

RECORD OF PROCEEDINGS

of the

HIGH COURT OF IMPEACHMENT

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

THE SENATE OF THE STATE OF TEXAS

SITTING AS A HIGH COURT OF IMPEACHMENT

FOURTH DAY
(Friday, September 8, 2023)

APPEARANCES

Mr. Rusty Hardin, Mr. Dick DeGuerin, Ms. Harriet O'Neill, Ms. Lara Hudgins Hollingsworth, Ms. Jennifer Brevorka, Ms. Megan Moore, Mr. Daniel Dutko, Ms. Leah M. Graham, Mr. Armstead Lewis, Ms. Aisha Dennis, Mr. Mark White III, Ms. Erin M. Epley, Mr. Mark E. Donnelly, Ms. Terese Buess, Ms. Donna Cameron, Mr. Brian Benken, Ms. Lisa Bowlin Hobbs, Ms. Stella Jares, Mr. Dan McNulty, Mr. Jim Yarbrough, on behalf of the House Board of Managers.

Mr. Tony Buzbee, Mr. Anthony Dolcefino, Mr. Colby Holler, 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, Mr. J. Mitchell Little, 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: Bailiff will bring in the jury.

(Senate members enter the Senate chamber)

PRESIDING OFFICER: Mr. Little, if you want to stand over there until we do the prayer.

Good morning, members of the jury. As always, we'll open with a prayer.
Senator Sparks?

SENATOR SPARKS: Please pray with me. Almighty God, we pray Psalms 139 this morning. Search me, oh, God, and know my heart; test me and know my anxious thoughts. See if there is any offensive way in me and lead me in the way everlasting.

Please give us wisdom and discernment beyond our own abilities. Give us the courage to stand when we must and kneel when we should. May all of our thoughts and actions today and every day bring glory and honor to our Savior Jesus Christ in whose name we pray. Amen

PRESIDING OFFICER: Amen.

Thank you, Senator Sparks.

You may be seated, everyone. Welcome to those here in the gallery.

Bailiff, would you bring in the witness.

The witness may come forward.

Mr. Vassar, you are still under oath.

THE WITNESS: Yes, sir.

PRESIDING OFFICER: Please be seated.

Mr. Little, you may begin.

MR. LITTLE: May it please the court. Thank you, Mr. President.

RYAN VASSAR,

having been previously duly sworn, testified as follows:

CROSS-EXAMINATION (CONTINUED)

BY MR. LITTLE:

Q. Mr. Vassar, when we were visiting yesterday, I believe it was somewhat of an emotional day.

PRESIDING OFFICER: Can you speak up a little bit?

MR. LITTLE: I'm sorry. Thank you.

Q. (BY MR. LITTLE) It was somewhat of an emotional day yesterday. You were talking about being called a rogue employee and the effect that that had on you. Do you remember?

A. Yes, sir.

Q. And that – I mean, being called a rogue employee by someone you worked with was painful, yes?

A. Yes, sir.

Q. Okay.

MR. LITTLE: Your Honor, may I approach the witness?

PRESIDING OFFICER: Yes, you may.

Q. (BY MR. LITTLE) I'm going to show you –

PRESIDING OFFICER: Don't talk to him on the way up, though.

MR. LITTLE: Of course.

Q. (BY MR. LITTLE) I'm going to show you what's already been marked and admitted as Exhibit AG 170.

MR. LITTLE: And, Mr. Arroyo, if you could bring up Exhibit AG 170 to page Brickman 190, please.

Q. (BY MR. LITTLE) Mr. Vassar, are you at page Brickman 190?

A. Yes, I am.

Q. Mr. Arroyo was getting there so the jury can follow along with us.

While this document is moving, Mr. Vassar, I understand you were served with a series of subpoenas by the House Board of Managers and by the Senate and by the Attorney General Ken Paxton in connection with this impeachment, true?

A. Yes.

Q. And in the course of responding to that impeachment, you performed a diligent search for all the materials, of course, that were responsive to the subpoena, true?

A. Yes, sir.

Q. And you didn't produce this text thread that we are looking at here at page Brickman 190, true?

A. I didn't have it. That's – that's correct. It was not produced.

Q. And you did not have it, sir, because you deleted it, correct?

A. No, that's not correct.

Q. Why did you not have it?

A. My phone – my personal phone, through which these messages were sent, had a retention policy of 30 days to align with the Office of the Attorney General's retention policy. And so those records were automatically expunged under that retention policy.

Q. And tell the ladies and gentlemen of the jury whether you signed what is called a litigation hold in connection with the Nate Paul investigation at the Office of the Attorney General on October 15th of 2020.

A. Yes.

Q. But you did not hold this text thread that related to that investigation, true?

A. It did not occur to me to change the setting on my personal device. But I delivered my agency phone and laptop to Brent Webster before I was placed on investigative leave. So I presumed that any information on those devices were maintained.

Q. So this text thread – your testimony here today is this was on your work phone, true?

A. No, sir. This was on my personal phone. And I didn't consider changing the settings on my phone – my personal phone, which were matching the OAG's retention policy on the work devices.

Q. And you would agree with me, of course, that these documents would be responsive to the litigation hold?

A. I would have to look at the litigation hold to recall what it said exactly. I remember signing it on October 15th, but I don't remember the exact categories or nature of the documents that it had mentioned.

Q. Well, it was anything related to Nate Paul, true?

A. Like I said, I – I'm happy to take a look at the document. I don't recall offhand if it was anything related to Nate Paul.

Q. That's fine. Let's take a look at this text thread. It begins on October 20, correct?

A. That's right.

Q. Yes. And yesterday I believe you said that after you left the Attorney General's Office, you had trouble finding work for six months; is that right?

A. Yes, sir.

Q. Do you know who Amanda Crawford is?

A. Yes.

Q. Who is Amanda Crawford?

A. She is the current director of the Department of Information Resources.

Q. And upon your leaving the Attorney General's Office, Amanda Crawford offered you the position of general counsel at the Texas Department of Information Resources, true?

A. I don't believe she offered me the job. I think she mentioned that there was a posting for the position.

Q. And why did she mention it to you? So that you could apply?

A. I – I presume so. You would have to ask her why she mentioned it to me.

Q. But you did – well, isn't it true that she mentioned it to you because she wanted you to apply and thought that you would get it?

A. I believe that could be a reasonable conclusion.

Q. But you did not apply, correct?

A. I don't recall if I did or not. I – I don't believe I did.

Q. You did not want that job, did you?

A. I – I don't remember at the time what my thinking was about whether I wanted the job or not.

Q. And isn't it true that Lacey Mase also offered you a job to come with her to the State of Tennessee and work for the Attorney General's Office?

A. I don't recall that – of any official job or anything like that.

Q. You don't recall any discussions with her about it?

A. No, sir.

Q. All right. Let's take a look at this text thread here at Exhibit AG 170. It begins with a couple of – and you have to understand, these documents were produced by Blake Brickman, and it begins – and so everything in blue is Blake Brickman. Do you understand that on an iPhone?

A. Yes, sir.

Q. He's the producer, and so his phone shows up blue, yes?

A. Yes.

Q. There are a couple of news articles at the top. There's a quote from one of the news articles, the third text. David Maxwell below that says, "How true." And you – you liked the statement from the news article about the whistleblowers in the Houston Chronicle, correct?

A. Yes, sir.

Q. And moving down through it, Blake Brickman posts another article from the Texas Tribune, and Lacey Mase says, "Cute picture, Blake." And you post, it looks like, a Batman meme; is that right?

A. That's right.

Q. This is a very somber time, yes?

A. That was a lighthearted effort to resemble the picture of Mr. Brickman.

Q. Oh, that he looks like Batman?

Okay. Mr. – I guess we'll see.

Mr. Vassar, after that Mr. Brickman says, "From 2014, pre-lasik." Lacey Mase laughs. Ryan Bangert says, "handsome man," and you post a link to Twitter and a tweet that was posted by Scott Braddock, true?

A. Yes.

Q. All right. We're going to jump ahead a little bit. I want you to –

MR. LITTLE: Mr. Arroyo, could you move us to page Brickman 198.

Q. (BY MR. LITTLE) And if you could join me there, Mr. Vassar.

All right. And do you see that you made a text at 6:59 p.m. that evening?

A. Oh, I see the one –

Q. It's Amplify Credit Union?

A. Oh, yes. Yes.

MR. LITTLE: Okay. Mr. Arroyo, could you highlight that text for me or bring it up in zoom?

Q. (BY MR. LITTLE) It reads, "Amplify Credit Union, which held notes on three Paul-controlled properties and had planned to put them up for auction on Tuesday, August 4, halted its proceedings because of Paxton's opinion, Amplify CEO Kendall Garrison told the Statesman. The opinion was provided to us by an attorney for World Class that Monday, Garrison said."

You – you posted that, correct?

A. Yes, sir.

Q. But you didn't know if it was true or not, did you?

A. No. I quoted it. That's a quote from the article that was circulating in the text.

Q. Yes, I understand. But you didn't know whether that was true, correct?

A. No.

Q. Okay.

A. Not at the time.

Q. I'm going to show you a document here.

Do you have any experience with bankruptcy law at all?

A. No, sir.

Q. Do you know what the automatic stay is?

A. No, sir.

Q. Throughout your practice, you've not encountered it in the least, no?

A. I've heard of an automatic stay, but I couldn't explain the consequences of it for you.

Q. You don't know what it means?

A. I – I understand it to mean that if a petition for bankruptcy is filed, it creates an automatic stay of any proceedings potentially relating to a debt or a claim. Is that a sufficient description?

Q. That's actually really good. It would also stop a foreclosure, right?

A. Again, I – I'm not sure. I'm not a bankruptcy lawyer, so I wouldn't be able to say if it would stop it.

Q. Do you know what times of day on the first Tuesday of the month foreclosures are required to occur under the Property Code?

A. Noon sounds right, but I don't know for sure.

MR. LITTLE: Your Honor, may I approach the witness?

PRESIDING OFFICER: Yes.

Q. (BY MR. LITTLE) I'm going to show you what's been marked as Exhibit AG 292.

Mr. Vassar, have you ever seen Exhibit AG 292 before?

A. No, sir.

Q. Can you tell at the top what time this document was filed?

A. It says it was filed August 4th, 2020, entered the same date at 10:48. I assume that's a.m. time. It doesn't have an indication.

Q. Yeah. If I told you that August 4th, 2020, was the first Tuesday of the month, would you believe me?

A. That sounds right.

Q. Let's go back to Exhibit AG 170, which is this text thread here, if you would. Let's continue on.

Blake Brickman responds to you –

MR. LITTLE: Mr. Arroyo, can you bring that back up for me? We're at page Brickman 198 for the ladies and gentlemen of the jury.

And if you look – Mr. Arroyo, if you can zoom in on the blue text at the very bottom.

Q. (BY MR. LITTLE) Blake Brickman responds, "Obviously, just a coincidence, right? LOL. And then he had the audacity to thank the office publicly at deputies meeting later that week for stopping foreclosure on individual homes. The man is a pathological liar."

Do you see that?

A. Yes, sir, I see that.

Q. Next page.

Mr. McCarty responds, "All about the people." And David Maxwell responds, "All about himself." Then there are a series of additional articles that are being posted to this group chat.

Why are you on a group chat in October of 2020 anyway?

A. We were all friends. We were all colleagues. We all enjoyed working together, so this was just a group thread where we talked.

MR. LITTLE: If you would, Mr. Arroyo, would you bring it forward to page Brickman 200.

Q. (BY MR. LITTLE) In the middle of the page –

PRESIDING OFFICER: Counselor, hold on one second. You're a little ahead of the –

MR. LITTLE: Oh, I am. Sorry.

PRESIDING OFFICER: It's up now. I want to be sure it's up for the jurors to read when you're quoting it.

MR. LITTLE: Thank you, Mr. President.

Mr. Arroyo, if you could zoom in on Ryan Vassar's text at the middle of that page.

Yes. Mr. Vassar, thank you. Not quite so close, Erick. If you would, just capture those two texts from Ryan Vassar in the middle of the page. The one above that, too.

Thank you, Mr. Arroyo.

Q. (BY MR. LITTLE) Now, Mr. Vassar, you linked to a tweet from Lauren McGaughy on, it looks like, October 25; is that right?

A. I don't – yes. It's a link to a tweet. I don't see anything about an October date, but – oh, you're talking about the date that it was sent.

Q. Yeah. It may be October 26th because –

A. Yeah.

Q. We're on that same thread.

A. Yeah. If it's – if it's chronologically just with the pages, the page before, Brickman 199, ends on 10-26. So it could have been 10-26 earlier in the day.

Q. And you write "#sole survivor." What does that mean?

A. I'm not sure if it was referring to the tweet that I was referencing. It – it could have been an indication that I was the last remaining whistleblower who was still employed by the office.

Q. I see. And if we can continue on in that thread.

MR. LITTLE: Mr. Arroyo, zoom in on the next three texts in that thread, please. Mr. Arroyo, just right under the date stamp, if you would, please. Good man. Thank you.

Q. (BY MR. LITTLE) All right. On October 26th at about 5:55 p.m. Ryan Bangert writes, "Yep," and Ryan Bangert writes, "BW." That's Brent Webster, right?

A. Yes, sir.

Q. "BW just dropped by my" – and just to be clear for the ladies and gentlemen of the jury, hopefully everyone knows, but Brent Webster is the then current First Assistant Attorney General, true?

A. Yes, sir.

Q. It says, "Brent Webster just dropped by my office to inform me of an org chart change. I will no longer be overseeing special litigation because he will now report directly to him." And you respond, "What a joke." Right?

A. Yes, sir.

Q. And David Maxwell responds, "That's a train wreck waiting to happen." Ryan Bangert says, "Let him have it." And Blake Brickman writes, "He is a joke." Yes?

A. Yes, sir.

Q. Let's continue to the next page.

MR. LITTLE: If you can give me, Mr. Arroyo, maybe the top – the gray text at the top, we'll go piece by piece. No. Maybe the first six gray texts so we can just all see them together, if you could. Thank you.

Q. (BY MR. LITTLE) Ryan Bangert says, "It will run itself. My fear is that he will force them to do crazy" – expletive.

Is that typically how Ryan Bangert would talk?

A. No, sir.

Q. Lacey Mase says, "I find that absolutely hilarious." And Darren McCarty says, "Perfect. I've been trying to figure out how to get Patrick and Disher to join my new law firm."

Is Darren McCarty one of the so-called whistleblowers?

A. Yes, sir.

Q. Has he filed a lawsuit with you?

A. No, sir.

Q. Has he just got out of the OAG's office and hung out a shingle, it sounds like, right?

A. That's my understanding.

Q. Okay. And Ryan Bangert says, "Maybe Aaron can help. I'm sure Patrick and Dish will loved being managed by a failed prosecutor and a third-year lawyer."

That's what Ryan Bangert wrote about his coworkers, yes?

A. I'm sorry, say that again. Ryan Bangert?

Q. That's what Ryan Bangert wrote about his coworkers, yes? His colleagues, yes?

A. Yes.

Q. Then there's a like from Ryan Bangert, and you write, "Patrick and Dish will need to start using smaller words in their pleadings."

That's what you wrote, right?

A. Yes, sir.

Q. You're insulting your colleagues on this familiar group chat, yes? Among friends, yes?

A. It was a very –

MR. LITTLE: Object, nonresponsive.

PRESIDING OFFICER: The witness shall answer yes or no.

Q. (BY MR. LITTLE) You are – I'm sorry, I'll ask it again. You are insulting your colleagues on this group chat among friends, true?

A. I wouldn't describe it as insulting.

PRESIDING OFFICER: The witness will answer "yes" or "no."

A. The way that you phrased it, no, sir.

Q. (BY MR. LITTLE) What did you mean? Well, first of all, just tell the ladies and gentlemen of the jury, who are Patrick and Dish?

A. Patrick Sweeten was in the special litigation division, and Todd Disher was also in the special litigation division.

Q. And so I want to make sure the jury understands the implication of what you're saying. The implication is that Patrick and – is it Todd?

A. Yes, sir.

Q. Patrick and Todd are going to need to use smaller words because their new colleagues at the Attorney General's Office wouldn't understand it if they used big words, right?

A. That's the implication.

Q. That is, as they say, the joke, right?

A. Yes, sir.

Q. You were being funny, right?

A. Yes, sir.

MR. LITTLE: If we could move down to the remainder of the page, Mr. Arroyo.

Q. (BY MR. LITTLE) Blake Brickman says, "The agency is going to fall apart and that is one person's fault and one person only, KP." Right?

A. Yes, I see that.

Q. In point of fact, the agency did not fall apart, did it?

A. I haven't followed it. I – I wouldn't know.

Q. Lacey Mase laughs and says – or she laughs at your joke and she says, "I would love to be a fly on the wall during the special lit meetings. Can you even imagine?" Four laughing emojis, right?

A. Yes, sir.

Q. And you deleted all of these texts, I guess, by just a policy on your personal phone, true?

A. The way that you phrased it, no, sir, I did not delete them.

Q. Well, you had a – you had a setting on your phone that deleted them, yes?

A. That's right.

Q. You didn't think they might be necessary or needed later, right?

A. That's not true.

Q. You post a link to Amazon below that. And what is that link to?

A. The title is A Coloring Book, it looks like.

Q. And the text below that says, from you, "They might need some activities to keep the kids entertained." Right?

A. Yes, sir.

Q. You are suggesting, are you not, Mr. Vassar, that your colleagues, professional lawyers at the Office of Attorney General, might need – might need a coloring book to stay entertained? That's what you're suggesting?

A. I wouldn't describe them as colleagues. I had no professional experience with them other than just the knowledge that they were new lawyers.

Q. You didn't have any experience with the people that you are saying that might need coloring books to keep themselves entertained at the Office of Attorney General; is that true?

A. That's correct. It was a joke.

Q. It was a joke. I believe earlier your testimony was that being called a rogue employee was very upsetting to you, right?

A. Yes, sir.

Q. But this is how you talk about your coworkers, true?

A. Again, it was lighthearted. It was among friends. It was not made public to millions of people.

Q. No one was ever supposed to see it and certainly not the people of Texas who are watching this impeachment proceeding, right? No one was ever supposed to see this.

A. No one was hiding it.

Q. It was private.

A. I'm sorry?

Q. It was private, right?

A. Well, it was – it was a conversation among friends, but I wouldn't say that any of us are concerned that it's being discussed here today.

Q. Are you proud of this?

A. No, sir. That's not what I said.

Q. No. I'm asking you now, are you proud of this?

A. No, sir.

Q. Let's turn the page.

MR. LITTLE: If you could give me all the gray ones at the top, Mr. Arroyo, or just the first six texts so we can see it in context.

Q. (BY MR. LITTLE) Lacey Mase says, "Ha-ha-ha-ha," in response to your text, and David Maxwell posts a laughing emoji, right? This is – everybody is joking, having a good time on this text thread, right?

A. Sure.

Q. Nobody's appreciating the somber moment of being FBI whistleblowers, at least at this time on October 26th, right?

A. Well, we had all been through a lot by that point, and I suppose people process things in different ways.

Q. Gallows humor, perhaps, right?

A. Yes, sir.

Q. Okay. David Max- – David Maxwell says, "My phone conference with Margaret Moore and her team went well well today. They are excited about pursuing this investigation and will coordinate their efforts with the U.S. Attorney's Office so that both pursuits complement each other."

Who is Margaret Moore?

A. She was the previous Travis County District Attorney.

Q. So David Maxwell is calling the Travis County District Attorney at the time and the U.S. Attorney's Office and everybody is getting fired up. They're getting excited about prosecuting Ken Paxton, right?

A. That appears to be what he is saying.

Q. Next sentence says, "They obviously want to move quickly, as they have time constraints. They are not going to wait on the feds."

What does that mean?

A. You'd have to ask Director Maxwell. I'm not sure what that means.

Q. What do you think it means?

MR. HARDIN: Objection. Objection to him being asked to speculate what it means, Your Honor.

MR. LITTLE: Good objection. I'll –

MR. HARDIN: He doesn't know – he doesn't know –

PRESIDING OFFICER: Sustained.

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

Q. (BY MR. LITTLE) Now, if you'll look down in the rest of the thread, it says, "So you know" – this is Ryan Bangert. "So you know, I tendered my resignation today effective November 4th." Darren McCarty says, "Thanks for letting us know." David Maxwell says, "No, I didn't. Just got done at FBI. Went great. I'm staying until he fires me. Will keep y'all posted on progress." Right?

A. Yes, sir, I see that.

Q. At this time are you hoping to retain your job?

A. Yes, sir. I was still on investigative leave at the time.

Q. Yes. And you're hoping to retain your job?

A. Yes, sir.

Q. And ultimately you came back to the office and talked to Brent Webster, yes?

A. That's right.

Q. And you said to Brent Webster in that meeting that you still trusted the Attorney General, correct?

A. I – I believe so. I don't recall exactly what I said to Mr. Webster about trusting the Attorney General. I think what Mr. Webster asked –

PRESIDING OFFICER: Can you hold for a moment?

We'll stand at ease for 30 minutes.

MR. LITTLE: Yes, Your Honor.

(Recess from 9:28 to 10:10 a.m.)

AFTER RECESS

PRESIDING OFFICER: Mr. Little, if you want to be seated for just a moment, because he's – I know he's in the building.

Bailiff, will you bring in the witness, please.

Mr. Vassar, you're still under oath. Please be seated.

Mr. Little, you may continue.

MR. LITTLE: Thank you.

Q. (BY MR. LITTLE) Mr. Vassar, we're going to go back to Exhibit AG 170.

MR. LITTLE: Mr. Arroyo, if you could bring up page Brickman 201 again. We're going to go back one step.

And, Mr. Arroyo, if you could highlight or zoom in on the two texts at the bottom again.

Q. (BY MR. LITTLE) So, Mr. Vassar, my apologies. My colleague, Amy Hilton, informs me that I did not, in fact, get the joke.

The joke here is this is a coloring book. It says – and I encourage anyone to look it up. It's the "Going Rouge: Sarah Palin Rogue Coloring & Activity Book," right?

A. That sounds right.

Q. Does that look like it?

A. I don't recall exactly. That could be accurate.

Q. And the joke is that Sarah Palin is so dumb that she can't spell "rogue," right?

A. That wasn't my understanding of the joke. I – I believe – my recollection is that when I found a coloring book about going rogue, that was why I sent it to this group chat. I don't recall any specific reference to Sarah Palin.

Q. That's the context of the joke, but the joke of the coloring book here is it's supposed to say "going rogue," and it says "going rouge" and it's Sarah Palin can't spell "rogue," LOL, right?

A. I – I can't really see your phone, but I'll take your point.

Q. Would you like me to approach so you can see it?

MR. LITTLE: May I, Your Honor?

A. That's up to the president.

I see it.

Q. (BY MR. LITTLE) That's the one, right?

A. I can't recall specifically if that is the one that's linked in this text message.

Q. But the context of the joke within the text chain is it's about you going rogue. And the reference is an oblique reference to Ken Paxton calling you rogue employees, right?

A. Yes, sir.

Q. And so the same information that got you very upset yesterday about being called a rogue employee, looks like three weeks or so after it happened, you're joking on a text chat with your friends about it and showing them the Going Rouge coloring book, right?

A. That's –

Q. Do I have it?

A. – what happened. Yes, sir.

Q. There's nothing less funny than someone who explains the joke, but I think I have it now, right?

A. I'm sorry. Say that again. There's –

Q. I think I have it now, right? That was the context of the joke. I explained it, true?

A. Yes. At the time circulating an Amazon link to a coloring book about going rogue was what had happened.

MR. LITTLE: All right. Mr. Arroyo, if you could advance to page Brickman 203. If you could start, Mr. Arroyo, with the blue text down and zoom in on that.

Q. (BY MR. LITTLE) The text from Blake Brickman says, "Being fired will make you a cool kid," right?

A. That's what he says.

Q. David Maxwell gives a thumbs up and sunglasses emoji, right?

A. Yes. I see that.

Q. Ryan Bangert responds, "Brent told me today that he was, quote, completing his investigation. He says" – "he said it's all based on the documents he reviewed. I told him the cold documents may tell one story, but ten months of loved experience tell the rest of the story." And then Ryan corrects his typo and says "lived." It says "lived experience that tells the story," right?

A. Yes. I see that.

Q. And Darren McCarty says, "Definitely not loved." Ryan Bangert said, "He also asked me how soon it was after RV received the signed Cammack contract that Jeff and I learned about it."

Do you see that?

A. Yes, sir.

Q. You are RV, right?

A. Yes.

Q. And what Brent Webster was trying to investigate at the time is what we discussed yesterday, right, Mr. Vassar? That apparently at some point you received the signed contract with Ken Paxton's signature on it with Brandon Cammack, right?

A. Yes, I did.

Q. And Brent Webster was trying to discover when Jeff Mateer and Ryan Bangert learned about that contract as part of his investigation, true?

A. That's my understanding. He didn't ask me when they learned about it, but he asked me when I received a copy of the contract.

Q. Okay. And Ryan Bangert responds, "He said that was one missing piece of his, quote, investigation, closed quote." Lacey Mase says, "He's the worst."

Let's turn the page, if you would.

And Brent Webster, he's the new guy at the office, right?

A. Yes, sir.

Q. He's been working there a little over three weeks maybe, or three weeks?

A. I think his first day was October 4th. And if these are on the 26th, then that would be accurate.

Q. Okay. Turn to the next page.

MR. LITTLE: If you could give me – just zoom in on the text, if you can, Mr. Arroyo. Just all of the texts together if you can. Give me the first one at the top too. Very kind.

Q. (BY MR. LITTLE) Ryan Bangert posts what looks like – I believe that is the "hmm" emoji. I don't know how else to refer to it. And then David Maxwell says, "I never created any documents. He wanted me to conduct an illegal investigation." Right?

A. That's right.

Q. Do you know what he meant?

A. No, sir.

Q. And you posted a meme. And why don't you tell the jury what your meme says.

A. It says, "Never interrupt your enemy when he is making a mistake."

Q. Who is your enemy?

A. I didn't have an enemy at the time. It was a meme just sent in the conversation.

Q. Sure. But there's a context, right?

A. Well, the context is Brent Webster was investigating us when it was General Paxton who was abusing the powers of the office to benefit Nate Paul.

Q. And so here the context is Brent Webster is the enemy, yes?

A. No, sir. It's Brent Webster is investigating the wrong person or the wrong people.

Q. Okay. Well, what's the mistake that's being made that's being referenced in your meme here?

A. Oh, that would be the fact that he is investigating us, not General Paxton.

Q. Brent Webster is making the mistake?

A. Yes, sir.

Q. And you don't want to interrupt Brent Webster, right?

A. That was – that was the joke. I was not in the office, so I couldn't have interrupted him if I wanted to.

Q. You hadn't been in the office in a very long time. You were working from home, right?

A. No, sir. I was placed on investigative leave during this period and surrendered my official agency phone and laptop and was not permitted to access the building or work.

Q. It seems to suggest – this meme seems to suggest to me in context that you think Brent Webster is the enemy who is making a mistake. Is that true or untrue?

A. I – I don't know what it seems to you, but I explained I didn't have an enemy at the time. I was not fighting Brent Webster.

Q. Okay. David Maxwell posts a thumbs up and a laughing emoji. Lacey Mase says, "So another candidate in Wilco came up" – Wilco is Williamson County, right?

A. Yes.

Q. And at this time Lacey Mase is running for office, true?

A. I believe so.

Q. What's she running for?

A. I don't recall.

Q. "So another candidate at Wilco came up to me yesterday and said, 'So I understand you're acquainted with Brent Webster. Let me tell you about Mr. Webster. He's lazy and he's a liar. I'm glad you don't have to work for him.' And then she walked away." And you said, "That's awesome." Right?

A. Yes, sir.

Q. Why was that awesome?

A. Because I had never heard anything about Brent Webster, and to have someone approach Lacey and give their personal experience of interacting with Brent Webster I thought was informative.

Q. Mr. Vassar, I'm going to show you another text thread that you didn't produce, okay, but you're part of.

MR. LITTLE: Your Honor, may I approach the witness?

PRESIDING OFFICER: Yes, you may.

MR. LITTLE: I'm marking this Exhibit 1006. Okay.

Q. (BY MR. LITTLE) Are you part of this text thread?

A. Yes, sir.

Q. Have you seen it before?

A. Yes. I have seen it before as a participant on the thread. I've not seen these documents or this exhibit before.

MR. LITTLE: Mr. President, we move for admission of AG Exhibit 1006.

PRESIDING OFFICER: Any objection?

MR. HARDIN: Excuse me. I have not seen it.

MR. LITTLE: And to be clear –

MR. HARDIN: I'm sorry. Can I just have just a moment?

I don't believe this is one previously that's been marked, so if I could have just a moment to look at it.

PRESIDING OFFICER: Yes, take a moment.

MR. HARDIN: Your Honor, may I inquire of counsel?

Is it a series of communications with the different deputy chiefs? It's just so long that I'm trying to save time if I could.

MR. LITTLE: Mr. Hardin, yes. This is a text thread that was produced by Mark Penley in response to your subpoena.

MR. HARDIN: I have no objection.

PRESIDING OFFICER: Admit Exhibit 1006 – is that the correct number, Mr. Little, 1006 –

MR. LITTLE: It is.

PRESIDING OFFICER: – into evidence.

(AG Exhibit No. 1006 was admitted)

MR. LITTLE: May I proceed?

PRESIDING OFFICER: Yes.

MR. LITTLE: Thank you.

Q. (BY MR. LITTLE) Mr. Vassar, take a look –

MR. LITTLE: And, Mr. Arroyo, would you please bring up Exhibit 1006 so the jury can see it with us. Go to the first page of that, if you would. There you go. All right. Thank you.

Q. (BY MR. LITTLE) Mr. Vassar, you post a picture into this text thread, right?

A. Yes, sir.

Q. And you're posting a picture of an email from Ken Paxton to a group chat, yes?

A. Yes, sir.

Q. And – and Ken Paxton is telling you, "I did sign the outside counsel contract with Cammack Law Firm PLLC." Yes?

A. That's right.

Q. And who is – if you can tell the ladies and gentlemen of the jury, who is on this text thread?

A. It's myself, David Maxwell, Ryan Bangert, Blake Brickman, and Lacey Mase, just going by their –

Q. And this is hard to tell with iPhones, but this document was produced by Mark Penley, so these are screenshots of Mark Penley's phone. Do you understand he's on the thread too?

A. Okay. I don't see him – I understand that now. He wasn't listed in the little bubbles at the top, but I understand.

Q. Well, my experience with this – obviously, I'm not testifying. But you know how on iPhones when you're on a group chat, it doesn't necessarily put you in the little circle –

A. Right.

Q. – if it's your phone, right?

A. Okay.

Q. So Mark is on this thread?

A. It appears so.

Q. Okay. So Lacey Mase's second text, "New group." Do you see that?

A. Yes, sir.

Q. And the date of this, just to be clear, it begins on October 2 of 2020, right, right after you went to the FBI?

A. That's right.

Q. All right. Let's see what you're talking about. Turn to the next page, if you would.

The next page is a picture from Ryan Vassar. It says, "Silence unknown callers." And he says y'all – and you say – I'm sorry, it's a text from you. You say – you show them a picture of the silence unknown callers feature on your phone and you say, "Y'all should probably should turn this feature on." Right?

A. That's right.

Q. And you're – and why do you say that?

A. To avoid receiving a phone call from a blocked number or an unknown number that was unanticipated or unexpected.

Q. And you're worried about media calls at this point, right?

A. It could have been any calls, any unknown or unidentified calls.

Q. And Ryan Bangert says, "How did I not know about that until now?" And Lacey Mase says, "Excellent."

The next –

MR. LITTLE: And let's turn the page, if you would, Mr. Arroyo, to page Penley 9.

Q. (BY MR. LITTLE) You say, "We should consider notifying other deps before Monday." Notifying them of what?

A. The fact that we had gone to report General Paxton to law enforcement about the facts that we had determined.

Q. That's not what you say.

A. To – to whom –

MR. HARDIN: Excuse me. I object to the sidebar and testifying, Your Honor. He can ask questions, but not – not state –

PRESIDING OFFICER: Sustained.

MR. HARDIN: – testimony. Thank you.

Q. (BY MR. LITTLE) Lacey Mase responds to you, "About the new FA." And she means first assistant, right?

A. Yes, I believe so.

Q. And then she says, "I don't feel like that's our announcement to make." And you say, "Resigning." Resigning?

A. Right.

Q. So what you said, "We should consider notifying other depts before Monday," it's about resigning, yes?

A. That was – that was an element of it. But most of it was about going to law enforcement to report General Paxton's activities that we had determined.

Q. That's not what you say in this text thread, is it?

A. No. What I – what I just explained is that is part of the conversation that we're having at the time.

Q. As of October 2, you were planning to resign as a group, yes?

A. No, sir. We were discussing what we should do.

Q. And you were saying we should consider notifying the other deputies before Monday about resigning, true?

A. That's – that's right. In addition to disclosing to them that we had gone to law enforcement to report General Paxton's activities.

Q. Ryan Bangert responds, "I don't think we tell them until we have a fully vetted plan of action."

Next page.

Blake Brickman says, "Has anybody updated Johnny?" Who is Johnny?

A. You'd have to ask Blake, but I interpreted that as Johnny Sutton.

Q. Is he representing all of you at this point?

A. Yes, sir.

Q. Who is paying for all of that, by the way?

A. Well, we are.

Q. You pay for it out of your savings?

A. I have not paid Mr. Sutton.

Q. Oh. Who has?

A. Nobody has. He's agreed to bill us at a future date.

Q. What future date?

A. You'd have to ask him.

Q. You're telling me that an attorney, a very experienced, prominent criminal defense attorney decided to do this for free for you for three years; is that right?

A. No, sir. It's not for free.

Q. What's the arrangement?

A. We will pay him for the services that he's rendered to us.

Q. Is he billing you hourly?

A. He's recording his hours is my understanding. I have not received a bill from him.

Q. And he hasn't been paid by any of you yet; is that right?

A. I have not paid him. I'm not aware of whether any other individuals have paid him.

Q. And so is the plan for you to achieve this settlement through the adoption of the Texas Legislature and then pay off your criminal attorney who is trying to help you not be labeled conspirators? Is that the plan?

A. No. That's never been discussed.

Q. When are you going to have the money?

A. Ideally, when I have enough money, I can pay him.

Q. But you've never been sent a bill. You don't even know what to pay him.

A. That's right.

Q. You – is everybody paying equally? Is it pro rata?

A. Again, I'm not sure what other people's arrangements have been, but I've not received a bill from Mr. Sutton and I have not paid him yet.

Q. How did you find this fellow, by the way?

A. Mr. Sutton?

Q. Yes.

A. His name had been discussed with Mr. Mateer, Mr. Bangert, and Mr. McCarty about the best person to call before we had met with law enforcement.

Q. Who suggested him first?

A. I don't recall exactly.

Q. Did you understand Mr. Sutton to be a former U.S. Attorney?

A. Yes, sir.

Q. In whose administration, if you would tell the ladies and gentlemen of the jury?

A. I believe it was George W. Bush's administration.

Q. Have you ever heard the expression, "There are no coincidences in Austin"?

A. I may have. I don't recall it right now.

Q. Next text you write – or in response to Blake Brickman you say, "Not me," meaning you haven't updated Johnny Sutton yet, right?

A. That's right.

Q. Ryan Bangert says, "Not with the latest. He is aware that Jeff resigned, but not the new FAAH or FAAG.

Is that supposed to be First Assistant Attorney General?

A. That's right.

Q. Okay. Next page, if you would.

You write, "To-do list. 1, update Johnny." That's Johnny Sutton, right?

A. That's right.

Q. And number 2 is, "Have someone call the new meat." Right?

A. That's right.

Q. Who's the new meat?

A. I have no idea. I don't recall who I was referring to at that time.

Q. You're talking about new employees at the Attorney General's Office, right?

A. I'm not sure.

Q. You can't –

A. I – I presume that would have been the people that I was referring to just based on being in the office and working in the office.

Q. Number 3 is "Discuss with Luis." Tell the ladies and gentlemen of this jury who Luis is.

A. At the time Mr. Luis Saenz was the Chief of Staff for Governor Abbott.

Q. What were you going to be discussing with Governor Abbott's Chief of Staff?

A. It was not my discussion. It was a to-do list that members of the group had contributed to. So I did not meet, I did not talk to, I did not confer with Mr. Saenz.

Q. Who did?

A. I'm not – I don't know. I believe Mr. Bangert and Mr. Mateer met with Luis, but I don't know where or when.

Q. Well, I want to be super clear about the time line, okay, without telling you anything that's been testified to in this trial.

Are you aware of any type of meeting between Mr. Mateer and Mr. Bangert and the Governor's Office on the day of the FBI report?

A. I can't say that I recall. I don't know when or where they may have met.

Q. But the discussion that's contemplated in your text message with Luis Saenz, it – that was poor syntax. Let me try again.

The discussion with Luis Saenz that's contemplated in your text message is not talking about that because this is on October 2. So this is talking about a new meeting with the Governor's Chief of Staff, right?

A. Again, I don't know for sure. I don't – I wasn't part of that meeting. I don't know when it happened or where it occurred. And I don't recall if this was referring to that specific meeting or a subsequent meeting.

Q. Number 4 on your to do list, "Coordinate group office cleanout," right?

A. Yes, sir.

Q. You are planning as a group to clean out your offices, yes?

A. Again, that was the conversation that we were having at the time.

Q. But at some point in time, I'm sure you retained an employment lawyer and someone advised you that you need to stick around and make them fire you, right?

A. I did hire an employment lawyer.

Q. And at some point in time after meeting the employment lawyer, you decided the best thing to do was stick around and make somebody fire you, yes?

A. I don't recall if that was the decision that was reached with my employment lawyer.

Q. Your plan on October 2 was to coordinate a group office cleanout, yes?

A. That was the conversation we were having, again, about options, discussing continuity of the office, and whether it was an option for us to resign.

Q. The next text is from – it appears to me to be Mark Penley because this is his text thread. It says, "Ryan B, did you find the sets of subpoenas in my office?" Do you see that?

A. I see that.

Q. These are the grand jury subpoenas, yes?

A. I would presume so. You would have to ask Mark which subpoenas he was referring to.

Q. Okay. Ryan Bangert responds, "I have not been down to grab them yet. I will" – "I likely will get them in the morning." Let's turn – and he says, "I know Johnny has" – and let's turn to the next page – "them so we can always get a copy from him worst comes to worst. I'm apparently not locked out yet." And then Ryan posts a tweet from Lauren McGaughy, right?

A. Yes. I see that.

Q. And who is Lauren McGaughy?

A. She's a reporter for *The Dallas Morning News*.

Q. Do you see her up here? Do you see her back there?

A. I don't know. I've never met her, so I'm not sure.

Q. You've never met her?

Well, she was on top of it this day. She's got a tweet here. It says, "I heard First Attorney" – "First Assistant Attorney General Jeff Mateer announced today he's leaving the agency to return to First Liberty." And then the next text from Ryan B is, "Lauren McGaughy knows."

She's a vigilant reporter, isn't she?

A. I'm not advised.

Q. That was not public at that point in time, right?

A. I'm not sure either. I am not sure of the time line between when this was sent or when – it looks like the tweet occurred on October 2nd at 7:15 p.m.

Q. All right. Let's turn the page, if you would.

You write, "What she needs now is a statement from First Liberty." Right?

A. That's right.

Q. What Lauren, *The Dallas Morning News* reporter, needs now is a statement from First Liberty is what you're saying, yes?

A. That's what I would have suggested, yes, sir.

Q. Yeah. And so correct me if I'm wrong, Mr. Vassar. It kind of looks like you're trying to shape the media narrative around what's going on. Is that true?

A. No, sir.

Q. But what you're saying here is we should give – we should try to give her a statement from First Liberty, right?

A. Absolutely not.

Q. That's not what you mean?

A. No, sir.

Q. What – what did you mean? Just tell the ladies and gentlemen of the jury.

A. That was my personal observation of another piece of information that she could obtain was a statement from First Liberty, which is where I understand Mr. Mateer was going to work.

Q. And Ryan Bangert responds, "Or Alejandro can just give our statement." Who is Alejandro?

A. He was the communications director at the office at the time.

Q. Okay. And you say, "Unless KP is holding it or Alejandro is keeping McGaughy on the blacklist." What's the blacklist?

A. It's my understanding at the office that there was a list of certain reporters that were handled differently than other reporters.

Q. Next text. "On second thought, let the media feeding frenzy start." Who said that?

A. That was Ryan Bangert.

Q. The same Ryan Bangert who's testified in this trial, that guy?

A. Yes, sir.

Q. So on October 2 he's saying let the media feeding frenzy start, true?

A. Yes. That's what this says.

Q. And this is – how many days is this after you went to the FBI with no evidence?

A. Well, to clarify, the absence of evidence that I was referring to is documents. What we went with is our –

MR. LITTLE: Nonresponsive. Object, nonresponsive, Your Honor.

PRESIDING OFFICER: Sustained. I'm sorry. I did not – I did not hear you.

Q. (BY MR. LITTLE) Why did Ryan Bangert want to start a media feeding frenzy on October 2?

A. You'd have to ask him that. I'm not sure.

Q. I would like for you –

MR. LITTLE: Mr. Arroyo, if you could go to page Penley 20. At the bottom of – it's hard to read Bates label at the bottom right. Right. Stop there. I want you to look at the – I want you to zoom in on the last two texts on this thread if you would.

Q. (BY MR. LITTLE) Lacey Mase says, "Stand down on that." We're not – I'm going to ignore that. It says, "Missy told me he was in JM's office," blank, and there's a redacted name. Blank "was actually in the office while he was there."

Mr. Penley redacted this name. Who is that?

A. I'm not sure. I don't recall who that would have been. That was a message from, looks like, Lacey.

MR. LITTLE: And if you could, Mr. Arroyo, advance to page Penley 25.

Q. (BY MR. LITTLE) And you say, "We need a statement," right?

A. That's right.

Q. And you wrote a long one. Look to the bottom of that page.

MR. LITTLE: Mr. Arroyo, next page.

Next page after that. Next page after that. Next page after that.

Q. (BY MR. LITTLE) You talk about not tiring in your pursuit for justice. Justice will be served. We refuse to resign and will not be intimidated. You say all that, right?

A. Among other things, yes, sir.

Q. But you wrote that, yes?

A. Yes, sir.

Q. Why did you want to do that? Why did you want to release a statement?

A. Because it was in response to the Attorney General's allegations that we had authorized the activities that he was directing and supervising throughout the year that related to Nate Paul.

Q. And no one on this thread agrees with you, right?

A. Well, the statement was not issued. I don't know that anyone disagreed with the content, but no one decided to issue it.

Q. Next page, if you would, please. Lacey Mase says, "It's likely that a very talented crisis COMS person is working very hard on our behalf."

PRESIDING OFFICER: Counselor, hold on. It's not on the screen yet.

MR. LITTLE: Oh, I'm sorry.

If you would – if you would, Mr. Arroyo, that middle text.

PRESIDING OFFICER: There it is.

Q. (BY MR. LITTLE) The middle text says, "It's likely that a very talented crisis COMS person is working very hard on our behalf as we speak." Right?

A. Yes. I see that.

Q. Who is that?

A. I have no idea. You'd have to ask Lacey.

Q. Were you paying for – were you paying for a crisis COMS person?

A. No, sir.

Q. Did you ever ask her who she was talking about?

MR. HARDIN: Pardon me, Your Honor. Can I ask the witness to speak a little closer to the microphone. Thank you.

PRESIDING OFFICER: Yes. Please do.

Q. (BY MR. LITTLE) Did you ever ask her who she was talking about?

A. No, sir.

Q. Okay. Next I want to move to the topic of what I'll call the mystery of the altered letterhead. Okay? I've got a new document for you. This is marked as Exhibit AG 1007.

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

PRESIDING OFFICER: Yes, you may.

Q. (BY MR. LITTLE) Please review this email thread, Mr. Vassar.

PRESIDING OFFICER: One moment.

Mr. Hardin, have you had an opportunity to look at it?

MR. HARDIN: I have no objection.

MR. LITTLE: We move for admission of AG 1007, Mr. President.

PRESIDING OFFICER: It is admitted into evidence.

(AG Exhibit No. 1007 was admitted)

Q. (BY MR. LITTLE) Mr. Vassar, review this thread, please.

A. I see it. It's an email that was printed by Brent Webster. It was sent from Lacey Mase to myself on October 1st, 2020.

MR. LITTLE: Mr. Arroyo, if you would, please. Exhibit AG 1007, zoom in on the text if you would, please.

Q. (BY MR. LITTLE) All right. I want to make sure we have this in perfect context. All right?

The earlier email in the thread is from a woman name Brittany Hornsey, yes?

A. Yes.

Q. And who is that, Mr. Vassar?

A. At the time she was executive assistant to Jeff Mateer.

Q. Jeff Mateer only? He's got his own assistant?

A. I believe she also supported Ryan Bangert, but I'm not sure exactly.

Q. Okay. And she writes an email on September 30th at 6:16 p.m., yes?

A. Yes.

Q. And to whom did she write it?

A. To Ms. Mase.

Q. And what is the subject?

A. It says "Letter."

Q. All right. Put this in proper time line for the jury. At 6:16 p.m. on September 30th of 2020, you have already made your report to the Federal Bureau of Investigation, yes?

A. Yes.

Q. And Brittany Hornsey is emailing something to Lacey Mase, yes?

A. That's – that's what this indicates, yes.

Q. And October 1, the next day – 30 days hath October. Yes, the next day, 12:09 p.m., Lacey Mase forwards that item to you, yes?

A. Yes.

Q. Let's show the ladies and gentlemen of the jury what that item is, Mr. Vassar. Next page.

A. Do you want me to identify it, or was there a question?

Q. What is it?

A. It says "A draft to." It's dated September 29th, 2020. It has the Attorney General's seal on the top of it. And it has no body, but it is a draft signature block of the executive deputies.

Q. What else do you notice about it?

A. There are some signatures and some that are not. There are – I think that's it.

Q. Anything else that you notice about it? Anything missing, perhaps?

A. Not offhand, no, sir.

Q. The Attorney General's name has been removed from the letterhead, hasn't it?

A. No, sir. As I explained yesterday, the agency has different letterhead. This is a different letterhead.

Q. Do you understand that Brittany Hornsey was interviewed by Brent Webster as part of this case?

A. I'm not advised, but –

Q. Have you heard that Brittany Hornsey was intentionally told by Lacey Mase –

A. I have not heard that.

Q. Stop. I didn't finish my question.

A. Sorry.

Q. Hold on a second. Have you heard that Brittany Hornsey was intentionally told by Lacey Mase to bring her the letterhead without Ken Paxton's name on it?

A. I'm not sure that I have ever heard that, that Lacey had instructed Brittany to send the letterhead.

Q. Had you ever before written a letter on agency letterhead – well, skip it.

This, of course, letterhead was being used in the letter by the so-called whistleblowers to notify certain parties of certain things, yes?

A. That's right.

Q. I want to go back in time a little bit. We've been talking a lot about September – or October, but I want to go back to the hiring of Brandon Cammack, okay, and ask you a series of questions that I think are going to call for a yes/no answer. Just do your best. Okay?

You were responsible for overseeing outside counsel contracts, correct?

A. For the Office of the Attorney General, that was one of the areas, yes, sir.

Q. Yes. And the agency reviews and approves around 900 of them every two years, true?

A. Yes, across the state.

Q. Okay.

A. Not for the office.

Q. Okay. I want to put things in proper context. Brandon Cammack would have been one outside counsel out of about 900 between 2019 and 2020, true?

A. Yes. On average, yes. There's about 900 outside – counsel contracts that the agency processes on behalf of other state agencies. The office itself might have two to five outside-counsel contracts at a time is my recollection.

Q. So if the suggestion is that Nate Paul had such a chokehold on the Attorney General's Office, that he had consumed so many resources that the office wasn't really doing much else, that wouldn't be true, would it?

A. The focus of Nate Paul's related activities were becoming increasingly –

MR. LITTLE: Object, nonresponsive, Mr. President.

PRESIDING OFFICER: Sustained.

Q. (BY MR. LITTLE) It is not true, Mr. Vassar, that Nate Paul had such a stranglehold on the Office of Attorney General that nothing else was getting done, right?

A. I wouldn't characterize it that way.

Q. All right. Let me ask a better question then.

Yes or no, did Nate Paul have such a stranglehold on the Office of the Attorney General that other things weren't getting done?

A. I don't think I can answer yes or no to that question.

Q. Are you sure?

A. I am sure.

Q. You can't say "yes," right? It's not true.

A. It –

Q. You can't say "yes," right?

A. I – the degree to which Nate Paul's relationship with General Paxton and the activities that –

MR. LITTLE: Object to nonresponsive.

A. – we were asking –

MR. HARDIN: Objection, Your Honor. He can't – I object to him being forced to answer yes or no. The rules don't require that from a witness if they can't, and he's trying to testify to these questions. When he doesn't get what he wants, he asks him just to give yes or no.

That question, if you look at it, we have no idea what he means by stranglehold, as an example. He should not be required to answer yes or no before he knows what this man means. That's my objection.

PRESIDING OFFICER: First – I think you had an objection first and then you had an objection.

MR. HARDIN: Yes, sir.

PRESIDING OFFICER: I believe so. Okay. The court reporter, I hope you were able to get that. We had objections over each other.

So, first of all, we will – overrule your objection. We will sustain your objection.

To the best of your ability, Mr. Vassar, if you can, answer yes or no.

Continue.

Q. (BY MR. LITTLE) I'll ask a better question. How many lawyers are there, roughly, at the Office of the Attorney General?

A. Roughly 800 lawyers.

Q. How many of them have ever touched anything related to Nate Paul? How many of the 800 ever touched anything related to Nate Paul?

A. I could speculate there may have been 15 lawyers, maybe 15 to 20.

Q. How many cases does the Attorney General's Office have going on at any time?

A. Generally, I think it's around 900,000 or maybe 850,000 cases.

Q. 900,000 or 50,000?

A. Well –

Q. Help me out here.

A. – I was – I was going back to the outside counsel numbers of 900 every two years, so I apologize. I was not in the civil litigation division, so I'm not sure how many litigation cases are active at any general moment.

Q. What's your best understanding of how many civil litigation matters are going at the Office of the Attorney General at any given time?

A. Possibly it could be 20,000 active cases at a time.

Q. 20,000, right? And how many of those 20,000 cases involve Nate Paul?

A. I would have no direct knowledge of how many of those cases would.

Q. So I think we've been over this a lot. I don't want to burden us with it too much longer. There's a layering of signatures and approvals as part of the policy for hiring outside counsel, yes?

A. Yes, sir.

Q. But, of course, you know that the law says that the elected Attorney General appoints outside counsel, right? Just him, right?

A. No, sir.

Q. All right.

MR. LITTLE: Mr. Arroyo, this may be challenging for you to find, but please bring up Section 402.0212 of the Texas Government Code.

Erick on-the-spot.

All right. Give me the title and Section (a), please.

Q. (BY MR. LITTLE) Have you ever read this before?

A. Yes, sir.

Q. Let's read it together. It says, "Except as other" – "authorized by other law, a contract for legal services between an attorney, other than a full-time employee of the agency, and a state agency in the executive department, other than an agency established by the Texas Constitution, must be approved by the Attorney General to be valid," right?

A. Yes, sir.

Q. That's pretty clear, isn't it?

A. Yes, sir.

Q. It doesn't have to be approved by you. It doesn't have to be approved by Jeff Mateer. It doesn't have to be approved by Michele Price. It doesn't have to be approved by Lacey Mase or Ryan Bangert or anybody else but the guy who got 4.2 million votes, right?

A. It was the standard practice for approvals, but, yes.

MR. LITTLE: Object, nonresponsive.

PRESIDING OFFICER: Sustained.

Q. (BY MR. LITTLE) Right?

A. If your initial question was whether the law allows General Paxton to appoint outside –

MR. LITTLE: Object, nonresponsive Mr. President.

PRESIDING OFFICER: Sustained.

Q. (BY MR. LITTLE) Would you like to have the court reporter read the question back to you?

A. The first – your first question about whether the law allows –

MR. LITTLE: Object, nonresponsive.

PRESIDING OFFICER: Sustained.

A. Yes. Please read the question back to me.

(Court reporter read back the question)

PRESIDING OFFICER: We could not hear that. Can you repeat that?

MR. LITTLE: I'll be happy to repeat it.

Q. (BY MR. LITTLE) Outside-counsel contracts don't have to be approved by you, they don't have to be approved by Jeff Mateer, they don't have to be approved by Michele Price or Lacey Mase or Ryan Bangert or anyone but the guy who got 4.2 million votes, right?

A. That's right.

Q. Thank you. Now, with regard to criminal matters, you had a call with General Paxton, true?

A. Specific to the outside-counsel process, yes, but in general criminal matters, no, I never spoke to General Paxton.

Q. Yes. Just about the outside-counsel process, yes?

A. Yes.

Q. Okay. And he said, and I quote, "Tell me about the approval process." And you walked him through it, right?

A. Yes, sir.

Q. Remember, you're the lawyer to lawyers, right?

A. That's right.

Q. And he was asking for your advice, yes?

A. He was asking me to explain the outside-counsel process.

Q. Now, this next question is very important. Ken Paxton asked you, and I quote, "Can the agency retain outside counsel in a criminal matter?" Yes?

A. That's right.

Q. He asked for your advice, right?

A. Yes.

Q. He didn't kick down your door and say, Ryan, this is what we're doing, did he?

A. Not in that conversation.

Q. He asked you for your advice, and you gave him your advice, true?

A. Yes.

Q. You called two candidates, Joe Brown and Brandon Cammack, correct?

A. Yes, sir.

Q. You got each of them to run a conflict check, true?

A. Yes, sir.

Q. You drafted a contract for Joe Brown, didn't you?

A. No, sir. I sent Mr. Brown the template – the outside-counsel contract template with no scope. There was no scope of work, no rate of pay; and his follow-up email to me was, "Would you like me to draft the scope?"

Q. And you said, "Joe, the malpractice issue may be one that we can resolve. We will draft the scope and will send you a draft agreement with the relevant details as soon as possible," right?

A. That's right.

Q. You got each of them to run a conflict check, Brown and Cammack, right?

A. Yes.

Q. Now, in your estimation the Nate Paul investigative referral from the Travis County District Attorney's Office was, and I quote, "an ordinary criminal referral with ordinary investigative issues," true?

A. That was my perception, yes, sir.

Q. Your conversations with First Assistant Jeff – actually, let me press pause here.

After your testimony yesterday, did you go back and watch the video of yourself giving testimony?

A. No, sir.

Q. Okay. Your conversations with First Assistant Jeff Mateer were that you could make a legal argument that this outside-counsel contract with Cammack was okay because you had a referral and you had separate authority to engage outside counsel, true?

A. Yes, sir.

Q. And you drafted Cammack's contract, true?

A. Yes, sir.

Q. Now, tell the ladies and gentlemen of the jury – because I think we all want to understand the executive action memorandum – the whole process or whole idea of using what's called workflow in DocuSign for these outside counsel contracts was your idea, wasn't it?

A. Yes, sir.

Q. Doesn't date back to John Cornyn or Greg Abbott, does it?

A. No, sir.

Q. You're the progenitor of this idea, and we have you to thank for it, I suppose, right?

A. I suppose so.

Q. And so what happens in workflow DocuSign is one person has to sign and then the next person and it has to go in order, true?

A. Yes, sir.

Q. Didn't exist before you, yes?

A. It existed in hard copy but not electronic copy.

Q. Jeff Mateer told you to sign this contract, yes?

A. Yes, sir, he did.

Q. Not Ken Paxton. Jeff Mateer told you to sign this contract with Brandon Cammack, right?

A. In my conversations with Jeff –

Q. No one but Jeff Mateer told you to sign this contract, right? Right?

A. Jeff Mateer was the only person that I spoke to about signing the contract.

Q. Ken Paxton didn't cause you or compel you to sign it, did he?

A. No, sir.

Q. Your conversation with Mateer, in fact, was, and I quote, "We need to keep this on as short of a leash as possible because we don't want it running away," true?

A. No, sir. That's not true.

Q. Well, fortunately, we have your transcript.

MR. LITTLE: Mr. President, may I approach the witness?

PRESIDING OFFICER: You may.

MR. LITTLE: Mr. President, I am not moving for admission of this transcript as I do not think it will be necessary. The purpose of this is impeachment only.

MR. HARDIN: May I inquire – excuse me. Go ahead. Go ahead.
May I inquire if you intend to introduce the entire document?

MR. LITTLE: I do not. I just said that. I don't intend to introduce it as an exhibit. I intend to use it for impeachment purposes only.

MR. HARDIN: All right. Thank you, Judge.

PRESIDING OFFICER: Continue.

Q. (BY MR. LITTLE) If you would, turn to page 105 of your transcript. I'm going to bring it up as well. We're not going to put it on the screen because I don't think we'll need to do that.

Can you find page 105?

A. I am on the transcript page of 105, yes, sir.

Q. Read for the ladies and gentlemen of the jury what you testified to the House Board of –

PRESIDING OFFICER: Counselor, hold on one second. My transcript is down. I'm just trying to get it back up. Hold on.

Go ahead.

MR. LITTLE: Thank you, Mr. President.

Q. (BY MR. LITTLE) Read, if you would, Mr. Vassar, to the ladies and gentlemen of this jury the testimony that you gave to the House Board of Managers beginning at page 105, line 24, and read until page 106, line 4.

A. So it says, "In my conversations with Mateer, similar to the qualifications, the expertise, the experience between the two potential people, along those same lines was, quote, 'We need to keep this on as short of a leash as possible because we don't want it running away,' closed quote."

Q. And you had that conversation with Jeff Mateer, didn't you?

A. I had several conversations with Mr. Mateer.

MR. LITTLE: Object, nonresponsive.

PRESIDING OFFICER: Sustained.

Q. (BY MR. LITTLE) You had that conversation with Mr. Mateer, didn't you?

A. Yes. I had a conversation with Mr. Mateer, but at no point did I say –

MR. LITTLE: Object, nonresponsive.

MR. HARDIN: Excuse me. May he please be allowed to – may he please respond to his –

PRESIDING OFFICER: Overruled.

A. Can you repeat the question to me?

Q. (BY MR. LITTLE) You had the conversation that you described here in your testimony to the House Board of Managers with Mr. Mateer, yes?

A. Yes, sir, I had a conversation.

Q. Thank you. And you made an intentional decision to bring Brandon Cammack on, as I believe you put it, a third set of eyes, yes?

A. No, sir. I – I didn't make the decision. I provided a recommendation and a legal justification to do so.

Q. If you'll look at page 106, lines 5 through 11, what you say is, "So I drafted the scope of work for the contract." You're talking about Cammack's contract.

MR. HARDIN: Pardon me, Your Honor. May we approach the bench, please?

PRESIDING OFFICER: Yes, you may.

(Conference at the bench off the record)

PRESIDING OFFICER: I think the two of you have come to an agreement of moving forward –

MR. LITTLE: We have.

PRESIDING OFFICER: – in a proper way.

MR. LITTLE: Mr. Hardin will let me know if I mess up.

PRESIDING OFFICER: Members of the jury, come to order.

Q. (BY MR. LITTLE) So, Mr. Vassar, the plan was to bring on Mr. Cammack, as I believe you put it, a third set of eyes, true?

A. That was my understanding.

Q. Tell the ladies and gentlemen of the jury, who were the other two sets of eyes?

A. I didn't have any specifically other than Director Maxwell and Mark Penley, I presume, is the two individuals.

Q. And –

A. I'm sorry. You were speaking.

Q. Did I cut you off?

A. No, sir.

Q. Okay. You anticipated Brandon Cammack providing a report to your office, true?

A. I did.

Q. And you testified that the Brandon Cammack contract never got to the Controller Michele Price, true?

A. That's right. At the time I don't believe it had.

Q. So just to be clear, you testified before the House Board of Managers that Brandon Cammack's contract never got to the Controller Michele Price, true?

A. That was my recollection.

Q. But you were wrong about that, weren't you?

A. I don't know for – I don't know.

MR. LITTLE: Let's bring up Exhibit AG 130. I believe it's already in evidence. If you can find that for me, Mr. Arroyo. Right there.

Okay. Would you just highlight the signature blocks for me or zoom in on the signature blocks?

Q. (BY MR. LITTLE) Michele Price, the Controller, approved it, yes?

A. I see that.

Q. So this contract had the money?

A. I'm sorry. Had a what?

Q. It had the money allocated if Michele Price signed it, true?

A. Yes. It appears she signed it after I did.

Q. But in the rushed impeachment in this case, you told the House Board of Managers that she never signed it, true?

A. She had not signed it before I signed it. That was my testimony, as I recall.

Q. Yeah. And at the time you gave your testimony to the House Board of Managers, you didn't know and now you know, right?

A. Well, yes. I see now that she has signed it.

Q. Lesley French, who's that?

A. At the time she was general counsel.

Q. She approved the choice of Brandon Cammack as outside counsel, true?

A. Yes. She initialed this as indicating approval.

Q. I want to talk briefly about grants. Okay? Are you familiar with applying for federal grants?

A. Yes, sir.

Q. Okay. Just explain to the ladies and gentlemen of the jury who may not understand the inside baseball of that, why would – why on earth would the wonderful State of Texas need to apply for federal grants for OAG funding?

A. Well, there are a number of programs that the office administers such as child support, crime-victim services, that are supplemented by state funds, state grants, as well as federal funding.

Q. And where does the money come from?

A. Well, in each instance it comes from state appropriations and also federal grant programs.

Q. And does your office have to apply for them with the federal government?

A. I believe so. There might be one or two instances where they are statutory grants under the federal statutes, but I think most of them are application based.

Q. And you were responsible for applying for those grants, true?

A. No, sir. The grants division of the office was responsible for applying.

Q. But you were overseeing them?

A. No, sir. That's a division that reported to Lacey Mase.

Q. Okay. As the office – as part of the office of general counsel or – by October 2020, what was your title at the agency?

A. Deputy for Legal Counsel.

Q. Okay. And so you're giving the couns- – isn't it true that you gave the Office of the Attorney General legal advice about those grants?

A. Yes.

Q. Okay. I think I'm over the target now finally.

So my understanding is, correct me if I'm wrong, in October 2020 after you had so-called blown the whistle with your friends, you were still providing legal advice to the Office of Attorney General about grant applications to the federal government, yes?

A. Yes, sir.

Q. And one of the reservations that you expressed was that the Office of the Attorney General might have some problems applying for federal grants because Ken Paxton was under indictment, true?

A. That was an issue that came to my mind, yes, sir.

Q. He was under indictment the whole time you worked there, right?

A. I'm not sure when it occurred, but I believe that's probably true.

Q. In every other year before October of 2020, you didn't provide that advice to the Office of the Attorney General, true?

A. That's right.

Q. And, in fact, if Ken Paxton was not allowed to sign those grant applications, it might have cost the Attorney General's Office between 1- and \$10 million in federal money, true?

A. I don't know the specific numbers, but, yes, if – if we were prohibited as an agency from participating in the federal grant program because of an ongoing indictment or conviction for a felony that was prohibited under those federal programs, then it could cost the agency.

Q. So after you blew the whistle on September 30th of 2020, your advice about those grants changed, right?

A. No, sir.

Q. You were advising the Attorney General's Office about this all the way on from before that?

A. No. What you asked is did my advice change? The answer is no. I didn't provide advice one way or the other that had changed from the previous years.

Q. Okay. Did you advise the Attorney General's Office on those grants before October of 2020?

A. On the specific grants that –

Q. The federal money, the 1- to \$10 million that's supposed to be coming to the State of Texas to help the AG's Office.

A. Right.

Q. Did you provide any advice about that before October of 2020?

A. Not – so just to clarify your question, these grants are typically on a two-year cycle in most instances, so each time we would consider those a separate grant. So when you asked if I provided advice on these grants, historically I would have advised on the legal nature of participating in these grant programs at different years.

Q. Did you ever raise your concerns about the Attorney General's being indicted for securities fraud over the last eight years to anyone before October of 2020?

A. I don't recall so.

Q. Let me just circle back with you and clean something up on the Public Information Act stuff that we talked about yesterday. Okay? I want to make sure I have this right, because I think we may have made a mistake, you and I together – or I may have made the mistake and elicited testimony that wasn't correct. I want to make sure. Okay?

You remember the three requests we talked about yesterday, right?

A. Yes.

Q. Okay.

A. The securities board, the big request, the FBI brief.

Q. The FBI brief. So on the FBI brief, yesterday I believe I elicited testimony from you that the FBI blew their response deadline, but that wasn't right, was it?

A. I think is what I testified yesterday is I don't recall exactly what the circumstances were regarding the response deadline or any response that we had requested.

Q. What actually happened is the FBI responded when that unredacted brief was requested, but their arguments were so nonsensical or were nonresponsive to the issue that your opinions division, which is under your oversight, made the decision to release the unredacted brief, true?

A. I don't recall what the brief said, the FBI's response to the request for the FBI brief itself. I don't recall what the FBI's position was or what the division issued.

Just to put it in context, my youngest was born May 30th of 2020.

Q. Okay.

A. So I was working out of the office. And at that time, if you recall, the DPS request – the big request was issued June 2nd. So toward May 30th for the month of June, most of those conversations were directly with Ryan Bangert.

Q. Okay. So is it true that you can't tell the ladies and gentlemen of the jury why the unredacted brief was released?

A. The unredacted FBI brief was released because General Paxton directed us to release it.

Q. And tell me about what that process was.

A. Well, in a meeting with General Paxton at which Ryan Bangert was attending, we identified that the agency, the Office of the Attorney General, had received a request for public information for the FBI brief. General Paxton asked us to provide him a copy of the redacted brief and the unredacted brief.

Q. Yes.

A. A few days later we met again, and General Paxton had reviewed it, had marked up the copies and indicated to both of us that he had seen nothing that should be withheld from Nate Paul.

Q. Did you disagree with him?

A. Yes, just based on the content of the information.

Q. Was there any claim of law enforcement privilege made by the FBI?

A. I'm not advised – again, I don't recall what their brief said.

Q. You don't recall any of the content of what the FBI said in their challenge?

A. Not in the challenge, no, sir. I recall the content of the FBI brief that was submitted as part of the DPS file.

Q. Okay. I'm going to show you a few other documents, okay?
We're going to go to – let's stay on this same topic.

MR. LITTLE: This is Exhibit AG 185, Your Honor, if I might approach.

PRESIDING OFFICER: You may.

Q. (BY MR. LITTLE) Have you had an opportunity to review Exhibit AG 185?

A. Yes, sir.

Q. What is it?

A. It's a letter dated April 13th, 2020, from the Department of Public Safety to Joseph Larsen regarding a Public Information Request referenced as 20-0983.

MR. LITTLE: And, Mr. Arroyo, if you would bring up Exhibit AG 185. Thank you so much.

PRESIDING OFFICER: Pardon me. Counselor, are you offering this?

MR. LITTLE: I am. I thought I did. I'm sorry. Exhibit AG 185, we move for admission, Mr. President.

PRESIDING OFFICER: Mr. Hardin?

MR. HARDIN: I have no objection, but I request that we don't put it on the – put it up on the easel until we get a ruling, please. Thank you so much.

(AG Exhibit No. 185 was admitted)

PRESIDING OFFICER: Agreed.

MR. LITTLE: I agree.

Now, Mr. Arroyo, please –

PRESIDING OFFICER: Okay. Mr. Counselor – Counselor, since we did break for a half hour earlier, that was kind of our 10:30 break. So we'll go to 12:00, about 40 minutes, and then we'll have lunch from 12:00 to 1:00.

MR. LITTLE: Understood, Judge. Thank you.

Q. (BY MR. LITTLE) This is a response from DPS to the big request, right?

A. It appears to be. I don't recall the exact number of the request, but it appears to be.

Q. So Joe Larsen is the vehicle through – that Nate Paul is using to make these requests, yes?

A. It was my understanding, that's right.

Q. And in the lawsuit that Joe Larsen filed, he filed that on behalf of Nate Paul, true?

A. Well, that lawsuit that you showed me yesterday, it identified Mr. Larsen as the plaintiff. I don't know why he would have filed it or what reasons he had.

Q. Ultimately, the unredacted FBI brief was released from a lawyer at the Attorney General's Office to a lawyer, Joe Larsen, who is working for Nate Paul, true?

A. I believe so.

Q. No one at the Attorney General's Office tried to stop it from going out, did they?

A. Except for our conversations with General Paxton, I don't think anybody stopped it after he instructed us just to release it.

Q. But you didn't have any good legal reason to keep it, did you?

A. I'm not sure what you mean by "legal reason to keep it."

Q. You're a lawyer. Did you have a good legal reason to keep it?

A. Well, we had reasons to believe that the information contained in the brief itself involved law enforcement information under the Public Information Act, because as you mentioned yesterday, the FBI redacted it.

Q. But the FBI didn't assert law enforcement privilege over the brief, did it?

A. Again, I don't recall what their position was in their briefing that they submitted, just because –

Q. You don't know.

A. That's right.

Q. Okay.

MR. LITTLE: Your Honor, I've got another exhibit. May I approach the witness?

PRESIDING OFFICER: Yes, you may.

Q. (BY MR. LITTLE) Have you seen Exhibit AG 253 before?

A. Yes, sir.

Q. What is it?

A. This is a –

PRESIDING OFFICER: Are you offering this?

MR. LITTLE: I was going to prove – I was going to lay the predicate first, but I will certainly offer it.

MR. HARDIN: Excuse me, Your Honor. Thank you. We have no objection to speed it up.

PRESIDING OFFICER: Exhibit 253, admitted into evidence.

(AG Exhibit No. 253 was admitted)

PRESIDING OFFICER: Continue.

MR. LITTLE: Mr. Arroyo, if you would, Exhibit AG 253.

Q. (BY MR. LITTLE) Mr. Vassar, what is it?

A. This is a letter involving private schools in the middle of COVID-19. It's dated July 17th of 2020.

Q. And Attorney General Ken Paxton issued this guidance, correct?

A. Yes. He signed it, and we issued it from the office.

Q. And it is not a formal legal opinion, correct?

A. No. That's – it's not a formal opinion decided under 402.

Q. Okay. Did you have kids in a religious school at that time?

A. No, sir.

Q. Okay. The purpose of this guidance was what?

A. To provide guidance on how religious private schools could operate in the face of local orders that may contradict the Governor's executive order at the time.

Q. Pretty important stuff, isn't it?

A. Yes, sir.

Q. And orders like this were being – orders similar to this that were giving informal legal guidance about COVID matters were coming out of your office almost every day, true?

A. I'm not sure if it was daily, but we were providing advice on a regular basis.

Q. All right. Do you recall the quote, unquote, midnight opinion – I believe Mr. Hardin referred it – referred to it as the midnight opinion, the foreclosure guidance?

A. I recall it, yes, sir.

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

PRESIDING OFFICER: Yes, you may.

Q. (BY MR. LITTLE) That wasn't even the only COVID guidance issued that day, was it?

A. I don't recall that specifically either.

MR. LITTLE: Mr. President, we move for admission of Exhibit AG 7.

PRESIDING OFFICER: Mr. Hardin?

MR. HARDIN: I'm trying to get my microphone. I'm sorry. We have no objection, Your Honor.

PRESIDING OFFICER: Admit Exhibit No. 7 into evidence.

(AG Exhibit No. 7 was admitted)

Q. (BY MR. LITTLE) Have you seen – no. That's not AG 7. This is 260.

MR. LITTLE: Would you put AG 7, please, Mr. Arroyo? Thank you, Erick. Erick, would you just – would you zoom in on the letterhead here?

Q. (BY MR. LITTLE) This is the letterhead of the Office of the Attorney General of the State of Texas, true?

A. I wouldn't state that it's the only letterhead of the Office of the Attorney General, just based on my previous testimony.

Q. Well, we'll see how common it is in a minute. But this is the letterhead that went out on formal statements, legal guidance, and formal legal opinions, true?

A. Yes, it was used in those instances.

Q. All right. This Exhibit AG 7 was sent to a man named Brian Muecke, who is of the City of Hedwig Village. Do you know where the City of Hedwig Village is?

A. No, sir.

Q. It's in the Houston area. But let's zoom out a little bit.

MR. LITTLE: Get me to the text, Erick, if you would, and capture Austin's signature too. I'm sorry, sir.

Q. (BY MR. LITTLE) What's this about?

A. It's the first time I've seen this letter that I can recall. It is issued under Section 418 at 193, which is the Disaster Act. It appears to be in response to a request – a question that the mayor had asked about a local health authority's power to close schools.

Q. And Austin Kinghorn works for you, true?

A. Yes, sir, at the time.

Q. And you knew this was going out, right?

A. No, sir.

Q. Why not?

A. Just based on the substance, this seems more like a pro forma response that does not need to be raised to the deputy level to make a decision. This seems to be consistent with advice that we had already issued and it was essentially reiterating that advice and not taking a contrary statement.

Q. Okay. So Austin – this was a minor enough issue that Austin could do this on his own, right?

A. No. So Austin worked in the general counsel division. That division chief is responsible for that division. I oversaw that division in addition to other divisions. So I did not have a daily oversight of the activities of that division.

Q. He's in your downline, true?

A. Yes, sir.

Q. What's the date on this?

A. August 1st of 2020.

Q. That's a Saturday, isn't it?

A. Possibly. I don't recall what day that would have fallen on.

Q. It's the same Saturday as the foreclosure guidance, true?

A. If that was a Saturday, then, yes, it would have been the same day.

Q. Well, you know the foreclosure guidance is dated August 1, right?

A. I don't recall if it's dated August 1. It might be August 2nd.

Q. Isn't it true, sir, that there were so many needs in this big state related to guidance about COVID that your office was working on it constantly?

A. It was a perpetual thing.

Q. Let's see how perpetual it is.

MR. LITTLE: May I approach the witness?

PRESIDING OFFICER: Yes, you may.

MR. LITTLE: I move for admission of Exhibit AG 260.

PRESIDING OFFICER: Give Mr. Hardin a moment.

MR. HARDIN: I have no objection.

PRESIDING OFFICER: Admit Exhibit 260 into evidence.

(AG Exhibit No. 260 was admitted)

MR. LITTLE: Thank you.

Mr. Arroyo, if you would.

Q. (BY MR. LITTLE) Same letterhead, yes?

A. Yes, sir. It's the same as the August 1st letter.

Q. July 28, 2020, three days earlier, yes?

A. Yes, sir.

Q. And who is Doug Svien? I hope I'm saying that right.

A. This letter indicates he's the mayor of Stephenville, Texas.

Q. He's asking about closure of schools, right?

A. That's right.

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

PRESIDING OFFICER: Yes, you may.

MR. LITTLE: I'm going to try to do this in bulk and maybe move this along a little bit.

Your Honor, we move for admission of AG Exhibits AG 259 and 6.

MR. HARDIN: We have no objection. And we have no objection to 289 [sic], and we have no objection to Exhibit 6.

PRESIDING OFFICER: Admit Exhibit 6 and 259 into evidence.

(AG Exhibits Nos. 6 and 259 were admitted)

MR. LITTLE: Mr. Arroyo, Exhibit 259, please.

Q. (BY MR. LITTLE) Who is Craig Morgan?

A. This letter refers to him as the mayor of Round Rock.

Q. That's on a Thursday before August 1st, right?

A. Sure.

Q. What's it about?

A. This is – appears to be the Round – City of Round Rock's decision to move its local election from November 3rd of 2020 to May of 2021.

Q. Why did they want to move it?

A. I think the reason that they had stated was because of COVID.

Q. Who issued the opinion?

A. It was signed by General Paxton.

Q. Does it have a KP number?

A. No. No, sir.

Q. Not a formal legal opinion, true?

A. No, it was not issued as a formal opinion under 402.

MR. LITTLE: Mr. Arroyo, Exhibit 6, please, AG Exhibit 6.

Q. (BY MR. LITTLE) August 3, Monday, who is the Honorable Vince Ryan?

A. The Harris County Attorney.

Q. This is a formal legal opinion, yes?

A. Yes. This is a formal opinion issued under Chapter 402.

Q. Tell the ladies and gentlemen of the jury how they can tell by looking at this document that it's a formal legal opinion.

A. After the mailing address, there is an opinion number that's referenced. And then in the subject line, there is a request number that's also referenced.

Q. And every formal legal opinion from the Office of the Attorney General under Chapter 402 of the Government Code has both, true?

A. Yes.

Q. And what's this letter about?

A. It's regarding the County authority to require masks in courtrooms, courthouses, and county buildings.

Q. Okay. So correct me if I'm wrong. July 28th, July 30th, August 1, August 1, August 3, there are opinions coming out almost every day about COVID stuff during this period of time, true?

A. Well, again, to clarify, a lot of the questions that we would get would follow the Governor's executive orders which were coming out at different points. So if an executive order was issued, the frequency of our request for advice might increase.

I can't testify that we were releasing information daily. I don't know if that's actually true. But I can say it was happening regularly just with the pattern of executive orders or mayoral or county orders.

Q. Isn't it true that the office was constantly adapting to the executive orders of the Governor's Office, the executive orders of President Donald J. Trump?

A. Absolutely.

Q. And that actually increased the amount of informal legal advice and the need for it on a literally day-to-day basis?

A. Again, it was very frequent just given the number of agencies that were involved on a state level as well as the federal level.

MR. LITTLE: Mr. President, a moment, if I may?

PRESIDING OFFICER: Yes.

MR. HARDIN: Oh, I'm sorry. I apologize. I thought you were passing the witness. I apologize.

MR. LITTLE: No. You ought to keep coming.
Pass the witness.

MR. HARDIN: I apologize.

PRESIDING OFFICER: Mr. Hardin, he passed the witness. Just you standing up made it all happen.

MR. HARDIN: Thank you.

PRESIDING OFFICER: We'll go to the top of the hour, Mr. Hardin.

REDIRECT EXAMINATION

BY MR. HARDIN:

Q. Good morning, Mr. Vassar.

A. Good morning.

Q. I'm going to try to, as best I can, to do this pretty quickly. Thank you so much. I've got several areas here. We should start where we finished up. I thought I would never have to talk about the different numbers of the different portions of the Government Code that suggested what y'all should and should not do. But I think counsel has appropriately covered back on the issue, and so I feel compelled to a little bit just try to clear this up just a tad.

The two sections of the Government Code that you folks would have been working – primarily that you have been testifying to counsel about on cross are what numbers in the Code?

A. Chapter 402 of the Government Code and Chapter 418.

Q. All right. Now, let me see if I can do this briefly with you.

How do you determine which of those codes apply to a request for an opinion, or the sections of the Code, excuse me?

A. So Chapter 402 enables the Attorney General to provide general legal guidance in response to a request from an eligible requester. Chapter 418 is expressly limited to providing advice relating to a disaster declaration, again, to eligible requesters who are differ – different from Chapter 402.

Q. All right. For instance, does which one of those sections apply depend on the identity of the requester that makes the request?

A. Yes, sir.

Q. And is 418 something that, I believe, did you testify earlier – if 418 was amended, the National Disaster Act before COVID, but when COVID came was frequently used as the basis to answer a query from a public official?

A. That's correct. I believe it was admitted in 2019. Obviously, COVID hit in 2020, so that provided an avenue for local officials to request legal advice from our office.

Q. Now, if when General Paxton requested y'all to do this hurry-up opinion, if he had come up with a requester that was a mayor, what section of the Code would have applied to the opinion that you folks wrote?

A. Just based on the fact that it was a COVID-related question and that the mayor is an authorized requester, it would have fallen under Chapter 418.

Q. Now, once it was decided that the requester would be a state senator, which section of the Code did that mean would cover what you did?

A. A state senator who was a chair of a legislative committee –

Q. Thank you. Excuse me for interrupting you. That's the caveat. It's not just a state senator, but it has to be a chairman, does it not?

A. That's right.

Q. All right. Resume the answer, please.

A. A state senator who is a chair of a legislature committee is an authorized requester under Chapter 402.

Q. All right. And is the significance that 402 was applied here is that Section 402 does not distinguish between an informal and a formal opinion, correct?

A. That's correct, does not.

Q. Now, if we move forward, that it had gone through the – if it hadn't been a hurry-up and went through your normal processes you testified that would take ordinarily about six months, is there a difference in the way the six-month opinions which are vetted and published in six months as opposed to overnight is what we've called this opinion, what would be the difference in the way those two opinions – heavily researched, vetted opinion, overnight opinion – how are those reported to the public and dealt with as far as publishing to the world?

A. So under Chapter 402, if it's an eligible request, our agency logs it as a request, publishes that request in the Texas Register, which enables third parties who are just interested in submitting their own briefing and arguments to our office. After a drafting period in the division, it's reviewed internally and – including other divisions who might have subject matter expertise on the issue.

After all of the division feedback is received, it's circulated to the deputy level and the executive for review and approval. After it is issued, it's then, again, recorded on our website and then published in the Texas Register for public dissemination. And I believe it's also uploaded to Westlaw.

Q. So is one much more widely distributed and easily published to the world than the other?

A. Yes, sir.

Q. Finally, you were asked about things I think you said you did not know about in terms of the next day or a hearing that you were not involved about, correct?

A. The hearing –

Q. For – very good point. Let me rephrase. That's a very good question.

Do you recall being questioned about what you knew about how the overnight opinion was used on behalf of Mr. Paul?

A. Yes, I recall that.

Q. Do you recall you said you were not aware at the time? Do you recall that?

A. That's right.

Q. All right. Have you become aware and did you see a document during your examination that showed a lawyer on behalf of Mr. Paul immediately – within 36 hours or 24 hours – was using that in a court to try to get what he wanted?

A. Yes, sir. I believe in one of the exhibits that I reviewed there was a statement indicating that the foreclosure letter that we had issued was used to stop a foreclosure sale related to Nate Paul.

Q. Do you have any idea how one would have known as early as Monday to be prepared to use that in a hearing on Tuesday when you only issued it – only completed it at 1:00 o'clock Sunday morning and sent it to the Attorney General sometime Sunday?

MR. LITTLE: Objection, Mr. President. Leading and calls for speculation.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Now, let's go to a couple of other areas.

Do you recall you had talked considerably – questioned considerably about whether – about, first of all, the interview that he asked you about a little bit toward the end. And that is that you were not under oath at that hearing.

A. I recall that, yes, sir.

Q. And I said hearing. I don't mean hearing. It was really an interview by investigators, many that are here today, that were retained by the House Management Committee – or the House Committee, rather, to do an investigation.

Do you recall that series of events?

A. Yes, sir.

Q. And I believe you were shown some of the testimony – again, not testimony, some of the interview statement that you gave.

A. Yes, sir.

Q. Now, did you readily agree to have it videotaped?

A. Yes. I believe when I sat down there was a recording that was going to be used for the interview.

Q. Well, yeah. But do you remember sort of a – a sort of fumbling around that nobody had a recorder, they had to go get one?

A. Yes, sir.

Q. All right. But, at any rate, ultimately when that happened, did you have any objection to it being videotaped and audioed?

A. No, sir.

Q. Now, did anybody at all suggest placing you under oath?

A. No, sir.

Q. Do you know enough about law enforcement as to whether or not ordinarily if somebody is trying to gather information as part of a law enforcement information or investigation, where they would swear the people when they're just trying to get people to tell them what happened?

MR. LITTLE: Your Honor, I'd have to object as being argumentative and sidebar.

MR. HARDIN: I'll withdraw –

PRESIDING OFFICER: Sustained.

MR. HARDIN: Thank you, Judge. Thank you. I'll withdraw the question, but I waited too late.

Q. (BY MR. HARDIN) All right. So, if I may, at any rate, you gave that interview, correct?

A. Right.

Q. And told them. And that interview was totally available as evidenced by questions you got to the other side, correct?

A. I believe so, yes. I'm not – yes.

Q. And in that one item that they came up with, there's no suggestion that you've testified any differently today than you did to these investigators, correct?

MR. LITTLE: Objection, leading and argumentative.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Are you under oath today?

A. Yes, sir, I am.

Q. Did you testify today the same as you did to these House investigators?

A. Yes, sir.

Q. Can we take that as evidence of the fact nobody is suggesting otherwise?

MR. LITTLE: Object to the argument, Mr. President.

Q. (BY MR. HARDIN) Now –

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Now, if I can, you were asked about evidence. Do you recall this evidence that you took to the FBI?

A. Yes, sir, I recall.

Q. And eight – seven of you went to the FBI, did you not, on the 30th of September of 2020?

A. Yes, sir.

Q. And you took no documents, did you?

A. That's right, no documents.

Q. Who did you take?

A. We took ourselves.

Q. And you took yourselves to do what?

A. To provide an explanation of the sequences of events that we had determined–

Q. Well, when you –

A. – revealed information tending to show that General Paxton had abused his office and the powers and responsibility and trust that millions of Texans bestowed upon him to benefit one individual.

Q. And when you went, if you had taken things with you, you would have had to take things that were the property of the Attorney General's Office, wouldn't you?

MR. LITTLE: Objection, Your Honor. Calls for speculation and a legal conclusion.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Would you have had any documents other than things that were circulated and created right there in the AG's office?

MR. LITTLE: Objection, Your Honor. Speculation and argument.

MR. HARDIN: I'm just asking – I'm really asking him if anything they took would have – as evidence would have had to be property of the Attorney General's Office.

PRESIDING OFFICER: Overruled. You may answer the question.

MR. HARDIN: Thank you.

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

A. All of the information would have been information that we had obtained just by virtue of our employment at the agency.

Q. Now, when you answered the question – do you recall answering the question as you had no evidence that you took to the FBI in that meeting, correct? Do you recall that answer?

A. Yes, sir, I do.

Q. Well, tell me – tell me what you mean by that answer when you say you took no evidence.

A. Well, the way that I interpreted opposing counsel's question was documents, documentary evidence of what we took to the meeting with the FBI for law enforcement.

Q. After this position you might want to say thank God, but you're not a trial lawyer, are you?

A. No, sir.

Q. Do you have any idea how evidence is defined in terms of law enforcement or people wanting to find out what happened in this situation?

MR. LITTLE: Objection, Your Honor. Calls for speculation, legal conclusion, argument.

MR. HARDIN: No. I'm asking does he have any idea. That's all I'm asking.

PRESIDING OFFICER: Sustained. Rephrase.

Q. (BY MR. HARDIN) All right. In this particular situation, did you take your body?

A. Yes, sir.

Q. Did you take your voice?

A. Yes, sir.

Q. Did you take your brain?

A. Yes, sir.

Q. Did you take your experience?

A. Yes, sir.

Q. Did you take your knowledge of the last nine months?

A. Yes, sir.

Q. Did you take what things you personally knew of in addition to going with people who may have known other things?

A. Absolutely.

Q. Did you tell the FBI that?

A. Every bit of it.

Q. Do you realize in the legal world that is evidence?

MR. LITTLE: Objection, leading.

MR. HARDIN: No. That is – that is simply a fact statement. That is not leading in my –

PRESIDING OFFICER: Sustained.

MR. HARDIN: – respect. And the Court disagrees, which is why we're here.

Q. (BY MR. HARDIN) Let me ask you this: If you told all of those people what you knew in your mind and what you were concerned about, what is your opinion now, after the primer we just did, as to whether you gave the FBI evidence?

MR. LITTLE: Object, leading, argumentative. This is closing statement, not a question for the witness.

MR. HARDIN: I've asked him what his opinion – excuse me, Your Honor. I asked him what his opinion is. I didn't ask him –

PRESIDING OFFICER: Overruled.

MR. HARDIN: Thank you.

A. My opinion was that our experiences were evidence, but we did not conduct our own investigation to provide documentary evidence of what we had come to learn.

Q. (BY MR. HARDIN) Well, what did you provide him?

A. Just our experiences.

Q. What do you mean?

A. The – the situations in which General Paxton asked us to act involving Nate Paul, the cumulative knowledge of the conversations that we had as a group between September 29th and the morning of September 30th, once the grand jury subpoenas from Brandon Cammack started coming to the office.

Q. Whose job, then, in your opinion, was it then to conduct the investigation?

A. Federal law enforcement.

Q. Did you ever view yourself as an investigator in this matter?

A. No, sir.

Q. What did you think you were when you went to the FBI?

A. We were witnesses.

Q. Pardon me?

A. We – I believed that I was a witness to criminal activity that had occurred by General Paxton.

Q. All right. Do you know of any other occasion in which the Attorney General involved himself in the drafting of an opinion such as what you did in August on the issue of foreclosures?

A. I can't think of any, no, sir.

Q. Finally, maybe from your age you don't know this. Are you familiar with a movie Cool Hand Luke?

A. I've heard of it. I'm not familiar with it.

Q. Did you ever see the scene in a very, very bad moment in the movie for – at least a bad moment for Paul Newman, in which the bad guy stands over there as he's digging and says, "What we have here" –

MR. LITTLE: I'm going to object to the argument.

MR. HARDIN: Let me just – let me just finish.

Q. (BY MR. HARDIN) – "a failure to communicate." That's just a question.

PRESIDING OFFICER: Overruled. And you are allowed to finish.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) Have you?

A. I have not.

Q. All right. Let's talk about these supposed altered documents. All right?

You tried several times, did you not, on your cross to explain there were different types of letterhead papers in the AG's Office. Do you recall telling him that?

A. Yes, sir.

Q. Do you recall he went right by? He didn't want to deal with that, did he?

A. That's right.

Q. All right. Well, let's deal with it real quickly.

For instance, in the Attorney General's Office, did y'all periodically use one type of paper that did not have General Paxton's name on it and another type of papers that did?

A. Yes, sir.

Q. Do you have any idea how the circumstances were that dictated which you would use?

A. No, sir.

Q. All right. On the occasion when the letter that we've been talking about that they have been complaining was altered and the Attorney General's name was taken off, was that letter complaining about the Attorney General?

A. Yes, sir, it was.

Q. Well, if you're writing a letter complaining to – about the Attorney General, what is your opinion as to whether you would want to make sure his name wasn't on there for a letter complaining about him?

MR. LITTLE: Objection, leading.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Let me ask you this. I'm going to show you a letter that is already in evidence, Exhibit 127.

MR. HARDIN: May I have it on the screen, please?

Q. (BY MR. HARDIN) Is that an altered letter?

PRESIDING OFFICER: Counselor, excuse me. I don't – we don't show that being already entered.

MR. HARDIN: You do not show it's in?

PRESIDING OFFICER: Oh, it's in.

MR. HARDIN: Thank you.

PRESIDING OFFICER: My apology.

MR. HARDIN: No, no, no, not at all. I misled you by making you think which one it was. We were both inadvertent.

Q. (BY MR. HARDIN) But I think it is interesting to point. Would you look down to the bottom, would you circle where the – the exhibit and whose exhibit this is?

MR. HARDIN: And let's, sort of, if we can, highlight, Stacey, both from whom the production was that produced it to us.

Q. (BY MR. HARDIN) OAG stands for what?

A. The Office of the Attorney General.

Q. And are you familiar enough, reluctantly, about this process to know what AG exhibit means?

A. That appears to be a reference to an exhibit that the Attorney General's defense team has offered as evidence.

Q. Yes. Yes. We can – would you expect them to offer an altered document?

A. No, sir, I would not.

Q. Well, in this offer is the Attorney General's name on it?

A. His name is not on the seal at the top of the document.

Q. Is this seal identical to the seal that y'all used for the letter you wrote before you went to the FBI?

A. Yes, sir, it is.

Q. Or after you came back. I can't remember what – I don't have – I don't want to misstate what it was.

A. It was – it was drafted and reported – or sent to HR after we returned from meeting with law enforcement.

Q. All right. So it would have been on the 20- – when you came back on the 30th?

A. 30th, yes, sir.

Q. When you came back on the 30th. Thank you.

All right. Now let's go to the next-to-last page, I believe, of this exhibit.

Do you see who it's signed by?

A. It's signed by Jeff Mateer.

MR. HARDIN: Now, Stacey, just to test your agility, would you go back to the front page again and isolate the date this was.

Q. (BY MR. HARDIN) What's the date?

A. The date is October 1st of 2020.

Q. All right. Now I'm going to show you some that have not been introduced, and I will first tender –

MR. HARDIN: Do we have copies of our Exhibit 633?

I'm going to move to introduce. I was waiting for you to review it.

MR. LITTLE: Oh, thank you.

No objection, Judge.

PRESIDING OFFICER: Admit Exhibit 633 into evidence.

(HBOM Exhibit No. 633 was admitted)

MR. HARDIN: Can you put it up on the screen, please. Thank you.

Q. (BY MR. HARDIN) Would you give – publish for the jury the date of this letter.

A. This letter is dated January 28th of 2020.

Q. And would this have been in connection with any particular event? Have you ever seen this letter or do you know anything about this?

A. I don't recall exactly if I was involved in reviewing it. It – again, I was appointed Deputy AG for legal counsel April 1st of 2020. It's possible I reviewed it – excuse me – in the general counsel division, but I have not seen it since.

Q. And the letter is signed by whom?

A. It's signed by General Paxton.

Q. And we can assume, can we not, that General Paxton didn't alter this letter?

A. I would presume so.

Q. And is it also similar to the letter y'all sent on paper that has just the seal?

A. That's the same seal, yes, sir.

Q. So let's, once again, make sure there's no misunderstanding. Do you understand for the last four days you folks have been accused of altering a document –

MR. LITTLE: This is a violation of the rule –

MR. HARDIN: Excuse me. Excuse me.

MR. LITTLE: – Mr. President.

MR. HARDIN: Let me put it another way. I'll put it another way, Your Honor.

PRESIDING OFFICER: Was there an objection?

MR. LITTLE: Objection, violates the rule.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) If anybody was to suggest that you guys had – when you wrote your letter that you had somehow altered it and taken the Attorney General's name off and, therefore, altered a government document, would that be true or not true?

A. That's not true.

Q. Would it actually be a lie?

A. As these documents indicate, there are different seals for different purposes. And in this situation we used the seal without General Paxton's name on it. That's the seal that was –

Q. You are indeed, are you not, Mr. Vassar, a kind and gentle person, so much so that even after and during yelling and constant interruption, you still don't like to use the word "lie," do you?

MR. LITTLE: Objection to leading and argumentative.

MR. HARDIN: I have no further questions.

PRESIDING OFFICER: Objection is sustained.

We will hold your – do you intend to recross?

MR. LITTLE: I do, Mr. President, but I could probably resolve it in about three minutes.

PRESIDING OFFICER: I'll give you three minutes.

MR. LITTLE: Thank you, Judge.

PRESIDING OFFICER: Five at the most.

MR. LITTLE: I will try to yield some back, Mr. President.

RECROSS-EXAMINATION

BY MR. LITTLE:

Q. So it's okay to give your personal lawyer documents from inside the Office of the Attorney General but not the FBI, right?

A. I provided documents under a grand jury subpoena that I received to my lawyer, so I don't know what the implication is.

Q. You had internal OAG documents, to-wit, a series of grand jury subpoenas that were served by Brandon Cammack that you sent to your personal lawyer, but you didn't bring any documents to the FBI, right?

A. That's absolutely true.

Q. You went to the FBI. David Maxwell went to Travis County. They investigated, and they still have done nothing, true?

A. I – I don't know what they found. I know it's an ongoing investigation.

Q. Mr. Hardin talked to you about the letter that Nate Paul wrote to the Court about the OG – OAG foreclosure guidance. Do you recall that testimony, those questions?

A. Yes.

Q. All right.

MR. LITTLE: Your Honor, Mr. President, I have one copy of AG Exhibit 286. If I may, I will tender it to Mr. Hardin for his review and then to Your Honor and then to Mr. Vassar.

PRESIDING OFFICER: You may.

MR. HARDIN: I have no objection.

PRESIDING OFFICER: What is the number on that?

MR. LITTLE: Mr. President, it's AG Exhibit 286, and we move for its admission.

PRESIDING OFFICER: The Exhibit 286 will be admitted into evidence.

(AG Exhibit No. 286 was admitted)

MR. LITTLE: Mr. Arroyo, if you could assist us, please, very briefly.

Q. (BY MR. LITTLE) Mr. Vassar, who is Stephen Benesh?

A. I have no idea.

Q. You should know him. He's your State Bar president-elect.

This is a letter from Stephen Benesh who was opposing counsel to Nate Paul in the WC 4th and Colorado matter, and he wrote a letter.

MR. LITTLE: Mr. Arroyo, please blow up the text of his letter.

Q. (BY MR. LITTLE) Mr. Benesh says in response to Nate Paul's letter, like lawyers often do, "I disagree." And he wrote to the judge and he said, "The foreclosure sale isn't being stopped by this OAG informal guidance," right?

A. I've never seen this before, but I see where he says, The AG's, quote, informal guidance does not, emphasized, state that foreclosure sales may not proceed unless specifically authorized by the mayor in the city of the foreclosure.

Q. And what happens in courts is one side makes an argument and the other side makes an argument and the judge decides, right?

A. Yes, sir.

Q. Only in this case Nate Paul put his entity in bankruptcy to stop the foreclosure, right?

A. I'm not sure.

MR. LITTLE: That will be all, Mr. President.

PRESIDING OFFICER: Thank you, Counselor.

We will break until 1:00 p.m.

(Recessed for lunch at 12:02 p.m.)

AFTER RECESS

(1:00 p.m.)

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

PRESIDING OFFICER: You may be seated. Thank you.

I was asked to do this this morning, so I'll update you now as we go to the afternoon session. Time remaining, the respondents have 16 hours 2 minutes and 19 seconds. The House has 15 hours 33 minutes and 2 seconds. So by the end of today, around 6:00 o'clock, we will likely be past the halfway mark, or close to it, of time.

And I know to both parties, when we met last week and talked earlier this week, I – I asked for both parties to conduct themselves in an appropriate manner for this historic event. And I want to thank both parties, because I believe everyone has conducted themselves in a very high level of professionalism. And hopefully we finish the second half of the trial doing the same. I have no reason not to believe that will happen.

Mr. DeGuerin.

MR. DeGUERIN: Yes, Mr. President.

The House calls former Texas Ranger and former director of law enforcement division of the attorney general's office, David Maxwell.

PRESIDING OFFICER: Bailiff, will you bring in Ranger Maxwell.

Counsel, there are some documents up here left over. I'm not sure whose they are.

MR. COGDELL: I don't know whose they are, but I'll get them, Your Honor.

PRESIDING OFFICER: Okay. Thank you.

MR. COGDELL: Mitch, I assume these are yours. I don't know.

MR. LITTLE: I'll take them.

MR. COGDELL: Yes, sir. I'm sorry. Thank you.

MR. DeGUERIN: Please don't ask me to control the witness.

PRESIDING OFFICER: Mr. Maxwell, did you swear in the other day? You did not.

Okay. Repeat after me.

(The following oath was given to the witness.)

PRESIDING OFFICER: I do solemnly swear and affirm – I do solemnly swear and affirm – and affirm as a witness in the impeachment proceeding shall be – I'm sorry. I read the wrong line. Let me start from the beginning.

I do solemnly swear and affirm – you've read that – that the evidence I give upon this hearing – upon this hearing the Senate the State of – the Senate of Texas impeachment charges against Warren Kenneth Paxton, Jr. – Jr. shall be the truth, the whole truth, and nothing but the truth, so help me God.

Please be seated.

You may – you may begin.

DAVID MAXWELL,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DeGUERIN:

Q. If you'll move that microphone pretty close, we have a little problem with –

A. Okay.

Q. – acoustics in here.

Please tell the senators your name.

A. My name is David Maxwell.

PRESIDING OFFICER: Hit that red button on there.

A. There we go.

My name is David Maxwell.

Q. (BY MR. DeGUERIN) Mr. Maxwell, your last position with the attorney general was as director of law enforcement; is that correct?

A. That is correct.

Q. I want to ask you some questions about your law enforcement career. Can you tell us where you started and when?

A. I started in 1972 with the Texas Department of Public Safety. I went through the patrol school, graduated April 6 of 1973.

I spent eight years working highway patrol in Harris County. I promoted to narcotics in 1981, and worked narcotics in Harris County for five years.

I then promoted to Texas Rangers in 1986.

Q. Let me stop you there, just for a second. Those of us who are raised in Texas know a lot about – or think we know a lot about the Texas Rangers. What does it take to become a Texas Ranger?

A. First of all, you have to have eight years of experience with DPS to be able to apply for the position. When I applied in 1986, it was a little different than it is now, but we had to take a written examination to qualify to go before an oral interview board. And then they would score the oral interview board and combine the two, and then they took the top five people and put them on a list for one year. If you didn't get promoted in that one year, you went back to the first step and started over.

Q. How long did you serve the State of Texas as a Texas Ranger?

A. 25 years as a Texas Ranger.

Q. And when you left the Ranger service, where did you go?

A. I went to the Texas Attorney General's Office.

Q. What was your first position there?

A. My first position was deputy director of law enforcement.

Q. And did you promote to the director of law enforcement?

A. I did.

Q. I want to pull up for – please, the organizational chart. It'll be in front of you. Ask you a couple of questions about that.

A. Okay.

Q. Your name and – or – yes, your name has been highlighted, and it appears to be on a level with other deputies. So what was your rank in the attorney general's office as it relates to the deputy attorney generals?

A. I was the executive deputy over law enforcement division.

Q. Is that an equal rank with the deputies that were deputies over the other divisions of the attorney general's office?

A. Yes. And I was the most senior deputy.

Q. Most senior how?

A. I had more time as an executive deputy than the others who were working with me at that time.

Q. How many employees, law enforcement officers and support staff as well as attorneys, did you supervise?

A. I had about 350 employees, 205 were commissioned officers, and 19 of them were attorneys.

Q. Were those employees spread out across the state, or were they only in Austin?

A. We had a majority of them in Austin, but we also had offices around the state.

Q. What is and was, when you were director, the authority of the law enforcement division of the attorney general's office?

A. The authority was that of other peace officers in the state. We had jurisdiction over any type of crime that would be committed against the State of Texas.

Q. Did you have a criteria for opening a case as an investigator to be investigated by the attorney general's office criminal division?

A. I did.

Q. What was that criteria?

A. This is the criteria that I set up for investigating public officials. So I had certain requirements. First of all, I reviewed all the requests that came in for investigations on public officials. And we had a lot of requests, and I didn't approve but just a few every year.

We already worked as many cases on public corruption as the Texas Rangers who have statute authority.

MR. COGDELL: Excuse me, Your Honor. Excuse me. Nonresponsive. The question was what was your criteria.

Q. (BY MR. DeGUERIN) What was your criteria for –

PRESIDING OFFICER: Sustained.

Q. (BY MR. DeGUERIN) – opening an investigation?

A. The criteria was at first I had to have a sworn signed statement from the person who was making the allegation. The second thing was that I had to have a letter from the district attorney who had jurisdiction over the possible cases saying that they would prosecute those cases if we were able to prove that a case was viable.

Q. Why did you have a criteria such as that, particularly when it comes to investigating public officials?

A. I set up the criteria in order not to be pulled into situations that are strictly political in nature. I did not want us to be in a position of investigating public officials when there was really no crime being committed.

Q. And did this criteria particularly apply to investigations of public integrity?

A. Yes.

Q. Do you know who was the district attorney in Travis County in the year 2020?

A. Margaret Moore.

Q. Did you have a good relationship with Margaret Moore?

A. I did.

Q. I want to get right to the matters here.

Were you asked in some way to meet with a person named Nate Paul?

A. Yes.

Q. Who asked you to do that?

A. Jeff Mateer.

Q. Where did – did Jeff Mateer tell you who had asked – who had told him to have you meet with Nate Paul?

MR. COGDELL: Objection. Hearsay.

MR. DeGUERIN: That's not hearsay under 803 and 801(e)(2)(D), Your Honor, with respect.

MR. COGDELL: Mr. Mateer is not alleged to have been a co-conspirator. Objection. Hearsay.

MR. DeGUERIN: It's not –

PRESIDING OFFICER: Hold on one moment. Hold on. And we've been doing a really good job of not using a lot of numbers. I have my whole chart here. It's better for you just to say what – what the answer objection is, but let me – this is why I have legal counsel here.

MR. DeGUERIN: Yes. It's 801(e)(2)(D).

PRESIDING OFFICER: Overruled.

Q. (BY MR. DeGUERIN) All right. You may state your answer. And the question is: Did Mr. Mateer tell you who ordered him to order you to meet with Nate Paul?

A. Yes.

Q. What did he say?

A. He said General Paxton ordered me to meet with this individual, that he had a story to tell.

Q. At about the same time, did you hear from an employee of the Travis County District Attorney's Office about Nate Paul?

A. I did.

Q. I'm going to ask you about that in a minute, but when you first were asked to meet with Nate Paul, did you do some research of your own?

A. I did.

Q. And what did you find?

A. I found –

MR. COGDELL: Excuse me.

A. – on the Internet –

MR. COGDELL: Excuse me. With all due respect to Ranger Maxwell, if he's going to recite information that he obtained doing his research, that would be hearsay.

MR. DeGUERIN: It goes to his state of mind in conducting the investigation, Your Honor. And thus is not hearsay.

MR. COGDELL: It is hearsay.

MR. DeGUERIN: Well –

PRESIDING OFFICER: Overruled.
Continue.

Q. (BY MR. DeGUERIN) Okay. So what did you find when you made your initial investigation of Nate Paul?

A. I found that Nate Paul is being investigated by the FBI, that they had run search warrants in August of 2019 on his business and his home and a storage facility. I found articles of business journals that talked about lawsuits –

MR. COGDELL: Excuse me, Your Honor. Excuse me. Objection. Hearsay. Articles and business journals, that's definitionally hearsay.

MR. DeGUERIN: Again, it goes to his state of mind. And it – it's the same – he's answered the same question that the Court allowed.

MR. COGDELL: With all due respect, he can testify to what's in his mind under this exception. He can't testify as to what the article said.

PRESIDING OFFICER: Sustained.

Q. (BY MR. DeGUERIN) Nonetheless, did you form an opinion of your state of mind?

A. I did.

Q. And what was that?

A. My opinion that Nate Paul was a criminal and that we should not be associated with Nate Paul.

Q. At about the same time, did you receive a communication from the Travis County District Attorney's Office?

A. I did.

MR. DeGUERIN: Your Honor, we have an agreement on House Exhibit 615, which we move to introduce.

MR. COGDELL: Could I see it, Dick, real quick? I'm sure you're right. Yes. Yes, no objection.

PRESIDING OFFICER: It's been admitted. Both sides have agreed.

(HBOM Exhibit 615 admitted)

Q. (BY MR. DeGUERIN) If we could bring up – closer – yeah, I'm being told to tell you to get closer to the mic.

PRESIDING OFFICER: Mr. Maxwell, they just asked you to get closer to the mic when you speak.

THE WITNESS: Closer to the mic. Is that better?

PRESIDING OFFICER: You can pull that towards you a little bit, if you'd like.

MR. DeGUERIN: You can pull the whole outfit closer to you.

A. Okay.

Q. (BY MR. DeGUERIN) This is the first page. This is the email, and it references a letter. Let's go to the second page, please.

A. Yes. It was from Don Clemmer.

Q. All right. Here's – here's a letter from Don Clemmer. It's dated June 10th, 2020. It's to you. And let's just read it into the record.

I am forwarding to you the attached complaint which was recently received by my office regarding allegations of misconduct by employees of the State Securities Board, the Federal Bureau of Investigations, the Department of Public Safety, the United States Attorney's Office for the Western District of Texas, and a federal magistrate. My office would typically forward such a complaint to the Public Integrity Unit of the Texas Rangers for review. However, since an employee of the Department of Public Safety is one of the subjects of the complaint, referral to the Rangers would appear inappropriate. I am, therefore, requesting that your agency conduct the review.

My first question: Is the word "review" significant?

A. Yes.

Q. What – what is its significance?

A. In the protocols that we have set forth, we first review the request before we ever make a determination on whether we'd actually open up an investigation.

Q. Now, you're familiar with a district attorney's office excusing or recusing itself from an investigation, aren't you?

A. Yes.

Q. Is that what this was?

A. Yes. They were forwarding it to us. They didn't feel like – that it was up to them to do this investigation.

Q. Now, we saw the email that Mr. Clemmer sent about the same time, and it mentions that you should call him if you'd like. Did you call him?

A. Yes, I did.

Q. And did you talk to him?

A. Yes, I did.

Q. What did he tell you?

MR. COGDELL: Excuse me. Objection.

MR. DeGUERIN: When it comes in – I know he's going to object to hearsay.

Under Rule 803.3, it's an expression by Mr. Clemmer of his then-existing motive, intent, and plan.

MR. COGDELL: Not only do I have to object, I want to object. Hearsay.

PRESIDING OFFICER: Sustained.

MR. DeGUERIN: Well, maybe I didn't clearly state my citation of the code or of the evidence rules, Your Honor. 803.3.

PRESIDING OFFICER: I've ruled.
Continue.

Q. (BY MR. DeGUERIN) All right. Whatever – and don't go into the words that Mr. Clemmer said. Was it consistent with what you had already found or the suspicions that you already had?

A. Yes.

Q. And what were your suspicions?

A. That the referral was being requested by General Paxton.

Q. And what about the validity of their referral and the complaint?

MR. COGDELL: Excuse me. Objection. Conjecture and speculation.

MR. DeGUERIN: This is – this would be his evaluation, which was his job to do.

MR. COGDELL: He hasn't done anything yet. Objection. Conjecture and speculation.

You're asking him to testify as to the validity of a complaint, which he hasn't investigated yet. That would be conjecture and speculation.

MR. DeGUERIN: Let me lay a better –

PRESIDING OFFICER: Overruled. Overruled.

Q. (BY MR. DeGUERIN) Okay. Go ahead.

A. I can answer the question?

Q. Yes.

A. My evaluation of the allegation that was made by Nate Paul, is that they were absolutely ludicrous without merit, no probable cause, not even reasonable belief that a crime had been committed.

Q. Now, let me step aside for just a moment and say – or ask you: What were the nature of the allegations that Mr. Nate Paul was making?

A. The nature of the allegations that he was making were against the FBI, an investigator with the Texas State Security Board, two U.S. attorneys, the federal senior federal magistrate Mark Lane, and others who were involved in the chain of the signing and execution of the search warrants on – that on his business, his place of storage, and also his home.

Q. Now, one of your areas to investigate, one of your duties was to investigate public integrity, correct?

A. Yes.

Q. If there had been credible allegations against the State Securities Board, the DPS, the FBI, federal magistrate, U.S. attorney, would you have any hesitation of going forward?

A. No.

MR. COGDELL: Excuse me. Objection. Bolstering and self-serving.

PRESIDING OFFICER: Overruled.

Continue.

Q. (BY MR. DeGUERIN) You may answer.

A. No, I would not.

Q. Did you have any hesitation even to meet with Nate Paul?

A. I did not want to meet with Nate Paul. And I expressed my concerns to Jeff Mateer about that.

Q. And what was the reply?

A. He said that he was getting a lot of pressure from General Paxton for me to do this.

Q. All right. Let's go to July the 21st of 2020. Did you have a meeting with Nate Paul and his lawyer?

A. I did.

Q. And what was the reason you had that meeting?

A. I told Jeff Mateer that I would consent to let him tell his story, and that if he made any statements against his interest, I would report it to the FBI.

Q. So on July the 21st did you have the meeting?

A. I did.

Q. Where?

A. It was on the first floor of the Clements building. It was in the office of our security office where we have a conference room that has the capability of recording video and sound.

Q. Who wanted that to be done? That is record by video and sound the meeting with Nate Paul and his lawyer and yourself?

A. Me.

Q. Are you familiar with a report that was later put out by the attorney general's office claiming that General Paxton wanted that meeting recorded?

A. That is false.

Q. So have you reviewed the transcript of that meeting?

A. I have.

Q. Are you aware that the lawyers for General Paxton have been supplied with both the audio and video and transcript of that meeting?

THE REPORTER: I didn't get your answer.

A. Yes, I'm aware of that.

Q. (BY MR. DeGUERIN) Okay. What took place at that meeting?

A. Say it again.

Q. What took place at that meeting?

A. Nate Paul laid out his conspiracy theory about what happened the day of the search warrants were executed. He had complaints about the procedural part that the FBI took when they were securing the scene and conducting the searches. And then he laid out a – his conspiracy theory that they had originally come to search for, not records, but for drugs and guns.

And then in the middle of the search when they didn't find any drugs and guns, they then altered the search warrant to be the search warrant that was executed where it was for records. And he further stated that the people involved in that was the FBI agent, the agent from the Texas Securities Board, Alan Buie who was AUSA, and Mark Lane, the senior magistrate.

Q. So according to his complaint, a United States federal magistrate was involved in this conspiracy?

A. That's correct.

Q. As a law enforcement officer of many years, what did you think of that?

A. It was ludicrous.

Q. Did you ask for any documentation?

A. Yes, I did.

Q. What is the – are you familiar with the crime of obstruction of justice?

A. I am.

Q. Are you familiar with the crime of interference of a law enforcement investigation?

A. Of a federal investigation, yes, I am.

Q. What concerns did you have if you had started an investigation based on these claims by Mr. Paul?

A. My concerns that we would be interfering with a federal investigation, we could be charged with obstruction of justice, and based on the complaint that has absolutely no merit.

Q. And at this time, even at this meeting, had your criteria for opening an investigation been satisfied?

A. No.

Q. How so?

A. It doesn't meet any of my requirements.

Q. After that meeting with Mr. Paul – and his lawyer, by the way, was Michael Wynne?

A. Michael Wynne was there.

Q. Okay. After that meeting with Mr. Paul, did you have a meeting with the attorney general, General Paxton?

A. I did not after that meeting immediately, no.

Q. But no, I don't mean that same day. But did you personally talk to Ken Paxton, the attorney general, about what had happened in that meeting?

A. No, I did not.

Q. What did you tell him about the meeting?

MR. COGDELL: I'm sorry. I thought he said he did not meet with Mr. Paxton, and you just asked him what he told Paxton. One of us is confused.

PRESIDING OFFICER: Can we clarify that?

Q. (BY MR. DeGUERIN) Yeah. Could you clarify that? Did you tell him what you thought about that meeting?

A. I told him before the meeting ever occurred what I thought about us being involved with Nate Paul. That happened before the first meeting.

Q. And what did you tell him?

A. I told him that –

MR. COGDELL: I'm sorry –

A. – he was a criminal.

MR. COGDELL: Excuse me, Ranger.

Objection. Asked and answered. He just got through telling us what he told Paxton.

PRESIDING OFFICER: Sustain –

MR. DeGUERIN: I don't believe it was asked – I don't believe he answered fully.

What I'm driving at, what did he tell General Paxton.

PRESIDING OFFICER: I'll sustain the objection. And you can try one more time, again.

MR. DeGUERIN: Or maybe I'm – maybe I'm not clear on it.

Q. (BY MR. DeGUERIN) Did you, at some time, tell General Paxton what you thought about this idea of Mr. Paul that there was a vast conspiracy against him?

A. Yes.

Q. What did you tell him?

A. I told him that Nate Paul was a criminal. He was running a Ponzi scheme that would rival Billie Sol Estes. And that if he didn't get away from this individual and stop doing what he was doing, he was going to get himself indicted.

Q. Nonetheless, was there a second meeting between you and Nate Paul and Nate Paul's lawyer and Mark Penley?

A. There was.

Q. Why was there a second meeting if you felt like you did after that first meeting?

A. Because he had talked to Nate Paul – I mean, he had talked to Mark Penley and told him he wanted him to conduct another meeting with Nate Paul.

Q. When you say "he," are you referring to General Paxton?

A. General Paxton, that's correct.

Q. So General Paxton had told Mr. Penley to get involved in this?

MR. COGDELL: Objection.

A. That is correct.

MR. COGDELL: Excuse me, objection.

I'm sorry, Dick.

Objection. Asked and answered. Ranger Maxwell will give his testimony, and Dick will ask him to repeat the same thing. Asked and answered.

PRESIDING OFFICER: I'm going to overrule that.

Continue.

Q. (BY MR. DeGUERIN) Yeah, I. Wanted to clarify and make sure that we understand.

Mark Penley told you that General Paxton had ordered him to now get involved?

MR. COGDELL: This is the third time. Objection. Asked and answered. He literally just got through testifying to that.

MR. DeGUERIN: I believe that –

PRESIDING OFFICER: Sustained.

MR. DeGUERIN: – he allowed me to ask that.

PRESIDING OFFICER: Sustained.

Q. (BY MR. DeGUERIN) All right. So did you have a second meeting?

A. We did.

Q. And was Mr. Penley involved in this one?

A. He was.

Q. And what was Mr. Penley's role in the attorney general's office? If we could have that organizational chart again.

A. Mr. Penley was the executive deputy over criminal prosecution.

Q. So in this chart, he's just next to you. And it's now been highlighted for them on – for the jurors, right?

A. That's correct.

Q. Was he your superior, or was he an equal of yours?

A. He was an equal.

Q. And what was Mr. Penley's background briefly?

A. He came to us from the U.S. attorney's office out of Dallas where he had been an assistant U.S. attorney.

Q. So at this second meeting, where did it happen?

A. In the same place as before, the Clements building ground floor, the security office conference room.

Q. Was it audio-video recorded?

A. It was.

Q. Do you – and is there a transcript of that?

A. There is.

Q. Have you reviewed that?

A. I have.

Q. Do you – are you aware that that has been provided to Attorney General Paxton's lawyers?

A. Yes.

Q. All right. Why did you – who wanted that meeting recorded?

A. I did.

Q. If there's any suggestion that General Paxton wanted that recorded, is that true or false?

MR. COGDELL: Objection. Asked and answered.

A. False.

MR. DeGUERIN: That was the first one. That was the first one that we referred to.

PRESIDING OFFICER: Overruled.

Q. (BY MR. DeGUERIN) Go ahead.

A. It's false.

Q. Was there anything new brought up in that meeting, as far as you were concerned? You were in both meetings.

A. He again – he and his lawyer again reiterated the complaints and their conspiracy theory, as they had done in the first meeting. I advised them –

MR. COGDELL: Objection. Excuse me –

Q. (BY MR. DeGUERIN) What did you advise?

MR. COGDELL: Excuse – excuse me, Dick.

The objection is nonresponsive. The question was: Was there anything new? Now they – now, Ranger Maxwell was going into what he told them. That's a different answer.

PRESIDING OFFICER: Sustained.

MR. DeGUERIN: That – it's correct. And I was trying to meet his objection by going to the next question.

Q. (BY MR. DeGUERIN) So what – go ahead. The next question is what happened?

A. What happened? So during the meeting, they continued to lay out their objections about what happened in the search warrants and the conspiracy theory about how all these different individuals came together and falsified a search warrant during the middle of the search. And I told them that if that – if they believe that to be true, then why aren't they in the office of the inspector general's office for the federal government, which has the authority to look into any of these complaints. And the FBI, the U.S. attorneys office, the federal magistrate has to cooperate with them. And I asked him why aren't you in that office.

Q. Did you get a satisfactory answer to that?

A. They danced around the answer, but they said they felt like they were in the right place with us.

Q. Did you receive any kind of documents to corroborate or to support that the search warrant had been changed mid search?

A. They gave us some documents. They were supposed to give us all the documents, but when we reviewed the documents they gave us, it was not very much. And it certainly wasn't enough for us to really make a determination.

Q. Even still, did you submit those documents to some experts within your office?

A. I did.

Q. And what – what's the expertise of the people that you submitted these documents to?

A. This is by a forensic section who does all the forensics on computers and cell phones for criminal cases. And we do that work not only for ourselves but for the Texas Rangers and others.

Q. All right. By this time, which is – that meeting was August the 5th. By this time, had you become aware yet that General Paxton had ordered Josh Godbey and Mr. McCarty to push a charity to settle in a lawsuit?

A. No.

MR. COGDELL: Objection. Objection.

Q. (BY MR. DeGUERIN) And by that time –

MR. COGDELL: Excuse me, Dick.

Objection. Leading. And assuming facts not in evidence through this witness.

MR. DeGUERIN: I'm just asking if he was aware.

PRESIDING OFFICER: Sustained. Sustained.

Q. (BY MR. DeGUERIN) Were you aware that Ken Paxton had asked Ryan Bangert to change a State policy?

A. No.

Q. Were you aware that General Paxton had asked Ryan Vassar to release details of that very ongoing investigation?

MR. COGDELL: Objection. That's a misstatement of the record. And it's assuming facts not in evidence through this witness.

PRESIDING OFFICER: Overruled.

Q. (BY MR. DeGUERIN) You may answer.

A. No.

Q. Did you later become aware of those things?

A. I did.

Q. We'll get to that.

Let's talk just for a moment about the records of a search. What is the general practice in the – at least in federal courts for the sealing, that is making private, the affidavit, the application for a search warrant?

A. They are sealed to protect people who are involved, may have given information about the crime that's being committed. And also for the purposes of protecting the investigation so it can be ongoing and find the truth.

Q. Are you familiar with orders of federal courts to seal documents such as these?

A. Yes.

Q. In this second meeting, what was Nate Paul and his lawyer's demeanor toward you and Mr. Penley?

A. I think that they were maybe not as gracious as they were during the first meeting. I think they understood by this point –

MR. COGDELL: Excuse me, Ranger.

Object to what he thinks they understood. That's conjecture and speculation.

PRESIDING OFFICER: Sustained.

Q. (BY MR. DeGUERIN) Well, what my answer is – my question is not what you thought they thought, but what was their demeanor. So what was their demeanor?

A. It was a little more animated than the first – first meeting.

Q. Did it – did anything happen at that meeting to change your initial assessment of whether this should be elevated to the level of an actual investigation?

A. No.

Q. To clear that up, when you got this, did you start an investigation as that term is understood?

A. Ask your question again.

Q. Yes. Did you start an investigation – did you initiate an official investigation?

A. No.

Q. What do you do when you start an investigation?

A. When you start an investigation, you assign it to an investigative group. That is assigned an investigative number and is put into the record.

Q. And the reason that even after this second meeting it had not risen to the level of investigation, what's that reason?

A. The reason was that the – the allegations had no merit, and we weren't going to do the investigation if I had anything to say about it.

Q. All right. Even though – did you make that clear to not only now Mr. Paul and his lawyer but also Mr. Penley?

A. Yes.

Q. Even though that was your position, did you agree to submit their documents to your experts within the office?

A. Yes.

Q. Okay. So was there a third meeting?

A. There was.

Q. When was that third meeting?

A. It was on August 12th.

Q. Was it clear to you by then what General Paxton wanted done?

MR. COGDELL: Objection. Conjecture and speculation.

Q. (BY MR. DeGUERIN) Was it – let me clear that up.

Was it clear to you from what General Paxton told Mr. Mateer or Mr. Penley what General Paxton wanted done?

MR. COGDELL: That's actually worse. That's hearsay and conjecture and speculation.

MR. DeGUERIN: Actually no, Your Honor. It's under 801(e)(2)(D).

PRESIDING OFFICER: Counselor, you're going to make me look at these numbers, aren't you?

MR. DeGUERIN: Yes. Yes, Your Honor.

MR. COGDELL: He's just trying to throw you off, Judge.

MR. DeGUERIN: 801(e)(2)(E) is – says that a statement such as this is not hearsay, particularly –

MR. COGDELL: With respect –

MR. DeGUERIN: When it – excuse me.

MR. COGDELL: I'm sorry, Dick. Go ahead.

MR. DeGUERIN: – particularly when it was made by the party's agent or an employee on a matter within the scope of that relationship. And here it's what General Paxton told to either Mateer or to Penley that was passed to the witness.

MR. COGDELL: With respect –

MR. DeGUERIN: That is not hearsay.

MR. COGDELL: I'm sorry, Dick.

With respect, Your Honor, there's a difference between what General Paxton said and what Ranger Maxwell can opine about General Paxton's state of mind. Those are two different things.

MR. DeGUERIN: Not asking that.

MR. COGDELL: You just did.

PRESIDING OFFICER: Sustained.

MR. DeGUERIN: Let me ask it again then if that's how it was understood.

Q. (BY MR. DeGUERIN) What message was passed to you by either Penley or Mateer that General Paxton had ordered done?

A. General Paxton wanted to have a third meeting –

MR. COGDELL: I'm sorry, objection. I don't – objection. Conjecture and speculation.

I have no problem with Ranger Maxwell testifying as to what General Paxton said, but there's a difference between what he said and what he wanted. I know it's splitting a hair, but objection, nonresponsive.

PRESIDING OFFICER: Sustained.

Q. (BY MR. DeGUERIN) What did he say he wanted?

A. He wanted us to tell Nate Paul that we were not going to be doing an investigation due to the results of our forensics analysis.

Q. So going into that third meeting, is that what you believed it was going to be about?

A. Yes.

Q. Was that meeting recorded like the first two?

A. No.

Q. Who was responsible for it not being recorded?

A. General Paxton specifically told us that he did not want that meeting recorded.

Q. Okay. So as you're going into a meeting in which you believe it's just for you to tell Nate Paul that you're not going to do his bidding, what happened?

A. Nate Paul was there along with his lawyer, Michael Wynne. I had my two forensic experts, Mark Penley, myself, and General Paxton. My forensics people explained to Nate Paul the results of their forensics examination.

Q. And very briefly, what was that result?

A. That the metadata that he was talking about that had changed could have been changed by the fact that there were documents he received had been electronically redacted and encrypted, which would change the metadata.

Q. Is that a long way of saying there was nothing there?

A. Yes.

Q. So your understanding that General Paxton was telling you tell him that you're not going to have an investigation, what was General Paxton's – what did he say during that meeting?

A. During the meeting, he was supporting Nate Paul's position, which was that we need to do an investigation. And he was pretty adamant about it.

Q. Was that meeting heated?

A. It became heated.

Q. Who became heated?

A. Nate Paul.

Q. Before that meeting started, were you aware of any public statements that Mr. Paul had made about whether there was an investigation?

A. Yes, I was.

Q. And what were those public statements you were aware of?

A. He had done an interview with a business journal and told them that the Texas attorney general was investigating the FBI and their handling of the search warrants on his property.

Q. Was that true or not?

A. That is false.

Q. In fact, you had not started an investigation, correct?

A. We had not. And I specifically told Mr. Paul that we were not doing an investigation at this point and our meetings were confidential.

Q. And the response?

A. Oh, yeah, he responded.

Q. What was his response?

A. He was – he was very angry. And he said that he still has a First Amendment right. And I told him that all you're doing is using the power and the prestige of this office for your own purpose, and I'm not going to allow that.

Q. Whose side in that dispute between you and Nate Paul did General Paxton take?

A. Nate Paul.

Q. So what was the significance of Nate Paul making a public statement that the attorney general's office was investigating a federal magistrate and the federal authorities and the State authorities that the attorney general was investigating, what's the significance of that kind of public statement?

MR. COGDELL: Excuse me. Objection. Conjecture and speculation.

PRESIDING OFFICER: Sustained.

Q. (BY MR. DeGUERIN) All right. Why did you think, what was your state of mind, about why such a public statement – when it was not true about the attorney general investigating these law enforcement people, what was your state of mind about why that was improper?

A. It was improper because Nate Paul was a criminal, and he was – Nate – General Paxton was using the office to try – to his benefit.

Q. Can the very start of an investigation into a public figure be damaging to that public figure?

A. Yes, it can.

Q. Is that –

MR. COGDELL: I'm sorry. Excuse me, Dick.

Pardon me, Ranger.

Objection. Conjecture and speculation.

PRESIDING OFFICER: Overruled.

Q. (BY MR. DeGUERIN) You may answer.

A. Repeat the question.

Q. Yes. Can the very public start of an investigation against a public figure be damaging, almost like a tattoo, to that public figure?

MR. COGDELL: I got to object to leading and the tattoo. I'm sorry.

Objection. Leading.

MR. DeGUERIN: Well, I'll – I'll reverse – I'll take the –

PRESIDING OFFICER: Sustained.

MR. DeGUERIN: – tattoo out of it.

PRESIDING OFFICER: Sustained.

MR. COGDELL: Take the tattoo out.

MR. DeGUERIN: If I take the tattoo out of it, may I ask the question again?

PRESIDING OFFICER: I just sustained that. You can try whatever you like to and see what he objects to or not.

Q. (BY MR. DeGUERIN) Is there a danger to a public official's reputation by publicizing an investigation by the attorney general, and especially when it's not true?

A. Yes, very much so.

Q. Is that the reason you're very careful about having a criteria for starting an investigation?

MR. COGDELL: Objection. Leading.

PRESIDING OFFICER: Sustained.

Q. (BY MR. DeGUERIN) What is the reason you're careful about that?

A. We're careful – we're careful because we don't want to put a stain on anyone's reputation. It has to be an investigation that is viable, has probable cause, and could move forward. This was not that.

Q. All right. So let's ask – let's talk about what happened after that meeting. Did you ever have any further conversations with Attorney General Paxton?

A. No. Attorney General Paxton stopped talking to me.

Q. And your assessment at that time of whether General Paxton was angry with you?

MR. COGDELL: Excuse me. Conjecture and speculation.

MR. DeGUERIN: It's his state of mind.

PRESIDING OFFICER: Sustained.
You can ask it differently if you'd like.

MR. DeGUERIN: All right.

Q. (BY MR. DeGUERIN) Your state of mind after General Paxton and you left that meeting, was what about General Paxton?

MR. COGDELL: Unless he said anything, conjecture and speculation. He's got nothing to base it on.

PRESIDING OFFICER: Overruled.

Q. (BY MR. DeGUERIN) You may answer.

A. I know his state of mind because in the meeting he threatened to fire me. So I knew then what his commitment was to Nate Paul, and he was not going to be deterred from continuing to try and do things that benefit Nate Paul.

Q. During this period of time with these three meetings, had you called upon any of your subordinates, any of your other investigators, to – other than to look at the – this metadata, had you called on anyone to assist you in this review?

A. No.

Q. Why not?

A. I told my people that this was going to get me fired. I was going to take the stand, and I was not going to jeopardize any of their careers by involving them.

Q. Why did you think it was going to get you fired?

MR. COGDELL: Excuse me.

A. He demonstrated his commitment to Nate Paul.

PRESIDING OFFICER: Witness, hold on a moment.

MR. DeGUERIN: State of mind.

PRESIDING OFFICER: Your objection?

MR. COGDELL: Objection. Conjecture and speculation.

PRESIDING OFFICER: Overruled.

MR. DeGUERIN: State of mind.

Q. (BY MR. DeGUERIN) Yes, you may answer.

A. He had already told me that if I conducted my business as the FBI does he was going to fire me. So I know that he was angry with me because I was not buying in to the big conspiracy theory that Nate Paul was having him believe.

Q. And at this time did you know that there was some action within the attorney general's office to hire an outside counsel to do what you refused to do? That is conduct an investigation into Nate – into the federal authorities that were hounding Nate Paul?

MR. COGDELL: I'm sorry, Dick.

Q. (BY MR. DeGUERIN) Take out "hounding." That were conducting their investigation on Nate Paul.

MR. COGDELL: Objection. Vague. When is this time? I'm not sure where we are.

MR. DeGUERIN: Okay. I'll clarify.

PRESIDING OFFICER: Sustained.
Clarify, please.

Q. (BY MR. DeGUERIN) At this time. We're now talking about the end, after the third meeting. Did you know that there was some movement for General Paxton to demand the hiring of a special counsel or an outside counsel? Did you know about it at that time?

A. No.

Q. As far as you were concerned, was the attorney general's office involvement in Nate Paul's complaint about how he had been treated, or mistreated in his words, by the investigation into his activities, was the attorney general's office involvement over?

A. No. I didn't think it was because I knew that he was probably going to fire me and hire somebody who would –

MR. COGDELL: Excuse me. Excuse me. Nonresponsive. And conjecture and speculation. With all due respect to Ranger Maxwell, he's not The Amazing Kreskin. He can't see everything in the future.

MR. DeGUERIN: I'm asking for his state of mind.

PRESIDING OFFICER: Overruled.

Q. (BY MR. DeGUERIN) You may answer.

A. Yes, I did not believe that General Paxton was going to stop pursuing this investigation.

Q. Did you, at that time, though, know about the hiring, or attempted hiring, of Brandon Cammack, the young lawyer from Houston?

A. No.

Q. Did you find out about it later?

A. I did.

Q. I want to jump ahead now to the very end of September and the beginning of October. Did you go on a vacation toward the end of September?

A. Yes.

Q. And where'd you go?

A. We went to Colorado.

Q. Did you learn – don't tell us what was said yet. But did you learn that there was a crisis of sorts among the deputies, your fellow deputies, in the attorney general's office?

A. I did.

Q. How did you learn it?

A. They contacted me.

Q. And did you – even being in Colorado, they have – they have phones up there last time I checked. Were you able to communicate with your fellow deputies?

A. I had to drive down the mountain to do it, but, yes, I did communicate with them by phone.

Q. What did you learn?

A. I learned that all the executive deputies, including Jeff Mateer, were going to stand shoulder to shoulder with me and confront Nate – confront General Paxton with what he has been doing to the agency for the benefit of Nate Paul.

Q. What about a plan to go to the Federal Bureau of Investigation to report what they believed were, and what you believed, I believe, were crimes being committed?

MR. COGDELL: Objection. Leading.

Q. (BY MR. DeGUERIN) What did you learn?

MR. COGDELL: And, again, what time frame are we talking about? Your question was late September.

MR. DeGUERIN: Time frame is the end of September.

PRESIDING OFFICER: Sustained.

Re-ask.

Q. (BY MR. DeGUERIN) Time frame is the end of September. And your conversations with your fellow deputies, what did you learn the plans were?

A. I learned that they were going to report the activities to the FBI. I learned that they had written a letter to General Paxton. I was not present so I could not sign it. And I told them that I would also contact Lieutenant Colonel Randy Prince with the Texas Department of Public Safety. And also tell him what was going on, and that we were going to request an investigation.

Q. So by you – you knew Lieutenant Colonel Prince as a fellow Ranger, didn't you?

A. Yes. I broke him in.

Q. And so by reporting to the Department of Public Safety, Lieutenant Colonel Prince, where was he in the hierarchy of the Department of Public Safety?

A. He is number two. Or he was number two in the department. He's now retired.

Q. And at the time that you did that, were you making a report to law enforcement about General Paxton?

A. Yes.

Q. What did you think would happen to you as a result of you reporting General Paxton to authorities?

MR. COGDELL: Conjecture and speculation, Judge.

MR. DeGUERIN: State of mind.

MR. COGDELL: Judge, everything doesn't get to come into evidence as state of mind.

PRESIDING OFFICER: Overruled.

Q. (BY MR. DeGUERIN) You may answer.

A. I was going to be fired.

Q. What happened on – I believe it was October 2nd, two days after the report. What happened on that date regarding you?

A. I received notification by text message from Greg Simpson, the division chief over human resources, notifying me that I was placed on investigative leave.

Q. As a result of being placed on investigative leave, what did that do to your responsibilities in the attorney general's office?

A. At that time I had no responsibilities, had no access.

Q. And how long did that situation last?

A. For one month.

Q. What happened then?

A. On November 2nd, 2020, I met with Brent Webster and he terminated me.

Q. Stop you. Who was Brent Webster by that time?

A. Brent Webster was the new first assistant hired by General Paxton.

Q. Would you describe for the Senate and the senators what happened when Brent Webster fired you on – was it – did you say November the 2nd?

A. Yes.

Q. Go ahead.

A. I was told to show up at 9:00 a.m. in the conference room next to human resources, and that he – I would be meeting with Brent Webster.

Q. Were you still a law enforcement officer?

A. Yes.

Q. Were you told anything about whether to bring a weapon or not?

A. My division chief over criminal investigation division had called me on the telephone when I was in route to the office. And he told me that Brent Webster said that I was not allowed to be in the building if I was armed.

Q. So what happened after you went to this – or showed up at the time you were supposed to show up?

A. I got there at – before 9:00. I was pretty much always early. And I waited till about 11:30 before Brent Webster showed up.

Q. What happened then?

A. Brent Webster and Anne Weiss came together, and they first asked me if I was recording this meeting, and I said no.

Q. And you were not?

A. I was not.

Q. Did you ask them?

A. I asked them if they were recording the meeting, and they said they were not.

Q. Then what happened?

A. Then Brent Webster told me that he was conducting an investigation.

Q. Did you believe that?

A. No.

Q. And, in fact, did his actions confirm your nonbelief?

A. Yes.

Q. What happened then?

A. So he attempted to interview me in a very vague and an inept way. And I told him just ask the question. I'll answer it or I won't answer it. Just give me a direct question and I'll give you what you want to know.

We never got to the point where he asked me really direct questions.

Q. All right. How did it end?

A. He told – he left, and he told me to be back at 1:00 o'clock. And so I went to have some lunch and I came back to the office at 1:00 o'clock.

Q. Did he show up?

A. No.

Q. What happened?

A. About 4:30, members of human resources showed up with my paperwork. And I signed the paperwork and I was fired.

Q. I want to talk just a moment about what I'll call "retaliation." Were you retaliated against for what – your actions that you took in this case?

A. Yes.

Q. Tell the members of the Senate briefly how you were retaliated against.

A. That he retaliated against me, was what you're asking.

Q. Yes.

A. Well, in firing me at the time I was 71 years old and had risen to a top level of law enforcement. In effect when he fired me and then berated me in the news, he ended my career.

Q. By that time your career had taken up how many years?

A. It was 48 years.

Q. Were you proud of your career?

A. Absolutely.

Q. What is an F-5 form, as in – F as in "Frank" 5, the number?

A. It's a TCOLE form.

Q. TCOLE means what?

A. Texas Commission on Law Enforcement.

Q. What – what's the importance of TCOLE?

A. TCOLE is the regulatory agency for all peace officers in the state of Texas.

Q. And so what happened with – at first with regard to your TCOLE license and the F-5 form?

A. The F-5 form is a form that is required for the agency to fill out any time they separate from a law enforcement officer. There are three things that you can mark on the F-5. It can be an honorable discharge, it can be dishonorable, or it can be a general discharge.

Q. Is a general discharge good or bad?

A. Bad.

Q. Did you contest that?

A. I did.

Q. Did you join in the filing of a whistleblower lawsuit?

A. I did.

Q. We've called it that.

Why did you sue?

A. I sued because he ended my career in a very unjust manner.

Q. Eventually, partly as a result of the lawsuit, was the general discharge reversed and you got an honorable discharge?

A. Yes.

Q. Is that important?

A. Yes.

Q. Why?

A. Because it's important to me to show that I had an honorable discharge and that I did nothing wrong by standing up for right.

MR. DeGUERIN: Pass the witness.

PRESIDING OFFICER: Mr. Cogdell.

MR. COGDELL: Thank you.

Give me just a minute to set up.

PRESIDING OFFICER: Take as much time as you need.

MR. COGDELL: Thank you. You good, Dick?

MR. DeGUERIN: Yeah.

CROSS-EXAMINATION

BY MR. COGDELL:

Q. Good afternoon, Ranger.

A. Good afternoon, Counselor.

Q. How are you?

A. I'm good.

PRESIDING OFFICER: Mr. Cogdell – I'm sorry – since you're a little taller, you're going to need to get closer to that microphone so we can –

MR. COGDELL: Wait, I'm taller than Dick?

PRESIDING OFFICER: – or raise that up. There you go.

MR. COGDELL: All right.

Q. (BY MR. COGDELL) It's been a minute, has it not?

MR. DeGUERIN: I confess.

MR. COGDELL: Sir?

MR. DeGUERIN: I confess. He is taller, and in fact – well –

Q. (BY MR. COGDELL) It's been a minute since you and I have seen each other.

A. It has.

Q. Let me go into sort of your preparation for this hearing. And, Ranger, I know you as Ranger Dave Maxwell, so I'm going to call you that whether you want it or not because it's just in my brain.

A. I'm good with that.

Q. That – good.

What have you done in preparation for testifying here today, Ranger Maxwell?

A. I've consulted with the attorneys. I've reviewed the material that has been turned over that I would be speaking about.

Q. And is your lawyer here?

A. Yes.

Q. Tell me his name.

A. T.J. Turner.

Q. And he's in the room?

A. He is.

Q. Now, when you say – when you say that you have consulted the material – let me make sure I'm on the same page with you.

A. Okay.

Q. I'm aware, Ranger Maxwell, that there are transcripts of your original meeting with – with the Board of Managers back in February. You've read that transcript, I assume.

A. Yes.

Q. There is the July 21st, 2020 interview by you of Mr. Wynne and Mr. Paul, right?

A. Yes.

Q. You – I assume you've read that transcript?

A. I have.

Q. There is the August 5th, 2020, interview by you and Mark Penley of Mr. Wynne and Mr. Paul, correct?

A. Yes.

Q. There are also videotapes. I think the first one is about an hour, the July one. And the second one is an hour and a half or so.

A. Hour and 17 minutes, and hour and 54 minutes.

Q. Your memory is not lacking, I'll give you that. At least so far. But have you seen the videos as well, Ranger?

A. No.

Q. Okay. Well, let – I may ask you some specific questions about those meetings. So let me give you copies of the transcript, Ranger. Just so if I – if I get down in the weeds and you need them, you'll have them. Okay?

MR. COGDELL: May I approach, Your Honor?

PRESIDING OFFICER: Yes, you may.

Q. (BY MR. COGDELL) This is, Ranger, the Board of Managers.

A. All right.

Q. The July and the August. We good?

A. Okay. Good.

PRESIDING OFFICER: He was not on mic, but he was simply pointing out to the witness what the different folders were.

Q. (BY MR. COGDELL) Let's go back to, I guess, the first – your first involvement, Ranger, with this particular investigation in terms of your testifying, okay?

A. Okay.

Q. And by – what I mean by that is when you were interviewed back in February I think by Terese Buess and Dan McNulty?

A. Yes.

Q. You remember that interview?

A. I do.

Q. You've read it?

A. I have.

Q. And in reviewing that transcript, Ranger, did – in your review, did you see anything that – that was in error or a mistake?

A. I see some things that may be misconstrued.

Q. What are those things?

A. About Drew Wicker and – and what he may or may not be able to testify.

Q. Gotcha. Now, let me put you on pause there.

You weren't here obviously during the opening statement –

A. No.

Q. – so you don't know what was said or what wasn't said about Drew Wicker and your statements about Drew Wicker. You weren't here, right?

A. No, that's correct.

Q. Have you met with Mr. DeGuerin or anybody from the Board of Managers' team in anticipation of your testifying?

A. Yes.

Q. Who did you meet with?

A. I met with Mr. DeGuerin, Rusty Hardin. I met with the other attorneys that are helping prosecute this case.

Q. Okay. And was that topic brought up in the meeting? That is what you said in the February meeting about Drew Wicker?

A. Yes. They did ask me about that.

Q. Okay. Now, you know Mr. DeGuerin personally?

A. Yes.

Q. And to jump way back in time, which is one of the first times I met you, Mr. DeGuerin famously walked into the Branch Davidian compound during the siege in 1993?

A. '3, '93.

Q. Were you escorting him in and out? Was that you?

A. No, I did not.

Q. But the Rangers did have a significant role in the investigation of that – that incident, that tragedy, whatever we want to call it. Right?

A. Yes. I was one of the lead investigators.

Q. Yes, sir. And if my memory serves me, Ranger, correct me if I'm wrong, but I think you helped a much younger me get access to my client in that ordeal, did you not?

A. I did.

Q. Thank you, sir.

Now, I mean this sincerely and respectfully, Ranger. You're an icon with the Texas Rangers, right?

A. I don't see myself that way.

Q. Well, a lot of folks do. You'd agree with me?

A. I've heard a lot of people say that, yes.

Q. You are in the Texas Ranger Hall of Fame, right?

A. Well, at some point.

Q. What do you mean at some point? You are now.

A. I'm not an official member of the ones they recognize as being in the Hall of Fame. My picture has been there. It was once an exhibit on being in the Hall of Fame.

Q. Well, let's see. You joined the DPS in 1972?

A. That's correct.

Q. You became a Ranger in 19 – 1986?

A. Yes.

Q. You left the DPS – and I'm sure 95 percent of the people in the room know this, but some folks watching on TV may not. All of the Texas Rangers, the genesis of being a Ranger, you hail from the Department of Public Safety. That's the outfit through which you become a Texas Ranger, right?

A. Yes, because the Rangers are a part of the Texas Department of Public Safety.

Q. Yes, sir. So all told with the DPS and the Rangers, your career lasted 38 years?

A. 38 years.

Q. Now, you made some statements to Mr. DeGuerin about how ludicrous it was to be investigating judges or assistant United States attorneys in this particular case, right?

A. Yes, in this particular case.

Q. Yes, sir.

A. That's correct.

Q. But certainly you would agree with me, Ranger, that in your experience, you have been part of investigations, even prosecutions, of assistant United States attorneys or judges. Right?

A. I have investigated and prosecuted public officials. I've never investigated a senior federal magistrate or an AUSA.

Q. Well, let's go back to the Waco incident. One of the fallouts, tragically, for one of the assistant United States attorneys in that case, a fellow who I actually respect a lot so I'm not going to mention his name, but I think you know who I'm talking about.

A. I do.

Q. He was charged with a federal offense after that ordeal, was he not?

A. He was.

Q. Now, you mentioned OIG, which is the Office of Inspector General. Right?

A. Yes.

Q. And they are kind of like – I don't know what you'd call them – OPR – or what is it in the – in local law enforcement when you have a complaint against a law enforcement officer? What – help me with the verbiage?

A. I don't think we, on the state level, have an equal to the Office of Inspector General because they cover all of the federal agencies, as far as being able to inspect them. We don't have that in Texas. We don't have oversight other AGs.

Q. Okay. Fair enough. But would you agree with me that in your experience as a Texas Ranger, you've seen, well, wrongful prosecutions of DPS agents?

A. Yes.

Q. One of those was a fellow by the name of Sergeant Bob Nesteroff. Remember that?

A. I do remember Bob, yes.

Q. He was a – I think head of DPS narcotics enforcement?

A. He and I were in narcotics at the same time.

Q. And he was charged by an AUSA in Florida, if I remember –

A. Yes.

Q. – for perjury and obstruction.

A. He was.

Q. Came here and went to trial in Houston in front of Lee Rosenthal, right?

A. Yes.

Q. You remember his lawyer, right?

A. I don't remember who his lawyer was, no.

MR. DeGUERIN: Objection for a moment, Your Honor. Relevance.

MR. COGDELL: Well, my point is this. No one –

MR. DeGUERIN: Relevance.

PRESIDING OFFICER: Overruled.

Let him continue.

Q. (BY MR. COGDELL) Let's just say his lawyer looked like a 27-year younger version of me, but that's not really the point. The point is even AUSAs can make mistakes, right?

A. You're talking about one individual.

Q. Yes, sir. One individual that charged a compatriot of yours for something he didn't do?

A. Yes.

Q. Okay. My point is it is not beyond the realm of possibility for anyone, including an assistant United States attorney, to make an error in judgment or whatever that ends up being criminal. Agree with me? It's rare, but it happens.

A. It rare, but it happens.

Q. Now, let's talk about the resources through your 38-year career, Ranger, that you've been exposed to. You would agree with me as a general rule that you have seen the tools and the resources available to law enforcement grow exponentially in your time?

A. Absolutely.

Q. There are kinds of investigative tools that weren't around when you started with the DPS, or when I started practicing law, that are around today. Agree with me?

A. There is no comparison.

Q. Yes, sir. Things like CrimeStar?

A. Yes.

Q. Things like CLEAR for law enforcement? It's a public records database, right?

A. Yes.

Q. Accurint for law enforcement. Again, another public records database, right?

A. Yes.

Q. TLO by TransUnion, another law enforcement public records database, right?

A. Yes.

Q. Cellebrite, a cell phone analytics tool, right?

A. Say that again.

Q. Cellebrite, it's a cell phone analytics tool?

A. Yeah. Uh-huh.

Q. GrayKey, another cell phone analytics tool?

A. Yes.

Q. PenLink, another phone analysis tool?

A. Yes.

Q. Obviously TCIC, NCIC searches, right?

A. Yes.

Q. Criminal history checks, driver's license checks, right?

A. Yes.

Q. Access to some utility companies' databases, right?

A. Yes.

Q. Open source data, like YouTube, Facebook, Twitter, X, all those sorts of things?

A. Yes.

Q. And 95 percent of that just wasn't around when you started your career, right?

A. Absolutely.

Q. So you would agree with me, I think, Ranger, that you – if you don't know how to use those tools, you could certainly find somebody that could help you use some of those tools if you wanted to use them. Agree with me?

A. Agree.

Q. Now, the DPS and the Rangers have all kinds of teams at their disposal, right?

A. Yes.

Q. They have a reconnaissance team, agreed?

A. Yes.

Q. A special response team, agreed?

A. Yes.

Q. A public corruption unit team, agreed?

A. Yes.

Q. They have – it is not unusual at all for DPS or the Rangers to participate in internal investigations, right?

A. That's correct.

Q. DPS from time to time, I am told, triple hearsay uses hypnosis?

A. We used to. I think it's been phased out now.

Q. Did you yourself?

A. No, I didn't want –

Q. You never did?

A. I didn't want to do that.

Q. I'm – your legend has been diminished by just a bit. I thought you used hypnosis. All right.

A. No, sir.

Q. Now, you yourself, Ranger, you have taught all kinds of courses, right?

A. Yes.

Q. You have taught on – you personally taught on how to conduct investigations?

A. Yes.

Q. Agree?

You have taught on interrogation techniques. Agree?

A. Yes.

Q. You have taught on how to testify in court?

A. How to what?

Q. Really? You just did that?

Come on. You have taught on how to testify in court?

A. Yes.

Q. And – and no disrespect to anyone. This is not your first rodeo. You have testified a few times, right?

A. That's correct.

Q. Can you estimate for us, Ranger, how many times you have testified in courts across this state or across this country?

A. Hundreds.

Q. Okay. Now, simply put, Ranger David Maxwell knows how to conduct an investigation if he wants to, right?

A. Yes, that's correct.

Q. And you have literally conducted probably thousands of investigations?

A. Yes, thousands of investigations.

Q. I guess, Ranger, anything from traffic tickets to capital murderers and everything in between you've investigated, right?

A. Yes.

Q. Now, let's talk for a minute about the good traits of an investigator, see if we can agree on a few good basics.

One, they should have the training and the mental tenacity to be a good investigator, right?

A. Say that again.

Q. They got to be smart enough to know what they're doing.

A. Yes.

Q. They should have an open and objective mind?

A. Yes.

Q. They should go into an investigation without bias or predisposition?

A. Yes.

Q. They should be willing to follow the evidence?

A. That's correct.

Q. And they shouldn't make assumptions that aren't based on sufficient evidence, right?

A. Yes.

Q. Now, it is also important, is it not, to follow up on any leads or information given to them by others?

A. I lost that. Say it again.

Q. And I couldn't help but notice you got a hearing aid.

A. I do. So it's a little hard for me.

Q. Yes, sir. And if I don't speak up enough –

A. All right.

Q. – please let me know.

A. Thank you.

Q. It's important for a good investigator to follow up on any leads or information that's been given to them, right?

A. Yes.

Q. Would you agree with me, Ranger, that a good investigator understands that, you know, we're kind of all equal under the eyes of the law in terms of everybody's entitled to have an investigation if – at least if it's warranted by the facts, investigated, right?

A. Yes.

Q. An inmate, or a president, or anything in between. Agree with me?

A. Yeah.

Q. An investigation should be thorough?

A. Yes.

Q. And accurate records and reports should be generated and maintained?

A. Yes.

Q. And that's important, not only for the investigator that's involved in the case, but really for the future of the case, right?

A. Yes.

Q. I mean, investigators leave. They get fired. They quit. But the case may still be going on. Right?

A. That's correct.

Q. So once again, you have the experience, the training, the assets, the knowledge, and the relationships, and the contacts to do a great investigation if you were inclined to do that. Right?

A. Yes, I do.

Q. All right. Let me ask you – and I think Mr. DeGuerin touched on it briefly, but let me do it as well.

I think he mentioned the search warrant and a probable cause affidavit, right?

A. Yes, he did.

Q. Where is the –

MR. COGDELL: May I have just a minute, Your Honor?

While he's looking for what he should have had, Erick.

(Laughter)

Q. (BY MR. COGDELL) While he's looking for that, let me cover a couple of things with you, Ranger.

First off – first off, the quantum of proof that a search warrant must satisfy before a judge or a magistrate signs off on it is probable cause, right?

A. Yes.

Q. And the lower standard of proof is scintilla. And then we go into probable cause. Then we go into clear and convincing. And then we go proof beyond a reasonable doubt. You're aware of all of those things, right?

A. Yes.

Q. Now – thank you. I'm going to show you, Ranger – I don't know that if you have seen this or not. But I'm going to show you, without offering it for obvious reasons, the underlying affidavit in support of the search warrant for Mr. Paul's properties and the search warrant itself. Okay?

A. Okay.

MR. COGDELL: May I approach, Your Honor?

PRESIDING OFFICER: Yes, you may.

Q. (BY MR. COGDELL) So what you have in one hand is a search warrant, which is pretty thick, right, Ranger?

A. Yes.

Q. You should have – and if you'll pull forward, Ranger, because we got to have your voice – pull forward.

A. I'm sorry.

Q. That's all right.

A. All right.

Q. You should have two different things. One is a part of the other. But one is the greater search warrant, which is several inches thick, right, the entire search warrant?

A. Yes.

Q. And then included in that, which we've excerpt – excerpted out is the search warrant affidavit in – or the affidavit in support of the search warrant, right?

A. Okay.

Q. Now, you have prepared – estimate for us, Ranger – how many search warrant affidavits?

A. I couldn't tell you. I mean, it's a lot.

Q. A lot. Like thousands?

A. Yeah, a lot.

Q. Now, you would agree with me that the content that goes into a search warrant affidavit is meant to do really one thing and one thing only, and that content that is to go into a search warrant affidavit is to convince a magistrate judge that there is probable cause for the issuance of a search warrant to search a given premises or a given location at a given time, right?

A. Yes.

Q. And what's important is not the personalities of the judge or anything to do with the prosecutor or anything to do with anything other than what information would establish probable cause, right?

A. That's correct.

Q. Now –

MR. DeGUERIN: Excuse me. Objection. And I object to any further reference to this affidavit as it was not part of his review, and he's not seen it before.

MR. COGDELL: I'm happy for the Ranger to take a few minutes to look at it, but these are – Dick, I think they're going to be pretty global questions. But if the Ranger needs time to look at it, I'm happy to stand down for a few minutes.

MR. DeGUERIN: I would also object to it – also object to relevance.

MR. COGDELL: The relevance is what Mr. Hardin has suggested time and time and time again about how – how the search warrant affidavit could endanger the lives of judges and prosecutors and all this. That's – I'm going there. I'll show you the relevance.

PRESIDING OFFICER: I'll overrule the objection.

But, Ranger, do you need some time? Would you like five or ten minutes to look at it?

THE WITNESS: Yes.

PRESIDING OFFICER: It's a good time to break.

Members, be back in – at 2:45.

(Recess: 2:27 p.m. to 2:49 p.m.)

AFTER RECESS

PRESIDING OFFICER: Okay. Be seated.

MR. COGDELL: Just let me know when to proceed.

PRESIDING OFFICER: You may resume.

MR. COGDELL: Thank you.

Q. (BY MR. COGDELL) Ranger Maxwell, I asked you – sort of gave you a hint at the break of where I'm going on this document, so let's go there.

Back up just a second. We're talking about the search warrant affidavit in the Nate Paul case, but really the questions kind of apply affidavits generally speaking, not just here. Okay?

A. All right.

Q. Would you agree with me, Ranger, that in your training in terms of law enforcement that you are trained that if charges are filed, that ultimately the defendant who is charged will get a copy of the search warrant affidavit?

A. That's correct.

Q. And the basis for that, to bore us all a little bit, is whether the search warrant affidavit is sufficient or not is often argued by defense lawyers as a basis for trying to suppress the search – an illegal search. That's the typical argument, right?

A. Yes, correct.

Q. So anybody that fills out a search warrant with any experience is going to know at some point this could well end up in the hands of the defendant or his lawyer. You agree with me?

A. Yes, sir.

Q. So as a habit, custom, and practice, Ranger, it's true, is it not, that you would not put anything in a search warrant affidavit, or really allow anything to be put in a search warrant affidavit, that could cause – come back to haunt somebody from a personal safety perspective, right?

A. That would not be my first choice, but sometimes judges don't give you a choice.

Q. Well, certainly there have to be names, right?

A. There'd have to be a name, yeah.

Q. But they don't have home addresses of the cooperator or where their kids go to school. That just doesn't happen. Agree with me?

A. That's correct.

Q. All right. Now, this particular search warrant, I'm assuming you've never seen this particular search warrant or the affidavit in the – in support of the search warrant before. This is the first time, I think, you've seen this.

A. It is.

Q. And did Nate Paul ever indicate to you in any of your meetings with him that he had a copy of the affidavit of the search warrant?

A. He told me very directly and positively that he knew who signed the affidavit for the search warrant.

Q. That he what?

A. He – he knew who was the officer who signed the search warrant on the probable cause affidavit.

Q. He knew who signed it?

A. He knew who signed it, yes.

Q. Okay. All right.

A. Who the affiant was.

Q. Sir?

A. Who the affiant was.

Q. And who the affiant was is often discoverable on the search warrant itself, right? Not the affidavit but sometimes it's on the – the affidavit and the warrant. Agree with me?

A. Maybe, but he – he referred to the probable cause affidavit.

Q. Okay. The affiant is the person who signs off on the search warrant?

A. That's correct, yes.

Q. So what he told you, if I'm understanding you right, Ranger, is that he knew who the affiant was, right?

A. That's correct.

Q. He did not say, I have a copy of the search warrant affidavit. Rather he said, I know who the affiant is, right?

A. Yes, he did.

Q. Okay. Now, let's get to the matter at hand a little more directly.

You received the referral from the Travis County DA's office on I think June 10th of 2020? I think Mr. DeGuerin showed you that in your direct?

A. Well, it was – it was created on June 10th. It went through regular mail, so I didn't get it on June 10th.

Q. Okay. You got it within a few days?

A. I got it through the mail.

Q. Okay. But you had gotten an email from Don Clemmer telling you that the referral was on its way, right?

A. Yes.

Q. And I think that is the point in time where you did what a Ranger Dave Maxwell would do, you Googled around and figured out, at least in your world view, this guy is up to no good, I don't want anything to do with him, right?

A. Yes.

Q. And you really began the investigation believing that Nate Paul was a criminal, right?

A. Not just because of what you said. I felt he was a criminal because of all that I saw.

Q. Fair enough.

But my point is, when you began your review – I'm not going to say investigation because it never got that far, okay. So I don't want to step on your verbiage.

A. Right.

Q. But when you began your review, you began it with the conclusion that this guy is a, quote, criminal and you want nothing to do with it, right?

A. When I began the review, my thought process was I wanted to see what it was that he had to say.

Q. We'll get there.

A. And that was what I told my boss, Jeff Mateer, that I would take a look at it. And when I read it, the allegations of conspiracy among so many professionals.

Q. Let me slow you down just a little bit, Ranger, because we're going to get there.

A. All right.

Q. But will you agree with me at least right here that you didn't exactly go into those meetings with a positive mindset about Mr. Paul, right?

A. No.

Q. Okay. Now, if I'm understanding it right, the Travis County DA's office decides it's not the appropriate agency to review or investigate this complaint because the Travis County DA's office deals regularly with DPS and with the Rangers, right?

A. That's not exactly true.

Q. That's part of it.

A. That's what was in the – in the email, but that's not exactly the case.

Q. Okay. But that's at least what's in the email. You'll give me that part?

A. That's correct.

Q. Now, does it strike you as ironic at all, Ranger, that they say, We're not going to investigate this because we're too close to the Rangers or – or to the DPS, and that – and yet they refer it to a – a Ranger that's in the Hall of Fame that had a 40-plus-or-minus-year career with the DPS? That doesn't strike you as ironic?

A. I – I can explain that answer, if you'd like.

Q. Well, first answer my question and then I'll let you explain it. I'll give you that much, Ranger.

A. No, it doesn't strike me as ironic.

Q. Okay. Doesn't – doesn't sound like Mickey Mantle investigating the Yankees?

A. Say it again, please.

Q. It doesn't sound like Mickey Mantle investigating the Yankees?

A. I'm sorry, I still couldn't understand you.

Q. I'm sorry. And I don't know if it's the microphones or what.

A. Not really good.

Q. I'm trying to be cute but I'm really trying to make a point.

A. Okay.

Q. It's kind of like Mickey Mantle investigating the Yankees.

A. Okay.

Q. Doesn't exactly jump off the page as an objective review. That's my point.

A. I would say you talked about my professionalism. I always look at things objectively.

Q. And let me stop you, Ranger.

At no time, sir – I may disagree with what you did or didn't do. But at no time am I going to suggest to you that I think you're a liar or you're unprofessional or you're not a man of great character. That ain't where I'm going.

A. Okay.

Q. We good?

A. I'm good.

Q. All right.

So it was Clemmer that you had the conversation with, Don Clemmer, Ranger?

A. I did.

Q. And I think you knew him from back in the day at the Harris County DA's office?

A. Actually I knew him when he worked for the AG's office because he was the executive deputy over prosecution when I was there in the law enforcement division.

Q. Gotcha.

A. So we were colleagues at that point.

Q. You were also friendly with him, I guess?

A. Yes.

Q. So there's nothing in your personal history that would be a source of conflict or tension between you two?

A. No.

Q. So when you caught – when you – when was this first call? Was the call between the time you got the email and you got the referral?

A. No. I called him after I got the referral in the mail.

Q. Okay. And – and did you express to Don at any time, Ranger – Mr. Clemmer, that is – did you, Ranger Maxwell, express to Don Clemmer, you know, I'm probably not the right guy to investigate this? I don't like Nate Paul. I don't trust him. I think he's a criminal. I think the world of the Rangers?

Did anything like that come up in that conversation?

A. No. My language was much stronger than that.

(Laughter)

Q. (BY MR. COGDELL) Okay. But you communicated those thoughts?

A. I communicated my thoughts in an unequivocal term.

Q. And four-letters words were involved I'm imaging, Ranger?

A. I probably won't use the same language in the court that I'd used that day.

Q. I wouldn't – I wouldn't ask you to, sir, certainly. There may be some courts somewhere, but this is not the one I'll ask you to use the language in.

All right. So it is true, is it not, Ranger Maxwell, that typically as the – are you deputy director? Are you director of law enforcement? Give me your title again at the –

A. Director of law enforcement.

Q. Okay. Typically as the director of law enforcement, Ranger Maxwell, you didn't often get personally involved in investigations, right?

A. Yes. I oversee them.

Q. Yes.

A. And sometimes I actually personally get involved.

Q. But that's my point. The majority of the time you oversee?

A. Yes, absolutely.

Q. Okay. And you certainly would – would you typically, Ranger, assign something like this if a – if a player like Nate Paul was involved, would you typically assign a referral like this to someone lower than you on the food chain?

A. I would assign it to my major, who was over special investigations and have him assign a team to investigate the allegations.

Q. Gotcha. And you told – I think you told us the reason why you didn't assign it any place else, but regardless, you kept this one for yourself, right?

A. I did.

Q. All right. Now, you got the referral in mid-June, right?

A. Yes.

Q. And you had the first meeting with Nate Paul and Mr. Wynne, Michael Wynne, July 21st?

A. That's correct.

Q. Now, let's set the stage in terms of – forget about how – your thoughts about Nate Paul. Forget about your thoughts about Paxton's involvement with him. And focus, if you can, on just the otherwise oddity of having something – a conversation with a fellow who is under investigation for federal offenses. Right?

A. Yes.

Q. And he comes in to you, a known quantity, shall we say, in the law enforcement community. And he and his lawyer are sitting down with you opening themselves up to ask you – asking them any question you want to. Right?

A. That's correct.

Q. I'm going to go out on a limb here, Ranger, and suggest that, despite your storied career, something like this may not have ever happened. Would you agree with me?

A. Possibly.

Q. Okay. Now – and when I say something like this never happened, let's just say it – I don't know many defense lawyers that would have taken the same position as Michael Wynne and walked their client into that meeting. Agree with me?

A. Okay.

Q. Now, did – before that meeting started, did Ken Paxton ever come up to you – did General Paxton, Ranger, ever come up to you and say, Hey, I want you to give him immunity. You can't use those statements against him. He gets a free pass for anything he says?

I mean, there was no condition put on your being able to ask Nate Paul questions. Agree with me?

A. That's correct.

Q. And likewise, from Mr. Wynne, he never likewise asked you, Hey, everything is off the record here. You're not going to go anywhere. That didn't happen either?

A. No.

Q. In fact, I think you told – was it Mateer that, Yeah, I'll have this meeting. And what I'm going to do if they say anything that incriminates him, I'm going to mail it right over to the U.S. Attorney's Office, right?

A. Well, no, I was going to contact the FBI.

Q. Okay.

A. And give that information to them. I also told General Paxton the same thing.

Q. Okay. So the point is you went into it with the mindset that if Nate Paul, or I guess even his lawyer, said anything that was incriminating about any criminal activity, that you were going to pass that information on to the appropriate agency?

A. Yes.

Q. And it's true, is it not, Ranger, that never happened? That is, they never said anything that incriminated them or that you passed on to another agency, right?

A. Right.

Q. I want to make sure –

MR. COGDELL: I don't know frankly, Mr. President.

I want to offer, if it's not in, the House Board of Managers Exhibit 149, which is the video of the 7/21 interview as well as the Board of Managers 151, which is the transcript of that same interview.

MR. DeGUERIN: No objection.

MR. COGDELL: Okay. And likewise while I'm doing that, I want to offer into evidence 156 and 158, which are the video of the August 5th interview that Ranger Maxwell and Mr. Penley had of Mr. Paul and Mr. Wynne, as well as the transcript, which is 158.

PRESIDING OFFICER: And let me –

MR. DeGUERIN: No objection.

PRESIDING OFFICER: We're looking at those numbers.

Yes, Mr. DeGuerin?

MR. DeGUERIN: No objection to the introduction of those – of the video, audio, and transcript.

MR. COGDELL: Thank you.

PRESIDING OFFICER: Make sure I have the numbers right. Hold on, Counselor.

MR. COGDELL: Yes, sir.

PRESIDING OFFICER: We're going to enter 151, 149, 156, and 158 into evidence?

MR. COGDELL: Yes, sir.

PRESIDING OFFICER: No objection. Show them being entered into evidence. Go ahead.

(HBOM Exhibits 151, 149, 156, and 158 admitted)

Q. (BY MR. COGDELL) All right. Now, Ranger, do you still have the three little –

A. I do.

Q. And – and I'm not going to try to give you a pop quiz and ask you if every single word that I'm saying – I hope you'll trust me far enough to say if I say it it's in there. But if you want to check me, please check me and I'll point you to the citation. Okay?

A. Okay.

Q. I think early on in your House interview, which is also in front of you, I think that's the orange folder, that you said his main allegation – when you were – back up.

When you were being interviewed – I jumped from your interview with him to their interview of you. But in your interview with the Board of Managers, you said his main allegation of why he didn't like the raid that they conducted was he was alleging that a copy of the search warrant had been altered. Right?

A. Right.

Q. And that's true, right?

A. Right.

Q. That's true in terms of that was what Nate Paul was claiming to you, right?

A. Right.

Q. And that at some point in the first interview, I think Nate Paul told you, Ranger, that he didn't even think they had a search warrant for at least one of the properties being searched, which was the storage unit. You recall him telling you that?

A. Yes. Uh-huh.

Q. And he went way deep. That is, Nate Paul went way deep into metadata, right?

A. Yes, he did.

Q. Do you know as little about metadata as I do?

A. Maybe less.

Q. All right. Metadata, at least as far as you and I know, is sort of the – the fingerprints that any electronically created documents leave, right?

A. Yes.

Q. Now, you said that – and I hear you. You said a couple of times to Mr. DeGuerin that his – his accusations were so ridiculous and so conspiratorial – I'm characterizing – that it was just absurd to you to even hear them, right?

A. Right.

Q. Would you agree with me, Ranger, that Mr. Wynne, his lawyer, through both of those things did say words to the effect, Ranger, that he doesn't think they're evil people. Maybe they just relied upon poor information and they don't know how to back out. Do you remember that verbiage that Mr. Wynne –

A. No.

Q. If you will look, Ranger, on Page 63, Line 22 of the 7/12 interview. And for the color-coded challenge, that is going to be in the green.

PRESIDING OFFICER: In the green. He's looking in the orange right now. The green or the –

MR. COGDELL: David. Ranger.

PRESIDING OFFICER: Ranger.

Q. (BY MR. COGDELL) The 7/12, which should be in the green folder.

A. Yeah. Oh, in the green folder.

PRESIDING OFFICER: Yes.

Q. (BY MR. COGDELL) Yes, sir. I'm sorry 7/21. If you'll look on Page 63.

A. 63, okay.

Q. At the very bottom of 63, do you recall Mr. Wynne telling you – I'll wait for you to get there, Ranger.

A. Okay. Okay.

Q. At the bottom of 63, Ranger, Mr. Wynne says, That's the problem. I don't think they're evil people from the core.

You see that?

A. Well, mine doesn't have all the words.

Q. Yours doesn't have all the words?

A. It says – I have, That's the problem. I don't think they're – and it's blank.

Q. Well, the next line is, I don't think they're evil people from the core.

You see that?

A. Right.

Q. And make sure you keep that microphone close to you, Ranger.

A. Sorry.

Q. No, sir. That's fine.

And then the next page, it says at the top of Page 64, Ranger, They just got – they listened to the wrong people and it got it wrong and they just can't come forward and say oops.

Right?

A. That's what he said.

Q. Now, again, not suggesting that you should buy that description, but that is certainly what Mr. Wynne is telling you in this first meeting, right?

A. Yes, that's right.

Q. Okay. Now, you told, Ranger, this jury in no uncertain terms that you never had any intention of ever investigating this. It was nonsense from the beginning. And you just wanted nothing to do with it.

Again, I'm paraphrasing what you told us, right?

A. That's correct.

Q. Ranger, it's true, though, that you never said that to Mr. Wynne and Mr. Paul?

A. That's correct.

Q. Okay. Instead, what you told them – and this is probably the sly investigator coming out in you – I don't mean to diminish your skill set. But what you told them was, Maybe I can get some answers for you.

Right?

A. Right.

Q. And you said, I can look at this and talk to the DA's office and see where we get.

Right?

A. Right.

Q. Told them, I'll look at the metadata just to see what our people tell me about it because I pay a lot of money to those people to get them trained, meaning your metadata people?

A. That's correct.

Q. Right?

A. Yes.

Q. And I will sit down with the DA, and if we have something, we do. And if we don't and they say no, that's as far as I can go.

Right?

A. Right.

Q. So – and, again, I think I get the reason why. But what you're telling us about your opinions about their story or their position is certainly different than what you were telling them, right?

A. Say that last part.

Q. Yes, sir. What you're telling us – your opinion of their description of what may have happened, your opinion that you shared with us is a very different opinion than what you shared with them.

A. Absolutely.

Q. That is –

A. Absolutely.

Q. Now, did you, though, early on, Ranger, tell them that it was up to the DA's office ultimately to accept charges or not?

A. Yes.

Q. Okay. So when Mr. DeGuerin said had the DA's office recused themselves – and that's a term of art we'll probably get to. But when he said had they recused themselves, you said yes, but you certainly never told or suggested that to Mr. Paul or Mr. Wynne. That is, the Travis County DA's office had recused itself. Right?

A. I go back to the protocol I testified in the first place, which is I require –

Q. Ranger, I can't hear you. I don't mean to step on you, but I want to hear you.

A. I'm sorry. I go back to my first statement where we talked about the protocols I have in place that I require a letter from the DA, and that jurisdiction that they'll either prosecute or recuse themselves and let us prosecute.

Q. Okay. And correct me if I'm wrong, but I don't think you ever got a letter from the DA in this case that they had recused themselves. Margaret Moore never wrote you a letter and said, We are recusing ourself from this investigation?

A. There is no investigation at this point.

Q. Okay.

A. There was not going to be an investigation, and there's nothing for them to review.

Q. Okay. I hear you. But if they didn't recuse themselves from an investigation because there was no investigation, they didn't recuse themselves from anything?

A. No, not the investigation. They had to – if they wanted to recuse theirself and have us prosecute.

Q. Yes, sir.

A. They either have to agree to prosecute the case or recuse themselves and allow our – our people to prosecute.

Q. And neither one of those things happened, if I'm understanding what you're saying right now.

A. Neither one were going to happen, no.

Q. Gotcha. And that's my point.

A. Yeah.

Q. That didn't happen.

And maybe you know this and maybe you don't, but I'll go out on a limb and ask you. Do you know sort of the condition precedent for a prosecutor pro tem? Do you know what that – that term means? And you may not, Ranger.

A. No. I'm not going to try and define that.

Q. Sir?

A. I won't try and define that.

Q. Fair enough.

Now, what is the WebPass system, the WebPass system?

A. I'm not sure.

Q. Well, as I understood it, and I could be wrong, law enforcement division maintains what is called a WebPass system, which has an offense report or a case file in it.

A. I'm still not understanding what that is.

Q. Well –

A. What – what's the purpose of it?

Q. Let me just put it this way. You never created any memorandum, right?

A. No.

Q. No memorandum of interview, right?

A. No.

Q. No report of an investigation or review?

A. That's correct.

Q. No note to the file, right?

A. Right.

Q. You didn't – you didn't initiate so much as a Post-it note, if I'm understanding you right – I'm sorry if you can't hear me. I think you're the only one in the world that can't hear me right now, Ranger. But you didn't even create a Post-it note about this case, if I'm –

A. I did not take any notes or even create a Post-it note about it, that's correct.

Q. All right. Now, Operation Longhorn.

MR. COGDELL: May I have just a minute?

May I approach?

Mr. DeGuerin, I think I showed you this.

PRESIDING OFFICER: Yes, you may.

MR. DeGUERIN: I've seen what he's offering, Your Honor. And my objection is that it's not only – if it's offered for the truth of the matter, we think it's false and we don't want it, so we object to it, but – and I don't know what the offer is.

MR. COGDELL: Well, I thought at the break that he told me he wasn't going to object to it, but whatever. That's fine.

PRESIDING OFFICER: Go to your mic so we can all hear the conversation.

MR. COGDELL: From my understanding with Mr. DeGuerin at the break, he told me he wasn't going to object to it, but that's all right. People can change their mind, Dick. I've been married a few times. It's okay.

PRESIDING OFFICER: Mr. DeGuerin.

MR. DeGUERIN: Let me clarify that. I told him I didn't object to it. But I don't agree that it should be admitted for the truth of the matters stated. It's something that was prepared by Nate Paul and his lawyers to show to Mr. Maxwell. We think it's hogwash, but it can be admitted.

MR. COGDELL: Is that an objection, Dick?

MR. DeGUERIN: Yes, that's an objection.

MR. COGDELL: Objection. Hogwash?

MR. DeGUERIN: Objection. Hogwash.

(Laughter)

MR. COGDELL: All right. You best not sustain that one, Your Honor.

PRESIDING OFFICER: Wait a minute. Which one of those rules is that one, Mr. DeGuerin? 802 or 803? Got them all up here.

MR. DeGUERIN: 803.75.

PRESIDING OFFICER: If it's not, we're writing a new one.

MR. COGDELL: It is not, Mr. President, being offered for the truth of the matter asserted but only to show that Ranger Maxwell, and I think Mr. Penley, actually were presented with a copy of this. We're not suggesting it's true or it's the letter of the law but only that it was given to them. That's the limited scope of the offer. All right?

PRESIDING OFFICER: We'll overrule –

MR. COGDELL: All right. Mr. –

PRESIDING OFFICER: – because it's not being offered as truth of the matter asserted.

MR. COGDELL: Mr. Arroyo, are you with me?

And it's marked. I didn't think – I don't think I said this for the record, Your Honor. It's AG 1005. So we're offering AG 1005.

Q. (BY MR. COGDELL) And, Ranger, can you see that screen in front of you?

A. I see it, yes. We're up on screen.

Q. Thank you.

PRESIDING OFFICER: This is your exhibit?

MR. COGDELL: Yes, sir. It's the electronic copy of what I'm holding in my hand, Judge.

PRESIDING OFFICER: For the same ruling, we'll admit this into evidence.

(AG Exhibit 1005 admitted)

MR. COGDELL: Yes, sir.

All right. Mr. Arroyo, could you go to the first page? Next page, yep. Next page, please, Erick. And if you could highlight the first sentence for me, please. Blow it up.

PRESIDING OFFICER: Can you go back to the microphone, please?

MR. COGDELL: Oh, I'm sorry. It's a big room.
If you could blow that up for us, Erick.

Q. (BY MR. COGDELL) It says that there were three search warrants that were executed simultaneously on Wednesday, August 14th. You see that, Ranger?

A. I do.

MR. COGDELL: And if we go down, Erick, to the second-to-last paragraph.

Q. (BY MR. COGDELL) It says, Since the search warrants were sent as PDF files via email, after the searches we were able to analyze the metadata of the PDF documents that were emailed.

Right?

A. I see that.

Q. And finally, Ranger, it says, According to the filings with the Court in the Western District of Texas, each of these search warrants was signed and issued by Judge Mark Lane on Monday, 10:00 a.m. August 12th.

But if we look at the first sentence and the last sentence, what they are alleging is that the search warrants were – per the filings, per what you and I could see if we looked at them, the search warrants would have been issued at 10:00 a.m., but – on Monday the 12th. But in reality, the documents were created on Wednesday, the 14th, two days later. Right? That's their claim.

A. No. What it says is that the three search warrants that were executed simultaneously on – 9:00 a.m. on Wednesday, August 14th –

Q. I gotcha. And the filings say – you're right. I stand corrected. They were executed on –

A. The 14th.

Q. – the 14th, right?

And then – and on the next page –

MR. COGDELL: Erick, if we'll go to the next page.

Q. (BY MR. COGDELL) And I think were there a total of six warrants, Ranger?

A. Well, there were three warrants that were executed. They had three more warrants that they did not execute.

Q. Gotcha.

So you spent a long time listening to Mr. Paul's description and Mr. Wynne's description of this contigo, this search of a storage facility.

A. Yes.

Q. You spent probably 30, 45 minutes listening to that.

A. Yes.

Q. And the net-net of their suggestion to you, Ranger, was that the search warrants for the – for that facility were created after the search, right?

A. That's what they're alleging.

Q. Okay. And according to them – and, again, I don't know metadata. But according to them, Ranger, it was through the forensic analysis of a PDF that was sent to – by Alan Buie to one of their prior lawyers, Chuck Meadows and Aaron Borden. That's how they say they broke the code on this. You with me?

A. I am.

Q. And you agree with that summary?

A. What's that?

Q. You agree with the summary that that's their claim? I'm not asking you –

A. That's the claim.

Q. – legal fact.

A. That's the claim.

Q. If we go to the next page.

And, again, they are saying that the document metadata reveals information that is inconsistent with looking at the – the documents on their face. You with me?

A. Uh-huh, I am.

Q. Okay. And I'm not going to bore us all, but this is what they gave you back on August 5th, right?

A. I see it.

Q. And they also gave you a thumb drive. Correct?

A. Yes.

Q. Now, I think one of the things that would be a condition precedent was whether or not the condition precedent for involvement by the attorney general's office of the State of Texas would be a violation of state law, right?

A. Okay. Yes.

Q. I mean you – you can't investigate – review, investigate, or prosecute federal cases, right?

A. That's correct.

Q. Will you at least agree with me that if what they were saying was true, that these actions by federal prosecutors would be a violation – would be, if they were true, a violation of state law. Right?

A. The state law – and this is one of the only reasons why I agreed to hear him out – was falsifying a government document would cover a federal document.

Q. Yes, sir.

A. Even though we don't have jurisdiction over anything else about it.

Q. Gotcha. And I think we're saying the same things. You probably better than me.

But if a federal law enforcement agent or prosecutor or judge or whatever, if they knowingly entered false information into a document with the intent to deceive someone else, not only would that be a federal crime, it would be a state crime. I think it would be tampering with governmental records, right?

A. That's correct.

Q. Now, would you agree with me, Ranger, that despite your concern or belief or hope that Mr. Wynne or Mr. Paul would say something incriminating or say something that would cause them exposure criminally, neither Mr. Wynne nor Mr. Paul ever asked you to do anything illegal?

A. Yes. They asked me to interfere with a federal investigation, which is absolutely illegal. It's also obstruction of justice.

Q. Show me, Ranger, in the first hour or the second two hours on the investigation or the interview of July 21st or August 5th. You've got the transcript there for both of those.

A. Counselor, you are showing me the evidence right here. This is – it's a map of how he wanted the investigation to be done and to have the AG's office follow how this was to be investigated along with targeting six individuals.

Q. Okay. Where does he – excuse me, Ranger.

A. Go through it and you'll see it.

Q. Show me –

A. I don't have a copy of it.

Q. I'm sorry?

A. I don't have a copy of it.

Q. You do. You've got a copy of the entire transcript of July 12th, Ranger.

A. No, no. I'm talking about the document you have up on screen right now.

Q. Show me, Ranger.

A. I don't –

Q. Where they say – you say you reviewed the transcripts of the July 12th interview, and you have reviewed the transcripts of the August 5th interview. Show me the language where in either one of those interviews, Ranger, that they asked you to commit a crime.

A. They're not in the interviews, Counselor. They are in the documents you are looking at right now. He lists six people as a person of interest to be targeted in this investigation.

Q. Where does – I'm sorry –

A. It's in Operation Longhorn.

Q. I'm sorry, I'm talking over you. I apologize, Ranger.

Where in this PowerPoint – show me, Ranger, where in this PowerPoint that Mr. Wynne asked you to commit a crime or Mr. Paul asked you to commit a crime. Where?

MR. DeGUERIN: Objection, Your Honor. He doesn't have a copy of this in front of him. May I give him my copy so he can answer that question?

MR. COGDELL: I'll give him mine.

PRESIDING OFFICER: Providing a copy now.

MR. COGDELL: I'm sorry, I thought you had one.

A. No, I don't.

Q. (BY MR. COGDELL) My apologies. I thought you had one.

MR. DeGUERIN: Your Honor, may we approach about some –

PRESIDING OFFICER: Yes, you may.

MR. DeGUERIN: – addresses.

PRESIDING OFFICER: Yes, you may.

(Bench conference off the record)

MR. COGDELL: Judge, can we get a minute? Can we get a minute so they can do what they need to do with the world famous Erick?

PRESIDING OFFICER: We are going to let Erick go to work here.

MR. COGDELL: Yes.

PRESIDING OFFICER: We'll take a stretch break for five minutes. Stand at ease.

(Off the record)

PRESIDING OFFICER: Members, just to let you know, we are redacting some personal information from a file, and that's what we're taking some time to do here. Exhibit 1005.

(Off the record)

PRESIDING OFFICER: Members, if you can retake your seats. Erick has resolved the issue. And I know I mentioned his name a few times. Stacey, I just want to be sure, we appreciate all of your work too. Okay.

MR. COGDELL: For the record, she has no GoFundMe page set up.

PRESIDING OFFICER: I think they both have a page out there.

MR. COGDELL: All right.

PRESIDING OFFICER: Ready to resume.

Q. (BY MR. COGDELL) We good, Ranger?

A. Yes.

Q. All right. So what happened there is that someone noticed that there were names and home telephone – home numbers or home addresses and telephone numbers. We've redacted those names, right?

A. Yes.

Q. Now, what crime is Mr. Wynne or Mr. Paul asking you to commit by tendering this PowerPoint to you?

A. They entered the PowerPoint and gave it to us to map out how they felt our investigation that they wanted to be created should go.

Q. Okay. We have a transcript, do we not, of exactly what they said?

A. Transcript of?

Q. Exactly what they said when they were meeting with you on August 5th when they gave you this PowerPoint.

A. Yes.

Q. Okay. And you've reviewed that transcript, you say?

A. Yes.

Q. And where in the transcript – what words do they use to describe to you that they desire a crime to be committed?

A. They obviously did not say that they wanted a crime to be committed. What they wanted was an investigation.

Q. Okay. And your position, Ranger, is two private citizens coming in and asking for an investigation into whether or not search warrants were illegally created, asking for that investigation is a crime?

A. Following through on the investigation is a crime.

Q. What crime would it be to investigate the legal – if that's a crime I'm going to be on death's row. I investigate the legality of search warrants all the time. That's what I do.

What crime is it, Ranger, for them to ask you to investigate the legality of a search warrant?

A. The only purpose –

Q. No, sir.

MR. COGDELL: Objection. Nonresponsive.

Q. (BY MR. COGDELL) What crime is submitted –

PRESIDING OFFICER: Sustained.

MR. DeGUERIN: Objection. He didn't allow him to finish so we could see whether it's responsive or not. I believe it was going to be responsive. Objection to interrupting the witness.

MR. COGDELL: I'll restate.

PRESIDING OFFICER: Overruled – sustained, but . . .

MR. COGDELL: I'll ask again.

PRESIDING OFFICER: Ask again. Take a pause.

MR. COGDELL: And I'll calm down.

PRESIDING OFFICER: And you can raise the mic too.

MR. COGDELL: And I will calm down and raise it up. Okay.

Q. (BY MR. COGDELL) I'll try again, Ranger.

A. All right.

Q. Even at my age, I get excited every now and then.

What crime is committed, Ranger, by them asking you to investigate the legality of a search warrant? What crime is that?

A. In my professional opinion, to create this investigation and follow through it will be obstruction of justice and interfering with a federal investigation.

Q. Okay. In fact, doesn't Mr. Wynne say over and over and over in the transcript he does not want to interfere with the federal investigation. He does not want to obstruct justice. Doesn't he say that?

A. He does.

Q. Okay. So the fact that he's saying he doesn't want that done, even though he says he doesn't want that done, you think it's a crime because?

A. His actions belie his words.

Q. Okay. Well, you are Dave Maxwell, Hall of Fame Ranger. If they would have committed that offense right there literally on videotape, the Dave Maxwell I know would have stuffed and cuffed them right there. You would have arrested them, right?

A. No.

Q. Okay. All right. In fact, Ranger, what did you tell them?

A. I told them that – what I said in the beginning that we would have the forensic people look at the metadata. And they promised to give us all the documents they had in order for us to do an examination.

Q. Let me try again, Ranger. Instead of saying, You've committed a crime, I'm going to arrest you. What you say on Page 143, Line 24 is, We're going to look every which way into this.

Right?

A. That is exactly right, as far as the metadata.

Q. Okay. You – Mr. Penley says, quote, We're going to look into these allegations.

Right?

A. He may have said that.

Q. Okay. Mr. Penley says, Thank y'all for coming in today. We appreciate it. Thank you for the handout and the – and for the documents. We'll look into this.

Are those – Mark Penley is an experienced prosecutor. Right?

A. Yes.

Q. He was with the U.S. attorneys in the Northern District of Dallas division by my recall 15, 18 years?

A. Something like that, yeah.

Q. Do those words, Ranger, sound like the words of an 18-year experienced federal prosecutor that believes a crime has been committed?

A. No.

Q. Thank you for the handout and for the documents. We'll look into this?

A. What – what is your question about what you just said?

Q. My question is: Do the words spoken by Mr. Penley suggest in any shape, form, or fashion, Ranger, that he, Mark Penley, believes that a crime has been committed in his presence by the tendering of the very documents we've just discussed?

A. Absolutely not.

Q. Do you think Mr. – Mr. Penley's a pretty straightforward guy most of the time?

A. I'm sure he is.

Q. Well, you worked with him, didn't you?

A. Yes.

Q. I assume, Ranger, that if he exhibited any characteristics of deceit or deception, you would have picked up on them.

A. Who would have picked up on the deceit?

Q. You, Hall of Famer, Dave Maxwell.

A. What – how I answer that is that he and I both knew that the only thing we're going to do was look at the metadata, period.

Q. Okay. Well, since you know what he knows, did he think he'd been asked to commit a crime? Mr. Penley?

A. Mr. Penley did not believe that a crime had been committed by these officers or the magistrate or the U.S. attorney's office.

Q. My question probably wasn't a good one, Ranger.

Did Mark Penley believe that Mr. Wynne and Mr. Paul, by asking for this investigation, did he think that was a crime by the simple asking of the legality of search warrants to be investigated was a crime?

A. He believed, as I did, that if we followed through with what they were asking, it would definitely be a crime.

Q. Okay. And that's why he continued to work on this case? That's why he continued to do an investigation? That's why he told Ken Paxton, I've got more work to do. There's more things I need. I need to do some more research.

Does that make sense, Ranger?

A. I didn't tell Paxton that.

Q. No, he did. Are you aware of that?

A. Who did?

Q. Mark Penley.

A. Oh, I don't know what he told him.

Q. Ranger, when is it, sir, that you first heard the name Brandon Cammack?

A. When I was on vacation in Colorado.

Q. And I think Mr. DeGuerin had us – or had you in late September?

A. Late September. I – I was traveling to Colorado on the 26th of September 2020.

Q. Okay. And was it – you learned of that name how?

A. Through Mark Penley.

Q. Okay. So do you have an independent recall, Ranger, of the date of that? Like 25th, 26th, 27th? Just ballpark it for me.

A. It was on the 26th of September –

Q. September.

A. – 2020 when I – Mark Penley told me about what was happening with Cammack.

Q. Okay. So Penley calls you. You're in Colorado at the top. And you got to come down and that's –

A. Well, actually I was driving at that time, so I had him on speaker phone.

Q. Okay. But anyway –

A. Yeah.

Q. – you're in Colorado?

A. Right.

Q. He's here.

A. Right.

Q. And he's upset and annoyed, whatever, because Brandon Cammack has been hired?

A. I think at the time he had not been hired, that – on that particular date he had a meeting with Ken Paxton, and Ken Paxton tried to get him to sign the EAM so Cammack could be hired.

Q. Let me – let me slow you down.

A. Okay.

Q. Stepping on pronouns.

A. All right.

Q. When you say "he" tried to get, who is "he"? You just said?

A. He tried – Ken Paxton.

Q. Yes, sir.

A. Tried to get Mark Penley to sign off on our EAM, which is a protocol that various people have to sign in order to hire and spend money, that type of thing.

Q. We've unfortunately heard a little too much about an EAM. But for purposes of this exchange, Ranger, are you aware that the attorney general has the authority to hire outside counsel himself statutorily?

A. The way the system works is

MR. COGDELL: Nonresponsive. Objection. Nonresponsive.

PRESIDING OFFICER: Sustained.

Q. (BY MR. COGDELL) Are you aware, Ranger, statutorily, the attorney general has the authority for he himself to hire outside counsel?

A. The – I was told by –

Q. That's a yes or a no. Are you aware?

A. I do not know that's a fact, no.

Q. Okay. You don't know one way or the other?

A. It's not my bailiwick.

Q. Yes, sir.

All right. Now, when we talked earlier, Ranger, about some potential mistakes that you may have made when you met with the House committee about your recollections – and to be fair to you, Ranger, this was a meeting this year in February. Right?

A. Yes. Yes, it was.

Q. And what had happened happened back at least two years ago?

A. Yes.

Q. Maybe two and a half, right?

A. Yes.

Q. So I'm not harping at your memory. I just want to make sure we're all on the same page now as to what's accurate and what's not.

A. Okay.

Q. Okay? Do you remember telling the – I think we've already discussed sort of globally, at one point you told the House committee that Drew Wicker delivered documents in a back alley in the dark of night. Right?

A. I did say that.

Q. And I'm the last person, Ranger, to strike at another about hyperbole, but that's what that was, that was just an exaggeration on your part. Right?

A. No. It was – it was actually what I had been told by numerous other people.

Q. Okay.

A. I had no direct knowledge.

Q. All right. So who was it, Ranger, that – I'm sorry. Who was it, Ranger, that told you that Drew Wicker delivered these documents in the dark of the night in a back alley somewhere? Who told you that? You said you were told that by numerous people, so give me two.

A. Counselor, I would – in being very honest with you, there's probably five or six people who told me that in passing. And I couldn't tell you who it was. It's three years ago.

Q. Okay. Well, if it's five or six people that told you that, can you give me one of them?

A. I – I – if I testified today who it was that gave me that information, I would not be able to say honestly that that person did.

Q. Okay. Well, you certainly told the House committee that, right?

A. I absolutely did.

Q. And when was it, Ranger, that you decided that that statement to the House committee was incorrect?

A. I didn't know whether it was correct or incorrect. I passed it on to the House.

Q. Let me back –

A. That's their job.

Q. Let me back up, Ranger.

A. Yeah.

Q. I thought two hours ago, or whenever it was when you and I started this dance, sometimes friendly, sometimes not so friendly, I asked you if there was anything in reviewing your statements to the House managers that you believed was inaccurate, and you pointed out this dirty statement, that is the Drew Wicker dark of night, back alley statement. And you had indicated that you had I think come to that conclusion after meeting with either Mr. DeGuerin or Mr. Hardin. Is that right?

A. Yes. It was one of my attorneys asked me did I make that statement on that date. And I said yes, that I was passing on information that I received from someone else.

Q. Okay.

A. I had no direct knowledge.

Q. All right. So are you relying upon Mr. DeGuerin or Mr. Hardin now for the truth or falsity of something?

A. I'm not sure I understood your question.

Q. Okay. Well, you told the House back in February that Drew Wicker, dark of night, back alley. Now you're saying that's a mistake.

When did you determine it was a mistake?

A. I don't know whether it's a mistake or not. I passed on the information. I was asked by our attorneys did I say that, and I said yes. And I explained to them that I passed on to them to investigate it.

Q. Okay.

A. So I don't know what testimony would be or would not be. I don't know the truth.

Q. So you don't know if what you were saying to the House managers is true or not?

A. What I was saying to the House managers was that somebody needed to talk to Drew Wicker. That was my only purpose in bringing it up.

Q. Well – but when you tell the House managers your statement, you would agree with me, Ranger, you don't say, I heard from five or six people that his travel aide, who was with him at all times outside the office, went with him to have meetings and also in one instance carried documents and gave them to Nate Paul in a dark alley one night in the middle of the night. You don't say you heard that from five or six people. You say that as a fact. Right?

A. In my mind, I said it for them to be a lead to go talk to Drew Wicker.

Q. Okay.

A. I didn't say it was a fact because I have no personal knowledge.

Q. You're saying you didn't suggest you had personal knowledge of that?

A. I do not have any personal knowledge about what Drew Wicker would or would not testify to. I was relaying what I was told by others so the committee could find Drew Wicker and find out what the truth is. It's part of an investigation.

Q. So how do we know, Ranger, when we look at your statements that have been made to the investigating committee, how do we know that those are statements based on your own personal knowledge or based on something that you've heard?

A. I will certainly tell you if you ask me.

Q. But you didn't tell them. You didn't say I heard this from five or six people. You said it emphatically. First person. In fact. So how can we tell when it's you you're relying upon and your memory or unnamed people? How do we know?

MR. DeGUERIN: Objection. Objection to Mr. –

MR. COGDELL: Cogdell.

MR. DeGUERIN: – Cogdell. Sorry. Objection to Mr. Cogdell stating –

MR. COGDELL: Have I showed you nothing – nothing?

MR. DeGUERIN: Well, we've known each other for at least 30 years.

But my objection is to Mr. Cogdell making a statement of what the record says and then asking him a different question about it. It's a statement by counsel rather than proper cross-examination.

Q. (BY MR. COGDELL) Look on Page 18, Mr. Maxwell, of your –

PRESIDING OFFICER: I'll sustain the objection.

You can rephrase it.

MR. COGDELL: Yeah. Thank you.

And I'm sorry I call you "Judge." It's just reflex, Your Honor.

PRESIDING OFFICER: You can call me anything. It's fine. I'm just here for –

MR. COGDELL: Let's don't get carried away.

PRESIDING OFFICER: I just have this job.

Q. (BY MR. COGDELL) If you will look, Ranger, on Page 18, I believe Line 3, would you read out loud what you tell the House managers on Page 18, Line 3?

A. Yes. Yeah, his travel aide, who was with him all the time outside the office, went with him to – and there's a hyphen – would have meetings with him. And also in one instance carried some documents and gave them to Nate Paul in a dark alley one night in the middle of the night.

Q. Okay. So you would agree with me and to satisfy Mr. –

MR. COGDELL: What's the name?

MR. DeGUERIN: Touché.

(Laughter)

PRESIDING OFFICER: Both of you need your names in the hat right there.

Q. (BY MR. COGDELL) To satisfy Mr. Touché, you would agree that you didn't qualify this statement, Ranger, that it was told to you by five or six people, right?

A. What are you asking me to agree to?

Q. You would agree to me that when you told the House committee this story about Drew Wicker, you never said you had heard it from someone else?

A. I did not.

Q. Okay. So my question remains the same. Since you didn't qualify or explain your answers that were based on hearing it from someone else, how do we know, Ranger, when you're telling us something that you know from your own personal knowledge as opposed to hearing it from someone else?

A. There is no comparison between giving an investigative committee a lead to go and investigate. I never said that I had any personal knowledge of that.

Q. Okay. Let's try – let's try again.

What's the answer to my question, Ranger?

A. Which is?

Q. Third time: Since you don't qualify your explanations and explain to us whether they are based on first-person knowledge or you heard it from somebody else, how do we know what you are basing your explanations on?

A. My explanations of what? Now, what are you referring to when you say what did I base my explanations on?

MR. DeGUERIN: My objection was asked and answered.

MR. COGDELL: Actually, he hasn't answered.

PRESIDING OFFICER: Overruled.

Q. (BY MR. COGDELL) Now, so that you and I are clear, Ranger –

A. Okay.

Q. – you are a fellow that's taught folks how to testify, right?

A. Say that – say it again.

Q. Why is it that every time I ask you if you've taught folks to testify, you suddenly can't hear the question?

A. Actually, my testifying I learned by experience.

Q. Okay. And is that one of the things you've learned by experience, Ranger, to pause and act like you haven't heard the question?

A. Maybe.

(Laughter)

Q. (BY MR. COGDELL) Fair enough. What did you learn?

A. I learned that it throws you off.

Q. Does it? Does it?

Okay. And that's your intent, Ranger? Rather than testifying to the truth and giving direct answers, your game is to throw people off? Is that where we're going, Ranger? Is that where we're going?

A. No.

Q. That's what you just said. That's what you just suggested.

A. I just said that I do sometimes pause.

Q. Ranger, you also told the House committee that Ken Paxton met with the Travis County DA and requested that the Travis County DA's office refer the case to him. Do you remember telling him that?

A. They referred the case to who?

Q. To him, Ken Paxton.

A. Yes.

Q. Okay. Who told you that?

A. Don Clemmer.

Q. Okay. That's really interesting. Because are you aware, Ranger, that it was Don Clemmer who told Mindy Montford and Ms. Moore, Hey, I don't want to deal with this. Let's give it back to the AG's office. It was him that came up with the idea?

Are you aware of that?

A. I know that Don Clemmer, when I made the phone call – call to him, and I was chewing him out about sending that over to me, that he told me it's not his fault that Ken Paxton requested it be sent to him.

MR. COGDELL: Objection. Nonresponsive.

PRESIDING OFFICER: Sustained.

MR. DeGUERIN: Excuse me, Your Honor, but he –

MR. COGDELL: No. He's not answering the question, Mr. Touché. He's not.

MR. DeGUERIN: My objection – my objection is that Mr. Cogdell cut off his answer when the answer was responsive to what Don Clemmer told him.

MR. COGDELL: No. That wasn't the question.

Q. (BY MR. COGDELL) The question was –

PRESIDING OFFICER: Overruled.

And rephrase the question.

MR. COGDELL: Yes, sir.

PRESIDING OFFICER: Make it clear.

MR. COGDELL: Yes, sir.

Q. (BY MR. COGDELL) The question is, Mr. Maxwell, are you aware that it was actually Don Clemmer's idea to refer the case to the attorney general's office, not Ken Paxton's? He wasn't even aware that he could – that process could occur. It was Clemmer's idea, not Paxton's. Are you aware of that?

MR. DeGUERIN: Objection to the form of the question, inserting what Ken Paxton knew.

PRESIDING OFFICER: Sustained.

Q. (BY MR. COGDELL) Are you aware that the idea to refer the case to the – to the AG's office came not from Ken Paxton but from Don Clemmer? Are you aware of that, yes or no, Ranger?

MR. DeGUERIN: Objection. That's a fact not in evidence.

MR. COGDELL: I'm trying to get it in evidence.

MR. DeGUERIN: But it's a lawyer testifying.

MR. COGDELL: I'm –

PRESIDING OFFICER: Overruled.

Q. (BY MR. COGDELL) Fifth time, Ranger: Are you aware that it was the idea of Don Clemmer to refer this matter to the AG's office? Are you aware of that, yes or no?

A. No. That's not what he told me.

Q. Thank you. Okay.

You've told the House committee, Ranger, that – actually it was your lawyer, Mr. Turner – is he here today? Did you say that?

A. Mr. Turner?

Q. Yes, sir.

A. Yes.

Q. Where is he?

A. He's in – somewhere. I think he's in the chambers.

Q. Okay. But he was with you while you were being interviewed by the House Managers, right, back in February?

A. That's correct.

Q. So you were present when your lawyer told the House committee that Paxton drafted the contract to Cammack and Paxton took Cammack over to the DA's office?

A. Yes, I was there.

Q. Okay.

A. You said that.

Q. Yes, sir. Look at Page 49, Ranger, of your Board of Managers' interview.

If you'll look, Ranger, at, I think, Line 3 down, your lawyer says, What David's talking about is after David and Mark refused to approve hiring of outside counsel, Attorney General Paxton actually drafted and sent a contract to this guy, Cammack.

That's what your lawyer tells the Board of Managers. Right?

A. Yes.

Q. Where did he get that from?

A. I don't know.

Q. Did you hear that from somebody?

A. Yeah.

Q. Who'd you hear that from?

A. Say it again. Who what?

Q. Really.

A. No. I'm – I'm being serious.

Q. We're going to be here all day.

Who did you – who did you hear that from, Ranger? Who did you hear that Paxton drafted and sent the contract from?

A. I don't know who has that information. I wasn't involved with Cammack.

MR. COGDELL: Objection. Nonresponsive.

A. Okay.

PRESIDING OFFICER: Sustained.

Q. (BY MR. COGDELL) Ranger, I'm asking you who told you that Ken Paxton drafted and sent the contract to Brandon Cammack? What is the name of the human that told you that?

A. I don't know that.

Q. I – I'm not asking you if you know that. I'm asking you who told you that. Those are two different things.

A. I think the statement was made by my attorney.

Q. And you said, after I pointed out, Ranger, that your attorney made that statement, you were the one that said I had heard that. And I am asking you who told you that.

A. I would think it was Mark Penley.

Q. Mark Penley. Okay.

A. Because Mark Penley was involved with that.

Q. Okay. And your lawyer, Mr. Turner, Ranger, goes on to say, And then – referring to Paxton – and then took him over to the DA's office and introduced them – introduced him to them where he went to the grand jury in the auspices of being his special prosecutor for the attorney general's office and obtained somewhere around 40 subpoenas.

So your lawyer is telling the committee that Ken Paxton took Brandon Cammack to the Travis County DA's office, to the grand jury, introduced Cammack to the Travis County DA's office grand jury, or the Travis County grand jury, and Ken Paxton got Cammack to get the 40 subpoenas.

That's what your lawyer told you?

MR. DeGUERIN: Objection. The objection is he's trying to cross-examine the witness from another person's statement, the lawyer. He's only recited what the lawyer said, not what the witness said in that statement.

MR. COGDELL: I didn't think there was any confusion about that.

Q. (BY MR. COGDELL) You were sitting right there when your lawyer is telling the DA's office –

PRESIDING OFFICER: Sustained. Try a different approach.

Q. (BY MR. COGDELL) You were sitting right there when your lawyer is telling the committee that Ken Paxton took Brandon Cammack over to the Travis County DA's office, right?

A. Right.

Q. Was that your understanding of what happened, that Ken Paxton took Brandon Cammack to the DA's office?

A. Like I said, I have no direct knowledge of it. I talked to Mark Penley a lot. He may have told me that.

Q. Okay. And your lawyer goes one step further and says that Paxton introduced Cammack to the grand jury. Is that your understanding of what happened?

MR. DeGUERIN: Objection.

A. I don't know. I don't know if that happened or not.

Q. (BY MR. COGDELL) Okay.

MR. DeGUERIN: Objection to cross-examining from what the lawyer said, not what Mr. Webster – Mr. Maxwell said.

MR. COGDELL: I am certainly free to test this witness's memory about what happened and what didn't happen. And if this lawyer is making falsehoods while he's sitting there, I can cross-examine him about that all day long.

PRESIDING OFFICER: Sustained.

MR. COGDELL: Okay.

Q. (BY MR. COGDELL) Did you tell your lawyer – where did your lawyer learn from this – where did your lawyer learn this claim that Paxton took Mr. Cammack to the grand jury?

MR. DeGUERIN: Objection. This – Law School 101 says you can't ask a client what he told his lawyer. Object to that.

MR. COGDELL: I'm not asking him. Law School 101 would also teach you to listen to the question.

Q. (BY MR. COGDELL) Where did your lawyer learn that Paxton took Cammack to the grand jury?

MR. DeGUERIN: I have an objection pending as to inquiring about conversations between Mr. Maxwell and his lawyer.

MR. COGDELL: They're not privileged. They're in front of the House Committee.

PRESIDING OFFICER: Can both of you come to the bench?

(Bench conference off the record)

PRESIDING OFFICER: Can you both come back, Mr. DeGuerin, Mr. Cogdell?

(Bench conference off the record)

PRESIDING OFFICER: Jurors, if you'll take your seats again, please. Hopefully we've worked this out.

MR. COGDELL: I think so.

Q. (BY MR. COGDELL) Let me try it this way, Ranger. You with me? Can you hear me?

A. Yes.

Q. Okay. Do you know how your lawyer knew, or supposedly knew, that it was Paxton that ostensibly took Brandon Cammack to the DA's office? Do you know how your lawyer –

A. I do not.

Q. Do you know how your lawyer learned that Paxton took him to the Travis County grand jury?

A. No, I don't know how he knows that.

Q. Do you know how your lawyer learned that Paxton was with Cammack when he obtained these grand jury subpoenas?

A. No.

Q. Well, when those statements were being made, Ranger, did you, David Maxwell, stand up and say, Whoa, whoa, whoa, whoa, whoa, whoa. Where'd you learn that from? Where'd that come from? What are you basing that on?

Did you say anything to suggest to the committee that those statements weren't accurate?

A. I don't know if they're accurate or not.

Q. You don't know if they are or they aren't apparently.

A. You're right. I don't. I don't have any knowledge of it.

Q. Okay. So that I'm clear, are you suggesting to this jury, to these 31 senators, that it's perfectly permissible for you if your lawyer makes a statement to the House committee and you have no personal knowledge whether it's true or not? You're fine with that?

A. I am fine with somebody making a statement that they know something about. It doesn't – because I don't know doesn't mean it's not true.

Q. Okay. Well, do you think, Ranger, that Ken Paxton took Brandon Cammack to the DA's office?

A. I don't know the answer to that.

Q. Okay. Do you think, Ranger, that Ken Paxton took Brandon Cammack before a grand jury?

A. I don't have any direct knowledge.

Q. Okay. Do you think, Ranger, that Ken Paxton was with Brandon Cammack and helped him get those subpoenas? Do you think any of those things are true?

A. I don't know the answer to it.

Q. Okay. So when you left the interview with the Board of Managers, did – after that point in time, did you learn that any of the information that you had been provided, or that your lawyer had provided, was incorrect? Did you ever find out anything that was said was untrue or inaccurate?

A. No.

Q. Okay. And, of course, had you, you would have brought that to their attention?

A. I would.

Q. Okay.

MR. COGDELL: May I have just a minute, Your Honor?

PRESIDING OFFICER: I'm sorry, say that again.

MR. COGDELL: It's catching now. Everybody's got it. Can I have just a second?

PRESIDING OFFICER: Yes, yes. The acoustics in here are not the best.

(Pause)

Q. (BY MR. COGDELL) Ranger, you never had any intention of investigating any of this, did you?

A. When I read the allegations, I never had any intention to open up an investigation, that's correct.

Q. You never had any intentions of finding out whether or not Mr. – well, Mr. Cammack and Mr. Winward telling you – you never had any intentions of doing any investigation. Right?

A. I plainly stated I was not going to do an investigation.

Q. Okay. You didn't so much as make a phone call, right? You didn't make a phone call to investigate. You didn't get on PACER. You didn't do TCIC. You didn't do – all that litany of accessible tools that you had at your disposal, you didn't do anything. Right?

A. I did not run him through any of our databases.

Q. And you never had any intention of conducting an objective, fair, reasonable, thorough investigation, did you?

A. There was no investigation to be done.

MR. COGDELL: Objection. Nonresponsive.

PRESIDING OFFICER: Sustained.

Q. (BY MR. COGDELL) Do you remember, Ranger, when we looked – went through the litany of characteristics of a good investigator in the beginning of your direct examination?

A. Yes.

Q. They should have an open and an objective mind, right?

A. Yes.

Q. They should act without bias or predisposition?

A. Yes.

Q. They should be willing to follow the evidence?

A. Yes.

Q. Should conduct an investigation timely, right? Should conduct an investigation timely?

A. Yes.

Q. And that they would know that no person is more or less deserving of their best efforts than another person, right?

A. Yes.

Q. The investigation should be thorough, right?

A. They should be, absolutely.

Q. And they should keep – generate and keep accurate records and reports, right?

A. I didn't quite get the last part.

Q. Now I couldn't hear you, that's a first.

A. I'm sorry.

Q. That's all right.

A. I didn't quite catch the last part of the question.

Q. Yes, sir. That if someone's going to do a legitimate investigation, they should keep accurate records and reports.

A. Absolutely.

Q. Okay.

A. Yes.

Q. And you never had any intention of doing any of that, right?

A. There was no investigation.

Q. That's a no, you never had any intention of doing any of that?

A. Right.

Q. Okay.

MR. COGDELL: That's all I have, Ranger. Thank you.

THE WITNESS: Okay.

PRESIDING OFFICER: Redirect.

REDIRECT EXAMINATION

BY MR. DeGUERIN:

Q. Once you were told that Nate Paul was the person that General Paxton wanted you to meet with, did you find out who Nate Paul was?

A. I did.

Q. And once you found out –

MR. COGDELL: This is asked and answered on direct. Same – same question.

PRESIDING OFFICER: Sustained.

Q. (BY MR. DeGUERIN) Did that – when you found out what he was and who he was, did that make the – back all that other stuff that Mr. Cogdell talk about unnecessary?

MR. COGDELL: Leading and asked and answered.

Q. (BY MR. DeGUERIN) Whether or not, did it make it unnecessary?

MR. COGDELL: Asked and answered on direct.

PRESIDING OFFICER: Sustained.

Q. (BY MR. DeGUERIN) All right. Mr. Cogdell asked you several questions about your conversation with Don Clemmer, the man in the Travis County District Attorney's Office. So what did he tell you about this?

MR. COGDELL: Objection. Hearsay.

MR. DeGUERIN: He opened the door, Your Honor.

MR. COGDELL: No, I didn't suspend the rules of evidence. Objection –

MR. DeGUERIN: Starting on Page 78, Line 15, there were a number of questions asked about the conversation with Mr. Clemmer, even to the point of what Mr. Maxwell said to Clemmer. I believe the door has been opened. I believe it's admissible. And I'm asking that the Court allow it.

MR. COGDELL: "Open the door" is not a hearsay exception.

PRESIDING OFFICER: Overruled.

Q. (BY MR. DeGUERIN) Go ahead.

A. Yes, Don Clemmer told me that Ken Paxton requested the investigation be sent to me.

Q. And what did he tell you about his opinions about the review?

MR. COGDELL: Objection. Hearsay. I didn't ask him about that, even though I continue –

PRESIDING OFFICER: Sustained.

Q. (BY MR. DeGUERIN) In the presentation, this PowerPoint presentation, was there a part of it that listed six people to make targets of an investigation Mr. Paul wanted you to conduct?

A. Yes.

Q. What – what was your opinion about whether that was proper?

A. If we followed the PowerPoint he created and conducted that investigation, we would have committed several federal crimes.

Q. What are they? What are the crimes that –

A. Obstruction of justice, interfering with a federal investigation.

MR. DeGUERIN: That's all. Thank you.

PRESIDING OFFICER: Recross.

MR. COGDELL: Yes.

REXCROSS-EXAMINATION

BY MR. COGDELL:

Q. Let me get this straight, Ranger. So if the feds break into my house, break the door down, hold my wife at gunpoint, kick my dog, cut off my Internet, search my house without a warrant, and I want that crime to be investigated, you're telling this jury with a straight face that that's obstructing justice and interfering with a federal investigation? That's your position?

Ranger, you're smarter than that.

A. They did have a search warrant. And they did execute it. And it was lawful.

Q. You don't know if the search warrant is lawful – was lawfully issued or not. You don't have a clue, do you?

A. Mr. Nate Paul –

MR. DeGUERIN: Object to argument.

(Simultaneous crosstalk)

PRESIDING OFFICER: Witness, please.

MR. DeGUERIN: Arguing with the witness. Objection.

PRESIDING OFFICER: Sustained.

Q. (BY MR. COGDELL) Have you ever analyzed the search warrant affidavit to see if it establishes probable cause for each of the search warrants that were issued?

A. Mr. Paul did not provide us the document.

MR. COGDELL: Objection. Nonresponsive.

PRESIDING OFFICER: Sustained.

Q. (BY MR. COGDELL) Ranger, you're smart enough to know what question I'm asking and whether or not to answer it.

A. We –

MR. DeGUERIN: Objection to the sidebar remark.

Q. (BY MR. COGDELL) Ranger, are you –

MR. DeGUERIN: Hold on. There's an objection.

PRESIDING OFFICER: Slow down, gentlemen. Slow down.

I sustained your objection before.

MR. COGDELL: Yes, sir.

Q. (BY MR. COGDELL) Ranger, are you smart enough to understand my question, and are you smart enough to answer my question?

A. We analyzed the material he gave us. That's all I have.

MR. COGDELL: Nonresponsive.

PRESIDING OFFICER: Sustained.

MR. COGDELL: I think we're done here Ranger. Good luck, sir.

PRESIDING OFFICER: Witness may step down.

Can the witness be excused, both parties? Both parties, witness excused? Yes?

MR. COGDELL: I don't think we'll need the Ranger on recall, but I have no problem excusing him, no, sir.

Good luck.

PRESIDING OFFICER: Both parties, come up a moment.

Mr. DeGuerin, Mr. Cogdell, come up for a second.

(Bench conference off the record)

PRESIDING OFFICER: Yes. Why don't y'all take a ten-minute break, stretch your legs, and be back at 4:40.

(Brief Recess)

PRESIDING OFFICER: Members – Members, after talking with both parties, they've decided to call it a day. So we will adjourn until Monday morning at 9:00 a.m.

(Proceedings recessed 4:28 p.m.)

