Q. Mr. Mateer, did you ultimately resign?

A. I did.

Q. When did you resign?

A. I resigned on that Friday, October 2nd.

Q. And I believe we have asked before, but let me make sure I'm right. You did not sue and you do not have any suit pending against either the Attorney's General's Office or Mr. Paxton or anyone out of this; is that correct?

A. I do not.

Q. If you go back to the things – what is your testimony as to whether you learned a lot more that gave you concern? Without going into what it was, on the 29th as all of these deputies began to compare notes, what is your testimony as to the very reluctant conclusion you came to?

A. I mean, by that time, the 29th – because the next day is when we go to the FBI and DOJ. By that time, I had – I concluded that, you know, Mr. Paxton was engaged in conduct that was immoral, unethical, and I had a good faith belief that it was illegal.

Q. What did you – what was your thought process as to what you believed would happen if you did this? What do you believe might happen to you and the others if you did come forward?

A. I mean, I knew by that time that my tenure as first assistant was coming to a quick end. So I knew that there would be – I mean, any time someone stands up, that there could be consequences. So I knew I was in the process of leaving the office.

Q. You, of course, were not here and did not hear the opening statements in this case, did you?

A. I did not.

Q. Let me ask you this: How long by the September 29th and 30th had – by then had you become aware that different members of the top-level administrators in this department had, in different ways, been trying to stop the Attorney General from helping Mr. Paul?

MR. BUZBEE: Objection, leading.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Did you have a thought process in your own mind as to why you needed to go finally to law enforcement?

A. I felt like we had been trying to protect Mr. Paxton. On several occasions I had gone to him and, really, my – he had become – I mean, he was my boss. He had become a friend. I cared for him; I cared for Senator Paxton. And I wanted him – I wanted him – I mean, I think in one of the memos I say, Come clean. I mean, I wanted to help –

Q. Come what?

A. Come clean.

Q. Microphone.

A. Come clean. I wanted to – I mean, my job – I feel one of the jobs of the first assistant is to protect – in addition to running the office was to protect the Attorney General. And quite frankly, I obviously failed at that. And – but I came to the conclusion that Mr. Paul had enabled Mr. Paxton, and despite my efforts, the other deputies' efforts, we couldn't protect him because he didn't want to be protected.

Q. As you ultimately made your decisions and as you have learned and things that have happened soon, did you change your mind as to whether or not General Paxton was simply being blackmailed or something else? Did you ultimately make a conclusion of what you believed, reluctantly, about the conduct of the Attorney General?

A. Again, I – in the end, I reached the conclusion that Mr. Paul enabled him to engage in the conduct that Mr. Paxton engaged in.

Q. What is your opinion as to whether or not a level of responsibility the Attorney General had?

A. I mean, ultimately, the Attorney General was responsible for his conduct.

MR. HARDIN: I'll pass the witness.

PRESIDING OFFICER: We'll take a ten-minute break here.

(Break taken at 11:21 a.m. to 11:36 a.m.)

THE BAILIFF: All rise. The Texas Senate is now in session.

PRESIDING OFFICER: Please be seated. We'll have to wait until all the jurors get here.

Members, will all the jurors in the back please come forward immediately. We're missing one juror. Senator Miles and Senator Kolkhorst. Okay. Members of the jury, just a reminder, if we take a ten-minute break, be here in ten minutes. Even if I'm not here, I need the jury to be here because I don't like walking out and not having the jury here, so just moving forward as best we can.

Mr. Buzbee?

MR. BUZBEE: Yes, sir.

### CROSS-EXAMINATION

BY MR. BUZBEE:

Q. Mr. Mateer, you told us Ken Paxton was your friend?

A. He became my friend, yes.

Q. And you were trying to protect him?

A. That's correct, sir.

Q. And you were trying to protect him from himself?

A. Correct.

Q. And when you found out that this young man, Brandon Cammack, had sent a subpoena to a bank, you guys sent everybody on the 8th floor home and had a meeting, right?

A. I don't recall sending everybody home. I do recall we had a meeting.

Q. And in order to protect Ken Paxton, what you did was then call the FBI, right?

A. That's –

Q. That's how you protected your friend?

A. That's not correct, sir.

Q. Did you not go to the FBI thereafter?

A. Not that day, sir.

Q. What day?

A. The next day, sir.

Q. Okay. Did you talk to Ken Paxton before you went to the FBI?

A. General Paxton was out of state.

Q. Did you talk to Ken Paxton before you went to the FBI?

A. I talked to him on the 28th, yes. After – sir, listen, you found out about – you found out that Brandon Cammack had served a subpoena on a bank, right? Right?

A. That is correct, yes.

Q. You thought it was a crisis situation, right?

A. That is correct, sir.

Q. You rallied the troops together and had a meeting, right?

A. We had a meeting, yes, sir.

Q. The next day you went to the FBI?

A. We did, yes, sir.

Q. Did you after your meeting talk to Ken Paxton?

A. I did not talk to Ken Paxton.

Q. Okay. So in order to help your friend, a guy that had given you a really plum of a job, instead of asking him some questions, you instead circled up and decided to go to the FBI. That's what happened, right?

A. I did have conversations with General Paxton.

Q. Not after that meeting, right?

A. Not after the meeting on the 29th, correct, sir.

Q. You had no clue that Brandon Cammack had received a second referral from the DA's Office, did you?

A. I did not.

Q. You were wondering why they were serving subpoenas on a bank when the complaint that you knew about had to do with the FBI and the magistrate judge, right?

A. That's correct.

Q. You had no clue that there had been a second referral from the DA's Office directly to Brandon Cammack; isn't that right?

A. That's right. No one had shared that with us.

Q. So you thought this Cammack fellow is sending – is sending subpoenas to banks related to some FBI thing, right?

A. I didn't know what he was doing.

Q. You know how you could have found out? Do you know how you could have found out? You could have picked up the phone and called your boss and said, Hey, boss, what's up with this Brandon Cammack? He's sent a subpoena to a bank. And he could have told you, Well, I have the authority to sign a contract because I am the elected AG, and he's sending subpoenas based on a second referral. You could have done that, right?

A. I could have done that.

Q. But instead what you did – instead what you did was rally your troops, get your stories together, and go to the FBI; isn't that right?

A. That's not how I would characterize it.

Q. Did you also talk to Dick Trabulsi?

A. Not at that time, no.

Q. How soon after that did you talk to Dick Trabulsi? You know who I'm talking about, don't you?

A. It's the –

Q. Tell us who he is.

A. I believe he's the leader of Texans for Lawsuit Reform.

Q. Oh. He sent you a text, didn't he?

A. He sent me a text after I resigned.

Q. A text of support?

A. I got many texts of support. He was one of them, yes.

Q. Where are your texts by the way?

A. I don't keep texts.

Q. What do you mean by that, you don't keep texts? You deleted your texts?

A. After I left the Attorney General's Office, when I'm no longer employed at the Attorney General's Office, I didn't keep texts.

Q. You didn't think anybody might want to look at your texts?

A. I adhere to zero – excuse me, zero inbox policy, and I think anybody who has ever worked for me knows that.

Q. Is that right?

A. That's right.

Q. So just so we're all clear and everybody that's watching is clear, you were having conversations with the leader of Texans for Lawsuit Reform who was showing support for you after you had went to the FBI and resigned, right?

A. I had one text message that I received from Mr. Trabulsi after I resigned.

Q. How did he have your phone number? I thought you weren't the kind of person that would talk to people like that. How did he have your phone number?

A. A lot of people have my phone number. Probably General Paxton gave it to him at one time.

Q. You know we do have some of your texts, don't you?

A. I mean, I assume you do if others produced them, yes, sir.

Q. Yeah, we don't have any from you because you say that you delete them. Tell me how you delete them, by the way, because that seems like a challenge. Do you delete every text that's sent to you?

A. I look at e-mail, I look at text every day, okay, within a 24-hour time period. If it requires an action, I then note it as a to-do item. If it's unrelated to anything, then I delete. That's just my – that's been my policy for years, sir.

Q. Wow. You're – you worked for the government, right?

A. Well, this was after I worked for the government.

Q. Right. After you had no longer – you were no longer working for the government, you deleted your texts, is that what you're telling me? Or you delete them real time?

A. I delete them basically real time within a period of time.

Q. Did anybody else in the office do that or was that just your practice?

A. The other person that probably did that was the Attorney General.

Q. You think so?

A. Yeah, I think so.

Q. Did he have a burner phone, by the way?

A. No. Someone mentioned that to me at one time.

Q. Who mentioned that? You read about that in the newspaper?

A. No, I don't think I read about it in the newspaper. It would have either been Mr. Wicker or Mr. Rylander.

Q. Mr. Wicker didn't mention it to you because he was questioned. He said he didn't know what a burner phone was. Who told you that he had a burner phone?

A. Again, my best recollection would have been Mr. Wicker or Mr. Rylander.

Q. Did you ever see a burner phone?

A. I know the Attorney General had several phones. I don't know, you know, a burner phone.

Q. You know what a burner phone is. This would be a burner phone. You can go to 7-Eleven, you can buy it, use it for a certain amount of minutes, you throw it in the trash. That's called a burner phone.

A. Okay.

Q. Did you ever see Ken Paxton with a burner phone?

A. He had a flip phone.

Q. Did you ever see a burner phone, one that he bought at 7-Eleven so he could do some sort of illicit business?

A. I don't know, sir.

Q. Okay. How about a secret e-mail address? Did you ever see him with a secret e-mail address?

A. He had a Proton e-mail address.

Q. Didn't you have a Proton e-mail address?

A. I sure did, yes.

Q. Oh, goodness gracious. So he had the same kind of e-mail address that you had?

A. Okay.

Q. We've been told that's a secret e-mail address, but you had the same kind of e-mail address, didn't you?

A. I think a lot of people had them.

Q. Sure.

A. I think your co-counsel has one.

Q. They do have it. Do you know why people use the Proton e-mail address?

A. Because – well, I know why we did. Because we were concerned that Google might be monitoring our conversations. We were investigating Google.

Q. Right. And also Ken Paxton and several others went to China, and they wanted to make sure that their e-mail did not get hacked, right?

A. Okay. Correct.

Q. But yet this Board of Managers – the House of Managers claims that that's some kind of secret, weird thing to do when everybody in the office was doing it; isn't that right?

A. Well, I don't think everybody in the office was doing it, but there were some, yes.

Q. Sure. Now, back to your texts. Just so the Court is clear and the jurors are clear, your testimony is when you receive a text, if it needs action, you note it, and otherwise you delete it?

A. That's correct.

Q. And you still do that now?

A. I do.

Q. Well, the good news is Mr. Brickman didn't have that same practice. Let's look at what is marked and in evidence, AG 170.

MR. BUZBEE: And, Erick, if you don't mind, go to – the page is Brickman 187. Let's put it on the screen so the jurors can see it.

Q. (BY MR. BUZBEE) What we're going to look at, sir, is a text stream that you were on with Brickman and several others, okay?

A. Okay.

Q. I need you to speak into the mic, please.

A. Yes, sir.

Q. Okay.

MR. BUZBEE: Erick, let me know when you're ready. Go to 187, Erick. We were looking at AG Exhibit 170. 187.

Q. (BY MR. BUZBEE) All right. Here's a text you sent at 3:02 p.m. on 9-29-2020; is that right?

A. That appears to be correct, sir.

Q. You said, We have a major problem. The kid has served a subpoena on a bank. Showed up there in person at the bank. Right?

A. That's what it says, sir.

Q. And you were thinking in your mind, why in the devil is he serving a subpoena on the bank? Nate Paul's complaint has to do with the FBI, right?

A. That was one of the things I was thinking, sir.

Q. Because you had no clue that there had been a second referral, true?

A. I did not know there was a second referral at this time.

Q. Now, is this the first time that you had found out that the kid – you're referring to Brandon Cammack, right?

A. I am referring to Mr. Cammack there.

Q. And you didn't say, hey, Brandon Cammack. You said the kid. Everybody knew who you were talking about, right?

A. That's right.

Q. All right. So Cammack wasn't a surprise, was he?

A. Cammack wasn't a surprise in the sense that we knew who he was, that's correct.

Q. Sure. And you actually got a copy of his contract too, didn't you?

A. At some point I got a copy of the contract, but not through the DocuSign, no, sir.



Q. Right. I mean, I know – and we're going to talk about your bureaucratic procedures. What did you call it, your executive action memo? What do you call it?

A. Executive approval memo.

Q. Executive approval memo.

A. Uh-huh. Yes, sir.

Q. Some procedure in writing put in place of how things should work at the AG's Office?

A. That's what it was, yes.

Q. Right. In some policy manual?

A. It's a policy, yes.

Q. Okay. It ain't the law, though, is it?

A. No, it's not the law.

Q. No. The power of the Attorney General derives from the Texas Constitution; is that not true?

A. From the Texas Constitution and Texas law, statutes.

Q. The Constitution is what gives the Attorney General the power to act; isn't that right?

A. The Constitution and the statutes passed by the legislature, yes.

Q. Your power to act, if any, derives directly from the AG; isn't that right?

A. It's derived from the AG, but it's also derived from the statutes.

Q. You're not authorized to take his name off his letterhead, are you?

A. Am I authorized to take his name off the letterhead?

Q. I'm sorry, is that a question or are you –

A. I'm repeating your question to make sure I understand it. Could you restate it?

Q. I can absolutely restate it. You, as deputy, as first assistant, are not authorized to remove your boss's name from his letterhead, are you?

A. I don't know if that's true or not.

Q. Did you not look? I mean, aren't you a lawyer? Isn't that something you better look at before you do it?

A. I don't recall doing it, sir.

Q. You don't recall sending correspondence with the Attorney General's name removed?

A. I do not.

Q. You wouldn't have done that, would you?

A. By implication of your question, it must have happened, but I don't remember.

Q. Oh, it happened. My question is, is that legal?

A. I don't – I don't know it's illegal.

Q. Well, did you check before you guys were sending correspondence without your boss's name on it?

A. I didn't personally check, no.

Q. Well, I thought you were a rule of law guy. Isn't that what you told us, I'm a rule of law guy?

A. I am a rule of law guy.

Q. Okay. Rule of law guy, is it legal to send out correspondence without your boss's name on it, official correspondence from the AG's Office?

A. I don't think it's illegal, no.

Q. You don't think it's illegal?

A. I do not.

Q. Is that how you decide your legal analysis is by just whether you think it is or not?

A. No. It would be based upon what I believed and what I know about the law.

Q. Well, what do you base that on? What don't you –

A. What I believe is – what I do recall is before I became first assistant, the prior first assistant – actually, one of the complaints that the Attorney General had with the prior first assistant was that the original letterhead didn't have Mr. Paxton's name on it.

Q. So you knew that the official letterhead, according to General Paxton, had his name on it. That was his – that's what he insisted upon, right?

A. Well, he insisted on it. I don't know about the word "official."

Q. And yet you were party to correspondence where his name was removed?

A. That I don't know, sir; but if you're saying that, then I must have been.

Q. Well, let's make sure we're all clear that you did get the contract because it's in the text even.

MR. BUZBEE: Erick, turn to same exhibit, AG 170, go to Brickman 180.

Q. (BY MR. BUZBEE) Vassar texted you a copy of the executed contract, didn't he?

A. Looks like on October 1st.

Q. Yep. Did you go back then – was that the same day you met with the FBI?

A. No.

Q. What day did you meet with the FBI?

A. I believe we met with the FBI on the 30th, sir.

Q. Okay. So you – did you go back to the FBI and say, Hey, you know what? I made a mistake. There actually is a contract. My boss signed it, and there's a second referral. Did you do that?

A. Not on October 1st.

Q. You went to the FBI uninformed; isn't that true?

A. No, I wouldn't say that, sir.

Q. I just want to try to get the time line because the jurors may wonder. You spoke to the FBI about – what did you call it, a good faith belief that a crime had occurred? Is that what you said? Did you – did you go to the FBI with a good faith belief that a crime had occurred? Is that what you told us?

A. That's correct.

Q. Okay. And that was on October the 1st?

A. No, sir.

Q. What day?

A. That was on the 30th.

Q. September the 30th?

A. Yes.

Q. Okay. That's when – you called Mr. Sutton before that, right?

A. I didn't, no.

Q. What –

A. I had not, no.

Q. One of you did?

A. I believe that's true, yes.

Q. One of the group called Mr. Sutton before that, right?

A. I believe that's true.

Q. Okay. We'll get to that in a minute. So on September 30th, you went to the FBI and you made your good faith complaint, right?

A. We told the FBI the knowledge that we had.

Q. Did you then go back and give them a copy of the actual signed contract from the duly elected Attorney General?

A. I did not.

Q. You did not?

A. I did not.

Q. Did you go back and tell them, Hey, you know what? There was actually a second referral that didn't even come into our office. It in effect went directly from the DA's Office of Travis County directly to Brandon Cammack. Did you tell them that?

A. Not on October 1st.

Q. Did you tell them at some point?

A. I think at some point we did tell them that, yes.

Q. Did they indict Ken Paxton?

A. As far as I know, they have not.

Q. Okay. Let's see. Let's try to get our time line right. That was September of 2020, and this is September of 2023. It's been three years?

A. Your math is correct.

Q. So in three years they've done nothing with the information that you provided them that's the subject of this impeachment, right?

A. I don't know what they've done, sir. You can ask them.

Q. Well, they certainly are pretty good about letting us know if somebody's been indicted, aren't they?

A. That's your area. I would assume we would – well, actually, I don't know.

Q. Okay.

MR. BUZBEE: Your Honor, I know you were concerned about timing. This might be a good break for me if you want to do it. It's up to you, though, of course. It's noon. I'm getting ready to go into another topic, and it's going to take some time.

PRESIDING OFFICER: You have a good half hour, 45 minutes.

MR. BUZBEE: Okay. I'm all for it.

PRESIDING OFFICER: Keep going.

Q. (BY MR. BUZBEE) You know, before I get into some of these others areas like the Mitte Foundation, which you approved of the intervention, right?

A. I did approve, yes, sir.

Q. The Mitte Foundation where you approved to investigate them, right?

A. I did sign that memo, yes.

Q. I mean, let's just make sure we're all clear here. One of the Articles of Impeachment – in fact the very first Article of Impeachment has to do with the – the AG's Office intervening in the Mitte Foundation lawsuit, right?

A. If you say so, I'll accept that.

Q. Well, I know you're a rule of law guy. Let's look at Article I, make sure we're all clear. Article I of the impeachment, first article. Just confirm with me, if you would, Mr. Mateer, that that is, in fact, the very first Article of Impeachment that we're here arguing about.

A. Correct, sir.

Q. And just so we're all clear for our jurors, you, Jeffrey Mateer, approved, along with multiple other people in the office, of that particular intervention; is that true?

A. Yes, sir.

Q. Okay. We're going to come back to that. I believe you have said that you resigned and it was on October 2nd, 2020, right?

A. That's correct, sir.

Q. You resigned because there was no longer a trust between yourself and General Paxton?

A. That is true, sir.

Q. And we know that on September 30th, after talking to – or at least some of you talking to a lawyer, you went to the FBI to make a good faith report that you thought a crime had been committed?

A. Yes, we went to the FBI on September 30th. That is correct, sir.

Q. Where else did you go? Who else did you talk to?

A. Later that day we had a meeting with the Office of the Governor.

Q. Wait a minute. So we're all clear about this, you – you had a meeting with the Office of the Governor? Is that what you just told us?

A. Yeah. We had – we met with the Office of the Governor sometimes weekly, sometimes every other week, but that was normal course. The Governor was our largest client.

Q. Right. I'm just trying to figure this out. You didn't talk to – after your meeting, you didn't talk to Ken Paxton. You instead spoke to, one, the FBI; two, the Office of the Governor. Who else did you speak to?

A. I'm not recalling anyone else.

Q. Well, we know you got a text of support from TLR, right?

A. That was after I resigned, sir.

Q. Did you talk to George P. Bush?

A. I've never talked to George P. Bush.

Q. Never?

A. Never.

Q. Can you tell us why he just recently – or I guess sometime in May applied to renew his law license? Bush.

A. I have no idea. I've never talked to George P.

Q. Okay. We'll come back to that too. Do you recall that at some point after you resigned that they did an inventory of your office?

A. I – yes.

Q. And you're a guy that keeps journals, aren't you?

A. I keep notes, yes.

Q. Okay. Where are your notes in the time frame that you're here to testify about?

A. At some point I began using a program called OneNote. I had gotten – the office had provided me with an iPad with a – the pencil, Apple pencil. And I started – from my one-on-one meetings I started a practice that actually I do even through today, although I now use a different program, but I used a program called OneNote. I mean, whenever my written notes end, that's when I started using OneNote. And those were on my iPad that I turned in when I resigned. And I think it's a Microsoft – I'm not a tech guy either. I think it's a Microsoft Word – Microsoft product that was part of the Word suite. And so when I turned in – and it did link to my computer and my iPad, sir.

Q. I don't really understand anything you just said. I'm trying to figure out where your notes are.

A. Well, you're – well, you're not representing the Office of Attorney General. The Office of Attorney General would have those notes.

Q. No.

A. They're on OneNote.

Q. Sir, sorry to interrupt you.

A. I'm sorry.

Q. You wiped it clean.

A. I wouldn't know how to wipe something clean, sir.

Q. Well, you know how to delete texts. That's for sure, right?

A. That's just hitting delete and having automatic delete on your device.

MR. BUZBEE: Erick, let's look at AG Exhibit 127 and go to Exhibit 36 within that exhibit. I hope that's not too confusing.

Q. (BY MR. BUZBEE) This document is in evidence, and we're going to look at what was found in your office and what was not found after you left.

MR. BUZBEE: Erick, we're going to Exhibit 36 within that exhibit. Almost there. Now, go to the fourth page of that exhibit. We're looking at Exhibit 127, Exhibit 36 to that exhibit, page 3.

Q. (BY MR. BUZBEE) Now, you can see that in your office there was an inventory made, right?

A. Correct.

Q. And we can see that you're a guy that kept a journal, right?

A. I kept notes, yes, sir.

Q. And we can see that these notes –

MR. BUZBEE: If you flip back to the page prior, Erick.

Q. (BY MR. BUZBEE) You can see they go from 2018 January and they go all the way to June of 2020, right? June of 2020. That's where they stop; isn't that right?

A. That's what that reflects, yes.

Q. Where are they?

A. Where are what, sir?

Q. The notes that are missing.

A. Again, sir, I began using a program called OneNote. And OneNote, what it does – I know you don't understand. But OneNote, what it does is it's an electronic note-taking system. And you can do it by – and what I had – the way I had it organized was, I had civil lit, I had child support, I had admin, I had criminal justice, I had law enforcement. And so that was a tab. And so it let me more effectively organize my notes by deputy. When I turned in my machines, OneNote was there. It may still be there. I don't know. When I turned in, I lost access.

Q. Who is Jordan Berry?

A. Jordan Berry is a political consultant who is a political consultant for Mr. Paxton, among others.

Q. Among who others?

A. Good question. Probably some individuals in this room. I don't know all his clients, so I would be guessing.

Q. You don't know who Jordan Berry represents?

A. I don't know all of his clients. I mean, in this room, maybe Senator Middleton, I think.

Q. I don't want to talk about the Senators. I'm talking about other entities that Jordan Berry may represent. Do you know of any?

A. Other entities that Jordan Berry may represent. I know he represents members of the House.

Q. Entities.

A. Entities. I don't know, sir.

Q. Don't know. Okay. So I just – I guess we kind of all got to know, when you went to the FBI, what crime did you have this so-called good faith belief had occurred?

A. The good faith belief that we believed had occurred was I believed that he potentially could have been subject to blackmail. And as a result, he was taking illegal actions on behalf of what we then knew was a campaign donor, but he was taking actions on behalf of Mr. Paul.

Q. You believed he was being blackmailed?

A. At one point I actually believed he was being blackmailed, sir.

Q. So you didn't think he was committing a crime; you thought somebody was committing a crime against him?

A. At one point in time I believed that, yes, sir.

Q. And that's why you went to the FBI?

A. Well, eventually we went because I had tried on several occasions to have – as I think in one of my memos says you probably have on here, I said – I asked him – I mean, I really wanted him to come clean. I even said, Are you under undue influence, sir?

Q. And he said no.

A. He did say no, yes.

Q. He never said, Oh, I'm being blackmailed. I'm under undue influence.

A. But his actions didn't reveal that. I mean, when we found out that this woman that he had had the affair with from years ago that had moved up to Austin and was now employed by Mr. Paul and that he was taking these unusual actions –

Q. Did you –

A. – it just didn't make sense to me, Mr. Buzbee.

Q. I hear you. You made some assumptions, did you not? You made some assumptions?

A. I made some reasonable assumptions, yes, sir.

Q. You made some assumptions, right?

A. I made some – yes.

Q. Okay. And you know that sometimes assumptions are wrong, right?

A. I remember that Odd Couple episode. We're probably similar age. Probably no one else gets that, Mr. Buzbee.

Q. You believed he may have a potential conflict of interest. That's what you said at some point, right?

A. You'd have to refresh my memory on that, sir.

Q. You said, I do not have any specific evidence, right?

A. You'd have to refresh my memory, sir.

Q. Let me ask you something. When you – do you remember there was a hearing in Travis County district court where you testified?

A. That by Zoom, I believe, yes.

Q. Yeah.

A. I was subpoenaed.

Q. And you were asked point-blank – let me make sure I get this exactly right because this might be something that's important to our jurors. You were asked under oath whether you believed the AG was engaged in ongoing criminal activity in connection with Nate Paul. Do you remember being asked that question?



A. I don't think that's the question I was asked, sir.

Q. You don't think that was what was asked?

A. I do not think that was the question that was asked.

Q. Okay. Do you remember – what question do you think was asked? Just so we can – maybe we can refresh your recollection.

A. I'd love to see the transcript. That would be the best evidence.

Q. Were you ever asked whether you believe that Ken Paxton was engaged in criminal activity?

A. I don't believe I was ever asked that question during that hearing.

Q. Okay. You believe you were asked about the AG's Office itself?

A. The best – again, if I could look at the transcript, that would tell us all what was asked.

Q. Let's do that. We're going to look at the transcript from Travis County district court, the 250th Judicial District, a hearing that was held on the 1st day of March, 2021.

MR. BUZBEE: We're going to turn to page 189 of that transcript, Erick.

Q. (BY MR. BUZBEE) You were asked point-blank under oath, six months after you had went to the FBI, this question.

MR. BUZBEE: Line 15, page 189, Erick.

Q. (BY MR. BUZBEE) I'm going to read it. You make sure – tell me if I read it right. And did you come to believe that the Office of Attorney General was being engaged in ongoing criminal activity in connection with Nate Paul? That was the question, correct?

A. Which is different than the question you asked me.

Q. That's why we're looking at it.

A. I know.

Q. That was the question you were asked, true?

A. That is true. Yes, sir, you read it correctly.

Q. Let's look at what your answer was, page 190, line 15. You said – tell us what you said. If you don't want me to read it, you can read your testimony yourself.

MR. HARDIN: Objection. I don't believe this is in evidence, Your Honor. I stand to be corrected. If so, I'll withdraw the concern, but I don't believe it's in evidence.

MR. BUZBEE: This is House Board of Managers' Exhibit 466 that was offered and received by this Court. We're looking at page 190, line 15.

Q. (BY MR. BUZBEE) You said: And I know it called for yes or no, but it's a question that it's hard to give a yes or no. So that makes it difficult for me as – as – as the witness. But I would say it is – it could have led to that. Certainly, it's – did I have concerns? I had –

MR. HARDIN: Pardon me. I apologize again, Mr. Buzbee. Excuse me, please. I think this comes under the heading of – it is one, of course, of our exhibits. I don't object to it being introduced, but I don't believe it has. It is not one of those that was agreed to by the parties. If you recall, they wouldn't originally agree to any of our exhibits and then we reached agreements we read in this morning. I don't think it's one of them. So if he wants to offer it, I'm not going to object, but I don't believe this document is in evidence.

PRESIDING OFFICER: Would you like to offer it?

MR. BUZBEE: Well, first, it's in evidence. But just to satisfy my co-counsel or a colleague over there, I'll offer it again.

PRESIDING OFFICER: He did not object.

MR. BUZBEE: Yeah.

PRESIDING OFFICER: It's admitted into evidence.

(House Managers' Exhibit No. 466 was admitted)

MR. HARDIN: Thank you.

Q. (BY MR. BUZBEE) Now, let's focus on this document that's in evidence. You were asked point-blank – and this is six months – I mean, come on, six months after you left the office, six months after you had went to the FBI. This is – this is after some of your colleagues had filed a very public lawsuit, right?

A. Correct.

Q. And this is even after that you had been interviewed in the press, right?

A. I believe one time, yes.

Q. Yeah. And all kinds of things were going on in the press about these so-called whistleblowers and crimes and all kinds of things. And then here you are placed under oath in March of 2021. And you were asked point-blank whether you believed the Office of the AG was engaged – had been engaged in ongoing criminal activity in relation to Nate Paul, and you couldn't even give an answer, could you?

A. With regard to the Office of Attorney General, correct.

Q. You're making some distinction between the Office and the AG himself?

A. Yes, sir.

Q. Okay. Because you didn't want to say that you had been engaged in criminal activity, right?

A. I don't believe – no.

Q. I mean, part of the so-called criminal activity is the Mitte intervention, isn't it? And you were dead and in the middle of that, weren't you?

A. I approved the executive memorandum.

Q. Isn't it ironic that the first witness called in this case for the House on the first Articles of Impeachment that was passed, that this witness, you, approved that intervention? Isn't that ironic?

A. I don't know, sir.

Q. Don't you think that really reflects – kind of reflects the whole House's case, that they put you up here as the witness to tell us how bad Ken Paxton was, and on the very first Article, you approved it? Isn't that ironic?

A. The irony I guess is lost on me, sir.

Q. Is it?

A. It is.

Q. Before I get to some of these other more difficult topics, would you help us – and we have people watching and, of course, some of our jurors are not lawyers. I want to talk to you about the burden of proof. You know what the burden of proof is, right? You know what that concept means?

A. I do, yes.

Q. Okay. There's one burden called more likely than not. You understand that concept?

A. Okay. Yes.

Q. What does that mean?

A. Whether a fact is more likely than not, like the preponderance of the evidence.

Q. Yep. And that's the easiest standard of proof if you're somebody advocating for something, right?

A. That's the normal standard in a civil court.

Q. Okay. Let's focus –

A. With some exceptions.

Q. Sure. There are –

MR. HARDIN: Objection.

PRESIDING OFFICER: Turn your microphone on, please.

MR. HARDIN: There we go. Thank you. I'm sorry.

He's not being offered as an expert on the burden of proof, and that's something for the jury to decide in their own mind. His view of what it is or not, he didn't bring these charges. The House Managers did. He's not here for that purpose. It's unfair for him – and irrelevant for him to be being asked what his definition of the burden – in fact I must say I've never heard that done before. And so I object to it as being totally irrelevant and improper for this witness to be even cross-examined about it. What difference does it make what he thinks the burden of proof is? It's what they think the burden of proof is.

MR. BUZBEE: Wait a minute, Your Honor. With all due respect, this counsel asked this man many times about his opinion on whether a law has been broken, many times. And so I'm entitled to ask him about the burden of proof, especially on illegality which, remember, he stood up there – or sat up there and said that Ken Paxton signing a contract was illegal. So you can't open the door and then close it now.

MR. HARDIN: He has not testified as to what this jury ought to do or how they ought to look at the burden of proof. He was asked whether or not he thought the conduct was unlawful. He said he did, but the burden of proof has nothing to do with it. Those are two different things. The burden of proof is decided by the jurors out there, not this man or any other witness.

MR. BUZBEE: I'm entitled to explore why he would say something like that, like in his – what is the burden of proof? And I'm going to get to that if I quit being interrupted.

PRESIDING OFFICER: Overruled. You opened that door.

Q. (BY MR. BUZBEE) Now, let's talk about the burden in this case for the Senators, our jurors. Beyond a reasonable doubt, what does that mean?

A. It means what it says. It means that you don't have any reasonable doubt.

Q. In other words, any doubts I have are not reasonable?

A. I'm not a criminal lawyer, but that's, you know, beyond a reasonable doubt.

Q. When you went to the FBI and you offered up a good faith belief that Ken Paxton had been engaged in criminal activity, in your mind, was that beyond a reasonable doubt?

A. I didn't think about that at all, sir.

Q. You just suspected; isn't that true?

A. I didn't think about the burden of proof at all in those conversations.

Q. You know, I would think that you, if you're – you've portrayed yourself, and I'm not challenging that, that you were a good and trusted friend, a good and trusted advisor, a good and trusted confidant in some cases, right, to Ken Paxton?

A. I don't know about confidant.

Q. Well, you – confidant.

A. Confidant. Sorry about that. Sometimes my speech impediment comes through. I apologize.

Q. No worries. I'm not picking on you. I just want to make sure you understand the concept.

I mean, you've told us, the entire public, that you had a meeting with Ken Paxton and he talked about his marriage. Told us that, right?

A. Well, Mr. Paxton and Mrs. Paxton had a meeting with senior staff and talked about their marriage, yes.

Q. Okay. So I guess it brings me to the point, wouldn't you want to make sure that you are absolutely sure that Ken Paxton was doing something untoward and illegal before you went to the FBI? Wouldn't that be what a trusted confidant would do? Somebody who's a trusted friend, somebody who's been trusted to run the office, at least you should make yourself sure. You know what, before I do this – because when I pull that trigger, when I do that, all bets are off. You even said, I knew when I did that, I wouldn't be the first deputy again, right?

A. First assistant, yes.

Q. First assistant. So wouldn't – shouldn't you be sure before you do that?

A. Sir, we were very – we were confident.

Q. You were confident?

A. Yes, sir.

Q. You thought that Nate Paul had made repairs on his home?

A. I had been told that, yes.

Q. Who told you that?

A. I believe, again, it was either Mr. Wicker or Mr. Rylander.

Q. You think that Mr. Wicker said that to somebody?

A. Yeah. I – again, it was either Mr. Wicker or Mr. Rylander.

Q. Seems to me that would be so important you would remember who told you that. I mean, you're telling me somebody told me my boss was having a campaign donor pay for renovations of his house, and you can't even tell us who told you that?

A. Well, I said I believe it's Mr. Wicker or Mr. Rylander, sir.

Q. So if it's not Mr. Wicker, because it wasn't, you're saying it would be Mr. Rylander?

A. Yes, sir.

Q. Okay. You ever play the telephone game with your kids?

A. I played the telephone game in youth group, yes, sir, not with my kids.

Q. Okay. Well, how many kids you got?

A. I've got three.

Q. I've got four, so sometimes I play the telephone game. And you know what that is, right?

A. I do, yes, sir.

Q. Okay. That's the game where somebody whispers something to somebody else, and then they turn around and whisper something to somebody else, and then they turn around and whisper something to somebody else, and so on and so on, and then they let the last person repeat what they think they were told.

A. Yes, sir.

Q. And sometimes it's comical how different the story is that's been passed from person to person to person and person, right?

A. Yes, sir.

Q. Yeah. That's what happened here.

A. I don't know.

Q. A stray comment from Drew – that Drew Wicker claims he heard that he misunderstood, you, a trusted advisor, a trusted friend, you believed that Nate Paul had paid for the renovations of Ken Paxton's home.

A. I believed that that was possible, yes, sir.

Q. Do you know that it's not true?

A. I do not know that it's not true.

Q. Have you ever tried to find out?

A. No, I went to – that's why we went to law enforcement for them to find out.

Q. Why didn't you just ask Ken Paxton?

A. I had resigned.

Q. Uh-huh. You know, he could have shown – he could have shown you the invoices, the wires, the receipts, the samples. You didn't ask him?

A. Well, I saw them because you had a press conference where you had them. That's –

Q. Oh, I've only shown a few. I'm going to show them all in this trial.

A. Okay. I haven't seen them, no, sir.

Q. How many times have you told people that Ken Paxton had somebody pay for the renovations of his home? How many times have you said that to people?

A. I don't know if I've ever said that until you asked me the question.

Q. You wouldn't say that to somebody, would you?

A. I don't have a recollection of saying it.

Q. I mean, you shouldn't say it, should you?

A. Shouldn't say it?

Q. In other words, if you don't know it's true, you shouldn't be out there repeating it, should you?

A. I don't believe I've been repeating it.

Q. Okay. I think you said, if I'm not mistaken – let me just ask you point-blank: Do you remember you talked about your potential concerns about the office? Remember that question?

A. From the transcript?

Q. Yeah. Do you remember that?

A. Yes, sir.

Q. Okay. You have said that in 2020 you became aware that Nate Paul had donated to Ken Paxton's campaign; is that right?

A. That's when I became aware of that campaign contribution.

Q. When you became aware, you learned, I'm sure, that that one campaign donation was actually made in October of 2018, right?

A. That's correct.

Q. And you learned that that October 2018 campaign donation was \$25,000, right?

A. That is correct, sir.

Q. And that Nate Paul – or that Nate Paul was a campaign donor played a part in your belief that Ken Paxton was engaged in unlawful conduct with regard to Nate Paul, right?

A. That was part, yes.

Q. Okay. So let's make sure we ferret that out a little bit. You learned in 2020 of a campaign donation almost two years before, right?

A. That's correct, sir.

Q. And that – the fact that a donation had been made two years prior played a part in your belief that Ken Paxton was doing something wrong with regard to Nate Paul; is that right?

A. That was part, yes.

Q. Okay. Do you know who else he gave money to?

A. Who else Nate Paul gave money to?

Q. Did you check?

A. No. That wasn't my concern.

Q. Do you know how much money Ken Paxton raised in 2018 for his campaign?

A. I did at the time. I know it was several million dollars.

Q. What did you say?

A. I knew – I would have known the number at the time. I know it was several million dollars.

Q. Where is that –

MR. BUZBEE: Where is that blowup? You have it blown up?

Q. (BY MR. BUZBEE) Do you know what percentage – what percentage of – in 2018, what percentage Nate Paul's campaign contribution was with regard to the total amount raised by Ken Paxton?

A. Well, if your math is correct on this demonstrative, it's there, but I wouldn't have known that then, no.

Q. 37 percent, right?

A. That's what your demonstrative says.

Q. In 2018 Ken Paxton raised \$6.7 million. Did you know that?

A. I would have known that at the time, yes, sir.

Q. You checked into that?

A. No. He would have told me.

Q. And Nate Paul donated 25,000 of that, right?

A. I know Nate Paul donated 25,000, yes.

Q. And the illegal activity that you complain about or at least you claim you had a good faith belief had occurred is .37 percent of that?

A. If that is the correct math, I have no reason to dispute you on the math.

Q. So let me just make sure I'm clear. When somebody feels aggrieved and they came to the AG's Office to get help, that's the job of the AG's Office, right, to help constituents?

A. That's part of our job, yes.

Q. I mean, isn't that what we taxpayers are paying for?

A. That's part of our job, yes.

Q. So when somebody feels aggrieved in some way, they don't know where to turn, and they go to the AG's Office, do you check to see if they're a donor of some sort?

A. We – because of allegations made in the past against Attorney General Paxton, we were very sensitive when we were asked to do things on behalf of folks who had contributed to his campaign. So, yes, we were concerned about things like that.

Q. You were. So that's – you decide whether you're going to do your job –

A. No, sir.

Q. Let me finish my question, please, if you don't mind.

A. I'm sorry. I apologize.

Q. No worries. You decide whether you're going to do your job based on whether the person has donated to your boss? Is that what you're telling me?

A. I'm not telling you that, sir, no.

Q. Okay. You look at someone with a jaundiced eye if they're asking for assistance and they've also given money to the elected official that you're working for?

A. No. No, sir.

Q. You're skeptical of somebody who's just asking for help how to deal with a situation and you're skeptical because they might also be a campaign donor?



A. No, not skeptical, no, sir.

Q. Okay. But you already told us that Nate Paul, as a campaign donor, played a part in your belief that Ken Paxton was engaged in unlawful conduct. That's what you said under oath, right?

A. That's correct, sir.

Q. Is it possible, Mr. Mateer, that you jumped to a lot of conclusions really fast?

A. I don't believe so, sir.

Q. And you could have – you could have put all this to bed if you would have just talked to your boss?

A. I attempted to talk to him starting probably in June, July, August, September.

Q. No.

A. I did.

Q. Take it easy now.

A. I did talk to him, sir.

Q. Take it easy. You could have – once you met up with the rest of your colleagues on the 8th floor, you could have then, as the leader – you were the leader, right, of the group?

A. I was the first assistant.

Q. Yeah, you're the leader?

A. First among equals, yes.

Q. You even said in your testimony, you said, Look, I – I managed the day-to-day business in that office. Remember saying that?

A. I did manage the day-to-day office.

Q. And I control the office, remember saying that?

A. Control the office. I don't know if I said it in that way, sir.

Q. We'll get to it.

A. Okay.

Q. But you as the leader, once you heard all these foolishness concerns, some of which you might have believed, some of which you didn't, your job at that point in time was to go to the boss; isn't that right?

A. I had tried to go to the boss.

Q. Is it because you wanted to be the Attorney General? Is that what was going on?

A. Anybody who knows me, Mr. Buzbee, knows that that is not one of my ambitions. I had my dream job. I came to help Ken Paxton, came down here, a city I didn't want to move to.

Q. Wait. Your dream job is to be a federal judge, and that got squelched; isn't that right?

A. No. Actually, my dream job has always been to be at First Liberty.

Q. Weren't you supposed to be a federal judge and then the two Senators objected to you?

A. What two Senators, sir?

Q. The two that would have the ability to object to you. You know who I'm talking about.

A. You're talking about our Senators?

Q. Yes.

A. They didn't object to me.

Q. They didn't?

A. No. Senator Cruz certainly didn't.

Q. Well, somehow something went awry and you're not a federal judge, are you?

A. That's absolutely true. My nomination was withdrawn by President Trump.

Q. Yeah. And that's the job you really wanted, right?

A. That was – I did want to be a federal judge.

Q. Sure.

A. But my dream job was First Liberty.

Q. Okay. Now, I understand that you took the place of Chip Roy; is that right?

A. That's correct.

Q. Chip Roy was the first assistant before you?

A. That's correct, sir.

Q. Okay. And you mentioned kind of in passing that Ken Paxton at some point became unhappy with Chip Roy?

A. That's correct.

Q. That Chip Roy was not doing what he wanted him to do?

A. That's correct.

Q. And he felt the same way about you during the conversation about Cammack, right?

A. The Attorney General never expressed that to me –

Q. But you told –

A. – has never expressed that to me.

Q. I'm sorry. You told us all that he compared you to Chip Roy, remember?

A. What I said was Mr. Penley said that.

Q. Penley said that Paxton had said that?

A. And I asked the Attorney General whether he was frustrated with me, and he didn't respond about being frustrated with me.

Q. Have you seen the second referral from the DA's Office to the AG's Office?

A. I may have.

Q. Why would you have seen it at this point?

A. I had a conversation with Margaret Moore after I resigned and may have seen it during that conversation, who was the Travis County District Attorney at the time.

Q. Yeah, I know who she was.

Listen, because we're running up against the lunch hour, I want to focus on Mitte real quick so we can just put this Mitte thing to bed, okay? Are you going to help me here?

A. You're asking the questions. I'll answer them.

Q. Okay. Let's look at AG Exhibit 151. It's in evidence. And just so the members of the jury understand how the office worked, there's some policy or procedure there that you described as executive action?

A. It's approval. The title is there, Mr. Buzbee. See executive approval civil litigation – he just –

Q. Oh, executive –

A. He highlighted it for us.

Q. Sorry. Executive Approval Civil Litigation Memorandum?

A. Yes.

Q. Okay. We see here the letterhead. Letterhead is Ken Paxton?

A. I see that.

Q. Okay. And basically, it takes us through various people within the bowels of the AG's Office who would approve something like this, right?

A. It starts with someone in the division and goes its way up, yes, sir.

Q. And this is just found in some policy manual somewhere, right?

A. Well, it was a policy of the office.

Q. Is it written down?

A. It is written down, sir.

Q. Okay. Now, so let's just look. With regard to intervention on behalf of the public interest in charity, we have a sign-off of Mary Henderson, who's a senior attorney, right?

A. Correct.

Q. We have, looks like, Josh Godbey, who is the chief of the financial litigation and charitable trust division, right?

A. That's correct, sir.

Q. We have also signed off here Darren McCarty, who is – what is he? For civil litigation, head of civil litigation?

A. He's the deputy attorney general for civil litigation.

Q. And then at the top of the chain is your name where you signed off on June 8th of 2020, correct?

A. That is correct, sir.

Q. And, of course, all of these people here that we see on Exhibit 151 derive their authority from the Attorney General; isn't that right?

A. From the Attorney General and the statutes and the Constitution, yes.

Q. I mean, it doesn't matter whether you think it's a good idea or not. He, the Attorney General, is the decision-maker ultimately; isn't that true?

A. And that authority is delegated down to and through.

Q. I understand you can delegate authority, but you can also take it back, can't you?

A. I think that's correct, sir.

Q. Right. So let's make sure we're clear. Any authority you had only existed as long as you serve the Attorney General; isn't that right?

A. I think the Government Code gives the first assistant authority when the Attorney General is absent.

Q. When he's absent?

A. That's correct.

Q. Right. Not when he's on a business trip doing work on a case for Google. You don't get to just say, Oh, he's out of town, now I'm in charge. That ain't how it works, is it?

A. I certainly never did that, sir.

Q. Yeah. And you better not do that because that would get you fired, right? I mean, if you were to do that, that should be a fireable offense, right?

A. Again, as long as the Attorney General were exercising his proper authority as well pursuant to the Constitution and the laws.

Q. Let's look at why the person that generated this Executive Approval Civil Litigation Memorandum, let's look at why they thought it was the right thing to do to intervene into this Mitte litigation.

MR. BUZBEE: Turn over, if you would, to page 2 of this document, Erick.

Q. (BY MR. BUZBEE) It goes on for several pages with the justification as to why it's a good idea for the AG's Office to intervene; is that true?

A. That's the purpose of the memo, to set forth the reasons why to take an action.

Q. Did you review it before you signed it?

A. I did.

Q. Did you have the opportunity to say, you know, I don't think that's sufficient justification?

A. I would have had that, yes.

Q. And can we agree that even if you thought it wasn't a good idea, that you could be overruled by your boss?

A. Yes.

Q. Okay. Just so we're clear on that, I want to make sure everybody hears that, that even if – let's just say as an example, using the Mitte intervention as an example, if you had looked at this and said, You know what? I don't think this detailed memo that goes into line by line of all the problems that the Mitte – the Mitte Foundation has had, I don't think that's sufficient justification to intervene, and you said, You know what, I'm not going to sign that, the Attorney General could overrule that however he chose; isn't that right?

A. I believe that's correct.

Q. Because you're not in charge, are you?

A. Ultimately, the elected official is the Attorney General.

Q. Because you've never gotten any votes, have you?

A. No.

Q. You didn't get 4.2 million votes, did you?

A. I've never run for any office, sir.

Q. He did.

A. Never any desire.

Q. He did, right?

A. He did.

Q. He's the one that's elected, right?

A. He is elected.

Q. He's the boss, true?

A. He is ultimately, yes.

Q. And you serve at his pleasure; isn't that right?

A. The first assistant serves at the Attorney General's pleasure.

Q. You're a political appointee; isn't that right?

A. That's correct.

Q. And if he doesn't trust you anymore, then you're out the door; isn't that right?

A. That's correct.

Q. And that's how it works with political appointees, isn't it?

A. That's correct.

Q. It's at will. When he doesn't trust you anymore, you leave, right?

A. Or vice versa, yes.

Q. Sure. Let's look at all the problems with the Mitte Foundation.

MR. BUZBEE: Go, Erick, if you would, to page 4 where they're laid out – the bullet points are laid out, the justification of the intervention by the AG's Office.

Q. (BY MR. BUZBEE) Do you see them there?

A. I see the allegations, yes, sir.

Q. And are those sufficient still in your mind for the intervention?

A. Again, I approved that memo at the time, yes, sir.

Q. You stand by it today, don't you?

A. That I approved the memo on that day, yes.

Q. Okay. Nobody tricked you to get your signature, did they?

A. No one on that date tricked me, yes, sir.

Q. Okay. And we can see all the problems. Apparently or allegedly the former chairman attempted to conjure a sale of the investment properties in a self-dealing transaction. See that bullet point?

A. I see it there, sir.

Q. It says that they hadn't filed the proper IRS forms. See that?

A. That fourth bullet point?

Q. Yes, sir.

A. I see what it says.

Q. They refused to disclose certain fee agreements, right?

A. I see that bullet point, sir.

Q. You knew, of course, that one of the individuals who had been involved had gotten in trouble criminally. You knew that, didn't you?

A. I don't know if I knew that, sir.

Q. You don't remember that?

A. I do not remember that.

Q. Okay. You know, there's been some saying here, let's – I want to make sure we're – because we're putting Article I to bed, which I think puts the whole case to bed. But look at Article I. Impeachment Article I, please.

It starts off, it says, Protection of Charitable Organization. Do you see that there?

A. One second. At the top, yes, I see it.

Q. Sorry.

A. Sorry about that.

Q. I'm kind of doing you like –

A. I was reading the paragraph, not the –

Q. That's false in itself, isn't it?

A. What –

Q. The AG's Office is not there to protect charitable organizations, is it?

A. No, I think that is part of our role.

Q. It's there by statute. It says, By statute, the authority to intervene is to protect the public interest in charity; isn't that true?

A. I think that's what that means.

Q. That's a whole different thing than protecting charities, isn't it?

A. No, I don't – I don't think so, sir.

Q. I mean, the reason for the intervention is because they thought the people within the charity were doing things that were wrong, and so we're protecting the public's interest in the charity, correct?

A. I think – I don't think they're necessarily exclusive, sir.

Q. You also authorized – you also authorized an investigation of the Mitte Foundation, didn't you?

A. I remember seeing those documents, yes, sir.

MR. BUZBEE: I didn't know what time you wanted to do lunch. Is it now? This is a good time to break for me if you want to.

PRESIDING OFFICER: Good time for you? MR. BUZBEE: Yes, sir.

PRESIDING OFFICER: All right. We will break until 1:30, 45 minutes.

(Recessed for lunch at 12:42 p.m.)

**AFTER RECESS**

(1:34 p.m.)

THE BAILIFF: All rise. The Court is in session. The Texas Senate is now in session.

PRESIDING OFFICER: You may be seated.

Thank you, jurors.

Mr. Buzbee, you may continue.

MR. BUZBEE: Thank you, Your Honor. Good afternoon.

PRESIDING OFFICER: Good afternoon.

**CROSS-EXAMINATION (CONTINUED)**

BY MR. BUZBEE:

Q. I want to kind of get this timeline correct so we can get it all right in our minds. You found out about the bank subpoena from Cammack on the 29th of September 2020, right?

A. That's correct, sir.

Q. And this meeting you had with the top lieutenants was what day?

A. It's the same day, sir.

Q. So on the 29th on the eighth floor, eighth floor, y'all got together and had a meeting about the subpoena and about Nate Paul, et cetera, correct?

A. That is correct.

Q. What happened in the – in the date order next on the 30th? Is that when you went to the FBI?

A. Yes, correct.

Q. Okay. And then you sent a text to the attorney general?

A. We did, yes, sir.

Q. What day was that sent?

A. That was the next day.

Q. What next day?

A. Well, the – October 1st.

Q. Okay. October 1st.

A. Yes, sir.

Q. And then you resigned October 2nd?

A. That's correct, sir.

Q. All right. Just so I can get it in my mind. You learned about the subpoena on the 29th of September?

A. Yes.

Q. Y'all met the same day?

A. Yes.

Q. You went to the FBI the next day?

A. Yes.

Q. You sent a text on October 1st, the next day?

A. That's correct.

Q. And you also signed – all of you signed a letter, correct?

A. Correct.

Q. And then the next day you resigned?

A. Yes.



Q. Okay. So – just so – in case the jurors are wondering about the timeline, and maybe they'll wonder.

MR. BUZBEE: Go back, Erick, if you would –

Your Honor, one thing I want to mention. Erick, would you stand up? You hear me say "Erick."

Your Honor, this is Erick Arroyo. He's our audiovisual guy that works at our office. I just – in case you were wondering who I was yelling at over there.

All right. Erick, would you – AG Exhibit 170, go to Brickman 187. And let's just try to confirm in our minds that the documents match up to the timeline.

Page 187.

Okay. Here we are. And I think everybody can see this.

Q. (BY MR. BUZBEE) We have a major problem. The kid has served a subpoena on a bank. Showed up there in person at the bank with someone from World Class. I need you guys to come back.

You wrote that in text, true?

A. Yes, sir.

Q. And that was on the 29th, right?

A. That's on the 29th, yes.

Q. Okay. The next day you went to the FBI, September 30th, true?

A. That's true, yes, sir.

Q. And the next day, October 1st, you sent General Paxton a text?

A. Yes.

MR. BUZBEE: Let's look at AG Exhibit 127, Exhibit 31.

Q. (BY MR. BUZBEE) Okay. Here's the text. This is a text – you deleted this text, right?

A. I had received a copy of it from Ms. Mase.

Q. Okay. And this is the text you sent the general?

A. Yes, sir.

Q. On October 1?

A. Yes, sir.

Q. Okay. And then the group of you folks then signed a letter; is that right, on the same day?

A. Yes, sir.

MR. BUZBEE: Let's go, Erick, if you would same exhibit, Exhibit 1. We're looking at Exhibit 127, Exhibit 1. Very tedious, but we've got to look at this.

We really need to break these out so this doesn't take this kind of time.

Q. (BY MR. BUZBEE) Okay. Here we are. This is the letter that the eight – let's see; one, two, three, four, five, six – seven of you signed, right?

A. Yes, sir.

Q. And that was on October the 1st, true?

A. That is true, sir.

Q. Okay. Let's take a look – keep that October 1, 2020, date in your mind. Can you do that for me?

A. I'll try, sir.

Q. Okay. Let's look at AG Exhibit 434. Do you see that? That's the bar record of George P. Bush. Do you see that?

A. I see what the document is. I think everybody can.

Q. Now, look at the bottom. Look at the bottom entry. His law license was active – inactive for 10 years. Do you see that? Look at when he requested to reactivate his license. Tell us all that date.

A. Where? Do you want to point it to me?

Q. 10/1/2020. Do you see that?

A. I see the document says that, sir.

Q. What date is it when he applied to activate his license?

A. It says October 1st, 2020.

Q. Huh. Let me get this right in my mind. On October 1st, 2020, you sent the general a text that we saw, right?

A. I did, yes, sir.

Q. On that same day, you signed a letter, seven of you, right?

A. Yes, sir.

Q. And coincidentally on that same day George P. Bush – who ran against General Paxton, did he not?

A. He did in the primary.

Q. George P. Bush applies to reactivate his law license. You see that?

A. That's what that document appears to say.

Q. Did you ever hear that old saying there are no coincidences in Austin?

A. Actually I don't –

Q. You never heard that?

A. I'm not an Austin guy so, no, I haven't heard that one.

Q. There are no coincidences in Austin. You never heard that?

A. No, I haven't.

Q. Okay. Now, let's – I'm trying to figure out the connection here. Before October 1st, you had already talked to Johnny Sutton, hadn't you?

A. I had not.

Q. Somebody had, right?

A. I believe so.

Q. Somebody in – within these seven people had, right?

A. I believe so.

Q. And what's Johnny Sutton's relationship with George P. Bush?

A. I have no idea –

Q. Don't know?

A. – if there's any. I have no idea if there's any.

Q. No clue?

A. No.

Q. So the day after George P. Bush applies to reactivate his license, you resigned; is that right?

A. I resigned on October 2nd, sir.

Q. Let's look at that.

MR. BUZBEE: That is House Manager Exhibit 291. Bring that up on the screen, please, House Manager Exhibit 291, the second page, please.

Q. (BY MR. BUZBEE) That's your resignation letter?

A. Yes, sir.

Q. Okay. Now, you told us before you resigned you talked to people at the governor's office?

A. Yes, I –

Q. Who? Who?

MR. HARDIN: Your Honor, is – is he going to offer it? Because this is not in evidence.

MR. BUZBEE: Which one?

MR. HARDIN: The exhibit you just put up.

MR. BUZBEE: House Manager Exhibit 291, to the extent it's not in evidence, I move for admission.

PRESIDING OFFICER: It's admitted.

(HBOM Exhibit 291 admitted)

MR. HARDIN: Thank you.

Q. (BY MR. BUZBEE) Now, let's get back to the subject at hand. Who at the governor's office did you speak to before you resigned?

A. Well, a couple of days before, we met with – I believe it was Jeff Oldham, who would have been at that time the governor's general counsel. I believe James Sullivan, who is – who was at that time deputy general counsel. And I believe the chief of staff, Luis Saenz, was in the meeting as well.

Q. Was anyone else in the meeting?

A. Other than myself and I believe Mr. Bangert and Mr. Brickman. I believe that's all.

Q. Did you talk to Mr. Hodge?

A. No.

Q. No?

A. He wouldn't have been in that meeting. He wasn't at the governor's office at that time.

Q. Right. Did any of you, the group that you know of, talk to Mr. Hodge?

A. Not that I'm aware of.

Q. You know who I'm talking about, don't you?

A. I know who Daniel Hodge is, yeah. He was at one time the governor's chief of staff, but by this time Luis – Luis Saenz was chief of staff.

Q. Right. Daniel Hodge is a lobbyist?

A. I – that's my understanding, sure.

Q. Why did y'all refer to yourselves as the Cool Kids' Club?

A. I don't recognize that.

Q. You don't recognize it?

A. I don't.

Q. Okay.

MR. BUZBEE: Go back, Erick, to AG Exhibit 170.

Q. (BY MR. BUZBEE) Your – your testimony is that you folks, you – you eight folks, never referred to yourselves as the Cool Kids' Club?

A. My testimony is I don't recall me ever using that phrase.

Q. Okay. How about the others?

A. I – sitting here right now, no.

Q. Okay. Do you recall ever being sent a text like getting fired will make you a cool kid?

A. No.

MR. BUZBEE: Erick, go to Brickman 203. Brickman 203, and this is Exhibit –

Q. (BY MR. BUZBEE) Okay. Do you see the text there I'm referring to, being fired will make you a cool kid?

A. Mr. Buzbee, I see that, but I don't know if I – am I on that exchange? I don't – the message at the top, if someone can highlight that. I do have my – I do have my glasses on, but I'm trying to see it.

Yeah, I – I don't see my name there. I don't think I was on that exchange.

Q. You don't think so?

A. No. After I left, I don't think so.

Q. Now, when did you find out about the second referral? When did you finally find out that, you know what, when I went to the FBI and I was telling them that this guy was subpoenaing documents that had nothing to do with the referral, when did you find out that the documents that were being subpoenaed actually had everything to do with the second referral? When did you find that out?

A. Mr. Buzbee, sitting here today I don't – I don't recall when.

Q. Okay. Let's look at the same exhibit, Brickman 202.

Y'all read about it in the news, didn't you?

A. Well, again, sir, I don't think I'm on the – I don't think I'm on this text message.

Q. Okay. But just look at the text message I'm referring to. This is about alleged second complaint. Interesting. Do you see that language?

A. Could you highlight it for me, please –

Q. Erick could.

A. – Erick?

Q. Do you see that language? They're referring to a news article. And they're, for the first time learning that, in fact, Mr. Cammack had been sent a second referral directly from the DA's office and that's what the subpoena regarded. Is that about the time you learned about this?

A. Again, I don't have a memory of learning it from – from that.

Q. I mean, you guys were alarmed, you said. I think the word you used was, we were alarmed that this kid, as you called him, had sent a subpoena to a bank. And you believed that subpoena had nothing whatsoever to do with whether the FBI had violated Mr. Paul's rights.

A. Do you have the second referral?

Q. You're going to see it in a minute.

A. What did it – what did it relate to? That may help me.

Q. Just a second. I'm going to help you. Don't worry. I'm not going to –

MR. HARDIN: My objection is, Your Honor, he's twice – maybe seven times, I resisted objecting because the witness quite frankly is handling him so well. However, he's now cross-examined him about an e-mail that he's not – or a text message he's not on, he doesn't know anything about.

Now he's going to cross-examine him about a second referral which the testimony is clear he never saw and doesn't know. He's, therefore, asking, give it to me before you ask me questions about it. So I object to him being asked about documents he knows not only nothing about but is not part of.

MR. BUZBEE: I'm trying to find out what was in his mind when he resigned and when he went to the FBI about what he didn't know. And I'm asking him about why the alarm. And the alarm is, Your Honor, I think he's told us that he didn't know about the second referral. And I'm trying to figure out when he learned about it.

MR. HARDIN: I – I think our law is clear he shouldn't be questioned about documents that he has not seen in this situation, knows nothing about. I mean, he's just said I never saw the second referral. I don't know anything about it. And now he wants to sort of lead him through as he gets to do on cross about things having to do with documents he hasn't seen. So I – I object to that being inappropriate.

PRESIDING OFFICER: Sustained.

Q. (BY MR. BUZBEE) And that's the whole point. You didn't know about the second referral, did you?

A. I did not.

Q. Right. And so you went to the FBI thinking this kid, as y'all called him, as you called him, should not be subpoenaing banks, right?

A. I did think that.

Q. But you now know that if he was charged by the DA's office of Travis County to investigate big – bid rigging, that that would be, in fact, something that he might subpoena, right?

A. I actually don't know that.

Q. You don't know?

A. I do not – I do not know it.

Q. Okay. And since we're on the subject, let's look at – because you know now there were two referrals, right? You know that.

A. I think I know that because I've reviewed the internal report at one time.

Q. Okay. Let's look at the first referral. The first referral is –

MR. BUZBEE: You're going to have to get into Exhibit 127, Exhibit 3 as quickly as we can.

Q. (BY MR. BUZBEE) This document is in evidence. I would ask you to take a look at it once Erick gets it on our screen. 19

MR. BUZBEE: Exhibit 3, Erick, page 3.

Q. (BY MR. BUZBEE) All right. Can you see that, sir? He's going to try to bring it up.

MR. BUZBEE: Page 3, Erick.

Q. (BY MR. BUZBEE) Bring it up so you can see it. You certainly were aware of this first referral from the Travis County DA's Office, correct?

A. At one time I became aware of it, yes, sir.

Q. And this was something that Maxwell, Mr. Maxwell and Mr. Penley were supposed to be handling, true?

A. That is true.

Q. And Mr. Paxton, the general, did not believe that Mr. Penley was pursuing this matter appropriately; isn't that true?

A. He became to – he expressed that at some time, yes.

Q. He felt like that Penley, who was a former assistant U.S. attorney, and Maxwell, who was a former Texas Ranger, were not taking the referral seriously; isn't that true?

A. I don't know if I would say it that way.

Q. Let me ask you this: If you – if you don't take a referral seriously, one thing you might do is not even log it into the system, right?

A. Again, I don't know if I would characterize it the way you have.

Q. Who would be responsible when a referral is made from the Office of District Attorney, Travis County, to the attorney general's office, to log that referral and open the investigation? Who would be responsible to do that?

A. Somebody in the division.

Q. Whose division?

A. Well, it would either be law enforcement or criminal justice. This would be one that sort of both had concurrent.

Q. So ultimately Mr. Penley or Mr. Maxwell?

A. They – they were in charge of both of those divisions, respectively.

Q. Let's look at Exhibit 5 to Exhibit 127. Did you realize that neither Maxwell nor Penley ever even bothered to open an investigation when they received the referral?

A. The document you're showing me, I don't see my name on.

Q. We were not able to locate this referral in any of our databases.

I want you to tell me as the first assistant who's responsible for the day-to-day operations of the AG's office how could it possibly be that when the Travis County DA's Office feels like the people they would typically refer this to – that is AG's office. Why would it possibly be that you guys wouldn't even log it into the system? Help me understand how that possibly could happen.

A. I would have to ask Mr. Penley or Mr. Maxwell.

Q. I will do that.

Aren't you ultimately responsible for making sure that your people did their jobs?

A. I mean, ultimately. But as I've testified, Mr. Buzbee, and I'm sure you're aware, it's a large office with a lot of matters, and I trusted in this case Mr. Penley and Mr. Maxwell.

Q. Now, couldn't you see how maybe your boss might be frustrated who felt – you know he felt like he was targeted by the feds, right? He expressed that to you before, right?

A. It –

MR. HARDIN: Is he soliciting hearsay now after all these objections?

PRESIDING OFFICER: Do you have an objection?

MR. HARDIN: I mean I –

PRESIDING OFFICER: Are you asking a question or do you have an objection?

MR. HARDIN: I have both an – a question that will lead into an objection to his – he's asking for hearsay. I guess it must be a valid objection. He made it 30 times when I was talking.

MR. BUZBEE: I don't know what that objection is, but I'm entitled to ask – I'm entitled to ask the man what he – I mean, he's told us multiple times about how Ken Paxton felt about this, that, and the other. He knows about how Ken Paxton feels about the feds, and that's what I'm asking.

PRESIDING OFFICER: Let's just move on, gentlemen.

Q. (BY MR. BUZBEE) Tell us how Ken Paxton felt about the feds.

A. I mean, he did have some distrust of the feds. His primary distrust was the State officials.

Q. Uh-huh. So can you understand why your boss might be frustrated with his two top lieutenants when they weren't doing their jobs and investigating the referral from the Travis County DA's Office?

A. I wouldn't characterize it as that, Mr. Buzbee, at all.

Q. And, of course, when you talk about conflicts, I mean, this – they decided we're not going to send it to the Rangers and we're not going to send it to the FBI. But we know that Mr. Penley was a former with the feds, right?

A. Mr. Penley was an Assistant U.S. Attorney for many years.

Q. And –

A. In Dallas. In Dallas.

Q. Right. And Mr. Maxwell also had a past history, did he not?

A. He did. And Mr. Paxton promoted him to the position that he held before I got there.

Q. Now, you told us that you – that you knew General Paxton was frustrated that neither Maxwell or Penley would investigate the referral, right?

A. Actually, I said I couldn't agree with you.

Q. Uh-huh. And so Mr. Paxton, General Paxton, wanted an outside party to do it, right?



A. We discussed that.

Q. And more than one person was considered; isn't that right?

A. That is correct.

Q. One of the people considered was a man named Joe Brown?

A. Yes.

Q. You liked Joe, didn't you?

A. I – I've known Joe for years.

Q. I mean, you liked him?

A. I've known him for years, and I like – yes, I had a favorable view of him, yes, sir.

Q. Another one considered was a man by the name of Strickland?

A. Cliff Strickland considered – his name came up, yes.

Q. His name came up, and then they figured out that Cliff Strickland was no way going to work for 300 bucks an hour, right?

A. I believe that's true, yeah.

Q. So instead they settled in on a guy who was young, but all he had to do was investigate. They settled in on Cammack, right?

A. Well, eventually that's apparently what the attorney general did, yes.

Q. And you actually, even though you claim it wasn't an interview, you spent 15 minutes with Mr. Cammack, did you not?

A. I spent 15 minutes with Mr. Cammack.

Q. Because we know from the visitor logs –

MR. BUZBEE: Exhibit 127, Exhibit 6, please put on the screen.

We know from the visitor logs – we are going to have to figure out a way how to break these out, Erick, so this doesn't take so much time.

Q. (BY MR. BUZBEE) We know from the logs, Joseph Brown came to the office on August 27, 2020, at 3:45 and spent two hours there, right?

A. If they can enlarge that.

MR. BUZBEE: Erick, do you see there at the bottom, on Joe Brown, it shows when he came in and when he left. Checked in, checked out. Bring that up.

Q. (BY MR. BUZBEE) Can you see that?

A. I guess.

Q. And I'm sorry –

A. And I'm not familiar with this document.

Q. I'm sorry.

MR. BUZBEE: May I approach the witness, Your Honor?

PRESIDING OFFICER: Yes.

MR. HARDIN: Maybe it's easier if –

MR. BUZBEE: I'm going to show you the same exhibit.

Q. (BY MR. BUZBEE) Mr. Mateer, just confirm for me –

PRESIDING OFFICER: Just wait to go to the mic to speak to him, though.

MR. BUZBEE: Okay.

PRESIDING OFFICER: Thank you.

Q. (BY MR. BUZBEE) Confirm for me and the members of this jury that Joe Brown, on August 27, 2020, spent two hours in the AG's office.

A. I can confirm to you that this document says checked in August 27th, 2020, at 3:45 p.m. And then it says checked out Thursday, August 27th, 2020, at 5:45 p.m.

Q. So he -

A. And Joe Brown's name is at the top – I'm sorry, sir.

Q. That's all right.

A. Joseph Brown's name is at the top.

Q. Right. That's a visitor log. That's how we know who comes in the office and who leaves the office, right?

A. I mean, I will assume that that is true, but I don't know if I've ever seen one of these before.

Q. Let's look – get – look at the next page. There's a visitor log for Brandon Cammack. Do you see that?

A. I do, sir.

MR. BUZBEE: Go to the bottom, Erick.

Q. (BY MR. BUZBEE) Even I'm having trouble reading that, but it looks like – why don't you tell us what it says. It says –

A. Well, I mean it's cut off on this copy, but it does say August 26, 2020, 3:08 p.m. It says KED in. We can assume that's checked in. And then it says KED out August 26, 2020, at 4:38.

Q. So what did he stay, an hour and a half or more in his office?

A. That's what this document says, yes, sir.

Q. So he came in on the 26th, that is Mr. Cammack, stayed an hour and a half, and then Mr. Brown came in the next day and stayed two hours; is that true?

A. That is correct.

Q. Okay.

MR. BUZBEE: May I approach the witness?

Q. (BY MR. BUZBEE) And we know, because we have your daily calendar, that you listed in your calendar times, and you were considering – you mentioned Cliff Strickland. You mentioned Joe Brown, right?

A. I did.

Q. If this was so illegal, and so out of bounds and so egregious, why the devil are you meeting with these people?

A. I don't understand the question.

Q. I'm trying to figure out why, if you thought, hey, I – we don't – Penley is doing his job. The former AUSA is investigating the feds. The former Texas Ranger is investigating the feds or the magistrates or the DPS. Why would you be meeting with several lawyers as outside counsel to do the very same job?

A. Well, it wasn't to do the very same job.

Q. Well, why – help me understand, then, why you met with – with Joe Brown. Why did you – did you think it was just a – a pleasure call?

A. No.

Q. He just showed up for two hours for no reason?

A. No, I'm not saying that, sir.

Q. Okay. You knew why he was there. You knew he was being considered for outside counsel to take over the job that Penley wasn't doing, didn't you?

A. No.

Q. We know from your logs –

MR. BUZBEE: Is this Exhibit 127? You didn't put a label on it. The logs. Pull up 127, please.

One moment, Your Honor.

All right. Bring up Board of Managers' 558.

Q. (BY MR. BUZBEE) All right. Are these your – is this your daily calendar?

A. It's my physical daily calendar, yes.

Q. Is this what you keep on your desk to make notes? Like here's what I want to accomplish today and some notes about what you do?

A. Some, yes, sir.

Q. Okay. Let's go – we're looking at Board of Managers' 558.

MR. BUZBEE: And, Erick, if you don't mind, turn to page 98. It's Bates-stamped there at the bottom.

Q. (BY MR. BUZBEE) And we see a name on that document, do we not? Do you see the name Cliff Strickland?

A. Yes. I see a couple of names, but I do see Cliff Strickland, yes.

Q. Okay. And can you tell us all why you wrote Cliff Strickland's name in your – in your daily calendar?

A. My guess is General Paxton mentioned him. I – I know who that is. I knew his father – I know his father.

Q. Sure. And you were supposed to check him out, see what his hourly rate was?

A. I don't know if that's true. I think – I don't know.

Q. You don't know?

A. No, I don't know.

Q. Right. But you do know his hourly rate is 800 bucks, don't you?

A. I'm not surprised that it's 800, but I don't know if I know that.

Q. Yeah. That's too expensive for outside counsel, is it not?

A. I would think it's expensive.

Q. I mean, even if – I mean, we have some World Class – probably the World Class lawyers here. They're only getting paid 500 bucks an hour.

A. Yeah.

Q. You knew that?

A. Yeah. What's your rate?

Q. Huh?

A. What's your rate?

Q. Well, you'll find out soon enough.

So Cliff Strickland was too expensive for the outside counsel gig, true?

A. I – what I recall is that Cliff Strickland denied being willing to assist in this matter.

Q. So let's go over to page 100 of the same document. He denied doing the work because he wasn't going to get paid his hourly rate. That's the reason; is that not right?

A. Again, Mr. Buzbee, I don't recall that.

Q. Now, let's go over to page 100. You wrote some other notes, but you put, I like Joe.

That's Joe Brown, right?

A. I believe that's so, yeah.

Q. So you had written in your logs – in your notes Strickland's name, Joe's name. We already know that you met with Cammack for at least 15 minutes, although you told us all, that wasn't really an interview.

Why don't you tell us why you're doing this if you – you were so adamant we weren't going to use outside counsel, and you thought it was wrong, and you had all of these objections to it. Tell us why you – you were going through the motions here.

A. I wasn't going through the motions. If you'll look at the notes below, sir, after I met with Mr. Brown, I met with Mr. Penley. And you'll see in parentheses it says DM out. That's referring to David Maxwell. The outside counsel we were looking at was to – was to assist Mr. Penley and Mr. Maxwell. That was always my understanding. That was always my expectation.

Q. Right. But see Mr. Penley and Mr. Maxwell weren't doing anything.

A. See, I disagree with that, sir.

Q. They didn't even open a file.

A. They kept asking Mr. Paul and his attorneys for documents, and they wouldn't give them documents.

Q. Did they open a file?

A. Again, sir, I don't know. I know that – I know that they were working on it because at different points in time they – they told me they were. They had meetings. They met with – with – with Mr. Paul. They met with Mr. Wynne. They kept asking for documents. Mr. Penley repeatedly expressed his frustrations that Mr. Paul and his counsel were not cooperating.

Q. You were so against the idea that you told Mr. Vassar to draft a contract; isn't that right?

A. I don't know that I did that, sir.

Q. Well, that's what he says.

A. Well, I – I don't believe I did that, sir.

Q. Do you know that he drafted a contract –

A. I –

Q. – for Mr. Brown and for Mr. Cammack?

A. I know he drafted one for Cammack because that was later. You – you showed that to me this morning. I don't know about Mr. Brown.

Q. One of the things that outside counsel has to disclose is whether he or she has conflicts that would prevent them from taking on an outside matter, right?

A. That is – that is true, sir.

Q. Let's look at Exhibit 127, Exhibit 8.

As he's pulling that page up, you also told Vassar we need to keep this on as short of a leash as possible. We don't want it running away, right?

A. That doesn't sound like me.

Q. All right. We'll ask Vassar that when he –

A. That – that language –

Q. That's what he said in his interview, but we'll ask him directly.

A. Yeah, that language doesn't sound like Jeff Mateer.

Q. So let's look at the correspondence between – now, where in the – in the chain of command, where is Vassar in relation to you?

A. Let's see, at this time he is deputy for legal counsel, and he would be a direct report to me through – assisting me on that would be Mr. Bangert.

Q. Okay. So he – you would consider him a direct subordinate?

A. He is a direct subordinate, but specifically on – because – because Ryan Bangert had been in that position, he worked very closely with him.

MR. BUZBEE: So, Erick, if you would, in this exhibit, turn to the last page.

Q. (BY MR. BUZBEE) And we can see Vassar, the e-mail that he sent an outside counsel contract draft. Do you see that?

A. I mean, I've never – I'm not – I don't think I'm on this. I – I've not seen it before.

Q. I'm asking you to see it now.

A. If – I mean, we can see it on the screen. I see it on the screen.

Q. Vassar is your direct subordinate?

A. Again, through Bangert, yes.

Q. He's sending an outside counsel contract draft.

A. It says, Please see attached.

Q. Yeah. And then in response Mr. Brown lays out some things that might or might not be conflicts to take on the – the representation. Do you see that?

A. Let me – yeah. Let me read it.

Can you make that bigger, sir?

Whoops. A little bit bigger.

What about the first paragraph first, the – I'm sorry, the first paragraph first, sir. I see in the first paragraph he talks about malpractice insurance.

Q. Right.

A. Second paragraph, sir.

Q. Do you see what the scope of the work is as you're reading that?

A. I read it, sir, yes.

Q. The scope is that I will investigate – fully investigate the circumstances related to the referral

A. That's right. I see what it says, sir.

MR. BUZBEE: And let's go to the first page. The next page, I should say, Erick.

Q. (BY MR. BUZBEE) More correspondence between Vassar and Mr. Brown related to the draft. Do you see that?

A. Now, can they – where? Isn't that the same e-mail we just saw?

MR. BUZBEE: Erick, please go to the first page of the e-mail. There you go.

Q. (BY MR. BUZBEE) Vassar says the malpractice issue may be one that we can resolve.

That's referring to the previous e-mail about malpractice insurance, right? Do you see that?

A. I see that, sir.

Q. Now, my question to you is did Vassar, your direct subordinate, tell you, you know what, we're looking at Brown, I've done a draft contract for Brown, but he doesn't have malpractice insurance. Is that a problem? Did he tell you that?

A. I don't remember that, sir.

Q. Don't remember it?

A. I do not.

Q. Can we agree as of September of 2020 that your subordinate had drafted a contract for Joe Brown and was talking through the scope, et cetera, of the representation?

A. These documents appear to reflect that, sir.

MR. BUZBEE: Let's go to Exhibit 7 within 127, Erick.

And bring up, Erick, if you would, the e-mail from Mr. Vassar to Mr. Cammack on September 4, 2020.

Q. (BY MR. BUZBEE) Can you see and confirm, sir, that at the same time that Vassar was sending a draft contract – or at around the same time he was sending a draft contract to Mr. Brown, he was doing the same with Mr. Cammack?

A. I can read the e-mail. I don't think I was copied on the e-mail. So I'm seeing it here for the first time.

Q. And of course we had already seen from the other e-mail there was a malpractice insurance issue with Mr. Brown, right?

A. I saw that Mr. Vassar said it was resolved.

Q. But there was no such issue with Mr. Cammack, was there?

THE WITNESS: Can you highlight that, Erick?

A. I'm sorry. I don't see it mentioning malpractice insurance.

Q. (BY MR. BUZBEE) Right. So as we look at these three people, one of them is too expensive, one of them doesn't have malpractice insurance, and the other one, he's young, but he doesn't really have to do a whole lot, he's just got to do more than Penley, right?

A. Again, sir, I would not characterize it that way at all.

MR. BUZBEE: Let's go to Exhibit 9 within 127.

Q. (BY MR. BUZBEE) Here, if the jury wants to see the actual contract sent by your subordinate to Mr. Cammack, they can look at this exhibit. Do you see it there?

A. What I – what's on the screen right now is a letter. Well, it says Brent Webster at the top.

Q. That's because he collected all the e-mails.

A. Say that again.

Q. That's because he collected all the e-mails.

A. Okay. So it says Webster at the top. And it says from Ryan Vassar. It doesn't say who it's to except it says, General.

Q. Right. This was the contract that Vassar wanted to use with both Cammack and Brown, and a copy was provided to the general. Do you see that?

A. I see what the e-mail says.

Q. Okay. Now, you've told us all that you objected to hiring Cammack, and the reason you objected is because you thought Penley could handle it and said he was handling it, right?

A. That's part, yes.

Q. And Penley did not want somebody to come in and do it. He said he was going to do it himself but he was just waiting on documents, right?

A. That's part, yes.

Q. Okay. And so as we – as the executive approval process went forward, it stopped at Penley, right?

A. That's my recollection, yes, sir.

MR. BUZBEE: Let's look at AG Exhibit 130.

Q. (BY MR. BUZBEE) And as we're putting that on the screen, just tell us point-blank, does – does – how long had Penley been at the office, as of this time?

A. That's a good question, sir.

Q. I hope my – all of my questions are good.

A. Some are.

Q. Some. Okay.

How long had Penley been at the office as of September 2020?

A. Yeah, I –

Q. Mere months, right?

A. I don't –

Q. Eight months at max, right?

A. I – I honestly do not have a recollection of when he started. I know when I came in Adrienne McFarland was the deputy. She retired at a point. We recruited – we were looking for the position. Mr. Paxton had known Mark, recommended him highly. And so he became, you know, part of our team. How long? A month? I mean, I – I guess ask Mr. Penley.

Q. I will.

What we have on the screen is the executive approval memorandum with regard to the outside counsel contract for Mr. Cammack, right?



A. You – you jumped down to the re – I'm sorry. If you could go down to the – I see it's an executive approval memo. I see the list of names. Can – can I see the –

Q. Synopsis?

A. Yeah, or the Re line. That will help first.

MR. BUZBEE: So he's asking for the Re line, please.

A. Yeah, I see that I'm not seeing it on this page.

Q (BY MR. BUZBEE) It's there.

MR. BUZBEE: Erick, it's in bold, Re.

A. I see – I see the Re, but I – what I – I'm sorry. And I keep going back and forth because I'm trying to look at it.

What I'm not seeing is Cammack referenced. If you say the next pages are Cammack, I'm not going to dispute that.

Q (BY MR. BUZBEE) Okay.

A. Obviously the document speaks for itself.

Q. Sure. Let's look at the people that approved it.

Let me ask you this. Any of these – none of these people can veto the attorney general, can they?

A. None of these people can veto the attorney general, but our processes were in place to protect him and to protect the agency that you had proper sign-off.

Q. I'm not asking about your processes, your bureaucrat processes. I'm asking about legally.

None of these people can veto the attorney general, can they?

A. That's a tough question for me to answer.

Q. Why? You should know that, should you not?

If you're the first assistant, that's something you should absolutely know by now, right?

None of these people, none of these people have the legal authority to veto the attorney general; isn't that true?

A. I think if the attorney general is taking an action that is improper, then it's incumbent on the staff, and that's why these processes are in place.

Q. And process according to –

A. So I don't –

Q. I'm sorry?

A. So I don't think it's proper, for instance, if Dan Morales goes out and enters into a deal –

Q. I'm not talking about Dan Morales.

A. – or Greg Abbott went out and entered into a deal. I mean, the process – it's the agency, and the agency had – I mean, I know you're – you're making comments about the process and bureaucratic, and look, it may be, but there's a reason.

Q. It is.

A. There's a reason, I mean, the attorney general can't, on his own, go out – because when this Legislature, they give authority for the agency to act, right? They give – you can do a certain thing. For instance, in the Government Code, one of the provisions in the Government Code, Mr. Buzbee – I'm sorry.

Q. I don't – you're not answering my question.

A. Well, I am answering your question.

Q. Okay. Just –

A. One of the – one of the – in the Government Code, the Legislature has given the Office of Attorney General the authority to enter into outside – outside counsel contracts. That's authority given.

In addition, this Legislature gives money so that you have money to actually – you need money and have authority and there has to be funds to do it. These processes are in place.

Q. Are you finished?

A. I was trying to answer your question.

Q. You're telling the members of this jury, each of them a senator elected by the people, that a bureaucrat in the office has the authority to veto the boss?

A. What I'm saying –

Q. That's what you're trying to suggest to us, are you not?

A. What I'm trying – if I can, can I answer your question?

Q. That's why I asked it.

A. What I'm trying – what I'm trying to suggest to you is this Legislature gives authority to the agency. They say what the agency can do. We have the Constitution, we have the statutes. Part of that is also money.

Q. The attorney general is responsible for the policies and the procedures of the office; is that policies and the procedures in the office.

Q. He makes the policies and procedures for his own office, does he not?

A. He, at one point, approved those. I think these policies and procedures were in place before he became attorney general.

Q. They were put in place by Greg Abbott. They're policies and procedures created by the holder of the office. They can be modified and changed by the officeholder, how ever he or she sees fits; isn't that true?

A. I think that's true.

Q. Okay. But here you are telling us all, or trying to suggest to us all, that the attorney general, the elected attorney general in the State of Texas, has to get the approval of his staff to enter an outside contract. That is what you are saying, is it not?

A. What – what I'm saying is in addition to having the – the Legislature also sets the parameters of that authority. Part of the job of the staff is to make sure the office is following what the Legislature has granted.

Q. In fact, let's see, we know on the first page that Lesley French, the general counsel, she signed off, true?

A. I – I see that, yes, sir.

Q. Joshua Godbey, he signed off, true?

A. True.

Q. Ryan Vassar, who wrote the contract, he signed off, right?

A. Yes.

Q. Michele Price, the controller, that's the woman in charge of the money, she signed off, right?

A. Yes.

Q. It stopped with Mr. Penley, right?

A. That is true.

Q. And this outside counsel contract was being done to do the job that Mr. Penley was supposed to be doing; isn't that true?

A. Now, you keep asking that question, and I keep telling you I don't have that same view.

Q. Sure.

MR. BUZBEE: And let's go to, Erick, if we could, page 14011 of the same document. It's the signature page. 14011.

Q. (BY MR. BUZBEE) And here's the signature page, true?

A. That appears to be the signature page.

Q. The contract is written where the attorney general is to sign; is that right?

A. Well, what it says, sir, is attorney general or designee. And I think I said on my direct examination, it was very rare that the attorney general himself actually signed contracts.

Q. Sure.

A. In fact, when the attorney general did sign a contract, we actually had a special folder, envelope, that you would put it in. There were some requirements of some contracts. I think they were things from the feds that they required actually the actual signature of the attorney general.

Q. Right. There are some things that the attorney general could not designate –

A. I said –

Q. Can you let me finish, please?

A. I apologize, yes.

Q. There are some things that he had to sign, right?

A. There are a few things he had to sign. Usually I think they were federal requirements.

Q. And most of the time, though, he designated someone to sign on his behalf, right?

A. Well, again, most of the time, in my experience as first assistant, it was the first assistant.

Q. But that does not mean he cannot sign, does it?  
Does it?

A. No.

Q. Okay. You said Mr. Penley had a real problem with hiring Cammack, true?

A. Penley had a problem with hiring Cammack, correct.

Q. So Penley refused to sign off, and that stopped the process, right?

A. That's correct.

Q. Are you telling me you did not know that Vassar had drafted a contract? Is that what you're trying to tell us?

A. What I'm trying to tell you is – is the best of my recollection. And the best of the recollection is I don't recall that, no, sir.

Q. But certainly at some point you knew because you talked about conversations you had with the general where he was asking – he was wondering why Penley wouldn't sign the contract. You knew the contract existed, right?

A. I knew that they were entertaining the fact of a contract. So I would assume, yes.

MR. BUZBEE: Erick, Exhibit 127, Exhibit 34 within that document, please.

Q. (BY MR. BUZBEE) All right. Looking at Exhibit 34 within 127, we see here kind of the DocuSign history, true?

A. If that's what you say. I can't – I don't dispute that. It says DocuSign. They just highlighted that.

Q. One of the good things about DocuSign is you can see exactly when somebody viewed the document. You can see if somebody rejects the document. You can see when they sign the document. Would you agree with that?

A. I'm seeing this for the first time.

Q. It's common sense, though, is it not?

A. The document says that – well, again, I think we both agree, neither of us are tech people. I mean, he – Erick is highlighting, and I – I see what that says.

Q. So let's look at Penley's history, Mr. Penley. According to DocuSign and the document that's in evidence, it was sent to him. That is the Cammack contract was sent to him on September 16th, 2020. Do you see that?

A. You're going to have to enlarge it for me, sir.

Q. September 16th, 2020, he was sent the document, true?

A. Yeah, it looks like it's 6:43:14 p.m. Is that what you're referring to?

Q. He didn't view the document until the day you all sent the text, did he?

A. I think there's a record. I mean, that's what this says. But I know there is an exhibit that – that he sends an e-mail on September 24th that he attaches, or tries to attach, the DocuSign. And, of course, you can't attach one. It was just the fact that one had been sent to him.

Q. It shows us here that he declined the document at 3:03 p.m. on October 1st. And then he viewed it after he had declined it, an hour later. Isn't that what that shows?

A. The document says what it says.

Q. Sure.

A. I don't have any knowledge.

Q. Now, your position is I was adamantly against the attorney general hiring Cammack, right?

A. I believe Mr. Cammack did not have the type of experience necessary to assist Mr. Penley in the investigation. You compare him to someone like Joe Brown who had been a U.S. attorney, who had been actually a DA. I mean, there – there's no comparison in experience.

Q. Did he issue subpoenas? Could he get subpoenas issued?

A. Could who? Mr. Brown?

Q. Mr. Cammack.

A. Well, we know –

Q. Would he have the – would he have the wherewithal to get subpoenas issued?

A. Well, we know that he eventually did with assistance from Mr. Paul's lawyer.

Q. Do you know how those subpoenas were actually – I don't – I don't want to talk about what you might have read in the paper. I want to ask you about what you know.

Do you know how Mr. Cammack –

A. I haven't –

Q. Can you let me finish?

A. Well, you asked me a question –

Q. I'm getting ready to finish the question.

A. – about the paper.

Q. Just a second, sir.

Do you know specifically how Mr. Cammack got subpoenas issued? Do you know how that process worked?

A. I do not.

Q. You claimed to the FBI that he appeared in front of the grand jury, didn't you? That's what you told the FBI, didn't you?

A. I don't think I told that to the FBI.

Q. What we know happened instead was, is he was assisted by the Travis County DA's Office and was sent a subpoena draft with a DocuSign that he DocuSigned?

A. I think that's a better question directed at the Travis County DA's Office, Ms. Moore.

Q. So did you ever bother even to ask how the subpoenas Mr. Cammack sent were issued?

A. I – I didn't, because I didn't need to.

Q. Y'all were drafting – collectively, you and the other employees or ex-employees – were drafting a letter to send to the FBI or the – or the Texas Rangers?

A. Do you have something to show me?

Q. Do you not recall drafting a letter where y'all were sending drafts back and forth amongst yourselves of a correspondence you were going to send to the authorities?

A. If you have something to show me, I – that may refresh my memory.

MR. BUZBEE: Let's look at Exhibit 22, please, within the same Exhibit 127. Go to page – the pages aren't numbered, but go to Number 4 within the document, please, Erick.

Go all the way to the bottom, Erick. It's very difficult to point this out, but it's the – the sentence starts: The subpoena sought information that involved financial records at local banks. Bring that – go to Number 4, Erick. I'm sorry, Erick. It's – you're two pages off.

There we go, Erick, just go to the second-to-last page, please. The second-to-last page of the document.

You're – guys, the second-to-last page, this page, the second-to-last page. There's two complaints. There we go. You have it. There we go.

All right. I'm sorry.

Q. (BY MR. BUZBEE) The sentence starts – I mean, this – this is something that you guys were collectively drafting, is it not?

A. I – I don't know if I've ever seen this, Mr. Buzbee.

Q. You – we took it off your computer.

A. Off my computer?

Q. Well, the computers from the office, yeah. There were multiple drafts that y'all were sending around.

A. Was it Jeff Mateer's computer? Can you show me that?

Q. Well, let's –

A. It said at the beginning – you've been\ jumping around. This is one of the disadvantages of an iPad.

Q. I know. I'm at a disadvantage, too, because my guy is way over there.

A. I know. I understand. We both are frustrated with it.

Q. Let me just – let me just focus your attention on some language of a draft letter. Then you can tell me whether you –

MR. HARDIN: Your Honor, pardon me. Pardon me, Your Honor. My objection is he doesn't know the source of this. He doesn't believe where it came. It's totally inappropriate for him to be asked questions about it until Mr. Buzbee shows where it came from so he's satisfied it's something that he knows something about.

MR. BUZBEE: Let – I can handle that, Your Honor. Sure.

PRESIDING OFFICER: Can you help straighten that out?

MR. BUZBEE: Yes, sir.

PRESIDING OFFICER: All right.

MR. BUZBEE: No doubt.

Q. (BY MR. BUZBEE) Did you realize that either the FBI or the Rangers?

A. I – I don't have memory of that.

Q. Did he share with you any of the drafts that he created that was ultimately sent to the authorities?

A. This is their – I don't know.

Q. You don't remember?

A. I don't remember, sir.

Q. Okay. Let me just see if your recollection the things that were going on – would you agree with the statement that nothing in the subpoenas sought information that related to the allegations contained the Travis County complaint which involved potential criminal conduct by employees of state and federal?

A. Is this related to the first one?

Q. Yeah.

A. I mean, I – again, you're reading from this document.

Q. Yeah. I'm just trying to –

A. I mean, I would ask – I mean, again, what I would ask is what you will do. I assume I would ask Mr. Bangert because I – I don't recall.

Q. I'm trying to get it – figure out what y'all thought you knew –

MR. HARDIN: Pardon me again. Pardon me again.

This entire line, Your Honor, is so misleading. If I'm right – and I'll be corrected – I'll be glad to be corrected if I'm wrong – I believe what we have here is an excerpt from the 50-something-page OAG report. What this is, it's a self-serving version of the – of their report that he's being asked about, as if it's something that first that he wrote, and if not, then something that – that was written by someone else. And he's acting like this was a fact that they did something.

He needs to disclose to this witness where this comes from. It's not coming from his computer. He doesn't have any knowledge whether it's coming from Mr. – anyone's else computer. This entire line is unfair and – and wrong for the witness.

If he tells him where it's coming from and then ask him if it's right, I won't object. But this is – this kind of shooting in the dark is inappropriate.

MR. BUZBEE: Your Honor, Mr. Hardin, if he – if he looked at the document would know that this came from Ryan Bangert's computer, that it was a letter that he was drafting on behalf of all of the so-called whistleblowers, and there are things in the letter that I think is misconception that they all had collectively, which was they didn't know about the second referral. That's why I'm asking these questions.

A. And I – I've said that, Mr. Buzbee.

Q. (BY MR. BUZBEE) Okay. And that's what – that alarmed you. He's sending subpoenas to banks and it has nothing to do with the first referral, right?

A. It was one of the things that alarmed us, I think I've said.

MR. HARDIN: Is it – may I ask for a predicate for these questions, Your Honor? Is this document that he's been asking him from, from the attorney general's offices, self-serving document they published to the world as to their version of events? If that's where it's from, then I can go to the page of that report and determine that. But this witness needs to know that's what it is, rather than suggesting it came from his computer or somebody else's computer. But this did not –

MR. BUZBEE: I –

MR. HARDIN: I respectfully suggest –

MR. BUZBEE: He's taking up my time and he –

MR. HARDIN: – the predicate –

MR. BUZBEE: If he read the documents that's in evidence – this document is in evidence – he knows that it came directly from Ryan Bangert's computer.

MR. HARDIN: He doesn't know any such thing.

MR. BUZBEE: And he knows that Ryan – please.

MR. HARDIN: Sure thing.

MR. BUZBEE: He knows that Ryan Bangert circulated this so they can get their facts right before they sent this correspondence to the authorities.

And that's all I asked him is, is this true that –

THE WITNESS: I don't think this –



MR. BUZBEE: – none of you knew – none of you knew about the second referral, and that's why you were all so upset?

That's the point, and I think the point has been made.

PRESIDING OFFICER: Let's move on.

MR. BUZBEE: Okay.

MR. HARDIN: Your Honor, this document, it looks like this document was – was prepared by Mr. Brent Webster.

MR. BUZBEE: No. Geez. Come on. You need to look closely at the document. It's very clear, prepared by Ryan Bangert.

Q. (BY MR. BUZBEE) Now –

MR. HARDIN: All right. It looks like –

PRESIDING OFFICER: Are you satisfied now?

MR. HARDIN: It looks like it's two other people, but it is not this man.

MR. BUZBEE: I – Your Honor, I made that clear. It's Ryan Bangert. I've said it three times.

MR. HARDIN: Excuse me. You've testified repeatedly, Mr. Buzbee, that this man knows X. This – the only way you're going to know what he knows is to ask him questions, rather than suggest it was done by somebody else.

MR. BUZBEE: Which is what I was doing. I'll move on.

(Simultaneous crosstalk)

MR. HARDIN: My objection is improper predicate –

PRESIDING OFFICER: Counselors, counselors –

MR. HARDIN: – to these questions.

PRESIDING OFFICER: – let's just move on.

MR. BUZBEE: Sure.

MR. HARDIN: Thank you.

MR. BUZBEE: I'm trying to.

Q. (BY MR. BUZBEE) Now, do you know who Bailey Molnar is?

A. Say that again, sir?

Q. I'm sorry. Do you know who Bailey Molnar is?

A. Spell that last name.

Q. M-O-L-N-A-R. Works at the Travis County District Attorney's Office. I don't want to say she's a clerk, but she does administrative-type work.

A. I don't think I do – excuse me, sir. I don't think I do.

Q. So you wouldn't have any role in her assistance with Cammack in issuing subpoenas?

A. No.

Q. Okay. Now, you had asked and your lawyer – or the House's lawyer had complained that, hey, show him the second referral. You would like to see it, right? You've never seen it?

A. If you show it to me, I guess I'll –

MR. BUZBEE: Exhibit 127, Exhibit 13.

Q. (BY MR. BUZBEE) Okay. Have you seen this document before?

A. I'm still reading it, sir. Thank you.

Q. Have you had a chance to read it?

A. I'm sorry. I don't read – I read fast, but not that fast.

It helps. Thank you, Erick.

Q. (BY MR. BUZBEE) Okay. What we have on the screen here is what has been referred to as the second referral. Would you confirm with me that this document, this referral, was sent from the DA's office of Travis County directly to Mr. Cammack in Houston, Texas, in September – on September 23, 2020?

A. Well, what I confirm is it's dated September 23rd. The address that's listed is not an Office of the Attorney General of Texas.

Q. Now, do you know who Don Clemmer is?

A. Don Clemmer – I do know who Don Clemmer is.

Q. Who is Don Clemmer?

A. He used to work at the Office of Attorney General before I was there.

Q. Okay.

A. I believe worked with Adrienne McFarland. Actually he might have been in a deputy position at one time for when Governor Abbott was General Abbott.

Q. I'm asking – okay, sir. Do you see where he – how he listed –

A. I'm trying to answer your question. I'm sorry.

Q. I understand what you're doing.

Can you tell me and confirm that at or around September 2020 he worked at the DA's office for Travis County?

A. I know he worked at the DA's office. I don't know what his position was, but I see that a letter says what his position is.

Q. Yeah. It says Director, Special Prosecutions Division. Do you see that?

A. I do see that, yes, sir.

Q. And you told us that Clemmer used to work at the AG's office, right?

A. Before my time, yes.

Q. Right. So you know that the AG's office is not in Houston, Texas, and he would know that too, right? He would know that the Office of Attorney General is not in Houston, Texas, right?

A. Well, no, we do have an office in Houston. We actually have several offices. I just know that address is not one of our offices.

Q. Right. Right. And so he would know –

A. Well, you would have to – I mean, obviously,

Q. Sure. Yeah. So rather than sending the referral to Penley or Maxwell, the second referral was sent directly to the outside counsel, Brandon Cammack, right?

A. This letter says that. I don't know why that was done.

Q. And you had no idea about this referral until sometime well after this; isn't that right?

A. That's correct.

Q. Now, who is Lisa Tanner?

A. Lisa Tanner was a – and may still be. Lisa Tanner was a prosecutor at the time I was there in the criminal division.

Do you want more? She's one of the key prosecutors for the State of Texas, or was.

Q. Now, on – did you ever – did you ever once – let me ask it this way: Did you ever discuss with Mr. Clemmer outside counsel for the AG's office?

A. I don't know if I've ever met Mr. Clemmer.

Q. Okay. I'm not asking that. I'm asking whether you discussed via phone, e-mail –

A. No.

Q. – anything like that, with Mr. Clemmer?

A. Again, I don't think I've ever had a discussion with Mr. Clemmer.

Q. Okay. Do you know what the subject was of the second referral? Do you know what Mr. Paul was alleging?

A. You would have to show it to me.

Q. Okay. We have the second one.

MR. BUZBEE: This is in evidence?

MR. LITTLE: I don't think so, but it's on your screen.

MR. BUZBEE: We're going to offer into evidence House 168. It's the second criminal complaint filed by Nate Paul.

PRESIDING OFFICER: Any objection?

MR. HARDIN: No objection.

PRESIDING OFFICER: Entered into evidence.

(HBOM Exhibit 168 admitted)

MR. BUZBEE: You don't have a hard copy? All right. Erick, go to the second page, please. Keep going. Next page, please. Go to page 6.

Q. (BY MR. BUZBEE) All right. And the jury, to the extent they want to look at it, can see in Exhibit House 168 the nature of Nate Paul's complaints. And you didn't know anything about this. That's what you told us?

A. If you want me to –

Q. I don't want to waste a lot of time on it. I just want to make sure the jurors know that there is a second referral and it was – the genesis of it Nate Paul complained to the Travis County DA's Office.

A. I mean, if that's what you're saying obviously the document is what it is. I'm not – absent me sitting and reading it, I'm not able to answer.

Q. Now, you told me, I think, that if you're going to hire outside counsel at the AG's office, you need to go through the procedure, right?

A. Yes, sir.

Q. And it's absolutely essential that if the DA – when he talked about the Legislature and the money and – and the codes and the – and the policy, it all needs to be followed if you're going to – if you are going to hire – that is the AG's office is going to hire outside counsel, right?

A. Yes.

Q. That's –

A. To actually hire and execute a contract, you have to go through the process.

Q. Right. And – and that includes getting approval from the comptroller in that process to fund it, doesn't it?

A. That – you have to have money that the Legislature has allocated.

Q. And you told us, I think you told us, that that is in place to protect the office?

A. Yes. In part, yes.

Q. That is in place so things are done aboveboard and on the up-and-up, right?

A. Yes.

MR. BUZBEE: Let's look at AG Exhibit 368. And go to the second-to-last page.

Q. (BY MR. BUZBEE) Now, let's focus on this all together. Given what you told us, given your objections to the elected attorney general and hiring Mr. Cammack, or anybody outside, what we have here is an e-mail from you the day before you resigned to Lacey May –

A. Mase.

Q. – Mase, where you authorized the use of \$50,000 for outside counsel. What is that?

A. What is it?

Q. Uh-huh.

A. That's what I was talking about exactly. In order to have a contract –

Q. What contract is that for?

A. It was – it says what it says. It was, we were considering at this point in time whether the agency would enter into an outside counsel contract with Johnny Sutton.

Q. But –

A. In order to do that – can I complete my answer?

Q. Yes. Sure. Go ahead.

A. In order to do that, you have to have funds set aside. You can't just enter into a contract. You have to have the funds set aside. This is part of the process.

What would have followed, Mr. Buzbee, is the full process. But obviously there isn't such a contract because we did not proceed.

Q. Wow. Okay. Let me make sure I got this.  
You are the first deputy?

A. I mean –

Q. First assistant.

A. Yeah.

Q. I call – I don't mean you any offense. I just –

A. I know. I know you don't.

Q. You're the first assistant. You're sending an e-mail to Lacey Mase authorizing \$50,000 of our taxpayers' money for an outside counsel, Johnny Sutton; is that right?

A. That is – that is correct. Setting aside those funds in the event we did ultimately enter into a contract, but we did not.

Q. Well, you certainly did. Johnny Sutton is your lawyer right now, isn't he?

A. He didn't enter into a contract with the agency.

Q. Let me ask you something. Let's be clear. Answer my question to the jury. They may want to know. Is Johnny Sutton your lawyer right now?

A. Johnny Sutton is my personal lawyer.

Q. Is he sitting right over there?

A. Yep, I see him.

Q. Okay. You tell me what authority you had as first assistant to set aside our taxpayer money to hire an outside counsel. You tell me that.

A. I had the authority to set aside the funds because the next step in the process would have been to go through the executive approval memo process. And if all of the deputies would have signed off on it and we had made the determination that that was in the best interest of the State to retain Mr. Sutton, as – as counsel.

Q. For who?

A. For the State.

Q. For what?

A. Because we were looking into potential crimes that were being committed.

Q. You – did you tell – did you tell your boss that you were allocating 50k for an outside contract – outside counsel contract?

A. If he had come to the meeting on October – can I finish? Are you done?

Q. Yeah. I know you're getting excited. Just let me finish.

A. Well, I am because this is –

Q. Take it easy.

A. – you're trying to misstate things.

Q. Please.

PRESIDING OFFICER: Settle down here. Just answer the question.

THE WITNESS: I'm sorry, Mr. President.

Q. (BY MR. BUZBEE) You know we had to get – we had to find this forensically. Did you know that?

A. No. I don't know why. I turned in my computer.

Q. I don't know why either. But let's be clear about what you did, about what you did, a loyal servant, trusted friend.

A. I never got to answer the question.

Q. I'm going to ask it.

PRESIDING OFFICER: Let him ask – just wait for the question.

Q. (BY MR. BUZBEE) What authority did you –

MR. HARDIN: My objection is if you'll quit the commercials and testify and just as to the objection, I don't have any. But when he puts all these kind of accolades in there and he is making fun of the witness in his question, I strenuously object. He can ask a simple question, but not with all these commercials from his side of the case.

PRESIDING OFFICER: What's the – what's the objection?

MR. HARDIN: My objection is that he has no foundation and basis for asking the questions. He is simply harassing the witness by putting a lot of adjectives in there that he thinks serves him. He's not asking a question. He has, for about two hours, testified, and I've been very patient about it.

His questions are testimony; they are not questions. That particular one, if we read back, he starts going on all of these little commercials for his point of view, and I object.

PRESIDING OFFICER: Again, let's just move on.

MR. BUZBEE: Sure, sir.

PRESIDING OFFICER: Thank you.

Q. (BY MR. BUZBEE) What authority did you have to secretly go behind your boss' back and allocate \$50,000 for an outside counsel contract? What authority? What – who gave you that authority?

A. I can't answer that question because what you've said is absolutely incorrect.

Q. Show me a –

A. First off – first off, sir –

Q. Go ahead.

A. – I asked – we asked to meet with the attorney general on this date. If we'd had a meeting, had he come, had he come, had he been here, we could have had a discussion, and perhaps Mr. Sutton could have assisted even him at this point.

MR. BUZBEE: Let's look at AG Exhibit 361. And go to page 7, Erick.

Q. (BY MR. BUZBEE) Lacey Mase took your authorization and sent it to the comptroller, right?

A. I mean, this is part of an e-mail. I don't see the – the first part of it. Again, I don't think I'm copied on it.

MR. HARDIN: Your Honor, I do not show that this one is in evidence, and it should be taken down on the – from the screen for the Senate until we find out whether it is.

MR. BUZBEE: I'm sorry, I don't even understand the objection. This is in evidence.

PRESIDING OFFICER: He's saying it's not in evidence. He's saying it's not in evidence at this point.

MR. BUZBEE: It is in evidence. We offered it into evidence. And if – to the extent that he doesn't know that, we'll offer it again.

MR. HARDIN: Can we see the exhibit number, please?

MR. BUZBEE: AG 361.

MR. HARDIN: 361, yeah. Okay.

PRESIDING OFFICER: Do you object?

MR. BUZBEE: Bring that up.

MR. HARDIN: Yeah. That's what – all right. So just real briefly, Your Honor.

This is not one of those that was agreed. It was provided to us this morning, the amendment to their list, and we didn't – I don't even think we still have a copy of it, a physical copy of it. And it's not an exhibit that was part of the agreement everybody reached overnight. So the problem is we don't have a copy of this. I'm sure he's going to –

PRESIDING OFFICER: Would you provide a copy?

MR. BUZBEE: We can get a copy.

MR. HARDIN: It's just now been up on the computer as an inadmissible piece of evidence for about five minutes.

MR. BUZBEE: May I approach?

PRESIDING OFFICER: Yes.

MR. HARDIN: Thank you.

PRESIDING OFFICER: We'll take it – we'll take it down until we resolve this. Just take it down for a moment – not you – off of the computers on the desk.

MR. BUZBEE: We offer 361, Your Honor.

MR. HARDIN: Well, we're going to object. It's circulated. We may change our mind later, but this is actually an excerpt from a forensic report that we've never had disclosed to us. It's never been part of discovery. And quite frankly, the report was generated on September the 14th of 2021, and they have never blank, blank, blank, produced it.

And now they have – while the witness is on the stand, they start talking to him. In very understated, kind and general terms, this is outrageous. It violates every rule the Senate had about discovery. And you've entered multiple orders, as you know and as you've mentioned. This is not the way the process is supposed to work, and we do object.

MR. BUZBEE: You know – Your Honor, you know what's so ironic is we got this, we're told, from them. We got this document from them. I mean, I didn't – I would have mentioned that, Your Honor, if I had known it, but I was just told that in my ear. And, of course, it's e-mails between people in the office, including this man here.

THE WITNESS: I don't think I'm on that e-mail, sir.

PRESIDING OFFICER: The witness, just hold for a moment. Is it your document, Counselor?

MR. HARDIN: I –

PRESIDING OFFICER: From you-all?

MR. HARDIN: I – I can tell you that we, the trial team, have never seen this document and never knew that it was going to be proposed as an exhibit. I will – and when you say that they got it from us, I don't know how they got it from us, unless the attorney general – this is produced by the attorney general's office. This is not produced by us. I don't know, and we would have to look during the break. We can try to do that because I think that's upcoming.

I will be glad to inform the Court. If it turns out that this document was given to us, we will tell you that, but that is still not the way admissibility should be. If they're going to offer an expert report in any kind of – this should have been disclosed a long time ago.

PRESIDING OFFICER: It's a good time to take a ten-minute break. We've been here for 90 minutes, and you can take a look at it.

MR. HARDIN: Thank you, Judge.



(Recess from 3:00 p.m. to 3:14 p.m.)

**AFTER RECESS**

PRESIDING OFFICER: We have a couple of jurors still not back, so we'll wait a moment.

Mr. Buzbee, you may resume.

MR. BUZBEE: Yes, sir. I want to close this loop on these documents.

PRESIDING OFFICER: I think that mic is not on.

MR. BUZBEE: I want to close this loop on these documents. You heard my colleague, Mr. Hardin, say that these documents had never been produced to us, we haven't seen these documents.

Your Honor, the documents are Bates stamped with their Bates stamp. They sent the documents to us. And then when we sent our exhibit list back to them, it was sent to Mr. Hardin. And I'm told he failed to forward it to the rest of his team.

So, you know, I withstood a few criticisms from Mr. Hardin, which is fine. You know, that's his job. But to suggest that he's never seen the document, that we didn't get him the document, and to object to a document that he gave to us, that's pretty ridiculous.

So we would offer into evidence the two documents that we were discussing before the break, just to confirm, AG 368 and AG 361.

MR. HARDIN: If I may, I told the Court that I would look into it because I think I have it – I think I have the sequence right.

This was a document that the AG's office produced to us in August. And in compliance with your order, we tried to turn them around many times within 24 hours, certainly as soon as we could. We produced this document, along with a lot of other documents, back in August. So almost two months ago.

When we produced it, it was produced en mass, just like this. It was never listed on their exhibit list, and it was never listed as a proposed list.

I'm sure Mr. Buzbee maybe inadvertently spoke now, I'm sure not deliberately, but he didn't add that when they – the first time we knew they were going to list it as an exhibit was last night. And the first time we saw it as an exhibit in type was today at noon. That's what led to all of this hullabaloo.

It is a forensic report, for the Court to understand, that was done back in '21, where the agency, after these people left, went through all their computers and did a forensic report looking for evidence and things. And this – this was a forensic report done on the computer of Lacey Mase. And that's – that's the sum total.

So he is right in that we produced it to him. He's somewhat misleading in discussing when we got it as an exhibit and were on notice it was going to be offered as an exhibit. But now that we've looked at it and all, I'll be glad to waive my objection. We'll be glad to have it be admitted and let the jury look at it and understand what it is.

PRESIDING OFFICER: Thank you, Mr. Hardin.

So he doesn't object. You can enter it into the exhibits.

(AG 361 admitted)

MR. BUZBEE: Yes, Your Honor. Thank you.

I want to make sure I understand. Put it back up on the screen, please. Actually, let's just make sure we focus on what this witness sent.

Erick, put 368, AG 368, which is now in evidence that we received. You can see – go to the e-mail sent by this witness.

Q. (BY MR. BUZBEE) Now, sir, I want to make sure we all understand this. You went to the FBI on September 30th, the day before you sent this e-mail, right?

A. Yeah. He enlarged it. Let – can you put the date so I can – I'm sorry.

Can we – Madam Court Reporter keeps telling me that when I look at the document, I don't speak into the mic, and so I'll try to be deliberate.

Yes, it is dated – looks like if this date is correct, it's October 1st, 2020.

Q. Listen to my question.

A. Yes, sir.

Q. You sent this e-mail the day after you went to the FBI; isn't that right?

A. You know, I – now that I see that date – that time, there's no way Jeff Mateer is up at 1:39 a.m. I – so –

Q. So you dispute an e-mail that was sent from your e-mail address?

A. I'm not – no, sir. What I'm – what I'm saying is it has a date stamp on it with a time stamp. That – there's no way I sent it on that – at that time. I'm not disputing that I sent an e-mail.

Q. On that date?

A. I think – that date or the day before, the timing could be somehow screwed up on the computer. I don't know.

Q. Let's make sure we have a clean record and everybody knows what was going on.

You went to the FBI. You reported what you claimed to be crimes. And then – and then you told one of your subordinates to allocate \$50,000 for a lawyer; isn't that right?

A. To – to set aside unobligated reserves in the event we did enter into an outside counsel contract, and the "we" being the agency.

Q. And you did that – this lawyer, Mr. Sutton who represents you now, was supposed to be helping Ken Paxton in some way?

A. Potentially. We wanted to meet with Mr. Paxton on October 1st.

Q. With a lawyer?

A. No. It was going to be just the deputies first, but perhaps that could have led to that, had he met with us.

Q. Uh-huh. So you – you were going to – you wanted a lawyer to meet with you with the AG?

I'm trying to figure out why are you using State moneys for a lawyer for your personal use?

A. I wasn't. And I didn't. And I wouldn't.

Q. I guess from your point of view it's okay to step outside of the procedure when you want to hire an outside lawyer, but it's not okay for the elected attorney general to do so; is that right?

A. That's absolutely false.

Q. Now, are letters sent by the Attorney General of the State of Texas official documents?

A. Yes.

Q. They are official documents, are they not?

A. I believe so.

Q. Let's all be clear. According to the former first assistant, your position is that letters sent from the AG's office are, in fact, official documents, correct?

A. They're documents from the office, and they would be, you know, depending on the subject matter, I believe so.

Q. Are you familiar with Texas Penal Code 37.01?

A. You've got it on the screen.

Q. Let's look at it.

MR. BUZBEE: Let's bring it up where we can see it, Erick. Can we have it bigger, Erick? There we go. Now scroll it where we can read it.

Q. (BY MR. BUZBEE) Tell me if I get this right. A person violates 37.0 – 37.10(a) when he knowingly makes a false record in or false alteration of a government record. Did I read that right?

A. You read the document, yes.

Q. Before I showed it to you and read it to you, were you familiar with that particular provision of the Texas Penal Code?

A. Sitting here, perhaps. I don't – I don't know.

MR. BUZBEE: Exhibit 127, Exhibit 19, please, Erick.

Q. (BY MR. BUZBEE) All right. What we have here is a letter sent on the same day you guys went to the FBI by your subordinate Mark Penley, correct?

A. That appears to be a letter of September 30th to Mr. Cammack from Mark Penley, correct.

Q. Who altered this government record?

A. I don't follow you.

Q. What?

A. I don't – I don't follow you. I don't think this document was altered. I don't.

Q. Do you see the letterhead that this letter was sent from?

A. I see the seal of the attorney general on it, yes.

Q. Do you see the attorney general's name?

A. I do not.

Q. Who removed it?

A. I – I don't know.

Q. Would you ever countenance that?

A. I would have to know the circumstances.

Q. Well, these are the circumstances. It's September 2020 and your subordinate is sending a letter, an official letter from the AG's office, and removes your boss' name. Would you ever countenance that?

A. Again, we would have to ask Mr. Penley.

Q. I'm asking would you ever countenance that?

A. I don't – I don't know in this situation. I don't think this letter was altered because it does have the seal.

Q. Would you authorize that? Would you authorize removing the duly elected attorney general's name from official correspondence? Would you authorize that?

A. Again, I don't know if that's required or not.

Q. Would you do it yourself?

A. I – I am anticipating that you're going to show me a document.

Q. I am indeed. My question is would you have done it yourself?

A. I don't know if Mr. Penley focused on that. I don't know if I focused on it. We obviously didn't – we don't print out the letters. They're route to us, and we sign them.

Q. Yeah. Somebody – this is not a situation. This is official letterhead of the office. Somebody had to do whatever it takes to remove the duly elected attorney general's name from the official letterhead; isn't that right?

A. I don't know what the process would involve.

MR. BUZBEE: Exhibit 30 within 127, Erick.

Last page. No. There you go.

Q. (BY MR. BUZBEE) Do you see that on the same day you were allocating \$50,000 for Johnny Sutton, you were also sending a letter to Brandon Cammack?

A. Again, we discussed what we did with regard to Mr. Sutton. I do see that I sent a letter – or signed a letter on October 1st, 2020, sent it.

Q. You signed an official correspondence from the attorney general's office of the State of Texas that had his name removed; isn't that right?

A. That's what this shows. I wouldn't – I did not focus on that at the time.

Q. Who gave you the authority to do that? Who gave you the authority? Someone that you've already admitted had never run for office, had never gotten a vote, the authority to alter the official letterhead of the attorney general's office?

A. As I mentioned to you, Mr. Buzbee, I didn't – I didn't do that. I signed a letter.

Q. Well, who did it in the office? Somebody had to be working for you because you told us you controlled the day-to-day – the day-to-day activities of the office. Remember?

A. I don't know who did it.

Q. And you just – it was just an oversight on your part that you were signing a letter that had your boss' name removed? Is that your testimony to these jurors?

A. My – my testimony is that is not something I would have been focused on, on October 1st.

Q. You were involved in staging a coup, weren't you?

A. Absolutely not.

Q. That's what you were up to.

A. Absolutely not.

Q. That's the reason you went to the governor's office. That's the reason you were talking to TLR. That's the reason that you had or engaged in conduct removing your boss' name. You were staging a coup, weren't you?

A. Absolutely not.

Q. Hmm. The Mitte Foundation, we saw that you signed off on that, right?

A. We reviewed documents that I approved the investigation and I approved the intervention, correct, sir.

Q. Do you remember you talked about – you came back from vacation and there – that you realized – you found out that a legal opinion had been issued. Remember saying all of that?

A. About the foreclosure?

Q. I'm just – do you remember saying –

A. I'm – I'm asking for clarification, sir.

Q. Yes, sir.

A. Is it about the foreclosure letter?

Q. Yes, sir.

A. Yes, I remember it.

Q. You called it a legal opinion, didn't you?

A. If – if that's what the record shows it was – it was a legal opinion. It was done by lawyers, the Office of Attorney General, under I believe the disaster authority.

MR. BUZBEE: In fact, Erick, put on the screen, please, Article II of the impeachment articles.

Q. (BY MR. BUZBEE) All right. I just want to – for the sake of clarity, one of the charges in this case that General Paxton misused his official power to issue written legal opinions under Chapter– Subchapter C, Chapter 402, Government Code. Do you see that?

A. I see what you've read, yes.

MR. BUZBEE: Now, let's look at the legal opinion that has been referred to. Go to Exhibit 127, 41, Erick.

Q. (BY MR. BUZBEE) Before we turn the page, why don't we look at the official letterhead of the attorney general's office. Do you see it there?

A. I see it, yes.

Q. Of course, that's not the letterhead that you used on October 1st, is it?

A. No. The two documents are –

Q. You altered it, didn't you? Or you had it altered?

A. No, sir.

Q. Uh-huh. But focusing on Article II of the impeachment articles –

MR. BUZBEE: Go to the second page, Erick. Actually, third page. It's the last page, Erick. There we go.

Q. (BY MR. BUZBEE) Would you do me the favor of reading the very last sentence in that paragraph?

A. Okay.

Q. Please read it aloud so our jurors can hear you.

A. Again, please note this letter is not a formal attorney general opinion under Section 402.042 of the Texas Government Code.

Q. Hmm. It's pretty clear, is it not, that this letter does not fall under legal opinions as defined in 402.042, correct?

A. Well, Mr. Bangert says what it – what it says. It's not a formal attorney general opinion.

Q. Right. But the Article of Impeachment says it is.

And you know as a lawyer, it fails right there, dismissed, right?

A. I don't – I don't know that.

Q. Well, I mean, you allege, hey, you violated – you did something wrong. You issued an opinion under 402.042. And it takes us literally 20 seconds to show that's not true. That fails, right?

A. I don't know what you're asking me.

Q. Hmm. It's like – almost like somebody read the first two pages but failed to read the last page when they drafted these articles, isn't it?

A. You're asking me to speculate concerning –

Q. How many foreclosures did this letter stop?

A. I don't know.

Q. None. Did you know that?

A. I – I don't know.

Q. Now, grand jury subpoenas are supposed to be secret; is that right? How does that work? You – do you know?

A. I – I don't know.

Q. Okay. Are you supposed to – I mean, would it be appropriate for somebody in your office to send issued grand jury subpoenas, copies of them, to some sort of outside lawyer who is not involved in the case?

A. I think it would depend on the circumstances.

Q. Was it appropriate to send the grand jury subpoenas that Mr. Cammack had issued to Johnny Sutton?

A. I believe in this circumstance it was.

Q. Was Johnny Sutton the office's lawyer at that point when that was done?

A. Johnny Sutton was never the office's lawyer.

Q. Okay. Was he – was he your lawyer when that was done?

A. He – what date was it done on, sir?

MR. BUZBEE: Exhibit 35 of 127, Erick.

Wait a minute. Hold up, Erick. Let me make sure I've got it right.

Q. (BY MR. BUZBEE) Let me just – before I grab the document. When would it ever be appropriate for either you or any of your subordinates to send grand jury subpoenas or copies of them to some outside lawyer who had not been hired yet?

MR. HARDIN: Object to the form. That's a misstatement. He doesn't know. He doesn't know when he had been hired.

MR. BUZBEE: Well, let's figure that out. If you are asking me, I'll ask him. We were told previously that, oh, you can't know when he was hired. So let's figure it out now.

Q. (BY MR. BUZBEE) When did you hire Johnny Sutton?

A. I believe we retained him that – during the last week that I was first assistant attorney general, personally.

Q. Well, wait – wait a minute. You're telling us that you hired and retained Johnny Sutton while you were still at the office?

A. Correct.

Q. And at the same time you're allocating \$50,000 to retain him?

A. And we made the decision not to do that.

Q. Wait a minute. Okay. Help me out. This is news.

You're saying under oath that while you were an employee of the attorney general's office, before you resigned, that you had already hired Johnny Sutton; is that right?

A. I believe that's so.

Q. What date?

A. Whenever the first – that first contact was.

Q. He says in his subpoena – or trying to quash a subpoena, it was before you went to the FBI?

A. I think that's correct.

Q. Okay. So now we're all clear. You personally had hired Johnny Sutton, an outside lawyer, in your individual capacity before you went to the FBI; is that right?

A. Correct.

Q. And at the same time – in fact, the next day on October 1, you were telling Lacey Mase and the comptroller to set aside \$50,000 for Johnny Sutton?

A. For the office to retain Johnny Sutton.

Q. You were going to have Johnny Sutton represent you individually and also the office, and who – and you were going to have the office pay for it?

A. No, that's not correct. It is not uncommon –

Q. You realize now what you just testified to?

MR. HARDIN: Could you let him finish, please? Just finish his answer.

Q. (BY MR. BUZBEE) Do you realize what you just testified to?

A. No, sir.

Q. You just told this entire jury that you had hired an outside lawyer in your individual capacity before you went to the FBI on September 30th, 2020. And the very next day you were instructing your subordinates to set aside \$50,000 for Johnny Sutton?

A. And the agency never hired Mr. Sutton. The agency never paid any money to Mr. Sutton. The funds were never used in that way. The decision that we made was the agency not to hire him. That never happened.

Q. The decision "we" made?

A. "We," me and the other folks.

Q. Okay. Can you help me understand? I guess you told me now. Johnny Sutton was your individual lawyer while you were still at the office. Was he an individual lawyer in the individual capacities of other of your subordinates?

A. I believe so.



Q. And so your testimony would be that if your subordinates were sending secret subpoenas that had been issued by the Travis County District Attorney's Office, that they were able to do that because Johnny Sutton was their personal lawyer?

A. I believe it was done pursuant to a request from the FBI.

Q. To send to Johnny Sutton?

A. To send to Sutton, and then to the FBI. That's what I understand.

Q. So the FBI, these subpoenas that everybody is complaining about, at least those folks, were sent to the FBI three years ago and nothing has happened so far, right?

A. I don't know if nothing has happened.

Q. Are you here testifying in any way that Nate Paul had anything to do financially with the renovations of Angela and Ken Paxton's home?

A. I only know what I've been told.

Q. Told by whom? Again, you mean Rylander and Wicker?

A. Remember I testified before lunch about that, sir.

Q. Okay. Did you ever make any effort to confirm that what you had been told by one of those two was correct?

A. I did not.

Q. Okay. You just believed it?

A. I believe Mr. Wicker and Mr. Rylander are truthful people.

Q. Did you know – did they ever look at the invoices?

A. You would have to ask them, sir.

Q. I will. I'm asking you. Did you ever look at –

A. I never asked them if they looked at the invoices.

Q. Do you have any evidence whatsoever other than what somebody – and you're not sure which one – told you that Nate Paul had anything financially to do with the renovation of the Paxton's home?

A. Would you say that again? I'm sorry.

Q. Do you have any evidence, any, to support any allegation that Nate Paul paid for any of the renovations of the Paxtons' home?

A. Other than what we discussed.

MR. BUZBEE: Pass the witness.

### **REDIRECT EXAMINATION**

BY MR. HARDIN:

Q. Mr. Mateer, let's cover a couple of things, hopefully very quickly. Let's talk about this forensic report that he introduced as Attorney General 361. And he talked to you about –

MR. HARDIN: I'm sorry. Do you want these? Mr. Buzbee, are these your notes? Mr. Buzbee?

PRESIDING OFFICER: Mr. Buzbee –

MR. HARDIN: Mr. Buzbee –

PRESIDING OFFICER: – he's asking you if those are your notes.

MR. HARDIN: – are these your notes? You want these back?

MR. BUZBEE: That's my trash.

PRESIDING OFFICER: Mr. Hardin, please speak up. You're speaking softly.

MR. HARDIN: Thank you very much, Your Honor. I've – I – I've been mindful of my failings in this regard.

Q. (BY MR. HARDIN) Let me ask you this: On Exhibit 361, he talked to you about Lacey Mase's e-mail that talked about that \$50,000, correct?

A. Yes.

Q. And he made a very big deal, did he not, about the fact that her – that this was on October the 1st. So that the jury remembers, the day that the group of you went to the FBI was what date?

A. Was the day before, September 30th.

Q. All right. And on the date of the – the date of October the 10th, is that when you sent the e-mail or text that Mr. Buzbee asked you about to the attorney general asking to meet with him?

A. That's October 1st.

Q. That's October 1st.

A. Yes.

Q. The gathering of all of y'all that we've talked about in that conference room where you found out about the subpoenas was on what date?

A. That was the 29th.

Q. All right. And on the 29th, I think you described the mood everybody was in and the concerns everybody was. On the 29th, is that when you initially thought and talked about setting aside \$50,000 for the group of you to – for the – for him to represent, Mr. Sutton, the attorney general's office, as opposed to you as individuals?

A. Correct.

Q. What was your thinking as to why y'all needed a lawyer for the university – for the attorney general's office?

A. Because we were trying to navigate through this with potentially going to law enforcement, and so we wanted someone who had that type of experience at that level.

Q. All right. You knew Mr. Sutton had criminal defense lawyer as well as a previous criminal prosecution experience, did you not?

A. I did.

Q. All right. And each of you – or did all of you know him from past dealings?

A. I didn't know Mr. Sutton very well.

Q. But most of you did?

A. Did. I knew one of his, I guess, former partners really well, which was John Ratcliffe.

Q. All right. Now, sometime that day, did you – did you as a group decide that was not a good idea?

A. We did eventually decide that, yes.

Q. Was that after you had authorized the exercise of paperwork to make it possible?

A. Well, what we did again was my e-mail was making sure and seeking confirmation that there were funds in the event we decided to do that. We did not do that. Had we done it, we would have gone through – we've gone at length through this executive approval.

Q. All right. Real quickly, if, in fact, you had decided to follow through on it, that request that had been put aside, what would you have had to do to get it authorized and done?

A. We would have had to go through the executive approval memo process, just like we've seen. And everyone would have had to sign off.

Q. And that process would have been necessary before any of the funds would have been expended or even eligible to expend; is that right?

A. Before funds are expended or a contract is executed.

Q. All right. So before a contract could have been worked out with Mr. Sutton, you would have had to go through all that – if you were going to do it on behalf of the agency, you would go – have to go through that – all that cumbersome process, correct?

A. That is correct.

Q. And how long would that have taken ordinarily?

A. I mean, it can be done within a day or so.

Q. All right. But in the meantime, had each of you decided that you needed to go to law enforcement, and after thinking about different agencies, different possibilities, you settled on the FBI, correct?

A. That is correct.

Q. DPS had agents that he had been complaining about, correct, that Mr. Paul had?

A. Yes.

Q. And so – and the other agencies that had law enforcement people had been involved, such as the District Attorney's Office, correct?

A. Correct.

MR. BUZBEE: Objection. Your Honor, I'm sorry.

MR. HARDIN: That's true. I'll withdraw it. Let me move on.

MR. BUZBEE: I mean, multiple leading questions. I just wish he would just ask one.

MR. HARDIN: My –

PRESIDING OFFICER: Sustained.

MR. HARDIN: My problem is if he just says objection and gives his basis and stops, it doesn't get charged on my time. But we've now had a bunch of time where these kind of speeches have eaten us up. I'll come to you at the end of my statements. I'll withdraw this statement and proceed.

PRESIDING OFFICER: Thank you.

And in fairness, both of you have kind of elaborated a little bit on objections, so let's continue. But I will watch it very carefully on both sides.

MR. HARDIN: Yes. Thank you very much.

Q. (BY MR. HARDIN) Now, if I could, would you please tell me when it was in this process y'all decided to go to the FBI and hire Mr. Sutton personally on y'all's behalf rather than the agency?

A. We initially contacted Mr. Sutton on the 29th. We reached the decision that the agency doesn't need to contract with Mr. Sutton on the – on – later on the 1st.

Q. So was there ever any attempt to get \$50,000 from the agency, to use \$50,000 from the agency, or follow – follow up at all on authorization?

A. We never started the memo process at all.

Q. All right.

A. Which was essential to do that.

Q. Are you – are you aware when we're talking about the computer time and everything of Universal Time?

A. Say that again.

Q. Are you aware of Universal Time?

A. Now that you say it, I am, the concept.

MR. HARDIN: I want to just get a note, if I can.

Q. (BY MR. HARDIN) Do you recall Mr. Buzbee spending a great deal of time with you on both the Lacey Mase e-mail and – so the attachment to the forensic report, and suggesting that it was at 1:39 on October the 1st?

A. I mean, the document says that. I see it.

Q. Does it come any surprise to you that if you go on the Internet and check out what Universal Time is, which is what this was, it would have been at 8:39 the day before, not on October 1st?

A. That's – makes sense.

Q. If what I have just said to you is true and accurate, would that have meant that y'all were still talking about authorizing the money on the day – on the 20th – on the 30th as opposed to October the 1st, as Mr. Buzbee was saying?

A. Yes, sir.

Q. And regardless, when you went to the FBI on the 30th – on the 30th, did Mr. Sutton accompany you?

A. I believe so.

Q. All right. And by that time had y'all orally retained him to represent you individually instead of the company – the agency?

A. Yes, sir.

Q. Do you have any evidence or knowledge at all that Mr. Sutton even knew that y'all had originally talked about retaining him for the agency?

A. I had no discussions with him.

Q. All right. Now, it would be consistent with your level of knowledge that Mr. Sutton would not even have known that y'all had talked originally about hiring him on behalf of the agency?

A. Based on my knowledge, that's correct.

Q. All right. And then finally he asked you about this one issue. He asked you about some grand jury subpoenas. At the time that the grand jury subpoenas were shared with Mr. Sutton, was he your lawyer?

A. Yes.

Q. And was he representing y'all individually?

A. Yes.

Q. What is your position as to whether anybody who thinks they may have a problem or need a lawyer can share the evidence that – or the information they're concerned about with their lawyer?

A. Oh, I think you can share information with your lawyer.

Q. And did any of you give any alleged grand jury subpoenas to Mr. Sutton before you had retained him?

A. I did not.

Q. Okay. Now, I want to ask when you go to the FBI, just a couple of more areas. I believe you said you have no criminal law experience; is that correct?

A. When I was at Carrington Coleman, Mr. Coleman made us all take a couple of criminal cases. So when I was a first- or second-year associate, I actually did do a couple of criminal cases.

Q. But other than that, what is your experience? If one is reporting a crime, what they believe may be a crime to law enforcement, do they wait until they're able to establish beyond a reasonable doubt before they report the possibility of a crime?

A. I don't think that's what you do.

Q. When you went to the FBI, did you go with them to express your concerns and hope that they would look into it?

A. We just wanted to tell them what was going on.

Q. Did you make any determination as any kind of expert on criminal law as to whether things were or were not a crime?

A. Not at that time, no, sir.

Q. All right. Finally, on this area, regardless of whether a crime, what is your position as to whether you were concerned about two particular areas, specifically? Whether or not what Mr. Paxton had been doing and authorized and loosened on the world was an abuse of office, did you have any thought about whether that was – whether it was an actual specific crime for this or not? What was your thought process?

A. I thought – I had a belief that – that it was.

Q. Would you still have that belief, even if it turned out this or that individual thing was not a crime?

A. That was based all upon what I knew at that time.

Q. What do you mean?

A. Well, we knew what we knew, I mean, you know, on that date. Therefore, based upon the actions that I discussed with you earlier today –

Q. What was – what was your view as to whether or not if the attorney general's office, when its own internal people believed the incident at issue was not a crime, if they did not, and it should not be investigated and should not be opened as a file, if your own internal people felt that way, would then somebody on behalf of the office been hired to go out and use grand jury subpoenas to punish the enemies of a friend or a donor, did you have a position – whether that was a crime or not, did you have a position of whether that was an abuse of the Office of the Attorney General?

MR. BUZBEE: Objection, Your Honor. That was three questions, and it was – all three of them were leading.

MR. HARDIN: I believe he can answer each of them.

PRESIDING OFFICER: Sustained.

MR. HARDIN: I'm sorry. Excuse me. Sustained?

PRESIDING OFFICER: Sustained.

MR. HARDIN: Thank you, Judge.

Q. (BY MR. HARDIN) Did you have an opinion as to what your really hard-core belief was as to that conduct that you believed he had engaged in as to what – how that complied with the oath of the Attorney General of the State of Texas?

A. I believed that it violated the oath.

Q. Why?

A. Because he was taking actions not on behalf of the State of Texas but on behalf of one individual.

Q. Against?

A. Against – I mean, he was aligning against other parties in the case – in this against law enforcement.

Q. Did you have an opinion one way or the other whether he was – by what he was doing, it was interfering with federal and state investigations, criminal investigations?

A. I mean, that appeared to be the case.

Q. Okay. Finally, if you – you signed on. You authorized the intervention in June of 2020 into the Mitte Foundation case against Mr. Paul's companies, correct?

A. I did, yes.

Q. If you knew then what you knew now, would you ever have authorized intervention?

A. I would not have.

MR. HARDIN: Thank you. That's all I have.

PRESIDING OFFICER: Recross, Mr. Buzbee?

MR. BUZBEE: Yes, Your Honor.

#### **RECROSS-EXAMINATION**

BY MR. BUZBEE:

Q. You told us all that it was against the charity and for Nate Paul. That's what you said, the intervention?

A. The intervention was to intervene into that lawsuit, yes, sir.

Q. No, no, no. You told us, in response to the leading questions of Mr. Hardin, that the intervention was against the charity and for Nate Paul. Isn't that what you said?

A. I think what I – what I meant to say, if I said that, and I'm not so sure I did, it was to intervene into the lawsuit between the two parties. And then there was also, as you know, an investigation into the charity.

Q. So it wasn't against the charity, was it?

A. It was to intervene into the lawsuit.

Q. Yeah. It wasn't against anybody. It was an intervention, wasn't it?

A. The intervention was an intervention.

Q. It was an intervention that you authorized, right?

A. That's correct.

Q. And you also authorized an investigation, didn't you?

A. I believe on the same day or about the same day, yes.

Q. And the impeachment articles –

MR. BUZBEE: Pull it up, please. Article I.

Q. (BY MR. BUZBEE) Let's look at it. Paxton caused employees of his office to intervene in a lawsuit. Do you see that language?

A. I do, sir.

Q. He didn't cause anything. That's something that each of the people on the executive action that memo, yeah.

Q. I'm asking you. You're on the memo. You approved it.

A. I did approve it.

Q. Okay. So this article is hogwash, isn't it?

A. I think we would need more information.

Q. Hmm. And you were telling us, well, that those time stamps in these documents that were given to our side at least by Mr. Hardin's office, you're saying those were Universal Time?

A. Again, I was reading the document, like we all were.

Q. Wait a minute. I'm just asking about what Mr. Hardin – this – the back-and-forth you had with Mr. Hardin. He asked you about Universal Time. Remember?

A. Showed a document, uh-huh, that had the reference to Universal Time.

Q. Okay. And you were telling us that Universal

A. He – I don't –

Q. You don't know?

A. What I know is it is very extremely unlikely that I was looking at any e-mail at 1:30. Now, 4:00 a.m., 9:30 p.m., yes. 1:30, that – that – I don't think so.

Q. Well, let's – let's real quick. I believe it was 368, AG 368, if my memory serves. Let's go to the – the authorization e-mail so the members of the jury are clear about what you were up to.

Do you – can you tell us whether you had already retained Johnny Sutton at the time you sent this e-mail to Lacey Mase?

A. I would – I would need to know the conversion to Universal Time.

Q. Well, I'm not asking about that. I'm asking in your memory – we know for a fact – you told us before you went to the FBI on September 30th that you met or talked to Johnny Sutton, that you retained him, right?

A. That is correct, sir.

Q. Okay. Can we agree that you had retained Johnny Sutton individually before you went to the FBI?

A. Yes.



Q. And can we agree that after that, according to you – and your story is now y'all were also thinking about hiring Johnny Sutton for the office itself, right?

A. Yes. We were, yes.

Q. Wouldn't that be a conflict? How the devil is Johnny Sutton going to represent you in your individual capacity, and also represent the attorney general's office when the actual client in the attorney general's office would be the attorney general himself?

A. That's why we wanted to meet with the attorney general, among other matters, on October 1st.

Q. You're telling this jury, all public servants, all elected, that you thought it was okay for you to hire some outside lawyer in your individual capacity and to also even discuss the office might hire him as well? You think that's okay?

A. I think it can be okay, yes, sir.

Q. Would you at least agree it wouldn't be okay to have Johnny Sutton be paid for by the Texas taxpayers for your individual representation?

A. Yes.

Q. That would be a crime, wouldn't it?

A. I don't know if it's a crime, but it didn't happen.

Q. It didn't happen because you resigned.

A. No. We made the decision not to hire him by the agency.

Q. You told us how all of this stuff was done for Nate Paul. Do you remember talking about all of that?

A. We discussed Nate Paul, yes.

Q. And you know for a fact that Nate – I mean, Nate Paul was a pain in the butt, wasn't he?

A. I think that's fair to say.

Q. He was a pain – he was a constituent that wanted action, right?

A. He certainly e-mailed a lot of people in the office.

Q. I mean, I said in the opening statement when he said jump, he wanted you to jump, and just hope you jumped high enough, right?

A. I think we've examined his contact with me.

Q. You heard the term the squeaky wheel gets the grease?

A. I do know that one.

Q. I mean, sometimes there's – in constituent services, there's somebody who's a real pain who is, over and over and over demanding action. And sometimes there ain't a whole lot you can do for them; isn't that right?

A. That does happen, yes, sir.

Q. Yeah. That's how Nate Paul was; isn't that right?

A. He was more than that.

Q. Yeah. He was – he sent letter after letter after letter after letter making threats and accusations to the AG's office, didn't he?

A. He did. Through his lawyer and himself.

Q. Yeah. E-mail after e-mail. He was incredibly unhappy with the action of the AG's office, wasn't he?

A. I believe at times he was, yes.

Q. He was madder than a hornet's nest at times at the AG's office for what he called incompetence and failing to act; isn't that right?

A. I mean, the best source of that would be ask Mr. Paul, yeah.

Q. And you know this is true because he sent you all of his correspondence that he had been sending to Josh Godbey, accusing Josh Godbey of having a conflict. You remember that?

A. I don't know if he sent me all his correspondence, but he did send me correspondence.

Q. I mean, he claimed the AG's office had a conflict because the spouse of the receiver in the case worked at the AG's office, right?

A. If you have it, I could look at it.

Q. Yeah.

A. I don't have –

Q. And he thought that that was the reason Josh Godbey wasn't doing anything, because Godbey had a conflict; isn't that right?

A. If you could show me the documents, I could look at it.

Q. Well, he sent them all to you. Don't you remember? We looked at them in your direct.

A. We didn't look at all of them, sir.

Q. Okay.

MR. BUZBEE: Let's just – let's look at AG Exhibit 219, Erick.

Q. (BY MR. BUZBEE) I'm just going to hit the high points. This is an e-mail Nate Paul sent to you in July of 2020 where he was very upset, very frustrated with the AG's office. Do you recall receiving this e-mail?

A. One second, sir.

It appears to be familiar, yes, sir.

Q. He says these e-mails started a month ago and continue to be ignored. Do you see that part? The first paragraph, last sentence.

A. I'm looking.

That's what it says, sir.

MR. BUZBEE: Go to the next page, Erick.

Q. (BY MR. BUZBEE) He's sending you a ton of different e-mails that he sent to Josh Godbey. Here it is where he tells Josh – Josh was your direct subordinate or one level below you?

A. No. Josh would have reported to the deputy for civil litigation.

Q. Which was?

A. Darren McCarty.

Q. Okay. So this would have been you, McCarty, Josh Godbey?

A. Yes.

Q. Okay.

A. With an associate deputy to McCarty there as well.

Q. Here he tells Josh Godbey pointblank, You've exhibited highly unprofessional behavior. Do you see that?

A. Yes, I see it. You've read that.

Q. He says, Your relationship with Greg Milligan. That was the receiver in the Mitte Foundation case, wasn't it?

A. I – I don't know.

Q. Well, we all know.

He says, Your relationship with Greg Milligan and opposing counsel has clearly affected your ability to be neutral. Do you see that language?

A. I see the language.

Q. He's accusing –

MR. BUZBEE: Yes, sir.

PRESIDING OFFICER: Excuse me. This has not been admitted into evidence yet, I believe.

MR. BUZBEE: 219 is not in evidence?

Your Honor, we offer 219, just to make it fast.

PRESIDING OFFICER: Any objection?

MR. HARDIN: No objection, Your Honor.

PRESIDING OFFICER: Continue.

MR. BUZBEE: Thank you.

PRESIDING OFFICER: It's admitted into evidence.

(AG Exhibit 219 admitted)

MR. BUZBEE: Thank you, Your Honor.

Q. (BY MR. BUZBEE) Looking at this, he accused the AG's office of having a conflict of interest, didn't he?

A. You've – is that – did you read that?

Q. Yes, sir, I did.

Clearly affected your ability to be neutral. That's called conflict of interest, is it not?

A. It says not to be neutral. That could lead to a conflict of interest.

Q. I'm just trying to figure out how Nate Paul had the keys, as we've been told, to the AG's office when he keeps haranguing the AG's office for failing to do its job. Any answer to that?

A. Any answer to that? He certainly –

Q. Let me go –

A. Would you like me to answer or not? No?

Q. You can answer if you – if you have an answer as to how we are being sold this bill of goods that the AG's office had been handed over to Nate Paul, yet we see the real time correspondence where he's haranguing the office over and over and eventually haranguing you. You see that, right?

A. Right.

MR. HARDIN: Now can he answer the question, Your Honor? Please.

PRESIDING OFFICER: Move on.

MR. BUZBEE: Thank you, Your Honor.

Let's take a look, so we can end this up, Exhibit –

MR. HARDIN: Your Honor, I asked that those last questions then, our objection, it's to be stricken from the record. He asked this question – he gave a speech. If one looks at exactly what he did with his answer there, the witness asked if he could answer. Do you want me to answer? And then he gives a speech about, well, if you can just do so and so, and then he withdraws the question.

So he's made a speech and testified and not allowed the witness to answer. I respectfully ask that that last question be struck, and he be allowed to answer the question before that.

MR. BUZBEE: I'll withdraw it, Your Honor. That's fine.

MR. HARDIN: I'll bet.

MR. BUZBEE: Finally, Erick, let's look at Exhibit 127, Exhibit 40.

Q. (BY MR. BUZBEE) What is a litigation hold? What does that mean in the parlance of lawyering?

A. Well, what it means is when you – when you either send or receive one, it's to not delete anything.

Q. Does that include texts?

A. It includes any correspondence that's relevant to the subject of the request.

Q. Now, would you agree – and I mean, you've been a lawyer for 26, 27 years?

A. Actually longer.

Q. Okay.

A. I was licensed in 1990.

Q. Okay.

A. So I think that means I'm 33 years.

Q. 33 years?

A. Yes, sir.

Q. You know as a member of our profession that – that when you send a litigation hold letter that means preserve everything related, I may be suing you, right?

A. That is true.

Q. Did you know that Nate Paul's lawyer sent that to the AG's office?

A. On October 11th, 2020.

Q. Yeah. So nine days after you left, Nate Paul is threatening to sue the office for inaction for having a conflict, et cetera; isn't that true?

A. I mean, this is a letter that is sent to Mr. Webster and Mr. Paxton. I'm not at the office any longer. I can read it if you want, if you have it.

Q. That's fine, sir.

MR. BUZBEE: Your Honor, with that, I pass the witness.

MR. HARDIN: Ready for the next witness, Your Honor.

PRESIDING OFFICER: The witness is excused.

MR. HARDIN: May this witness – may this witness be excused and, of course, stay available if there has to be some recall, but certainly not around.

PRESIDING OFFICER: You're excused but subject to recall. You may step down.

MR. HARDIN: Thank you, Your Honor.

Your Honor, we call Mr. Ryan Bangert.

PRESIDING OFFICER: To both parties and the jurors, I plan to go until about 6:30 this evening, depending on when we get to a point. It may be a little earlier, a few minutes later, since we started a little late this morning working on other issues.

We'll take a break, members, a snack break here for everyone in about another 30 minutes.

MR. HARDIN: That's fine.

PRESIDING OFFICER: Okay.

Members, we're not on a break. We're just waiting for the other witness to come in. I just want to let you know. But feel free to stand and stretch.

(Brief pause.)

PRESIDING OFFICER: Mr. Bangert, come forward. I need to swear you in. Raise your right hand.

(Witness was sworn by the Court.)

PRESIDING OFFICER: Thank you.

RYAN LEE BANGERT,

having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

BY MR. HARDIN:

Q. Good afternoon.

A. Good afternoon.

Q. State your name, please.

A. Ryan Lee Bangert.

Q. All right. Mr. Bangert, I want, if you will, to keep in mind a couple of things. The way you're positioned is perfect for the microphone, I think, in every respect. You don't have to take your hands down.

And if you think I am not very – not moved about inadvertently, I want you to call me on it and vice versa. Okay?

A. That's fair.

Q. How old a man are you?

A. I'm 46 years old.

Q. And you might want to be a little closer to the microphone. See if you can – I think you can bend it towards your face. It might work out a little better. All right. Thank you.

Where do you live?

A. I live in Bee Cave, Texas.

Q. So would you take us through about a minute and a half or so of your own personal background, where you grew up, your parents, et cetera?

A. Certainly. I was born in a small farm town in Illinois called Quincy, Illinois, about an hour north of St. Louis on the Mississippi River.

Q. What did your parents do?

A. My father is a salesman. He did not complete college. My mother is a schoolteacher.

Q. And do you recall – what size town was this, by the way?

A. About 40,000 give or take.

Q. And that's a little bit bigger than my 9,000 in North Carolina. So 40,000 would be considered a big city.

Let me ask you this: When you finished high school, where did you go to college?

A. Certainly. I moved to Fort Worth, Texas, when I was in second grade.

Q. All right.

A. And did grade school there. High school in Omaha, Nebraska. And then I went to Oral Roberts University for college, which is in Tulsa, Oklahoma.

Q. And what about law school?

A. I graduated ORU in 1999 and started law school at SMU in 2001. And in the intervening two years, I – I successfully pursued my wife who agreed to marry me.

Q. And where did you finish in your class?

A. At SMU?

Q. Yes.

A. I was first in my class at the law school.

Q. And where did you go from there?

A. From 2004 to '05 I clerked for Judge Patrick Higginbotham on the Fifth Circuit Court of Appeals.

Q. And after that in 2005 – and let me stop you there. You would have been approximately what, what age by the time you – you finished clerking for the Fifth Circuit?

A. About 28, maybe – I was 28 years old.

Q. Had you picked – by that time had you also been involved in Republican politics or other outside activities?

A. I had. I had been – at Oral Roberts University, I had been the student body president, but I had also been an officer in the College Republicans. I had interned for a Republican congressman on Capitol Hill named John Christensen from Omaha, Nebraska. I had also served on his campaign.

I had been an intern for a group called the Christian Coalition. I am not sure if they exist anymore, but I was an intern for them back in the late '90s. I also was a Blackstone Fellow in law school.

Q. What is a Blackstone Fellow?

A. A Blackstone Fellowship is a fellowship, a summer fellowship program, that is administered by Alliance Defending Freedom. And we collect what we would say are the best and the brightest conservative, faith-based law students in the country, and we train them for about two and a half to three months in originalism, textualism, natural law. We give them excellent access to internships. And we also commission them as fellows.

Q. Mr. Bangert, tell me this: Did – what role has your religion played in your life, both as a student and as an adult?

A. Very significant.

Q. In what way?

A. It's the basis for everything that I do.

Q. And has that always been true or is that later in life?

A. It's always been true. And, of course, as anyone would tell you who has been a believer most of their life, you have your ups and downs. But certainly it has been the guiding star in everything that I do.

Q. You're aware, are you not, of the allegations that have been made publicly, and indeed by Attorney General Paxton and others similarly involved from his point of view, defenders of his, that this is somehow – this impeachment process itself is somehow in the hands and caused by outside groups that do not share conservative values. You're aware of that?

A. I have heard about that, yes.

Q. All right. Would you please tell us or give me an idea of, for instance, your political philosophy in the sense of on a scale of 1 to 10, and 1 is very, very, very far left, and 10 is very, very, very far right, where do you – where do you fit in?

A. Well, I don't think anyone would have ever accused me of being far left. I – in newspaper articles describing me, leading up to this trial, I was described as working for an extreme conservative group. I believe I work for a – what I would call a Christian legal advocacy organization.

But my politics are very much conservative. My party affiliation has been and always will be Republican. And I have long been associated with what is – what I would call the conservative legal movement. That includes the Federalist Society, the Philadelphia Society, and of course the Blackstone Fellowship.

Q. So if someone were to refer to you as a RINO, what is your reaction?

A. That would be – I would – that would be remarkable and I can't imagine that having any basis in reality.

Q. What are you presently doing? What is your present job?

A. I presently am the executive – I'm sorry, not the executive – the senior vice president for strategic initiatives and an advisor to the president for a group called Alliance Defending Freedom.

Q. Called what?

A. Called Alliance Defending Freedom.

Q. And the Alliance Defending Freedom is what?

A. We are a global legal advocacy organization. We specialize in defending religious freedom, freedom of speech, life. We also work very closely on campus with groups who are having their free speech stifled by universities.

We also support parental rights. I think that it's fair to say that if you were to put us on a political spectrum, we would be conservative very much, although we are a nonpartisan organization.

Q. At the time, how did – the jury has just heard for several hours from Mr. Mateer. How long have you known him?



A. I've known Jeff for quite a while. I knew him back when he was at First Liberty Institute prior to joining the attorney general's office. And I did several cases with First Liberty Institute as a volunteer attorney when I was practicing law at Baker Botts, which I don't think we talked about me joining Baker Botts. But I – when I was there, I was a volunteer attorney for First Liberty.

Q. Wait. Yes. When you left law school at SMU, and then after you left clerking for Judge Higginbotham, what did you do?

A. In 2005 in the fall I joined Baker Botts in Dallas, Texas. I was an associate there until 2013, I believe, when I made partner as a litigation partner. I was there as a partner until 2016. Right after the election of President Trump, I received requests that I consider joining in the government.

At the time we weren't in a position lifestyle – life stage-wise to go to Washington, DC. And so I was asked by then-Attorney General Josh Hawley to join his administration in Columbia, Missouri. And we had some back-and-forth, but he's a very persuasive guy.

Q. So when you joined him, what position did you have with Josh Hawley?

Q. And what was his position?

A. Josh Hawley was the attorney general for the State of Missouri.

Q. And, of course, since has gone on to other things?

A. He has. He ran for and won the U.S. Senate seat in Missouri over Claire McCaskill while I was there.

Q. Can we safely concede that Josh – Senator Josh Hawley is a very conservative man?

A. He's a very principled conservative man.

Q. And did you – how long did you work for him in your capacity as chief of staff?

A. I was two years. And I was the deputy for civil litigation.

Q. I'm sorry.

Did you actually be offered – did you obviously end up being offered another job before you left?

A. I was spoken to by the incoming attorney general, Erick Schmitt, about potentially joining his administration. Incidentally, Mr. Schmitt is now the junior Senator from the state of Missouri. But during that time period, after – immediately after the 2018 election when Josh had won the Senate seat and General Paxton had won reelection, Jeff Mateer and I were texting back and forth, and Jeff said I think it's time for you to come home.

Q. Did you do so?

A. I did. Brantley Starr, who was a friend of mine, and at the time was the deputy first assistant in the office, had been nominated by President Trump to become a federal judge. And Jeff recruited me because we knew Brantley was going to be leaving.

Q. Could you imagine how anybody could be legitimately contending you and Mr. Mateer into a team that was put together at the attorney general – how could anyone reasonably legitimately contend that you guys were some kind of ultraliberal force that was designed to take over and thwart the true conservative mission?

MR. OSSO: Assumes facts not in evidence. And relevance, Your Honor.

MR. HARDIN: Okay. I'm sorry –

PRESIDING OFFICER: What?

MR. HARDIN: – I'm simply asking him about it. Can he imagine how anybody can take that position. I thought I was taking a shortcut to bringing in evidence on it. All right.

PRESIDING OFFICER: Sustained.

A. It would be fantasy, pure and simple.

Q. (BY MR. HARDIN) All right. Now, let me ask you: When you left and came back, did you come to work then for the attorney general's office?

A. I did. In January of '19, I joined the Attorney General's Office of Texas as the deputy for legal counsel.

Q. And what were your duties as the deputy of legal counsel? And what – and what month did you come back?

A. January of 2019.

Q. All right. And what were your duties? What did you oversee starting in January of '19?

A. The deputy for legal counsel oversees a number of different functions within the office. Open records is one of them. The opinion committee is another. The public finance division is another. The general counsel division is another.

And I was also tasked with overseeing a group called special litigation. Special litigation is a strategic litigation unit within the AG's office that both brings and defends strategic key litigation on behalf of the State.

Q. All right. Now, let me ask you when you – do you recall the first time you might have ever become aware of a Mr. Nate Paul?

A. I do.

Q. When was that?

A. It was either at the end of December of 2019 or early, early in January of 2020.

Q. Was he on your – the evidence is clear in here that on August the 14th of '19, he had a search warrant executed by a combined state and federal task force at his house and businesses. Did you happen to notice any publicity or anything about that in August of '19?

A. No.

Q. All right. What was the occasion for you becoming aware of Mr. Nate Paul in either December or January of '20 – December '19 or January of '20?

A. The attorney general spoke to me about an open records file that he wanted me to take a look into. I also contemporaneously received an e-mail from Jeff Mateer to the same effect.

Q. All right. And did you talk to Mr. Mateer about it or he just forwarded you the – the request?

A. He forwarded me the request. I cannot recall whether I spoke with him or not, but I certainly spoke with the attorney general.

Q. What was the nature of the request that he – he referred to you to consider?

A. The request was a – basically it was called a reconsideration, a recon, of the previously issued open records decision that had been issued by the open records division.

Q. Had you ever before been involved, in Missouri or any other, working with an open records request?

A. My time in Missouri, I was primarily responsible for litigation, so my experience with open records requests in Missouri was relatively limited. But by the time that this came about, I had been working with it for over a year here in Texas.

Q. Would you briefly describe for the jury the open records process as it is – as it is handled by the attorney general's office?

A. Certainly. And I will – I'll do my best to summarize.

The attorney general's office is responsible for ruling on requests by agencies or state governmental bodies who have received open records requests from citizens and who wish to withhold information based on an open records exemption or an exception. And the attorney general's office will evaluate those requests and then rule on them through a series of letter rulings. We receive thousands upon thousands of these requests every single year. It's all handled through the open records division. They're handled by a team of attorneys who specialize in open records law. And they are – let's just say that it is a well-oiled machine.

Q. And what – what are we talking about when we say the law enforcement exception?

A. Yes. There are a number of exceptions in the open records provision – provisions in Texas law. The law enforcement exception is one of those. It's designed to protect law enforcement when an ongoing investigation is taking place against having the defendant or other interested parties procuring information from law enforcement that would disrupt the investigation or potentially compromise witnesses or compromise safety, quite frankly, of – of those involved.

Q. Does it matter whether the law enforcement agency is a federal or state or local law enforcement agency?

A. The rules apply slightly differently. The rules are designed for state law enforcement agencies, but we do, as a matter of comity, when there's a FOIA exception for federal law enforcement agencies, honor those requests as well.

Q. But it is essentially a state statute designed, is it not, to regulate or respond to requests that would invoke local or state law enforcement, correct?

A. Yes.

Q. But if something is to effect – say, if the FBI is one of the agency – agencies in a particular event, is it designed to address that as well?

A. It does. It does –

Q. How does it do that?

A. We have a number of open records rulings that we've issued. And you'll have to forgive me if I forget the numbers of them, it's been a – it's been a while.

But we effectively agree to honor requests posted by FBI or other federal law enforcement agencies to withhold information, oftentimes information that has been provided to state partners in the conduct of joint law enforcement activities.

Q. So if there was a joint law enforcement operation to involve, like, four different law enforcement agencies, it could be FBI, it could be DPS, it could be local police departments, it could be some regulatory agencies that have law enforcement capability or involvement, in any or all of those situations, does the AG's office treat that as a law enforcement exception agency?

A. The law enforcement exception, specifically with respect to state law enforcement agencies, and we'll treat that as a matter of comity, a law enforcement exception for the federal agencies as well.

Q. Well, all right. Let's take the incidents that you said you were not aware of the time it occurred, following Mr. Nate Paul. And among the agencies that were involved there were people from the Securities board, right?

A. Right.

Q. The State agency. From the DPS, State agency and also the FBI, would any of those agencies be treated differently?

A. Functionally, no. No, they would not.

Q. And what does that mean "functionally"?

A. It means that the analysis in the open records rulings differed slightly with respect to the agencies, but the outcome was always the same. We would not force those agencies to disclose law enforcement materials that were subject to the exception in the Texas code for Texas agencies or FOIA for federal agencies. We would allow them to withhold that information.

And I also want to point out, these requests that were going to the open records requests were being posed to Texas law enforcement agencies.

Q. All right. So a private citizen wants to complain about some matter in a search warrant or whatever. What would they do and how would – how would the process prefer it?

So let's say a private citizen and his lawyer wants to determine – want to get behind a joint operation by law enforcement and file a Freedom of Information request. How would that proceed?

A. The same – the same as every other request. The request would go to a Texas agency or a Texas law enforcement agency. They would then submit a request for a ruling to the open records division. And when the law enforcement exception applied, which in that – in these types of cases where there are joint law enforcement activities taking place and they're ongoing, we would very – we would almost always withhold the information.

Q. So if, an example I cited, law enforcement capability board, the Securities board had people present, DPS had people present, FBI had people present conducting it, what – how would you proceed with each of those agencies?

A. The agency making the request to withhold would brief the issue. Interested agencies would then receive an opportunity to submit their own briefs.

Q. Let – let me start here. If the request went to the securities board, what would be the process then, if the first request went to the securities board?

A. The State Securities Board would – if they wish to withhold information under the state law enforcement exception, the Securities board would submit a request for a ruling to the attorney general's office open record division. That request would then be adjudicated by our attorneys. And sometimes there were additional briefings if there's a party who was seeking information who wanted to brief the issue, they would submit briefs and we would rule upon it.

Q. All right. And then if – what would you do about if there were other agencies that had information in there? Obviously if the request originally went to the securities board, whichever – would there be possibly information there from DPS and from the FBI? How do you handle that in letting them know whether they can weigh in?

A. They're notified of the pending request and given an opportunity to brief.

Q. They would be notified as well?

A. Yes.

Q. So would you notify, then, each law enforcement agency of the request, even if it just went to one of them?

A. Typically, yes.

Q. Okay. Now, in this particular time in December – January, December of '19, January of '20, would you describe for the jury how you got involved and what you did and what the request was that you were asked to look at by Mr. Mateer?

A. Certainly. There had been a request made, I believe it was to the State Securities board, for information relating to the law enforcement actions taken against Nate Paul, concerning Nate Paul. And there were a number of different pieces of information and documents that were requested.

I did speak with the attorney for Nate Paul.

Q. Do you recall who that was?

A. It was someone at the Meadows Collier firm in Dallas.

Q. Someone in the Chuck Meadows firm in Dallas?

A. Yes, the Chuck Meadows firm in Dallas.

Q. All right.

A. I had dealings with them before in other matters when I was at Baker Botts.

Q. So you already knew the firm?

A. I did.

Q. All right. So what did you do?

A. I spoke with them to understand the contours of their motion for reconsideration. Based on my review of the record and through conversations, it became apparent that the thing that was most concerning to the Meadows Collier firm was getting access to a particular document known as a probable cause affidavit. This was the affidavit that would have supported the search warrant of Mr. Paul's home, the –

Q. And did you discover whether or not that affidavit was actually under a federal seal in San Antonio?

A. I did. And I learned that it was under federal seal, yes.

Q. And I'm not sure – you mentioned it today. I'm not sure we were clear before this.

The actual event that gets to you, was that the first time the AG's office had been involved in this request, or were you being asked to reconsider a previous decision?

A. It's the latter. We were being asked to reconsider a ruling we had already made, finding that the documents should not be disclosed. And that includes the probable cause affidavit. It should not be disclosed.

Q. And do you recall whether the previous one had weighed – whether the FBI had weighed in on it as well, or was it declined initially without even hearing from the FBI?

A. I do not recall because I wasn't involved specifically. That would have been a routine matter. And the denial of the open – the granting of those exceptions and the refusal to force disclosure would have been routine. It was unexceptional.

Q. Was there anything unusual about the decision you were reviewing in terms of its – its actual decision itself, namely that the law enforcement exception dictated that the information would not be revealed?

A. No. When I –

Q. Was there anything?

A. When I reviewed the decision, it was unremarkable to me. It appeared to me to be a straight application of our existing precedent.

Q. And what did you do? When you – when you looked at it, what is the first thing you did?

A. Well, I reviewed it. I understood that there was a motion for reconsideration pending, so I also took that issue to Justin Gordon. Justin was, at the time, the head of the open records division and was one of my direct reports. I asked him to pull the

file, to look at it, to evaluate the decision, and make sure that we had covered all of our bases. Because a motion for reconsideration, we did get those from time to time. They were almost, in all cases, denied out of hand.

Q. Yeah. I was going to ask you that next.

In all the cases you touched or watched while you were there, how would you rank the number of occasions in which the law enforcement exception was not adhered to?

A. Difficult to quantify, but it would have been a very unusual thing for a straight application of that exception not to be granted. In fact, I don't know if we ever did it.

Q. So it would be accurate to say that you don't know of one that you were – that you had encountered?

A. I'm not personally aware of a situation where that exception applied where we would not have granted it.

Q. Did you look into Mr. Paul at all yourself?

A. Say it again.

Q. Did you do any research on Mr. Paul?

A. I did.

Q. What did you do?

A. I Googled him.

Q. The ultimate research tool.

A. Right.

Q. And how did that impact your view?

A. It made me very concerned that I had been asked to – well, let me back up.

I learned through my Google research that Mr. Paul had indeed been – his home and several properties been searched by the FBI, that he was under active investigation by federal law enforcement. And as someone who is a senior staff member, that immediately sends up red flags when you're being asked to review a file for reconsideration to disclose law enforcement materials to someone who is under an active and very far-reaching investigation.

Q. Tell me what the danger is or what the policy position was at your agency in terms of why would you want to adhere to this sort of rigid rule that if it involves ongoing investigation, criminal investigations, you would cite the law enforcement exception? What – what's the reason – reason for that?

A. The policy reasons. There are a number of policy reasons for that.

Q. Don't get too far away from the microphone.

A. Oh, my apologies.

Q. That's okay.

A. Certainly. There are a number of policy reasons for that, one of which is you would not want to compromise, in any way, an ongoing criminal investigation, particularly by state agencies by releasing information that could cause that investigation to be not able to go forward.

More importantly, you also don't want to compromise the safety or the identity of potential witnesses or the safety and identity of those who might be conducting the investigation. So there's both the public policy interest in ensuring the integrity of our law enforcement activities here in the state. There's also a public policy interest in ensuring the safety of those who are undertaking those activities or serving as witnesses.

Q. I was about to ask you. Those files, how would you rank whether or not how often they have actual personal data with people who have cooperated with law enforcement, or citizens who have given information but want to remain anonymous as much as they can, the names of people that are involved? How would you describe the potential risks to them if this information started being revealed to whomever was curious, whether it was media or the offender themselves?

MR. OSSO: Objection to relevance, Your Honor. I mean, it's – it's not with regard to a specific document here.

PRESIDING OFFICER: I'm sorry. Repeat your objection. I couldn't hear you clearly.

MR. OSSO: It's an overly broad question, Your Honor. It doesn't specify what specific document that the witness is going to be referring to.

MR. HARDIN: My question is – I'm asking him what the danger in the policies of these things, which goes directly to why they were going to be concerned about releasing this information to Mr. Paul.

MR. OSSO: Well, I think Mr. Bangert has already answered that question, Your Honor.

MR. HARDIN: I'm sorry?

MR. OSSO: I would say that Mr. Bangert's already answered that question.

PRESIDING OFFICER: Overruled.

MR. HARDIN: Thank you.

A. Could you state the question one more time, Mr. Hardin?

MR. HARDIN: Yes.

Q. (BY MR. HARDIN) My question is – I'm asking what did the danger and the policies of these things which goes directly to why they were going to be concerned about releasing this information to Mr. Paul?

A. Again, safety concerns are paramount. You never want to compromise the identity or the safety of witnesses. And certainly, I – when I was reviewing files, and I only reviewed files that had what you might call hair on them, or files, in this instance, that didn't have hair on it, but at the request of the attorney general.



There were files where witness identity – sex crimes with – sex crime victims in particular – might be revealed. Those were always very concerning. We want to make sure those were properly dealt with.

Q. Well, Mr. Bangert, do your decisions when you're making of these open records requests, if you're not careful about how you do it, are you ever concerned about your setting a precedent that would even be worse than the individual case you're looking at?

A. Precedent is very important to the open records division. We want to be rigorous and ensuring consistency to the utmost. We want to ensure that as we apply the law, it is applied evenly and consistently – consistently for all Texans.

Q. Well, then if, in fact, you released the information that Mr. Paul and his attorneys were seeking, that would have given you – what kind of information would that have given them, the person under investigation?

A. I was very deeply concerned in particular about what it would have done to our precedent to overrule the law enforcement exception applied in this case, this case being the reconsideration motion I was asked to review by the attorney general, because there was a probable cause affidavit in play. Not only that, a probable cause affidavit subject to a federal seal that was part of an active, ongoing, multiagency investigation. That would have been, in my view, a very poor precedent for us to set and would have disrupted law enforcement activities in the State of Texas.

Q. Did it include often – what we commonly call offense reports in which identifying data of the officers and the witnesses were included?

A. I'm not familiar with that term, but certainly –

Q. Let me get the – let me give you – excuse me for interrupting.

Let me see if I can give you another term. Would it have included memos about what happened and by whom and who did what so that personal identifying data would be in there about law enforcement and anybody else, witnesses?

A. Certainly. Law enforcement exception covers documents that contain personally identifying information for law enforcement and witnesses.

Q. And with that file, that would also include the names and addresses potentially of victims for witnesses?

MR. OSSO: Objection. Improper foundation, Your Honor. This witness hasn't yet laid the foundation to establish he has knowledge of the file.

MR. HARDIN: I'm simply asking what all is there that they're trying to protect.

PRESIDING OFFICER: Overruled. could be included within documents covered by the law enforcement exception, so –

Q. (BY MR. HARDIN) When this was over – well, let me ask you this: During your deliberations about this matter in January of 2020, did you have any contact with the attorney general about it?

A. I did.

Q. And what was the nature of that? When, where –

A. Certainly.

Q. – how, what?

A. Initially the attorney general asked me to review the motion for reconsideration. Unusual in the sense that he typically did not involve himself in open records requests, but he is the attorney general and I certainly wanted to honor and fulfill that request. So I reviewed it carefully. And I reached – very quickly reached the conclusion that the decision was correct, and I advised him of such.

Q. Let me go back for a moment. When you were hired, did you ultimately – I believe you said that you were recruited by Mr. Mateer. But did you have contact with the attorney general and – and meet with him before you – before you were hired?

A. I had – not before I was hired, but I had contact with the attorney general going all the way back to 2014 when I was a partner at Baker Botts. I contributed to his campaign. I supported him during his primary run – his primary campaign. I believe it was against Mr. Branch. I also – I believe I was the only partner at Baker Botts who did so. That's what I was told.

But I believed in what he was doing. I believed his policies were the best for Texas. That's why I joined his office in 2019. I believed in what he was doing. I also believed Texas was leading the way in representing the interests of the conservative legal movement here in the U.S.

Q. So would you have characterized yourself as a strong supporter?

A. At that time, yes, I was. That's why I joined the office over other opportunities that came my way.

Q. So in addition to this – this reconsideration request on the – on the Paul case coming from the lawyers for Mr. Paul, where in that scheme of things did the attorney general reach out to you as well and ask you to look at it?

A. Again, it would have been toward the end of December or beginning of January, either '19 or '20. He asked me to take a look at it. I did. I reviewed it. Came to the conclusion that it was correct. Typically in instances like that the attorney general would say thank you for that review and we would move on. This was different.

Q. How – how was it different?

A. He pushed back. And he pushed back not necessarily by contesting my application of law, but by saying it doesn't seem fair to me that a defendant should not have access to something like a probable cause affidavit, something that's being used to investigate him.

Q. Was there any conversation, Well, that would be a consideration for the judge in courts that were involved that he should go to? Tell me about any conversation or response you had.

A. There was federal case law on that point. And I shared that with the Meadows Collier firm, and pointed out to them that all they needed to do was go to the federal courts and file motions with the federal judge. If denied, they could go to the Fifth Circuit, and there was good case law there too. And I shared those facts with the attorney general as well. There was a federal option.

Q. What was Attorney General Paxton's response?

A. The attorney general shared with me his view that he had been wronged by law enforcement and was uninterested in having other Texas citizens wronged by law enforcement as well.

Q. Did he express to you any further, as far back as January of '20, his views of law enforcement?

A. He was clearly very skeptical of law enforcement when we were having those conversations. I was – I was surprised by the level of pushback I got to what I viewed as a routine application of the law. But we continued to have those conversations with him all the same.

Q. But once – once you had put – made your view known, and once he pushed back, how many – did you have any further conversations with him?

A. We had a series of conversations, most –

Q. About this?

A. About this subject, in January.

Q. Oh, excuse me. About this case as well?

A. We had a series of conversations about this specific open records request, the one for reconsideration of the SSB request, yes.

Q. The one on behalf of Mr. Paul?

A. Yes.

Q. How many times would you estimate that you had conversations with the attorney general in which he was urging you – or was he? In these conversations, was he urging you to take a particular position?

A. He was certainly putting – applying pressure to look for any way possible to disclose the probable cause affidavit. Now, he did not instruct me to override or overrule our existing precedent at that time. But he was very interested in finding any way he could to have that probable cause affidavit released.

Q. And what was your reaction?

A. I told him that that would not be a good idea.

Q. So ultimately was it disclosed at that time?

A. It was not disclosed at that time; to my knowledge, no.

Q. How – how did the issue end? I mean, how did you move away from it?

A. I think we may have just worn each other out on that, but he did –

Q. You what? I'm sorry.

A. We may have just worn each other out on that, but he – he did eventually – and, of course, remember we're now ramping up into COVID in 2020. February and March was the beginning and the explosion of COVID. So other events began to overtake the office very quickly.

Q. And actually in February – as early as February of the COVID year, 2020, before everything really breaks out the middle of March, did you yourself give talks and research and conclude it was going to be a huge issue, particularly as it affected the legal things that the AG's office was going to have to get involved in?

A. Yes. We – even before March when COVID became a reality for most Americans, we were wargaming, planning, having internal meetings about what the potential legal effect would be if a pandemic were declared and COVID hit our state.

Q. Was – did the – did the attorney general's office have a position from the very beginning, initiated and urged by the attorney general, as to what y'all's legal position was going to be in dealing with the COVID plague with any issues of whether it's masks or whether it's meetings, whether it's gatherings, whether it's activities? What – what was his position that each of you were challenged to carry out?

A. Yes. The situation was very fluid in March. I would say we didn't have a position per se. But very quickly over time as states began shutting down, canceling school, mask mandates were imposed, stay-at-home orders were imposed. Very quickly it became the policy of our office, and I would argue the policy of the State of Texas, to do everything we could to keep things open as much as humanly possible, consistent with public safety.

PRESIDING OFFICER: Counselor, I went a little past our break I promised for everyone involved. Can I – is this fine?

MR. HARDIN: This is fine. This is perfect.

PRESIDING OFFICER: We'll break until 20 after, take a little bit – it's a 20-minute break – I mean 10 after, a 20-minute break, 10 minutes after, a 20-minute break, get us back, and then we'll go about 6:30. We'll go another hour when we come back.

MR. HARDIN: Thank you, Your Honor.

(Recess from 4:50 p.m. to 5:15 p.m.)

#### **AFTER RECESS**

PRESIDING OFFICER: Court will come to order.

Mr. Hardin, we'll go to – try to wrap up by about 6:30, a good breaking point. If it's a few minutes later, fine. Or if it's a few minutes earlier, I will leave it to you.

MR. HARDIN: Thank you, Your Honor. Can you hear me?

Ah, there you go. Thank you.

PRESIDING OFFICER: We'll wait for our witness here.

Q. (BY MR. HARDIN) The necessary participant.

Now, if you can keep the microphone to you, my problem is I can hear you sometimes thinking, so just – I think you're perfect where you are.

All right. We move on now from the open records. Is it – in your mind, so the issue died out as to that file after – after your conversations, repeated conversations with the AG?

A. Yes, eventually, the issue did –

MR. OSSO: It's off.

A. Testing.

Yes. The issue did eventually, from my perspective, die out. It was not – it was not raised again for some time, you know, for a matter of months after that.

Q. (BY MR. HARDIN) Did it resurface later that year?

A. It did.

Q. And how and when?

A. I was promoted to a different role in March. I believe it was March of 2020. So as COVID was kicking in, I was promoted to Deputy First Assistant Attorney General. So the role that Brantley Starr previously had had, he had been elevated to the federal bench. And I was asked to assume that role.

So Ryan Vassar became the deputy for legal counsel, which was the role that I previously had been serving in. But I was aware, because I was working with Ryan Vassar at the time, helping him to learn the ropes of open records, that another request had been submitted, this time to DPS.

MR. HARDIN: Stacey, can you pull up – back the first demonstrative we started the trial with that lays out the pictures of everybody? Thank you.

Q. (BY MR. HARDIN) Can you see that okay?

A. Yes, sir.

Q. Can you see that okay?

So does that accurately reflect where you were in the new lineup?

A. Yes, it does.

Q. All right. I'm going to call this Demonstrative 1.

And this particular – this particular document, whom did you report to? Were – did you have a direct report to the attorney general or to Mr. Mateer?

A. I reported directly to Mr. Mateer.

Q. And then how many divisions did you have under you by this time?

A. I was still overseeing the special litigation unit. But apart from that, I had no other direct reports. However, as the deputy first assistant, I was assisting the first assistant in overseeing the agency as a whole.

Q. So if the first assistant was out of town, would you be the one that – that would be essentially the acting first assistant?

A. More or less. When he was out of town, I would assume some of his responsibilities as a matter of practice. I also would handle duties as assigned by both the first assistant and the attorney general.

Q. And you, by this time, had known Mr. Mateer how long?

A. Several years.

Q. All right. Had you ever seen or known him to express any interest in ever being the attorney general himself?

A. No, I had not.

Q. All right. On a scale of 1 to 10, 10 being totally absurd, 1 being – 1 being much less than that, where do you rank?

A. In terms of his desire to become the attorney general?

Q. Yeah.

A. He – he was very tired. By the end of his thinking about retiring from public service because his back was bad. He had been burning the candle at both ends for some time.

Q. So on a scale of 1 to 10 again, in terms of his desire, as your observations, to be the attorney general, where would you rank it?

A. It would be zero.

Q. All right. Thank you.

Now, let me ask you this: How did the – the continued issue of the open records request and desire to obtain open records concerning Mr. – Mr. Paul's search warrant and criminal investigations again, how did you next come into contact about – with it and when?

A. Speaking with Ryan Vassar, who by that time, in April, May of 2020, he was overseeing open records as the deputy for legal counsel. I understood that a request had been filed, I believe it was with DPS, for additional materials relating to the Nate Paul investigation.

Q. All right. And – and the original time that you – you became aware of Mr. Paul seeking these records, whom was the open records request directed to, if you recall?

A. My recollection is the State Securities board the first time around.

Q. All right. So that one went off as you have described in your testimony. And then did you learn that there had been a second open records request, this time to another agency that was present in this search, this time DPS?

A. Yes.

Q. All right. Had you had conversations in the past in which the lieutenant governor expressed his views of DPS?

PRESIDING OFFICER: Excuse me. I think you mean the attorney general.

MR. HARDIN: Pardon me, Your Honor?

PRESIDING OFFICER: You said the lieutenant governor. I am listening very closely, Counselor.

MR. HARDIN: That was only to see if you were paying attention, sir.

PRESIDING OFFICER: Trust me. I'm not missing a word.

MR. HARDIN: Now that you confirmed that you were, let me rephrase it.

Q. (BY MR. HARDIN) The DPS – I'm a little flustered here. I'm going to have to recover.

So did you – would just then the second agency that had – or that had been involved in the search of Mr. Paul's house and business back in '19, in August of '19, was this now the second agency Mr. Paul and whomever is working on his behalf tried to get documents from?

A. That is my – yes, that is my understanding. I was aware that this was the second time. I do not believe Meadows Collier was involved this time around. A new law firm had surfaced.

Q. Yes. And do you recall whether – the name of that lawyer?

A. I believe it was Gregor Wynne.

Q. Was the lawyer you were dealing with a Mr. Michael Wynne?

A. He was part of that firm to my recollection, yes.

Q. Now, so how did it come to your attention as to what you were supposed to do or what you were referring – what you were regarding, rather?

A. My understanding was this request was, again, for law enforcement materials this time in the possession of DPS, not SSB. But, again, these were all agencies, part of this joint law enforcement operation. So very similar materials were being requested again relating to Nate Paul.

Q. So how did you get dragged into it as to your position and your participation?

A. Primarily by assisting Mr. Vassar, who was at that time very, very new to the role.

Q. All right. Can you describe for the jury the sequence of events as it was being considered in – in the attorney general's office to override past decisions on these same matters?

MR. OSSO: Objection to leading, Your Honor.

MR. HARDIN: I – I don't –

PRESIDING OFFICER: Sustained. Rephrase.

Q. (BY MR. HARDIN) Let me – let me put it this way: What happened next?

A. Many things. So this request was submitted to DPS. DPS then did what it normally would have done, which is request our office – request a ruling from our office from the open records division, which was per normal process. At this point, the attorney general became interested in the file once again.

Q. And how did he show that interest?

A. He asked to meet with Justin Gordon. I believe it was at this point where Justin Gordon was summoned to the attorney general's office to be – to have discussions with the attorney general about this file.

And he also asked for a copy of a book that we keep in our office. We have a manual that we publish. When I say "we," the attorneys – the attorney general's office, every two years, I believe, publishes an update to the open records manual to reflect changes to the code from the previous legislative session.

Q. Did you – did you provide him the book yourself?

A. It was either I or Ryan Vassar. I do recall we were looking for a copy in the office because he wanted a paper copy.

Q. All right.

A. And the copies we had, the pages were falling out so we had to go make sure they were all there.

Q. Now, did you begin to continue to have repeated conversations with the –

MR. OSSO: Objection to leading.

MR. HARDIN: I don't think that's leading at all. I haven't even finished by the way.

MR. OSSO: Your Honor –

MR. HARDIN: It works better if I finish the question.

PRESIDING OFFICER: Finish the question first.

MR. HARDIN: Thank you very much.

Q. (BY MR. HARDIN) Did you have any continued conversations with the attorney general about this matter?

A. My conversations were primarily with Ryan Vassar and Justin Gordon at this point assisting them in handling it. I did overhear conversations. I know I did see and witness the attorney general pull Justin Gordon into his office concerning this matter. So I was keenly aware being on the eighth floor and working with my colleagues that this was happening.

Q. Did you – did the attorney general your – himself contact you about his interest in trying to find a way to reveal this information?

A. I do not recall specific conversations with him about the second request. And, again, that would have made sense because I was no longer overseeing that division directly.

Q. Then did you have any participation and – and observation of what happened next, or was that primarily in – in the realm of Mr. Vassar?

A. I did have some observations, and I did have some participation on what happened next.

Q. In – in what way? What was it?



A. There were a couple of options on the table for how to handle this open records request. There really are two options. One, you either would pour out. A pour out is when you more or less tell the agency you have to disclose the information, or you sustain the agency's request for exemptions. It was clear to us that the attorney general was now stridently in favor of finding a way to disclose this information.

MR. OSSO: Objection to speculation.

Q. (BY MR. HARDIN) Were you aware of –

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) – of what his position was?

A. Yes. I was personally aware of his position on this.

Q. How were you personally aware?

A. Because I was in the office. I watched him as he was conducting himself. I overheard conversations in which he was a party concerning this. So, yes, I was aware based on my interactions with him.

Q. And how –

MR. OSSO: Judge, I renew my objection to speculation also.

MR. HARDIN: These are all party admissions, every single one of them, Your Honor.

PRESIDING OFFICER: I'm sorry.

MR. HARDIN: These are conversations –

PRESIDING OFFICER: I did not hear – I did not hear you.

MR. OSSO: I'll let him ask the question. I'll retract my objection.

PRESIDING OFFICER: Continue.

Q. (BY MR. HARDIN) So then when you – when you heard those conversations, what did you hear the attorney general say and who was he talking to?

A. Well, there were always groups of us on the eighth floor. It's very hard to hide on the eighth floor. It's a very small floor, and it's a – it's a square or a rectangle and so there's not a lot – and my office was directly down the hall from his, so I was very close to his office.

And the summary of it was he was – he was desirous of finding a way to either disclose that information or, at the very least, not – not rule against the requestor.

Q. What was the recommendation that you were aware of, of all of the – the deputy in charge and the people above him – below him, what was their recommendation as to what be done – what should be done with the request to be –

MR. OSSO: Objection to hearsay.

A. I was –

PRESIDING OFFICER: Sustained. Sustained.

Q. (BY MR. HARDIN) Were you present when they made their recommendation to the attorney general?

A. I was personally involved in formulating a recommendation, yes.

Q. All right. Did you yourself make a recommendation to the attorney general?

A. I do not recall if I made the recommendation, but I certainly helped my colleagues formulate it –

MR. OSSO: Objection. Nonresponsive.

MR. HARDIN: Wait a second. You've got to let him finish the answer. You can't do that.

MR. OSSO: I'm making an objection. I'm objecting.

PRESIDING OFFICER: Stop.

THE REPORTER: Stop.

PRESIDING OFFICER: Please stop.

MR. OSSO: I had an objection.

PRESIDING OFFICER: No arguing. No arguing.

What was your objection?

MR. OSSO: My objection was that this witness answered counsel's question, and then the latter half of his answer was not responsive. And so my objection is nonresponsive, Your Honor.

MR. HARDIN: The objection –

PRESIDING OFFICER: Overruled. Continue.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) Go ahead.

I think my question to you was: Did you yourself make a recommendation to the attorney general, or were you present when others made a recommendation to the attorney general where you could hear his response?

A. No.

Q. All right. Did you have any conversations with the attorney general after the period of time we're talking about?

A. Concerning this matter?

Q. Yes.

A. Not to my recollection.

Q. All right. At the time, were you present when the decision was made that it would take no position?

A. I was directly involved in that decision.

Q. And tell us about that and how that happened.

A. Certainly. We were evaluating options for responding to this open records request. It would have been, in my view, unconscionable to do a pour out for all the reasons we discussed. The law enforcement exception has very strong public policy grounding in this state.

The attorney general, based on my involvement in this case, I knew was not going to tolerate anything –

MR. OSSO: Objection. Nonresponsive, Your Honor.

MR. HARDIN: It is responsive. Excuse me. I think he is just finishing his –

PRESIDING OFFICER: Move along.

MR. OSSO: The objection is – okay.

Q. (BY MR. HARDIN) Go ahead.

A. I understood that he was not going to tolerate anything that was viewed as unfavorable to the requestor. As a result of that, an option was developed to do a no decision or a no opinion, which was very unusual.

Q. Do you – you recall who came up with that – that option for him?

A. It was a group of us; Justin Gordon, Ryan Vassar, and myself, in conversations that opinion was ultimately – that approach was reached.

Q. And what was your position as to whether or not the no-opinion option was one that should be adopted?

A. I believed it was the wrong approach. I believed it was the wrong decision. But it was the best we could do, given the place that the attorney general was at, at the time.

Q. And that was a time – that was – was that adopted to keep him from continuing to insist on the other? In other words, continuing to insist on disclosure?

A. It was the best answer we could reach that we knew would be accepted by the attorney general at the time, even though I believed that it was wrong.

Q. Now, it's been suggested in this litigation the last day and a half that that meant no harm was done, no benefit was given to Nate Paul by that. Do agree with that?

A. No.

Q. Why not?

MR. OSSO: Objection to speculation, Judge.

MR. HARDIN: That's not speculation.

PRESIDING OFFICER: Overruled.

MR. HARDIN: Yeah. Thank you.

A. There was, at that time, pending litigation concerning the open records request. We were being asked at the same time to issue a ruling on that request. It was my view that the ruling should have denied access to those records. That at least would have been persuasive authority for the Court that was examining that very same issue.

We had a policy at the AG's office that we would not withhold making a decision based on pending litigation. So in effect, our no decision contravened our existing policy.

Q. (BY MR. HARDIN) And in addition, did it provide any advantage in the – potential advantage to the – to the litigant, Mr. Paul, even though you weren't recommending disclosure? By recommending no opinion? Do you have any idea as to whether or not that still conferred a benefit on him?

A. Yes.

Q. And what was the benefit?

A. As a logical inference, any time our office issued – our office is the authority on open records decisions. If our office refuses to take a position, which by the way is deeply out of character and contrary to our precedent –

MR. OSSO: Objection. Nonresponsive, Your Honor.

MR. HARDIN: He is just finishing. Let him finish the answer, then you can object.

PRESIDING OFFICER: You may answer.

A. If our office refuses to take a position on an issue like that, and the Court sees that, that is a strong signal I believe to the Court. And I've been a lawyer for over a decade, and close to two. That's a strong signal to the Court about the attorney general's view of that file that we would have gone out of our way to render a vastly uncharacteristic decision.

Q. (BY MR. HARDIN) Okay. Now, after that happened and that no opinion about it occurred, did you have any more contact with the open records request that Mr. Paul was making?

A. Once the no decision was issued, no.

Q. All right. And then did you – when was the next contact you had with matters of Mr. Paul?

A. It was in June. I believe it was in June. It may have been in May, but it was in that time period, late May, early June 2020. The attorney general approached me personally and asked me to review a file that was – it was a lawsuit that was pending between a charity, the Mitte Foundation, and World Class Holdings, which I very quickly recognized as one of Nate Paul – Nate Paul's company.

Q. Had you had a history, even in your previous jobs or even in this one, overseeing the AG's position – the office's position of charity trust?

A. Yes.

Q. Would you tell us what basically, by both statute and mission, was the obligation of the attorney general's office as it – as it involved a charity trust?

A. Generally speaking, and this is true for most attorneys general's offices that have this jurisdiction, you are there as the attorney general to protect the public interest in charity, which means that the public has an interest in ensuring that charities that are formed pursuant to state law are fulfilling their function to benefit the public interest, meaning the corpus of the proceeds the charity manages and operates on are not being squandered or wasted, that the charity is not being highjacked for improper purposes, and that it's generally discharging its role to benefit the public.

So that's the attorney general's role is to intervene in lawsuits, to – and, by the way, it has – we have authority to investigate charities that are abusing their role. The attorney general's office protects the public interest in charity.

Q. Is the general – and under the law and the responsibility and the mission of the attorney general's office, is the attorney general's office in a charity trust case supposed to be intervening in any way to help one individual or the other?

A. The attorney general's office is to intervene to advance the public interest in charity. So it is not characteristic to intervene to assist a party in particular. Rather, the intervention is for the purpose of defending, protecting, and ensuring the public interest in charity.

Q. So if, in fact, a set of facts or course of – course of conduct making the decision to intervene would benefit the opposing party in the litigation to the charity trust, what would you expect the position of the attorney general's office to be?

A. Under that hypothetical, if we were being asked to intervene to aid a party that was actively seeking to harm a charity, we should not intervene under – under those circumstances.

Q. Well, in the case you were – are – were you aware – did you become aware of the Mitte Foundation?

A. Again, I did become aware of the Mitte Foundation. The attorney general personally brought the issue to my attention.

Q. And when did it – and when did the attorney general bring that matter to your attention?

A. It was either toward the end of May or the beginning of June. It was sometime in that time frame.

Q. How did it happen that he brought it to your attention?

A. He asked me to review the file and consider whether or not there was a basis for our office to intervene in the litigation pursuant to our statutory authority.

Q. Is that the third time you've now been asked within six months to review a matter that involved Nate Paul?

A. Yes. And I – yes.

Q. All right. So at this time, how would you characterize your feelings about whether or not the AG's office ought to be getting involved in anything that involved Nate Paul?

A. My feelings were that I was becoming increasingly concerned because the initial foray into the world of Nate Paul was through the open records division. That had ended with the issuance of an uncharacteristic opinion. And now it had, in my view, metastasized to a new section within the attorney general's office that had nothing to do with open records. This was a completely new front. It had nothing to do – by the way, in my – it had nothing to do with the criminal investigation.

MR. OSSO: Objection. Narrative and nonresponsive.

MR. HARDIN: I'll ask him another question.

PRESIDING OFFICER: I'll sustain the objection.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) As you – whether you – when you were asked to look at this, where and when was that?

A. Early June.

Q. And how and where – how and where did it occur?

A. In the office on the eighth floor.

Q. And who was present for the conversation?

A. Based on my best recollection, it was just the two of us. I believe it happened in my office on the eighth floor.

Q. When the attorney general came into your office, what did he say and what did he want?

A. He wanted me to review the litigation file and evaluate whether or not there was a basis under our statutory authority to intervene.

Q. At that time had you personally met Mr. Paul yet?

A. No.

Q. And so how long did this conversation with the attorney general who asked you to look at the file take? A. My recollection is it was very brief. I got the name of the case file from him, just the basic identifying details so that I could locate it. And then after that, he left.

Q. All right. Did you – at that – did – once you got the file, did you review it?

A. I reached out to a gentleman named Joshua Godbey, who at the time oversaw our charitable – our financial litigation division. I wanted him to at least help me evaluate this request because it was his division that had primary responsibility for deciding whether or not to intervene.

Q. Did the attorney general tell you what he wanted you to do at this time?

A. Beyond just the desire to review the file to consider intervention, no. It was very – it was very straightforward: Consider this for intervention.

Q. How long did you talk to Mr. Godbey? And afterwards did you review any materials, or did you stop at your conversation with Mr. Godbey?

A. I asked Mr. Godbey to provide me background on the case. I learned through those interactions that we had actually waived on the case months before.

Q. All right. So at that time you became aware that y'all had taken the position previously not to intervene in the lawsuit?

A. That is – that's what waiver means. When a notice is sent to our office per statute, if there's a charity involved in litigation, they're required to notify our office of that and give us an opportunity to intervene. We received that notice and we had issued a declination of waiver.

Q. In your conversations and research, did you discover when it was chronologically that the office had previously declined to enter the litigation at all?

A. My recollection, it was early in 2020. Perhaps as early as January.

Q. All right. And so after that declination, what did you learn – what was the occasion for this issue coming back before you?

A. My impression was it was the attorney general asking me to review the file. And he –

Q. And at that time did you discover how long the litigation between Mr. Paul's companies, therefore Mr. Paul, and the Mitte Foundation, how long had they been in litigation by that time?

A. It had been a long and sordid affair, yes. Lots of litigation had taken place.

Q. And was it more than one year?

A. I believe it was more than that. I'm testing my memory, but it had been – it had been well – the case file was well developed.

Q. All right. So at – in this time, once you talked to him and once you talked to Mr. Godbey and you've reviewed your other materials, what did you do next?

A. Well, I – I notified the attorney general that we had waived. We had previously waived on the file.

Q. And did you have a recommendation as to whether you continued that waiver?

A. Either at that time or subsequent to that, I did. I had looked at the file. My strong belief – and by the way this is very common. We rarely intervene because oftentimes the factors for intervention are not –

MR. OSSO: Objection. Nonresponsive.

Q. (BY MR. HARDIN) Let me ask you: When you – what was your opinion after you talked to Mr. Godbey and looked under the circumstances – by the time you talked to the attorney general, what was your opinion as to what you should do?

A. There was no basis for us to intervene in the case.

Q. Did you have that recommendation to the lieutenant – I mean, did you have –

PRESIDING OFFICER: I'm going to object again.

MR. HARDIN: I'm not suicidal, Your Honor. I'm not. I promise.

Q. (BY MR. HARDIN) Did you have that – did you share that opinion with the attorney general?

A. My recollection, yes, I did share with him what had happened. The waiver had been filed. And the reason for the waiver was there was no basis for us to intervene.

Q. What was the attorney general's reaction?

A. He was not happy with that response.

Q. How did he – how did he show he wasn't happy?

A. He informed me that he – he was surprised and not happy that we had waived. He wanted me to reconsider the waiver. He informed me that in his view it was improper for a charity to be oppressing a business, especially when the charity was effectively a limited investor in the business. He thought that was out of bounds for a charity to do that. And it was his view the litigation was somehow a form of oppression by the charity toward the business.

Q. So if one were to ask, had he taken a clear-cut position on one litigant against the other in the case?

A. He was determined for us to intervene, and the basis for that was he was concerned that the charity was doing wrong to the World Class.

Q. And – and when the – did he express any kind of feelings of himself against Mr. Godbey's thus far resistance to entering the litigation?

A. Yes. Mr. Godbey was resistant to entering in litigation. He and I had many conversations to that effect. We were both in agreement that intervening would have been a – was a poor choice and was not justified by the circumstances.

Q. It was the position that made its way to the attorney general?

A. Yes.

Q. How would you describe why you and Mr. Godbey had concluded that you should not change the earlier decision and should not intervene in the lawsuit?

A. The charity was represented by competent and able counsel. It was taking legal positions that we believe were justifiable. It was largely, from our view, doing well in the litigation. The litigation involved a request to – for World Class to produce books and records concerning the investments the charity had made, and World Class was refusing to provide those, which any good corporate lawyer knows is improper. And so the charity was defending its interest in its investment aggressively and appropriately.

Q. And – and was the charity itself simply seeking to – to find out what the value of their investment was?

A. Yes. Among other things, yes.

Q. Among that. And among that and others.



And whatever expenses that have been incurred when y'all looked at the file, who was causing the expenses?

A. The litigation had – when I – when I earlier said it was a long and sordid affair, what I meant by that was World Class was rapidly burning through law firms. It had developed a history of using law firms, not paying their bills, cutting them loose, going on to the next law firm. So it was using law firms at a frightening rate. It was filing a number of motions. It was resisting discovery into its books and records –

MR. OSSO: Objection to nonresponsive.

MR. HARDIN: No, it is responsive. That's exactly what I'm asking. What were they – what was causing – what was happening with the assets, and so and which one – which one of these two parties was causing the expenses.

PRESIDING OFFICER: Our witness, try to answer the questions directly for the Court.

THE WITNESS: Yes, Your Honor.

Q. (BY MR. HARDIN) All right. Now, at the end of the day, could – would you describe the dispute being a minority investor investing in a company, Mr. Paul's companies, and they can't get any records – books or records to tell them what the expenses are – sorry, what the value is or so – and so there's a lawsuit. Is that a fair resolution –

A. That is –

Q. – a fair description?

A. That is my understanding of the basis for the lawsuit, yes.

Q. All right. And so when – when all of this was going on, what was – once you told the attorney general that you and Mr. – you agreed with Mr. Godbey you should not interfere, what happened?

A. He effectively directed us to intervene.

Q. Pardon me?

A. He – he directed us to intervene.

Q. He instructed y'all to?

A. Yes.

Q. So did he interfere in a lawsuit – that interference, did that ultimately turn out to be on the side and effect of Mr. Paul?

MR. OSSO: Objection to leading.

Q. (BY MR. HARDIN) How did it –

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) How did it end up? I mean, was there anybody that benefited from that by the fact that the attorney general's office came in?

A. Yes.

MR. OSSO: Objection to speculation. And an improper opinion, Your Honor.

MR. HARDIN: Well –

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Well, you clearly, though, knew what the result was going to be, did you not?

MR. OSSO: Objection to improper opinion and speculation.

MR. HARDIN: Excuse me. Just let me finish, please, the question.

PRESIDING OFFICER: Let him finish the question.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) When you were opposed to the intervention, whom did you believe would benefit from the intervention?

MR. OSSO: Objection to speculation and improper opinion.

MR. HARDIN: I've asked what his opinion is. That's very relevant here.

MR. OSSO: And I'm objecting to the opinion.

MR. HARDIN: Excuse me. He's –

PRESIDING OFFICER: Overruled.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) Whom did you believe would benefit from the intervention?

A. It was clear to me that the intervention –

Q. Use your microphone, please.

A. It was clear to me the intervention would benefit World Class Holdings and Nate Paul.

Q. All right.

A. There was no question about that.

Q. And what was your position expressed to the attorney general as to whether that was appropriate or not?

A. It was not appropriate.

Q. All right. In spite of that, there was an intervention?

A. There was an intervention. It was directed by the attorney general to do so. I instructed Josh Godbey to make the intervention. We justified it on the basis that we would intervene for the purpose of bringing the parties together for a mediation. That's honestly how I put lipstick on that pig.

Q. Had there – what was your knowledge as to whether there had already been one mediation that was unsuccessful?

A. Yes, there had been.

Q. Had there been an agreement previously?

A. Yes.

Q. And do you remember how much that mediation that there was an agreement for, that – that the Mitte Foundation would receive?

A. Yes.

Q. How much was that?

A. My recollection was around \$10 million.

Q. And then was that – that agreement breached?

A. Yes.

Q. By whom?

A. World Class.

Q. And by the time that y'all were asked to intervene – or instructed and ordered to intervene, what was the status of the litigation?

A. The Mitte Foundation was pressing – my best – based on my recollection, they were pressing hard for discovery into World Class, and World Class was approaching a point where they were risking sanctions for discovery noncompliance.

Q. What was your experience, both then and later, that even has to do with this case in terms of was there a particular consistent approach of Mr. Paul whenever he got into civil litigation as it applied to discovery?

A. He resisted it strongly, based on what I could tell from the file.

Q. All right. And so what did you do in terms of your position in the office after you were instructed to intervene?

A. I advised Mr. Godbey of the decision to intervene in the case. The basis for that intervention would be to formulate a mediation to bring the parties back together again. Again, that was a post hoc rationalization. And we began speaking with the parties involved in the lawsuit.

Q. Did you have any reason or belief that that was going to be successful?

A. No.

Q. And ultimately was it successful?

A. No.

Q. And was there another final thing that you were instructed to do with the case that ended up with you being not involved any longer?

A. Following our intervention, Mr. Paxton – the attorney general asked if we could also file a motion to stay the proceedings.

Q. Would that have stayed the discovery?

A. Yes.

Q. And how was it that you knew that's what the attorney general wanted to do?

A. He conveyed that to me himself.

Q. What was your reaction?

A. I could see no justification for that. That would have been directly against the public interest in charity and directly for the benefit of only one party, World Class.

Q. Did you inform the attorney general of that?

A. I told him that I was very uncomfortable filing a motion to stay and resisted it, yes.

Q. So what was his reaction to that?

A. He was not pleased with that. I was subsequently removed from the file by Mr. Mateer.

Q. And did Mr. – without going into what he said, what was your understanding as to why you were no longer going to be there with the file?

A. My understanding was that Mr. Mateer believed that I was wasting time dealing with Nate Paul, and that I needed to stop wasting time dealing with matters concerning Nate Paul.

Q. So then after that – and were you opposed to being removed from that file?

A. I was very happy to be removed from that file. I was quite frankly sick of dealing with Nate Paul.

Q. Did you do anything like the equivalent of a high five or go out and visit, have a nice dinner or anything?

A. I was very relieved.

Q. And so at the end of the time when you left that file then, did you – was that it? The rest of your professional career, was that your last contact with anything having to do with Nate Paul?

A. No.

Q. When is the next time that Nate Paul appears on your radar screen?

A. So this is the summer of 2020. We are still working around the clock on COVID matters, which was my primary focus. And in late July – and, again, Mr. McCarty and others had taken over the Mitte Foundation file. I was approached by the attorney general again, this time to evaluate a matter related to COVID, and in particular the governor's order, GA – I believe it was GA-28. It was one of the closure orders – as it pertained to foreclosures of real estate.

Q. Now, at this time did you have any idea or any inclination at all that this also was going to involve Mr. Paul?

A. No.

Q. Do you recall approximately – when you say in the summer, I think you just said July now, because it's 23September and it's hard to tell this between July, if it – did you say July 31st or was it earlier than that?

A. It was earlier in the week, yes.

Q. All right. And how did the attorney general contact you and what did he want to know?

A. He came to me in person, and he asked me to evaluate whether or not foreclosure sales should be allowed or could be allowed to continue, given the current state of the governor's – or COVID orders.

Q. All right. So now we're late July. The governor's orders roughly come out the middle of March of that same year, correct?

A. And they were continuing to come out thereafter.

Q. There would be periodic orders issued. Did the attorney general express any interest in what he wanted to happen?

A. Not at the – not at first, no.

Q. All right. So did you do anything in response to his immediate question?

A. I did not.

Q. And why – and why was that?

A. It was sort of an offhanded request, and we were busy dealing with a whole litany of matters related to COVID. It was also one of those sort of, hey, take a look at this, type of request. There was no real timeframe associated with it. So I put it on my to-do list, but it didn't get high priority at that moment.

Q. And then when was the next time he contacted you about it, if he did?

A. A few days later he approached me and wanted to know if we had done the research and it was completed.

Q. Do you recall which day of the week it was he approached you?

A. I believe it was Thursday. Yes, I believe it was that Thursday.

Q. And what did you tell him?

A. I said, no, it was not.

Q. All right. So then did he say anything further?

A. Yes. He said, get on it. We need to get this done right away.

Q. Did he express what he meant by right away?

A. He said this needs to happen within the next few days.

Q. And that was on a Thursday?

A. Yes.

Q. Well, the next few days is – takes into a weekend, right?

A. That's right.

Q. Did he express why he needed something done that weekend?

A. He did.

Q. What did he say?

A. He said that homeowners across Texas would benefit from an opinion dealing with foreclosures.

Q. Now, you don't now anybody else is going to benefit from this. What was your reaction to that? Did you – did you believe –

MR. OSSO: Objection to leading.

Q. (BY MR. HARDIN) – it really was focusing on homeowners?

PRESIDING OFFICER: Overruled.

MR. OSSO: Objection overruled. okay.

PRESIDING OFFICER: Overruled.

Answer the question.

A. I quite frankly wasn't quite sure what to think about it because I was scrambling to pull together the research. I had no basis to know whether or not homeowners would benefit or not.

Q. (BY MR. HARDIN) All right. So did he – did he provide you any evidence or any – anything to – to help you understand whether this was really about helping homeowners or not?

A. No, but he did – I did ask him directly if there was someone I could speak to who was cognizant of the issues or perhaps that even made the request.

Q. What did he tell you?

A. We were standing in the hallway of the eighth floor –

Q. Let me stop you. What day?

A. This was Thursday, I believe.

Q. All right.

A. Yes.

Q. Go ahead.

A. We were standing out in the hallway. And I asked him if there was someone I could speak with who had knowledge of the request.

Q. Now, let me stop you there. Let's explain to the jury as quickly as we can why that was relevant. What – what is the law that would require you to have some type of requestor?

A. Well, the law, based on the Government Code 402, I think it's 045 or thereabouts, our office is not allowed to issue opinions to individuals, unless those individuals are called out in the code specifically.

Q. And did – and did he give you any suggestion as to who was asking for this or who wanted it or anything?

A. He did – he went back to his office and returned in a few minutes and handed me a scrap of paper with a phone number on it.

Q. And did it have a name as well as a phone number?

A. I can't recall, but I just – I recall the phone number for sure.

Q. So what did you –

A. If it was a name, I don't – it didn't ring a bell.

Q. What did you do with his phone number?

A. I put it in my pocket – it was toward the end of the day – and committed to call the phone number that day.

Q. What, on the way home or what?

A. It was late. We were pulling very late hours at that time because of COVID. So I do recall it was in my pocket. I was dealing with some other exigent circumstances. And I recall pulling into my driveway that evening. It was dark. So I got home very late.

Q. So did you call this guy?

A. I did.

Q. And – and tell us what happened.

MR. OSSO: Objection to hearsay. This question calls for hearsay, Judge.

MR. HARDIN: Well, actually – actually this isn't offered for the truth of the matter. This is simply an operative fact of this particular event, Your Honor.

MR. OSSO: Judge, he's asking –

PRESIDING OFFICER: Stop.

MR. HARDIN: Excuse me.

PRESIDING OFFICER: Sustained. Rephrase.

Q. (BY MR. HARDIN) Did you call this guy?

A. I did.

Q. And did he answer?

A. Yes.

Q. And did you have a conversation?

A. I did have a conversation.

Q. And did he know anything about what you were calling about?

MR. OSSO: Objection to hearsay.

MR. HARDIN: That is not hearsay.

MR. OSSO: Backdoor hearsay, Your Honor.

MR. HARDIN: Excuse me. It is not hearsay.

MR. OSSO: His question insinuates an answer from this individual, which would be hearsay.

MR. HARDIN: It doesn't matter. Hearsay is a communication. This is a – he – he did not answer – I did not –

PRESIDING OFFICER: Sustained.

MR. HARDIN: – ask him if he communicated. Thank you.

Q. (BY MR. HARDIN) Well, did you find out whether this guy knew anything about it?

MR. OSSO: Objection, Your Honor, to hearsay.

PRESIDING OFFICER: I sustain the objection.

MR. HARDIN: Surely – surely the question of did you find out whether this guy knew anything about it is not hearsay, in all due respect.

MR. OSSO: It's the same conversation, Your Honor. It's hearsay.

MR. HARDIN: I haven't asked him, Your Honor, what the conversation was. I haven't asked him what the person said.

PRESIDING OFFICER: Just answer yes or no to the question, not go into the contents of the conversation.

A. Could you please restate the question?

Q. (BY MR. HARDIN) I asked you, well, did you find out whether this guy knew anything about the matter that you were calling about?

MR. OSSO: Judge, I'd reurge my objection that –

MR. HARDIN: The judge has already ruled.

Q. (BY MR. HARDIN) Would you answer yes or no?

MR. OSSO: Judge, I reurge the objection that it is hearsay. Anything –

PRESIDING OFFICER: He can answer yes or no.

MR. OSSO: Yes, Judge.

A. I did learn whether or not this gentleman knew anything about the file.

Q. (BY MR. HARDIN) All right. So as a result of what you – what you learned from that conversation, did you go then back to the attorney general, or – or contact him one way or the other?

A. I returned to the attorney general to seek additional assistance because I still had no assistance.

Q. All right. And did you – what did you tell the attorney general and what did he say to you?

A. Well, I went back to the attorney general, and we still did not have an authorized requestor in the code.

Q. Did you tell him that this guy didn't know anything about it?

MR. OSSO: Objection, Your Honor, to hearsay.

MR. HARDIN: No, excuse me.

MR. OSSO: His question –

MR. HARDIN: Let the –



MR. OSSO: The form of this question –

(Simultaneous crosstalk)

PRESIDING OFFICER: Stop arguing with each other.

MR. HARDIN: Let –

PRESIDING OFFICER: Finish your objection. Your objection is?

MR. OSSO: The form of Mr. Hardin's question is hearsay. He is insinuating and stating hearsay in his question.

MR. HARDIN: The difference is he's in the presence of the attorney general. And we're about to have, by acquiescence, by silence in this, and it is not being offered for the truth of the matter. It's being offered the fact that he told the attorney general, which then has – then influences the attorney general's conduct following.

MR. OSSO: Judge, he's backdooring hearsay through a witness that he – the witness hasn't even stated his name.

PRESIDING OFFICER: Sustained.

Continue.

MR. HARDIN: It – may I be heard briefly? Just – I just want to point out one thing. I'm not arguing with you at all.

It's important to understand that when we're talking about hearsay, this man is the witness. Hearsay is designed to prevent people from coming into court and repeating something that can't be cross-examined. This man can be cross-examined about the conversations that he had previously. But more importantly, he's there having a conversation with the attorney general.

The attorney general is the one who has sent him on the mission. And the attorney general, by acquiescence, is acceding to the comment. And when you put all that together, I'd respectfully ask the Court to reconsider.

MR. OSSO: And, Your Honor, we're talking about a conversation with an unnamed witness on an unknown number on a sheet of paper we don't have. This is hearsay.

PRESIDING OFFICER: Try rephrasing the question one more time. Would you rephrase the question one more time?

MR. HARDIN: Thank you. Thank you, Judge.

Q. (BY MR. HARDIN) When you – when you talked to the attorney general, what did you tell him about your conversation and what was his response?

MR. OSSO: Objection. Hearsay, Judge.

PRESIDING OFFICER: Overruled. Continue. Answer the question.

MR. HARDIN: Thank you.

A. I shared with the attorney general that the random number he had provided me and the gentleman had yielded no helpful information to me whatsoever.

Q. (BY MR. HARDIN) Did he know anything about what you were calling about?

A. The attorney general?

Q. No. The man you called.

A. No.

Q. All right. And so when you told the attorney general that, what was his reaction?

A. He shrugged it off and said let's proceed anyways.

Q. All right. So you went and searched then for a requestor, did you?

A. I – I enlisted the assistance of Ryan Fisher.

Q. All right. So now what would you need to be able to render this opinion that the attorney general had requested?

A. Well, if we were going to issue an opinion to an individual, we needed someone who was authorized to make a request to our office.

Q. All right. And were you ultimately informed that Mr. Fisher had – without going into what he said one way – located a requestor?

A. Yes.

Q. And who was the requestor?

A. Senator Bryan Hughes.

Q. All right. Now, I want to be very clear. Do you have any evidence from any source or any reason to believe that at the time that Senator Hughes was asked to be the requestor that he had any idea that that would benefit any particular individual at all?

A. No.

Q. All right. And we're now three years later. Would it be your opinion that Senator Hughes had no idea that the request he's making might be used in a way that wasn't –

MR. OSSO: Objection to leading. And improper opinion.

MR. HARDIN: Excuse me. You have to let me finish the sentence.

MR. OSSO: It calls –

MR. HARDIN: Excuse me, sir. I want it in the record I finish the sentence, he can object, and the Court can rule.

PRESIDING OFFICER: Finish the sentence. Finish the sentence.

MR. HARDIN: Thank you very much.

Q. (BY MR. HARDIN) Either then or since, do you have any belief that yourself, you yourself, that Senator Hughes had any idea that by being asked to be a requestor for an opinion, that opinion was going to be used to either help or hurt anybody else?

A. No, no basis for that.

Q. All right. And, of course, was Nate – was Nate Paul's name ever mentioned in this at all?

A. The attorney general studiously avoided using the name Nate Paul.

MR. OSSO: Objection. Improper opinion. Speculation.

Q. (BY MR. HARDIN) All right. And then –

MR. OSSO: I would ask that the answer – I'd ask – I'd ask that the objection be ruled on, Judge, and to strike this witness's testimony based on the ruling.

MR. HARDIN: Well, I –

PRESIDING OFFICER: Overruled.

Q. (BY MR. HARDIN) All right. Now, when you then – what was – what was the mission you were then going to have to do after you got the request from Senator Hughes, and was the request done by text or what? Or did you have any contact with him, or – or just with Mr. Fisher?

A. I did not personally have any contact with the senator, no.

Q. All right. And so then what was your mission? What was your obligation to do?

A. My assignment was to prepare the opinion with the assistance of deputy for legal counsel Ryan Vassar.

Q. How were you going to do that? What were you going to do?

A. I assigned the research to Ryan Vassar. He began the process of researching on Friday. And the plan was for him to send me some – a draft the next day.

Q. All right.

A. On Saturday.

Q. And when he did, what time of day – well, when did y'all start conversing? Did you have conversations with him on Friday night?

A. I did speak with him on Friday, yes.

Q. Who was doing the drafting Friday night?

A. Ryan Vassar.

Q. And what were y'all doing about drafts?

A. Ryan Vassar was preparing the initial draft, and then he would share it with me by e-mail.

Q. Now, was the attorney general involved in this process at all?

A. Initially, no. But subsequently, yes.

Q. When did he become involved?

A. Saturday.

Q. And what happened Saturday that ended up having to – getting the attorney general involved?

A. After we completed what we believed was a satisfactory draft, we provided it to the attorney general by e-mail.

Q. And when you did so, would you estimate what time of day it was?

A. It was late morning, if I recall correctly.

Q. And what conclusion did you and Mr. Vassar reach as to what the answer should be?

A. Generally speaking, no, that – that the governor's orders would not prevent foreclosure sales from going forward.

Q. And that – and I'm not sure we made clear just exactly what the mission was. What – what issue were you researching and going to issue an opinion on?

A. Whether or not the governor's COVID orders would preclude foreclosure sales from taking place.

Q. And would it – was there a limit? Was it a location?

A. My recollection – and, again, it's been a while – is that these foreclosure sales generally happened in person on a certain day of the month. And there was a question as to whether or not guidelines governing the number of persons who could gather in one place would prohibit or restrict a foreclosure sale from going forward.

Q. And the issue of the numbers of people as to whether they could gather here was what? Do you remember the numbers?

A. Oh, the governor's orders?

Q. Yes.

A. There were – there were county, city orders, the governor's orders. I – the number 10 sticks in my mind, but that was my recollection.

Q. And were – and were these – were these foreclosure events to occur outside?

A. Yes.

Q. What had been, as of the July 31st, August 1st time frame, the attorney general's office's position, and the attorney general's position himself, as to whether events like this should be open?

A. Ideologically we were vastly in favor of openness. We were looking for every opportunity to signal to the public that Texas should be open for business.

Q. So if one were to close those foreclosure events, would that have been consistent or inconsistent with the position that the attorney general's office and the attorney general himself had been taking in the months before July 31st and August 1st?

MR. OSSO: Objection. Improper opinion.

MR. HARDIN: Excuse me. He's entitled to express whether –

PRESIDING OFFICER: Overruled. Overruled.

MR. HARDIN: Thank you, Judge. Thank you.

A. It would have been contrary.

Q. (BY MR. HARDIN) All right. Now, the opinion that – that you reached, what did you inform – did you – who called the attorney general, or whatever communication you used, to let him know what your position was?

A. I e-mailed him the draft that Mr. Vassar had prepared and that I had reviewed.

Q. And at that time, who signed the draft, or was it signed at all? Was it still a draft?

A. Still a draft. Although I – if my recollection serves me right, it was set up for Mr. Vassar's signature.

Q. All right. And so – and your conclusion was that you notified him, other than that draft, was what?

A. Generally speaking foreclosures could go forward.

Q. All right. And then what response did you get from the attorney general?

A. At some point that afternoon he informed me that that was not –

Q. What time – what time of day and how?

A. Mid-afternoon is my best recollection.

Q. What did he tell you?

A. That was not the answer that he wanted or that he was looking for.

Q. So what did he instruct you to do?

A. The opposite. Do the opposite.

Q. Do you recall what he said?

A. It was effectively this is not going to work. We need to do something very different. We need to write this a different way so that foreclosure sales don't go forward. And, of course, he repeated his mantra about helping homeowners in Texas. And, of course, at that point I understood sort of what his argument – I mean, I could – I could understand why he was arguing that, but he did say let's reverse it and go this direction.

Q. Let's reverse what?

A. The opinion that we had reached.

Q. And so what did you and Mr. Vassar do?

A. We wrote it the way that the attorney general had asked. I – I specifically asked Mr. Vassar if it was an 80/20 or 90/10 proposition, if it could pass the laugh test. And he thought he could write it in a way that it could pass the laugh test.

Q. And when you – did – had you begun to wonder why he was so involved in this?

A. It was very uncharacteristic for the attorney general.

Q. Pardon me?

A. It was exceptionally uncharacteristic for the attorney general to be involved in an opinion like this.

Q. Now – so what did you guys do to go draft the opposite opinions, or did you just deliver it?

A. I assigned it to Mr. Vassar and he got to work.

Q. And how did y'all get to work? What – what were the next seven or eight hours like?

A. He prepared the draft. He sent me the draft. We edited it. I provided it to the attorney general that evening. He had some additional comments and requests for changes to the opinion. We worked past midnight.

Q. How many times did you talk to the attorney general?

A. Several.

Q. Did the attorney general initiate calls with you during this period of time?

A. Yes.

Q. And if you had to estimate, how many times did the attorney general reach out to you about the language of your opinion and what he wanted in it that night?

A. Multiple times. It was at least three or four, probably more.

Q. Would the phone records going back and forth from your numbers be the best judgment? If the – if the phone records show calls that particular night –

MR. OSSO: Objection to leading and attorney testifying about facts not in evidence.

MR. HARDIN: Excuse me. I still get to finish the question.

MR. OSSO: I'm objecting to the line of questioning.

PRESIDING OFFICER: Overruled.

Q. (BY MR. HARDIN) How many times did the attorney general call you with suggested language?

A. Several.

Q. And then when he did that, were you at any time going back and initiating calls to him?

A. Generally speaking, I was calling Mr. Vassar. And yes, I do believe I called the attorney general a few times, if I recall correctly.

Q. All right.

PRESIDING OFFICER: Counsel, we're going to – about – are you in a good position here? Say another five, 10 minutes, is that a good break point, or do you want–

MR. HARDIN: That would be – that would be fine. I won't – I'm not going to be able to finish, I'm afraid.

PRESIDING OFFICER: Right. I assume you would be back to it. So five or 10 minutes?

MR. HARDIN: Sure.

PRESIDING OFFICER: Is that?

MR. HARDIN: That's great. That's perfect. Thank you, sir.

Q. (BY MR. HARDIN) All right. Now, on this particular issue, what time in the morning did you guys complete the opinion giving the attorney general the result he wanted?

A. It was after midnight.

Q. Okay. And did you – by the time midnight came around, how would you describe the attorney general's conduct that night in terms of his involvement with you?

A. It was bizarre.

Q. And why was it bizarre?

A. He was acting like a man with a gun to his head.

Q. In what way? Anxious, desperate, urging me to get this out as quickly as humanly possible. I was very concerned –

MR. OSSO: Objection to speculation, Your Honor, speculating about what Mr. Paxton felt at the time.

MR. HARDIN: My question is directed toward his reaction and observation as to the way the attorney general was acting.

PRESIDING OFFICER: Overruled.  
Continue.

Q. (BY MR. HARDIN) Go ahead, sir.

A. All of those things. He was desperate to get it out quickly. 24

MR. OSSO: Objection to speculation, Judge. And improper opinion.

PRESIDING OFFICER: Overruled, Counselor.

Q. (BY MR. HARDIN) Did he have a deadline for you guys that he told you when he wanted to get it done by?

A. It had to be done that weekend.

Q. Pardon me?

A. It had to be done that weekend.

Q. Okay. You have to keep by the microphone – I'm sorry.

Now, when were – were you supposed to have it done – when – did he give you a day? Because I didn't quite understand your answer before. I apologize.

A. Yes. It had to be done that weekend.

Q. That weekend. Did he tell you why?

A. He continued to repeat his mantra that this was going to help homeowners.

Q. All right. And did he explain to you any homeowners were in crisis by Monday morning?

A. No.

Q. Did you yourself start connecting any dots as to what this might involve as a result of all of this?

A. I began to form an opinion, yes, about what was happening.

Q. And what was that?

A. He had asked us to completely rewrite the opinion, to change the conclusion. He had done so in a whirlwind of activity –

MR. OSSO: Objection to nonresponsive.

MR. HARDIN: I think it's very responsive.

PRESIDING OFFICER: Overruled.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) Go ahead.

A. Based on those observations, I was very – given the fact that there had been no profit from prior interactions with the phone number he gave me, I was very concerned that something unusual was going on.

MR. OSSO: Objection to speculation.

Q. (BY MR. HARDIN) Let me ask you this.

MR. HARDIN: I didn't hear the last answer.

MR. OSSO: I objected to speculation.

MR. HARDIN: Excuse me. May I?

PRESIDING OFFICER: Overruled.

MR. HARDIN: Thank you.

May I point out, she can't get both of us, and it's just a nightmare for the court reporter –

MR. OSSO: I'm objecting to sidebar, Judge.

MR. HARDIN: Excuse me, sir.

PRESIDING OFFICER: Excuse me. Both of you, you're correct. She can't record two people at one time so try not to talk over each other.

MR. OSSO: Yes, Your Honor.

PRESIDING OFFICER: Thank you, Counselor.

MR. HARDIN: Thank you.



Q. (BY MR. HARDIN) Now, after that, did you learn of any particular event that involved Nate Paul that would indicate a potential benefit from the ruling that you would ultimately issue?

MR. OSSO: Objection to leading and speculation.

MR. HARDIN: I asked what he learned. It's not speculation.

MR. OSSO: He insinuated.

PRESIDING OFFICER: I'll sustain that one. Rephrase.

MR. HARDIN: All right. Thank you, Judge.

Q. (BY MR. HARDIN) Did you yourself also find out anything about Nate Paul and a foreclosure event?

MR. OSSO: Objection to relevance.

MR. HARDIN: Oh, I think it's very relevant.

MR. OSSO: And speculation as well, Judge.

MR. HARDIN: It's very relevant and that's – that's – I'm sorry.

PRESIDING OFFICER: Rephrase one more time.

MR. HARDIN: Yes.

Q. (BY MR. HARDIN) Did you yourself ultimately discover a benefit to Nate Paul from what y'all had done?

A. Yes.

Q. And what was that?

MR. OSSO: Objection to lack of personal knowledge. This witness – he's not laid the foundation to show how Mr. Bangert would have this found out, Judge. So lack of personal knowledge.

MR. HARDIN: I – I don't know how – if he knows it and he learned it, he can then challenge how he learned it. He can challenge that. But whether or not he learned of a benefit to Nate Paul, I – I don't know what the objection to that is.

MR. OSSO: I'm – I'll be happy to take him on voir dire, Judge.

PRESIDING OFFICER: I'll sustain it.

Q. (BY MR. HARDIN) Now, in – ultimately, did you have any more – the opinion that you issued, you explained that it was contrary to the law as y'all researched and issued your first opinion, correct?

A. It was not the best interpretation of the law, by a long shot.

Q. Had – had the attorney general ever, ever inserted himself in a particular opinion during the time you were there?

MR. OSSO: Objection to speculation.

MR. HARDIN: I asked whether he knows of any time ever the attorney general had ever interfered with an opinion like this.

PRESIDING OFFICER: Overruled.

MR. HARDIN: Thank you.

PRESIDING OFFICER: Answer the question.

A. I oversaw the opinion committee for over –

Q. (BY MR. HARDIN) Pardon?

A. I oversaw the opinion committee for over a year. And in my time overseeing the opinion committee, he never interjected himself in that way.

Q. During that year you were there, had he ever interfered with the conclusions that the opinion committee or anybody working in that committee had issued?

A. On occasion he would have suggestions, but the degree of interference here was completely unprecedented.

Q. Had you ever had him participate in the actual drafting of an opinion?

A. No.

Q. In this particular time that you were talking to him, and were there any – when – on that Saturday, how many times would you estimate that he would call and ask you how much longer?

A. Toward the end, it was repeatedly. He would text me. If I recall correctly, he also called. But it was a constant stream of communications.

Q. And did you ever see – did he ever send back to you some suggested change in language?

A. They were by phone call.

Q. All right. Did he ever call and discuss any change of language?

A. Yes.

Q. Had you ever experienced anything like that with the attorney general?

A. I had not.

Q. The final particular opinion, who initially assigned – signed it? At first which one of the two of you signed it?

A. It was set up for Ryan Vassar's signature initially.

Q. Did the draft have that for him to sign initially?

A. Yes.

Q. Did you change that?

A. I did.

Q. And what – how did you change it and for what reason?

A. I changed it to go out under my signature.

Q. And why?

A. At the end of the process, I had become very alarmed by the attorney general's behavior. I had promoted Ryan Vassar into that position myself and I felt a degree of responsibility to him. He was still building his career. And my sense was if something broke bad with this, I did not want it to tarnish his career.

MR. HARDIN: I think that's a good place to stop, Your Honor.

PRESIDING OFFICER: Thank you, Mr. Hardin.

We will adjourn until 9:00 a.m. tomorrow morning. Thank you.

(Proceedings adjourned at 6:19 p.m.)

