

# **RECORD OF PROCEEDINGS**

## **of the**

# **HIGH COURT OF IMPEACHMENT**

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

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

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

#### **FIFTH DAY**

(Monday, September 11, 2023)

#### **APPEARANCES**

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

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

#### **PROCEEDINGS**

(9:00 a.m.)

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

PRESIDING OFFICER: Good morning, everyone.

Will the bailiff bring in the jury.

(Senate members enter the Senate chamber)

PRESIDING OFFICER: Senator Birdwell, would you come forward for the prayer.

And before the prayer, I'd like for every member to come up and stand alongside of Colonel Birdwell on this remembrance of 9-11. We will first have a moment of silence and then he will pray and make a few-minute remark.

Everyone bow their heads in a moment of silence, remembering those that we lost on this day.

(Moment of silence)

PRESIDING OFFICER: Senator Birdwell?

SENATOR BIRDWELL: Thank you, Mr. President. I – I come to this duty with emotion. Today is the first day in – the first September 11th in 18 years that I've been apart from Mel, but I am at my assigned place of duty with my colleagues at their assigned place of duty. And it is that that we wish to remember as I – as I offer this prayer, if I may, Members. Please know that it is my honor to be among you at this appointed place of duty.

Father, we come before you, thankful for your grace, thankful for your mercy. We thank you for the miracles that you worked in the lives of the Birdwells, ask you for peace on Mel's heart and calm for her as we are apart today, and thank you for the blessing of friends that are with her.

Thank you for the first responders that stepped out of their homes that morning thinking it would be a normal day and in many cases did not return home, but they responded to their places of duty and the circumstances before them.

Bless those families of the loved ones lost, the loved ones injured, and bring peace and calm to their hearts on this day of remembrance.

Let us not forget those that responded to the nation's call to arms because of the events that day. They left the shores of this great nation to defend our ideals and our way of life, and that their families be blessed and your peace and quiet be upon their hearts today.

Thank you for those currently serving in our towns and our foreign lands on Freedom Sentinel.

Father, we ask you for the wisdom that you gave Solomon in our current duties, but most of all we thank you for ordering your Son to step out of the perfection of heaven in your throne room to be the greatest example of selfless service to redeem a fallen world to you. And we thank you for the day that you have made today. In Christ's name we pray. Amen.

PRESIDING OFFICER: Thank you, Senator.

For those of you watching online who may not see other Senate proceedings or be as familiar with our Senators, Senator Birdwell was in the Pentagon on 9-11, a Lieutenant Colonel in the Army. And the plane hit right where his office was, and it's a miracle that he survived. He's had over 50 surgeries. And we're – we're so honored to have Senator Birdwell, Lieutenant Colonel Birdwell with us today, and his wife, Mel, who he spoke to who didn't know if he was alive or not, no communications for hours and hours until later in the day. So, Mel, we know you're watching, and we're with you as a body as well.

You all may be seated.

Members and counsel, before we begin, I'd like to go over the clock and a reminder of the schedule ahead. Beginning today, the time remaining for the House Managers is 14 hours, 28 minutes, and 17 seconds. And the time remaining for Respondent, 14 hours, 23 minutes, and 17 seconds.

That means – and we plan to go until 6:30 or 7:00 tonight and tomorrow night, possibly Wednesday. And since both of you have been almost even in direct and cross-examination, redirect and recross, that you both have about the same amount of

time. And so based on that time schedule, both sides will be likely down to under five hours by sometime late Wednesday, depending on how the time is divided. And both sides could be out of time on Thursday morning.

I want to be very clear that one side or the other could have time left that the other could not respond to. Those are the rules that both sides proposed and agreed to. So it's up to you to strategize and manage your time properly. But when you're at the end of the time, I'm not going to cut you off in midsentence. We'll give everyone ample notice; you have an hour left, 30 minutes left, 15 minutes left. But there will not be "I need another half hour," "I need another witness," "I need a few more questions." When the time is up, the time is up. And then you'll have an hour for rebuttal, and you'll have an hour for your closing arguments beyond that.

That means, members of the jury, you may have this in your hands late Thursday or Friday. We will not take a day off until a final resolution, whether you deliberate a short time, midtime, long time. We'll stay here through Friday, Saturday, Sunday, Monday until you've made a decision on every Article that you're prepared to come and vote. So from this moment forward, no off days until the trial deliberations and the decision is given.

With that, call your first witness.

MR. HARDIN: We call Mark Penley.

PRESIDING OFFICER: Bailiff, please bring in the witness.

(Witness entered the chambers)

PRESIDING OFFICER: Mr. Penley, please step forward. Did you take the oath the other day?

THE WITNESS: I did not take an oath.

PRESIDING OFFICER: All right. You don't have to repeat after me. You can just at the end answer. Please raise your right hand.

(Witness sworn by the Presiding Officer)

PRESIDING OFFICER: Please be seated.

MARK PENLEY,

having been first duly sworn, testified as follows:

### **DIRECT EXAMINATION**

BY MR. HARDIN:

Q. Good morning.

A. Good morning, Mr. Hardin.

Q. I want to warn you now, each of us needs to be a little bit closer to the microphone than you are right now. I think that base actually does move, if you want to move it towards you a little bit. If it doesn't, don't force it.

A. All right.

Q. All right. If you would just keep that in mind, please because we have some acoustic issues.

State your name, please.

A. My name is Mark Penley.

Q. Mr. Penley, how old a man are you?

A. I'm 69.

Q. Where did you grow up?

A. Grew up in Denton, Texas.

Q. And when you – high school? College? Give us a little bit, like a minute and a half or so if you can.

A. All right. Went to Denton High School, graduated in 1972, played high school football, president of the student council, was in the fellowship of Christian Athletes, went to church and Sunday school and sang in the youth choir at the First Baptist Church. I was in Boy Scouts and was an Eagle Scout.

Q. Let me stop you there. Let me just try to do some of it, if I can, by question and answer rather than just a narrative, which I first asked for.

If you'll keep in mind, you started talking fast. You're an interesting combination. You talk slowly, but you talk fast, if that makes any sense. So just stay with me long enough, and everybody will be able to hear you.

After high school – and I think – you folks who are Eagle Scouts, y'all stay pretty close together, do you not, in terms of later in life or so? Have you stayed active with them at all?

A. Well, I didn't. After I attained the rank of Eagle, I was busy playing football and doing other things, so – but certainly something I was very proud to attain.

Q. Mr. Penley, you've mentioned religion. Would you describe for the jury in your life what role religion has played?

A. Yes, sir. I'm a Christian. My belief in Jesus Christ is the most important thing in my life. He guides me in everything I do. He's my strength. He's the cornerstone of my life, and I try my best to honor Him in every area of my life.

Q. Was there a particular moment in your life that you particularly saw the road ahead for yourself?

A. I did. I grew up going to church, and I thought being a Christian meant being good. But in 1968 in the summer, I went on a school trip to San Antonio, and there was a man by the name of Billy Graham having a crusade at Alamo stadium. And for the first time in my life, I understood the gospel. We can't save ourselves, but Jesus died to save us, and I put my faith and trust in Christ that night.

Q. Mr. Penley, those of us, like myself, that grew up in North Carolina are very familiar with Billy Graham.

From then on – and I want to ask you if we could make our answers short and to the point of the question.

A. Yes, sir.

Q. But from then on, from the time you were 14 up – 14, was your religion a very, very big, integral part of your life?

A. Yes, sir.

Q. All right. And then what about politics? If you – did you at any time in your education and early careers become interested in politics?

A. Well, I've always been interested in politics. My father was. He was active in local Republican politics in Denton County. He was the county chairman for Senator John Tower.

Q. All right. So throughout your career – this is not a – probably a favorable point for Democrats but might be interesting to a Republican. Have you ever voted for a Democrat in your life? Just yes or no.

A. No, not to the best of my recollection.

Q. All right. Not on purpose? You mean you might have accidentally done it?

A. Well, I might have voted for a judge.

Q. All right. Okay. Now, let me ask you, so high school, where did you go to college?

A. I went to the United States Air Force Academy.

Q. Did you serve all four years?

A. Yes, sir, I stayed all four years and then –

Q. And how long were you in the Air Force?

A. I was on active duty for five years in the Air Force.

Q. After Air Force, you were how old when you graduated?

A. I'm sorry? Could you –

Q. How old were you when you graduated from the Air Force Academy?

A. I was 22.

Q. What did you do then?

A. Well, I went on active duty, and I became an aircraft maintenance officer and primarily stationed at Reese Air Force Base in Lubbock.

Q. All right. Then after your service, how many – I think you said, but how old were you when you got out of the Air Force?

A. I was 27.

Q. What did you do then?

A. I went to law school at the University of Texas.

Q. When did you graduate?

A. 1984.

Q. What did you do then?

A. I took a job at Andrews & Kurth in Houston in commercial litigation.

Q. Andrews & Kurth at that time was one of the three or four largest firms in – one of the four or five, probably, largest firms in Houston, was it not?

A. Yes, sir.

Q. And how long were you at Andrews & Kurth?

A. I stayed there four years.

Q. And then what type of practice did you do?

A. A general commercial litigation practice, a little bit of tort litigation as well.

Q. And then after your time at Andrews & Kurth, where did you go?

A. I transferred to Strasburger & Price in Dallas. I wanted to do more trial work, and I felt like I'd get more opportunities there.

Q. How long were you at Strasburger & Price?

A. I stayed there 13 years, I believe, from the fall of '88 until January of '03, so–

Q. While were you at Strasburger & Price, did you meet Mr. Ken Paxton?

A. I did.

Q. And how was that? How did you meet him?

A. Well, he was a fellow associate at the law firm. He got there a year or two after I started, and we met each other and had some similar interests and knew each other a little bit.

Q. And so how long were you at Strasburger & Price with Mr. Paxton?

A. I think we overlapped a year or two and then he left.

Q. After that time, how would you describe your relationship? Were you a friend or associate, or tell us in your own words how you would describe your relationship at that time with Mr. Paxton?

A. We stayed friendly acquaintances. I saw him infrequently; but when I did, we always spoke. It was always pleasant. We had similar interests in politics.

Q. All right. And so then how long – what – how old were you and where did you go from Strasburger Price?

A. Goodness. I left Strasburger & Price in January of 2003, so I guess I was 48, 49. I'm not doing the math very well, but –

Q. That's okay.

A. – late 40s.

Q. And was Mr. Paxton – how long was he there? Did he leave before you?

A. Oh, he left many years before me.

Q. After he left and you're no longer a member of the same firm, did y'all stay in touch?

A. Well, we had a mutual friend, and I would hear what he was doing. And I saw him infrequently, but we did see each other on a few occasions. And we went to the same church for a year or so.

Q. Which church was that?

A. That was Stonebriar Community Church in Frisco.

Q. After you left Strasburger Price, where did you go?

A. I spent a few months working in a small firm in Fort Worth, and then I got a job offer from the United States Attorney's Office in Dallas, which I accepted.

Q. How long were you a federal prosecutor with the U.S. Attorney's Office in the Northern District of Texas?

A. For 16 years.

Q. And what were your jobs during that period? And I want to try to do it if we can hit the high points.

A. All right. I started out doing general crimes, counterfeiting, identity theft, things like that. And after I had been there a couple of years, I transferred to the national security section and worked on terrorism cases and export control cases for the rest of my time there.

Q. And so the last two or three years, or four years even, what were your assignments as a federal prosecutor? How would you describe it?

A. I did some violent crimes. I did some computer crimes, but mainly I did terrorism cases. I did a – helped out on a large mortgage fraud trial, and I worked on a very large export control matter involving a foreign company selling American technology to prohibited nations.

Q. And when – how is it that you then joined the Attorney General's Office? How did that come about?

A. I had spent a year in D.C. at the main justice department in the counterintelligence section in 2018. And in the summer of 2019 after I returned to Dallas, I got a phone call from First Assistant Jeff Mateer at the Office of Attorney General. He told me they had an opening for the deputy for criminal justice, and he said Ken Paxton wanted me to interview for the job.

Q. So he indicated to you the idea of giving you a call was Ken Paxton's?

A. Yes, sir.

Q. Did you interview for the job?

A. I did.

Q. Whom did you interview with?

A. Well, I came down here to Austin. I met a number of the deputies. I met Lacey Mase. I met Lisa Tanner who was the head of the criminal prosecutions division. I met the Chief of Staff Missy Cary, Ryan Bangert, several others. I can't recall everybody, but most of the people on the 8th floor.

Q. And did you meet also with the Attorney General himself?

A. I did not meet with him in person. We spoke on the phone about a week later.

Q. All right. And when you spoke on the phone, were you offered the job?

A. Yes.

Q. So who offered you the job to come to work at the Attorney General's Office?

A. Mr. Paxton.

Q. And what year and month, if you recall, was that?

A. That would have been in July of 2019.

Q. All right. Now, at some time until the end of the year of 2019, had you ever heard the name Nate Paul?

A. No.

Q. And how is it that you ultimately did, if you did?

Well, let me back up and ask, did you ultimately become familiar with the name of Nate Paul?

A. Yes, sir.

Q. And when was that that you became aware of it?

A. On December 16, 2019.

Q. And how and what was the occasion for you to become familiar with the name of Nate Paul?

A. I was in Dallas that weekend. Mr. Paxton called me, asked me to stay over on Monday and meet with him at the Highland Park Village shopping center at a coffee shop. And I agreed to do that, of course, and –

Q. Hold on. That – that'll get us a start.

Now, when you got that call, explain to the jury how your working relationship – the agreement with – as far as your residence in Dallas and working in Austin, what was your schedule by that time with the Attorney General's Office?

A. Yes, sir. When I was offered the job, I explained to Mr. Paxton and to Jeff Mateer that my wife and I each had an elderly parent in their 90s in the Dallas area, and we were looking after them. And I couldn't move to Austin, but I could stay down here most of the time. And they said, Look, just be here three or four days a week. We have a civil division office in Dallas. We'll give you a desk and a computer and a phone there. You can work from there one or two days a week. Typically, I worked in Dallas one workday a week, either a Friday or a Monday, and then commuted to Austin for the rest of the week, generally four days.

Q. So that's why he asked you to stay over as opposed to come back to Austin?

A. Yes, sir.

Q. All right. Did you meet with Mr. Paxton?

A. I did.



Q. And the day and place that you met, you said Highland Park. The date was what?

A. It was Monday, December 16, 2019.

Q. And where did you meet and what was the circumstance for your meeting?

A. Well, first I met in the coffee shop. He was finishing another conversation. And then he said, Let's go out to the car. We're going to make a phone call to a friend of mine.

Q. So you went out to a car to have this phone call?

A. Yes, sir. And I don't remember if it was my car or his, but we had the phone call on his cell phone.

Q. All right. And then I assume he put him on speaker?

A. He did.

Q. And how did he describe – what did he say to you to describe who he wanted you to talk to?

A. He told me this was a friend of his who had had some search warrants executed on his home and offices.

Q. Did he say anything else before the phone call that you recall?

A. Not much.

Q. All right. And then what happened?

A. Then Mr. Paul came on the phone. Ken Paxton introduced us, and then I listened as Mr. Paul told his story.

MR. LITTLE: Objection, hearsay to anything he said.

Q. (BY MR. HARDIN) Excuse me. Did you listen in the presence of the Attorney –

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Excuse me. Did you listen –

MR. HARDIN: I'm sorry. I didn't mean to speak.

Q. (BY MR. HARDIN) Did you listen in the presence of the Attorney General?

A. Yes, sir. He was sitting at my right elbow.

Q. And did Mr. – did the Attorney General also periodically make observations or discuss during the phone call?

A. Yes. He participated in the conversation.

MR. HARDIN: I renew my questions, Your Honor. These are party admissions from the Attorney General himself. If – I wanted to go back to the original question and ask him what was said.

PRESIDING OFFICER: Go ahead.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) Now, can you recall what Mr. Paul said to you and the Attorney General in this car?

MR. LITTLE: Mr. President, objection, hearsay.

MR. HARDIN: I'm sorry? I didn't hear the – apology.

PRESIDING OFFICER: Repeat your objection so he can hear.

MR. LITTLE: I said it was objection, hearsay.

PRESIDING OFFICER: Sustained.

MR. HARDIN: Your Honor, if I may, I certainly don't want to argue with the Court, but this is a conversation that the Attorney General himself is participating in. And by participating and asking questions, he is really acceding to what the conversation is.

And finally, the conversation in the presence of the Attorney General is not being offered for the truth of the matter. In fact, as the Court knows, we contend that what he was saying is untrue. But whether that's true or untrue, we're not offering it to prove the truth but only that that's what this witness was telling – was being told in the presence of the Attorney General by Mr. Paul. And so we renew our offer.

MR. LITTLE: Mr. President, may I be heard in response?

Mr. President, thank you. Nate Paul is not a party to this case. He's not an agent of any of the parties of this case. And party admission is not an exception to the hearsay rule, and none of the stated reasons to allow this information to come in are exceptions to the hearsay rule. So we renew our objection.

PRESIDING OFFICER: I have my legal counsel on some of these more sophisticated, complex issues, a former judge, of course. And we'll overrule this objection. Continue.

MR. HARDIN: Thank you, Your Honor.

Q. (BY MR. HARDIN) You can answer that question. What did Mr. Paul say?

A. He narrated a series of events related to search warrants that were served on his home and two of his business properties in August of 2019.

Q. How long did this conversation take place, would you estimate?

A. Twenty to 30 minutes.

Q. Do you recall what your own thought processes were as you listened to him?

A. I thought, Why is the Attorney General involved in this? Why is he wanting me to know about this? This is not a state matter from what I could tell. And I thought it was very suspicious that someone who was the target of a federal investigation was reaching out to the Attorney General of Texas for legal help.

Q. Did you make sure in your conversation with him in the presence of the Attorney General to Mr. Paul that you yourself were not allowed or able to give him legal advice?

A. Yes, sir. I specifically told Mr. Paul that. I said, I represent the State of Texas. I can't be your lawyer. I can't give you legal advice. Do you have counsel? And he gave an affirmative answer. And I said, You need to talk to your counsel about this so they can guide you.

Q. All right. When this conversation was over – and I think you said it was like 20 to 25 minutes?

A. Yes, sir.

Q. Did you talk to the Attorney General about that subject anymore –

A. We –

Q. – on that occasion?

A. Yes, sir, we did, and on later occasions. But on that day, December 16th, he made comments to me that indicated he was very mistrustful of law enforcement, and he made a comment as to how he felt about how he had been treated by law enforcement, which was in a negative way.

Q. Do you recall what he said, please?

A. He said, I've been the subject of a corrupt investigation.

Q. Did you know at that time that he had pending criminal charges?

A. I knew about the securities fraud charges. I knew nothing about the facts of the case, and I still don't.

Q. Okay. Now, at the – at the end of the day, did that – on that occasion, did he say any more to you about his feelings about law enforcement in general?

A. Not on that day.

Q. All right. Then after that occasion, when is the next time that you heard anything about Nate Paul?

A. It was on June 16th or 18th of 2020.

Q. Let me stop you there. So is it your testimony that from that conversation in December of '19 until June of 2020, you neither heard nor had any involvement with any issues involving Nate Paul?

A. That's correct.

Q. All right. And then what was the date in June did you say?

A. It was either June the 16th or the 18th to the best of my recollection because those were the dates of our two weekly staff meetings.

Q. All right. So that the jury knows, there's been some reference maybe to different meetings. What was the normal schedule about staff meetings of the upper – upper management of the AG's Office at that time when you were there in 2020?

A. We met every Tuesday and Thursday. If the Attorney General was in town, he attended, but First Assistant Jeff Mateer chaired the meetings if he wasn't there. And if I'm correct, on one of those days, we had a strategy meeting.

Q. Hold on. I'll get there. I didn't ask you about that yet.

On those meetings, would – how long would they last and what time of day would they usually be?

A. I believe they started at 9:00 or 9:30, and they would last an hour, hour and 15 minutes.

Q. Where would you have them?

A. In the executive conference room right next to the Attorney General's Office on the 8th floor.

Q. And who all – and do this slowly so the jury can absorb who all the upper staff would be at these – these weekly meetings. Who all would attend those weekly meetings?

A. All of the deputies, and there were 12 or 13 positions at the deputy level; the first assistant; and if he was in town, the Attorney General.

Q. All right. And what about the chief of staff? Would she – would she attend the meetings?

A. Yes.

Q. And who was the chief of staff at that time?

A. That was Missy Cary.

Q. All right. Would there be any other staff member? And let me ask you this: Were you familiar with the young man named Andrew Wicker?

A. Yes, sir.

Q. And what was his position?

A. He was a personal assistant to General Paxton. He had a desk outside his office, and he'd travel with the General and just took care of whatever duties the Attorney General gave him.

Q. Would Mr. Wicker ever attend any of these meetings?

A. I don't have a specific recollection of that one way or the other.

Q. All right.

A. And if I may, sometimes other staff people and other executives were present. So I'm not trying to say it was only the deputies that were there. There could be different people involved on different days.

Q. So would Mr. Wicker perhaps attend sometime at the request of somebody?

A. Certainly he could.

Q. All right. Now, back to the June time when you say that you became familiar with – again with the name of Mr. Paul. What was the circumstance in which you again came into contact with something about him?

A. It was the weekly deputies meeting, and I believe it was on a Thursday. The Attorney General was present, and he announced that he had received a referral from the Travis County District Attorney's Office. And after the meeting was over, Jeff Mateer handed that referral document to me and David Maxwell.

Q. All right. So at that meeting, was that a meeting just between you and Mr. Maxwell and Mr. Mateer?

A. Well, initially it was the deputies meeting with everybody present. But then as the meeting adjourned, Jeff Mateer asked me and Mr. Maxwell to stay, and we – we talked about the referral.

Q. All right. Once you became aware of the referral, what did you do?

A. Well, first, I read the referral and realized I've heard this story before.

Q. And was the referral – and why did you say that you had heard it before? What was it about the referral that was similar to what you had heard before?

A. Well, it was basically the same story in a little more detail, and it was typed up. It was unsworn, but it was signed by Nate Paul.

Q. And did you learn where that complaint had originally gone to?

A. Yes. I –

Q. You answered. That's good enough.

A. All right, sir.

Q. Thank you. And then did you – when you read the referral, did that – did that inform you as to how it originated and with what agency?

A. Yes, sir.

Q. And which agency was that?

A. That had initially gone to the Travis County District Attorney's Office.

Q. Were you informed at that time by the Attorney General one way or the other anything about whether he had already personally met with representatives of the District Attorney's Office about this matter?

A. Not that day, no.

Q. All right. So when you – did you share that referral and what it said with Mr. Maxwell at that time?

A. Well, we both read it.

Q. All right. And then did you lay out a plan of action as it applied to that referral?

A. Yes, sir.

Q. Did you at that time – what did you do after that meeting and you had been shown the referral?

A. Well, the first thing we did was talk about it, the three of us.

Q. And when you say "the three of us," you mean who?

A. Jeff Mateer, David Maxwell, and me.

Q. After you had that conversation, did you make any plans for how you would deal with it?

A. Yes.

Q. When did you make plans – your initial reaction, what did you do with it?

A. Well, my initial reaction was this is crazy.

Q. All right. After you – and without going into anything Mr. Maxwell said, what type of reaction did you get from him when he read it?

A. The same as mine.

Q. All right. So then did you decide not to investigate it at that time?

A. We hoped to slow walk it and see if the Attorney General would drop it.

Q. All right. Did you talk to the Attorney General any more about it before you then met with anybody about it?

A. I think the Attorney General talked to me.

Q. And when did the Attorney General talk to you after he had informed you of that referral?

A. I recollect two conversations. One of them occurred in my office when he came to my office.

Q. All right. I'm going to stop – stop you there. I want to know when that was. How soon did you have a conversation with the Attorney General about that referral after you were given it to it – after it was given to you on the morning of the 16th?

A. The first date I recall was July the 6th of 2020.

Q. Well, from the time you got it on June 16th to July the what?

A. 6th.

Q. Had you done anything with it?

A. Only talked to David Maxwell about it.

Q. All right. What was the occasion for the Attorney General coming to talk to you about it on July the 6th?

A. He just knocked on my door and walked in and wanted to talk about the status of the Nate Paul referral.

Q. Do you recall what he said?

A. He was unhappy that nothing was happening. He said he wanted us to get moving on it. That was basically the gist of the conversation.

Q. Well, why was it that nothing had happened on it from June 16th to July 6th? Did I get that date wrong? Was it July 6th or July – yeah.

A. There was – there was one conversation on July 6th.

Q. All right.

A. And there was another one.

Q. All right. Why had nothing happened between the 16th or the 6th, or had something happened?

A. David Maxwell and I saw no merit to the complaint. We saw no state interest. We saw no evidence of a state crime violation.

Q. So what did you do when he – what did he – when he came in and talked to you on the 6th, what was your response?

A. I told him I had talked to David Maxwell, and we'd get moving and set up a meeting with Mr. Paul and his attorney at some point.

Q. Were you opposed to having that meeting?

A. I wasn't opposed to having a meeting, no.

Q. All right. Well, why hadn't you arranged it before then?

A. Again, speaking for myself, I thought it was crazy, and I was hoping the Attorney General would drop it. He didn't.

Q. Why did you think it was crazy?

A. The idea that the State of Texas Attorney General's Office would go investigate the federal courthouse, investigate federal agents and also state agents that were task force officers on the raid, and that – those were agents from the DPS and the State Securities Board – that we would investigate a federal magistrate judge and federal prosecutors was insane. That – that is something that can be handled by federal authorities. And there's no easy or practical way for state authorities to investigate the type of complaints Mr. Paul was making.

Q. Why? What was it about the complaints that would have been difficult or – or so for you to investigate?

A. Well, as the matter developed, their main complaint that – that could theoretically have been a state criminal violation was that the Assistant United States Attorney who got the search warrants signed by the magistrate judge had then altered the warrant after it had been signed by a federal judge, which was absolute craziness.

Q. All right. Why is that craziness?

A. Because that would be a felony, that would get you fired, that would get you sent to federal prison.

Q. All right. So why was that crazy? People commit felonies all the time.

A. They do. I knew the Assistant U.S. Attorney. He used to work in Dallas. He had a stellar reputation. He had very high personal integrity. I had never seen any indication in Dallas that he would even think of doing such an outrageous thing.

Q. Well, let me ask you this: Was it just limited to a complaint about federal officials?

A. Well, there were state agents involved in the searches. And Mr. Paul at a later date named one of the state agents as being the affiant on the sealed federal search warrant affidavit.

Q. I was going to ask you about that. First of all, were there agents from the Texas Security Board involved in the search warrant? Were there?

A. Yes, sir, there was at least one.

Q. And were those security folks, the Security Board, the same agency that had brought charges against the Attorney General and that were part of the case that was currently pending against him at the time he wanted you to meet with Mr. Paul?

MR. LITTLE: Objection, leading, Mr. President.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Were there – could you tell us in your observations at the time whether actually the Attorney General was asking you to investigate a matter with Mr. Paul who was being – he was – let me put it this way.

Were you aware or did you focus on the fact that one of the things they – one of the groups that they were asking you to investigate was the very agency that had brought the charges that were currently pending against Mr. Paxton?

MR. LITTLE: Objection –

A. Yes, sir.

MR. LITTLE: – leading, Mr. President.

MR. HARDIN: I believe he had a choice there. He could have said –

PRESIDING OFFICER: Overruled.

MR. HARDIN: Thank you, Your Honor.

Q. (BY MR. HARDIN) All right. So was that also an – did that – did that give you any concern?

A. Yes, it did.

Q. All right. Into the microphone, what was that concern?

A. Well, my concern was not only was he asking us to investigate state agencies, including an agency that was investigating him, but he was asking us to investigate the investigators who were conducting a federal investigation of Nate Paul.

Q. All right. Now, once he asked you to do something to get moving on it, what did you do?

A. I told him I'd talk to Mr. Maxwell and we would get moving.

Q. Did you do so?

A. I did. I talked to Mr. Maxwell.

Q. I want – I don't want you to tell us what you told him. But after you talked to Mr. Maxwell, what was the next course of action?

A. Well, we had a brief delay. Mr. Maxwell was out of the office for a few days. And after that, the Attorney General spoke to me again on July 16th. But eventually we did schedule a meeting for Mr. Maxwell to meet with Mr. Paul and his attorney Michael Wynne.

Q. All right. Hold on a second. You said you had another conversation with the Attorney General before you made your first meeting with Mr. Paul; is that correct?

A. That's correct.



Q. What was that conversation and when – when was it?

A. That was on July 16th, and that was in a little more detail. He told me that –

Q. Wait. Stop. Let's just get this – set the stage for it. Where was it and about what time of day?

A. I don't remember if that was in person or by phone.

Q. All right. What did he tell you?

A. He told me that he wanted to get things moving. He said there had been a leak to *Texas Monthly* about issues surrounding the federal raid. And I never saw the story, so I don't know the specifics. But he was concerned that something had gotten out in the press. And then he mentioned that Mr. Paul's sister was his personal counsel. I never spoke to her. But again, he was insisting that we get moving and do something with the referral.

MR. LITTLE: Mr. President, just briefly. Can we have the witness clarify for the record that Nate Paul's sister is – Sheena Paul is Nate Paul's personal counsel and not the Attorney General's.

MR. HARDIN: Certainly, I have no objection to that.

PRESIDING OFFICER: Would you clarify that, please?

THE WITNESS: Yes, sir.

A. He was saying that Sheena Paul was Nate Paul's personal counsel.

MR. LITTLE: Thank you, Mr. Penley.

Q. (BY MR. HARDIN) All right. Now, so then when was the meeting with Mr. Paul?

A. The first meeting was on July 21st.

Q. And who was at that first meeting?

A. That was conducted by David Maxwell on behalf of the OAG. Nate Paul attended along with his personal counsel Michael Wynne.

Q. Michael Wynne is spelled do you know how for the court reporter?

A. It has an E on the end, W-y-n-n-e.

Q. Thank you. Now, were you present or watching this interview or anything?

A. I didn't watch it live. I didn't attend it, but I watched later. It was video and audio recorded.

Q. Do you recall about how long that lasted?

A. It was over an hour. Maybe an hour and 15, 20 minutes.

MR. HARDIN: Okay. May I have the exhibit number?

Your Honor, may I visit the table just for a second?

Q. (BY MR. HARDIN) When did you view the video?

A. I viewed it on July 23rd.

Q. Were you aware of any meetings – without going into what anybody told you, were you aware of any meetings that the Attorney General had with other members of the executive staff about Mr. Paul just the day before on July 22nd?

A. No, sir.

Q. All right. So when you met – how is it that you reviewed the interview? The date of the interview was what?

A. July 23rd.

Q. And then when's the next time you heard from Mr. Paul – from Mr. Paxton about that matter?

A. Mr. Paxton called me on July 23rd and said he wanted me to come to his office and view the video with him.

Q. Did you do so?

A. I did.

Q. So had he ever asked you on any occasion to look at evidence or so, or interviews or so, that – meetings or so that you were dealing with on criminal justice matters?

A. Not as a general matter. There are two exceptions.

Q. What are they?

A. There was one case up in the Panhandle where someone in a town met him at a political event and asked him for our office to take a look at a cold case.

Q. All right. Did your office do that?

A. We did.

Q. All right. And then what's the other occasion?

A. There was an occasion in July of 2020 where a former deputy at the Attorney General's Office, who was in private practice in San Antonio, represented some parents in a drowning case. And he contacted the Attorney General and wanted our office to look at – at this drowning case down there where Bexar County was not pursuing criminal charges.

Q. All right. Now, those are two occasions that previously – excuse me – that previously during your service he had asked you to look at, correct?

A. Yes. Yes, sir.

Q. Now, would you describe the level of involvement that he had in each of those cases compared to the involvement he had with Mr. Paul?

A. Vastly different.

Q. How? Now, I don't want to really go into the facts of the other two cases.

A. All right.

Q. I just want to know – I want to ask you to describe in each of those two other occasions that he had contacted you on behalf of some constituent, describe what his behavior – what his involvement was in those cases.

A. Yes, sir. On the Panhandle case, he asked me to look at it. Our law enforcement division had looked at it. I reviewed what they had done. I reported to him that they had done everything that could be done, and he accepted that and didn't bring it up anymore.

Q. What about the Bexar County case?

A. On the Bexar County case, I made some phone calls. I looked at some evidence the family's attorney had sent me. I made a report back to the Attorney General that I didn't see any state criminal charges that we should pursue. He accepted that and never brought it up again.

Q. In either of those cases, did he have any further involvement after asking you to look at it?

A. No, sir, other than asking me to report back to him.

Q. And after you reported back to him, did he do anything – have any further involvement in either of those two cases that you're aware of?

A. Not – not to my knowledge. He didn't with me.

Q. By the time July 22nd rolls around, July 23rd rolls around, how many times had the Attorney General talked to you about the Nate Paul case? Just take your time and count back up to that moment.

A. I'll count three to that moment – well, actually five to that moment counting the December phone call.

Q. All right. Now, when you – describe for the jury how – this review of the video of the initial interview by Mr. Maxwell of Mr. Paul with his attorney present.

A. We watched the video together. Mr. Paxton was unhappy with David Maxwell because David Maxwell was not accepting what they were saying at 100 percent face value.

Q. Well, let me ask you this: Did you see anything, as an experienced law enforcement professional, that was objectionable about the way Mr. Maxwell was conducting the interview?

A. No, sir.

MR. HARDIN: Your Honor, at this time – it's already in, but for the record, I'll say that Exhibit 149 is a video and audio. I'm not going to go into it right now, but it is a video and audio of the initial David Maxwell interview, if the jury later decides they want to look at it.

PRESIDING OFFICER: All right. Thank you.

MR. HARDIN: 149.

Q. (BY MR. HARDIN) Now, after – after you looked at that interview, do you recall anything else that the Attorney General said about it during the course of watching it with you or after it was completed?

A. He made comments that told me he didn't understand the significance of some of the claims they were making. Number one, he didn't recognize the legal difficulties for us to investigate the federal authorities when a search warrant is under seal at the federal courthouse. I didn't see any way we could get that realistically other than by asking the federal judge if he would open up the sealed record and let us examine the issued search warrant and compare it to the returned search warrant.

Q. All right. So now at the heart of this thing that you looked into the file, there's been one interview, you've heard from Mr. Paul – let me back up. In that interview you watched, who does most of the talking in the interview?

A. Nate Paul.

Q. Does his lawyer also participate some in it?

A. He does.

Q. And in the case of – how much does Mr. Maxwell talk in there, if you could just characterize it?

A. I'd say Mr. Maxwell spoke 35 to 40 percent of the time. He asked questions, appropriate questions, and then they gave answers.

Q. Did you find anything objectionable about the questions or the way Mr. Maxwell was asking them?

A. No, sir. In fact, he made some very excellent comments to them about where they should go to get relief.

Q. All right. In that particular document, Mr. Maxwell is suggesting they go where for that complaint they had?

A. He told them the best place for them to go to get help with their complaints was the Department of Justice Inspector General's Office because that office would have the power to investigate federal authorities.

Q. Now, let me ask you something that may perhaps not have been clear in this trial at all. If a defendant – a search warrant is run in the federal court, where you were for a number of years, and ultimately – a judge has signed it, the warrant is executed, evidence is gathered, and then ultimately charges are filed and the person – something happens with them, they're indicted. If they have a pending criminal case, what is your experience as to whether the defendant would then be given access to not just the search warrant but the probable cause affidavit?

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

MR. HARDIN: I'm simply asking what his experience is –

PRESIDING OFFICER: Overruled.

MR. HARDIN: Thank you.

A. Well, the way it works is the Assistant U.S. Attorney and the agent go see the federal magistrate judge to ask for a search warrant to be signed, to be approved. And when you go, either beforehand or at time you're talking to the judge, the agent presents a probable cause affidavit which lays out the key facts of their investigation which the AUSA and the agent believe establish probable cause to get the search warrant under Rule 41.

Q. (BY MR. HARDIN) Now, let me stop there. At that time, in the affidavit they present to the judge, does it describe what all kind of information would be in there –

A. Yes.

Q. – that they might later ask be sealed?

A. Yes. There is often confidential law enforcement evidence in there. There is information – if there's an informant in the case, that information may be in there. The work the agent has done to that point, the investigative steps they've taken, what they've uncovered, the facts they've developed are laid out so that the judge will see probable cause exists. And if the judge rejects it, you don't get the warrant.

Q. All right. And in addition to what you just described, is there information in there potentially of other citizens who may have talked to the government and provided information?

A. Yes, sir, and other confidential information.

Q. So if, in fact, the magistrate or the judge signs the search warrant and it is executed, what happens then in terms of the warrant being given and the affidavit being given? What is the practice?

A. Well, the original documents are given to the judge's clerk who files them under seal in the federal district clerk's office. Now, typically there's a motion to seal filed by the Assistant United States Attorney. If that's granted by the judge, and they routinely are, the clerk's office keeps that under seal. So they're not going to give it to anybody except the Court or the government. A target of an investigation is not entitled to see the affidavit which lays out the facts of the investigation until they've actually been indicted and are entitled to discovery.

Q. So if the charges are filed against them and they're indicted, then what is the law – what is the practice as to whether they then get the probable cause affidavit?

A. At some point that would be unsealed and the Assistant U.S. Attorney would send a copy of the previously sealed search warrant affidavit to the defense attorney.

Q. But if they are not charged as yet and not charged at that time or not charged immediately after, what will happen with the sealed probable cause affidavit and whether or not that target, that you've used the word, is entitled to see it until charges are filed?

A. The target is not entitled to see it until charges are filed. And sometimes charges aren't filed, but they don't get to see it. That's confidential law enforcement investigative material. It's very important that not leak out because the target could go destroy evidence. He could go intimidate witnesses and do other things to undermine an investigation.

Q. In the case – did you relay essentially the kind of information you just told the jury to the Attorney General?

A. At various points during this entire matter, yes, I did.

Q. All right. And at some time, did you express to him the fact that you would not have access – even you yourself and the Attorney General's Office would not have access to that sealed probable cause affidavit?

A. Yes.

Q. Now, if, in fact, somebody made a public information request, would what was in the sealed affidavit be – potentially be provided by the law enforcement authorities for them to decide whether to release it or not?

MR. LITTLE: Objection, Mr. President, calls for speculation on the part of this witness.

MR. HARDIN: I'll ask this, if it's okay.

PRESIDING OFFICER: Sustained.

MR. HARDIN: Thank you.

PRESIDING OFFICER: Rephrase.

MR. HARDIN: Thank you very much.

Q. (BY MR. HARDIN) Would you – do you have any personal knowledge of how the public information requests would work for somebody who wants to see a probable cause affidavit that he has not been given by the federal judge?

A. Yes. I have an understanding that there is a law enforcement exception in the public information request laws and that an agency has a right when there's a pending law enforcement investigation to keep that private and not release it to a requestor.

Q. So in order for the Attorney General's Office to know what their position to be and whether the law enforcement exception applies, would the agency that is seeking to withhold the information reveal what is in the probable cause affidavit in order for the Attorney General's Office to make the decision?

MR. LITTLE: Objection, leading.

Q. (BY MR. HARDIN) If you know.

A. My understanding is –

MR. LITTLE: Hold on. Hold on, Mr. Penley.

PRESIDING OFFICER: Sustained.

MR. LITTLE: Thank you.

Q. (BY MR. HARDIN) All right. Now, let's move on, if we can. After you had that meeting with the Attorney General and when the two of you watched the – I think you said on July 23rd, what was the next thing you did that was in connection with Mr. Paul's case?

A. On July 28th or 29th, I received a phone call from Mr. Wynne requesting a second meeting, which I agreed to.

Q. All right. Now, at this meeting – when did that meeting occur that the lawyer for Mr. Paul requested?

By the way, why did you give them another meeting?

A. Why did we need another meeting?

Q. Yeah.

A. Well, I hadn't attended the first one. He was asking for it. I was trying to show the Attorney General we were being accommodating and willing to listen to whatever they had. So I agreed to a second meeting, which we scheduled for August the 5th.

Q. All right. Did you do anything in connection – in preparation for that meeting on August the 5th, the second meeting on Mr. Paul?

A. Well, I had reviewed the entire transcript from the first meeting, and I'm sure I had spoken to Director Maxwell.

Q. All right. And then what happened on the next meeting? And again, what date was it, the second meeting?

A. August the 5th.

Q. What happened at that meeting?

A. That meeting was also in the law enforcement interview room, so it was audio and video recorded. Mr. Paul and Mr. Wynne came. They had not brought any documents to the first meeting, which surprised me, because normally when a complainant comes in, you expect them to bring their evidence. But this time they brought documents because I had asked Mr. Wynne to do that during our phone call on the 28th or 29th.

Q. All right.

MR. HARDIN: Your Honor, if I may, just for the record, that interview is Exhibit 156 that is in evidence. And I'm not going to ask the – at this time it be played. It's a long interview, but it is available during deliberations for the jury to review if they choose to.

PRESIDING OFFICER: Thank you.

Q. (BY MR. HARDIN) Now, in this second meeting, about how long do you estimate that lasted?

A. About an hour and a half.

Q. Was it just four people there?

A. Yes.

Q. And that meeting, how did that conclude?

A. Well, it concluded that I told them –

Q. Stay with the microphone.

A. – thank you for coming in. We've heard your theories. They had really stressed that their proof of alteration of a federal search warrant was in the metadata of those documents. So we – I told them that we're going to get with our computer forensic examiners that work for Director Maxwell. We'll review this with them, we'll explain your theory, and I'll get back to you.

Q. All right. So now, what was the contention that they were saying that would show that – let me back up.

Were they talking to you in terms of warrant is presented, judge signs it, and then supposedly the law enforcement people changed that affidavit?

A. Yes, sir.

Q. And what was – what was, as you understood it, the contention as to why it was changed?

A. Their contention was that –

Q. Microphone.

A. – the magistrate judge had signed it on August the 12th, and they claimed that they had metadata from the documents that showed it had been changed on August the 14th, the day of the first searches. And they claimed that – their theory anyway, which again sounded insane to me, that initially the search warrant had been approved to search for guns and drugs and related items. But after the agents got there and started the search at 9:00 o'clock, by 11:00 o'clock the Assistant United States Attorney was changing the search warrant to a white-collar crime type of search warrant seeking documents and computer files, bank statements, financial records, things of that nature. And that just – that was insane.

Q. All right. So did they have any reason they would not have gone back to a federal judge and said, Hey, hey, these guys – these guys changed your warrant?

A. I asked them –

MR. LITTLE: Again, Mr. President, leading.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Let me put it this way: What was the reason that they would not go back to a federal judge to complain, these guys changed your warrant?

A. Right.

MR. LITTLE: Objection, Mr. President, speculation as to what someone else thought.

MR. HARDIN: Your Honor –

PRESIDING OFFICER: Sustained.

MR. HARDIN: Excuse me.



Q. (BY MR. HARDIN) Did they give you reasons as to why they wouldn't go back to a federal judge?

A. They told me they had done that, and I inquired further.

Q. When did they say they had gone back to him?

A. They told me they actually had a hearing in late February of 2020. Because I asked Mr. Wynne, who's a former Assistant United States Attorney in Houston and Austin and a graduate of Harvard Law School, Why are you coming here? Why don't you go file a motion with the magistrate here in Austin who signed the warrant? He's got the power to deal with everything.

Q. And so instead of doing that, did they then contend the federal magistrate was in on all this?

A. At some point, they did.

MR. LITTLE: Mr. President, leading.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Then why would they not go back to the federal magistrate or to the federal district judge?

I think everybody in the jury may know this, but just to be sure, the search warrant was entered by a federal magistrate, correct?

A. Correct.

Q. And that federal magistrate handled matters like that on behalf of a federal district judge, correct?

A. Correct.

Q. Did they have any explanation as to why they hadn't gone to a federal district judge to complain about this magistrate who must be in on this whole thing?

A. No. And in fact, that was one of the giant red flags that was raised in my mind by that –

Q. At your microphone, please.

A. – and the –

Q. Microphone, please.

MR. LITTLE: Mr. President, I'm going to object as nonresponsive to everything after "no." It's a yes-no question.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) All right. Now, please, please remember the microphone –

A. Yes, sir.

Q. – to make sure people in the back can get it. All right?

Now, at the end of the day, what is it that they wanted you to do?

A. They wanted us to agree with them on their metadata theory and agree that an Assistant United States Attorney had illegally, at a felony-level crime, altered search warrants after they were issued by a federal judge and that two Assistant United States Attorneys, a federal judge, and a whole bunch of state and federal agents were in on a grand conspiracy to cover this up and target Nate Paul.

Q. So did they want you to investigate all of these people that you've just elicited?

A. That was my understanding.

Q. Yeah. Well, now, when the meeting was over, what did you do?

A. I talked to Director Maxwell. He took the thumb drive. I said – we both discussed the fact that his computer forensic examiners needed to analyze the documents based on their contention that the metadata had been – would show an illegal alteration.

Q. And what would you need to be able to show an illegal alteration – address the issue as to whether it had been illegally altered or not?

A. You would need the actual computer that the Assistant United States Attorney used to type up the search warrant documents; and you would need his computer files, the original computer files, which only existed at the United States Attorney's Office and would be subject to all kinds of privileges.

Q. Well, let me ask you this though: If a search warrant is signed by the magistrate and is taken out and executed, all right, and then ultimately a copy of that search warrant is given to the lawyers of the target – are you with me?

A. Yes, sir.

Q. What documents could you potentially compare to see if the original search warrant was altered? What would you need?

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

MR. HARDIN: No, this is what –

PRESIDING OFFICER: Overruled.

MR. HARDIN: Thank you.

A. The source material, the Rosetta Stone, if you will, would be the sealed search warrant that was actually signed by the federal magistrate and on the day of signing was placed under seal at the federal district clerk's office. So if I had the original issued search warrant and I got the returned search warrants that were actually served on the defendant, not the affidavit, but just the warrants themselves, and you could put those together and you could see if there were any changes in the original and in the copies that were given to the defendant and the copies that the agents filed back with the clerk's office after the search is concluded. The agents fill out an inventory of all the items that are seized during the search, and they file that back with the district clerk's office and it goes in the file together. So if I had the beginning and the ending, I'd have a bookend.

Q. (BY MR. HARDIN) All right. And are those actually – were those documents the ones that were under seal?

A. The originals, the issued sets were under seal, and I had no access to them.

Q. All right. So without going into what the – what your experts told you, did you have these – these materials or what you had, at least the original warrant, did you have your IT people look at it?

A. Yes. In the thumb drive that Mr. Paul and Mr. Wynne gave us on August the 5th –

MR. LITTLE: Mr. President, I need to object again as nonresponsive –

MR. HARDIN: That's fine. That's fine. We'll do it real quickly.

Q. (BY MR. HARDIN) Did you –

PRESIDING OFFICER: Sustained.

MR. HARDIN: Excuse me. Thank you.

Q. (BY MR. HARDIN) Did you, in fact, give the information they gave you to your IT people to look at?

A. Yes, sir.

Q. Without going into what they said to you, did they come back to you with a recommendation?

A. They gave us their opinion, yes.

Q. Were they able to find anything that would determine one way or the other with the information they had available?

MR. LITTLE: Objection, hearsay.

MR. HARDIN: Whether they could find? How is that hearsay? I'm sorry. I'm learning a lot in this case.

PRESIDING OFFICER: Overruled.

MR. HARDIN: Thank you.

A. The metadata theory advanced by Mr. Paul and Mr. Wynne was not validated.

Q. (BY MR. HARDIN) And so were you able to tell from your experts one way or the other as to whether there had been any alteration?

A. The only alterations were through innocent functions.

Q. What do you mean?

A. If you redact anything in a search warrant, which is routinely done, that –

Q. Let me stop you. The kind of things that might be redacted would be what?

A. If there were other targets in the investigation that were listed in the warrant, in the – in one of the attachments, routinely you redact the name of the other target.

Q. All right. And so if there are redactions, what happens?

A. That will change the metadata.

Q. All right. So ultimately, were the – were the experts in your – your office able to answer one way or the other whether or not it had been redacted?

A. Yes. They were able to tell it was redacted. We had copies of the warrants, and it showed redactions.

Q. All right. Were they able to offer an opinion as to whether or not that meant the document was changed for the basic things that were contended by Mr. Paul's lawyers?

A. Well, let me explain it this way.

Q. Let's do it shortly. Let's see how you do.

A. All right. There are innocent functions that can change metadata that are routinely done. I had evidence those innocent functions were done. Therefore, the metadata theory proved no wrongdoing. It proved no criminal conduct by the federal authorities. There was no evidence of a crime.

Q. All right. And then what did you do after you got this report back from your people?

A. That was on August the 6th. A couple of days later I saw the Attorney General in the hallway and I said, Ken, there's no evidence of a crime. I recommend we close this investigation.

Q. All right. And what was his response?

A. His response was, Okay. Fine. All I ask you to do is meet with them and tell them, which I agreed to do.

Q. All right. So what happened then?

A. I scheduled a meeting. I called Mr. Michael Wynne. We set up a meeting for August the 12th, which I believe was a Wednesday, again here in Austin. And a couple of days after that – this was before the August 12th meeting – I saw the Attorney General in the break room, and I told him I had set up the meeting as he had requested.

Q. All right. Then what happened?

A. Well, he told me he wanted to attend. So I changed the meeting location to the executive conference room so it would be right next to his office for his convenience.

Q. Now, was this meeting either videotaped or audiotaped?

A. No, sir. There was no video or audio in the executive conference room.

Q. All right.

A. Not for recording a meeting.

Q. Excuse me. So when did this third meeting with Nate Paul – did Nate Paul attend the second – the third meeting?

A. Yes, sir.

Q. So when did this third meeting with Mr. Paul and his attorney occur and who all was there?

A. It occurred on August the 12th in the morning. The Attorney General attended; I was there; Director David Maxwell was there; his two forensic examiners that we had met with on August the 6th were there; Drew Wicker, the Attorney General's assistant, attended; and Mr. Paul and his attorney Michael Wynne were there.

Q. And during this meeting, did the Attorney General stay – how much of that meeting did he stay for?

A. He stayed for about three-fourths of it.

Q. All right. So what happened in this meeting?

A. Well, I opened the meeting and announced to Mr. Paul and Mr. Wynne that – I thanked them for coming and said, We've looked at your metadata theory, but we don't find any evidence of a state crime and we're going to close our investigation.

Q. What was their reaction?

A. It was very unhappy. They – they pushed back immediately.

Q. How about Mr. Paul? How would you describe his conduct?

A. He was angry.

Q. So as both as being angry what did he do?

A. Well, number one, the Attorney General was also unhappy. And then Mr. Paul demanded that a laptop computer be brought in, because we had discussed what the forensic examiners had told me and Director Maxwell. He disagreed with them; demanded a laptop to be brought in. So the Attorney General told Mr. Wicker, Go get your laptop and bring it in and hook it up. There was a video screen at the end of the room.

Q. Did Mr. Wicker do that?

A. He did.

Q. And then what did Mr. Paul do?

A. He got on the keyboard. He pulled up a document, and he said – he said, What I've just shown you here disproves what your forensic examiners are saying.

Q. Did it?

A. I'm not a computer expert, but I know that the forensic examiners didn't tell me they were wrong.

Q. Yeah. And I'm curious, how was Mr. Paul acting in this meeting in terms of who was in charge and what was going to happen here?

A. Mr. Paul acted like we didn't understand who the real boss was. It wasn't the Attorney General; it was him. That was his body language, that was the expression on his face, the way he bowed up. He got very unhappy with us. He got very unhappy when Director Maxwell called him out for leaking our investigation to the media.

Q. Let me stop there. What are you talking about there?

A. There were two publications that printed reports about Nate Paul and some of his civil litigation issues and bankruptcies. And they reported quotes from –

MR. LITTLE: Objection, hearsay.

Q. (BY MR. HARDIN) All right. He doesn't want you to report –

PRESIDING OFFICER: Sustained.

MR. HARDIN: Thank you, Your Honor.

Q. (BY MR. HARDIN) He doesn't want you to talk about what their articles were.

A. Right.

Q. So my question is, what did Mr. Maxwell say to them in the presence of the Attorney General?

A. He said, You leaked the fact of our investigation to the media.

Q. All right. And what was the import of that? Why was that a concern?

A. When you're doing a law enforcement investigation, you don't do it through the media. You keep it confidential. You don't want to alert the target. You don't want people destroying evidence or hiding evidence. You keep it quiet.

And secondly, sometimes the targets of your investigation may not have done anything wrong. You don't want to smear people's reputation unnecessarily due to the fact that they've been investigated.

Q. What was Mr. Paul's reaction to that?

A. Mr. Paul pushed back against Mr. Maxwell and said he had a First Amendment right to talk to whoever he wanted to.

Q. And what – he didn't deny that he had done it, did he?

A. Initially he did and then he admitted it, which told me something about his veracity.

Q. And then what was the Attorney General's reaction?

A. The Attorney General took his side and agreed with him that he had a First Amendment right to talk.

Q. So then what happened?

A. Shortly thereafter, the Attorney General announced he had to leave. And a few minutes later, the meeting was not productive anymore. Mr. Paul and Mr. Wynne were unhappy, so –

Q. All right.

A. – I closed the meeting.

Q. Again, this meeting was on what date?

A. August the 12th.

Q. And then what happened after that?

A. The next day we had our weekly deputies meeting on Thursday. Jeff Mateer was there. I met with Jeff after the meeting.

Q. I'm confused. Earlier you talked about a weekly deputies meeting on Tuesday.

A. I believe – and I'm trying to remember this. I could be wrong, but I think the deputies meeting was on Thursday, and I think we had a policy and strategy meeting on Tuesday. If I'm mistaken, then reverse it.

Q. All right. But are they the same people attending?

A. There could be differences. The policy meeting might be a smaller group.

Q. All right. So what is this meeting that you had on Thursday after the previous meeting?

A. After our regular weekly staff meeting on Thursday, David Maxwell and I stayed behind, and we met Jeff Mateer either in his office or in the executive conference room, just the three of us.

Q. Without going into what was said at that time, did you become ultimately aware of anything having to do with an outside counsel being hired?

A. Not at that time, but later I did.

Q. All right. And then when did you first become aware that the Attorney General was considering or wanted to hire an outside counsel to investigate Mr. Paul's complaint?

A. Well, number one –

Q. Wait. Let me stop. You mentioned something about this a moment ago. When you're investigating people and wanting to find out information and so, in your years in law enforcement, do you put people that you want to elicit information from under oath?

A. No, sir.

Q. Have you ever done that?

A. Rarely. Sometimes in federal practice we would bring somebody in to the grand jury, but that was not a common practice.

Q. Well, let me ask you this: Have you ever put people that you were trying to investigate or get information from an investigation, other than presenting them in a grand jury where they're sworn in, do you ever swear in people that you are trying to get information from, you want to sit and talk to you and inform you?

MR. LITTLE: Objection, relevance, Mr. President.

MR. HARDIN: Very relevant. This allegation's been made repeatedly by these guys.

PRESIDING OFFICER: Overruled.

MR. HARDIN: Thank you.

A. No, sir.

Q. (BY MR. HARDIN) All right. Are you familiar with anybody in law enforcement doing that?

A. I don't believe that's a routine practice, no.

Q. Well, as a matter of fact, the complaint that Mr. Paul went down and filed – filled out that started all this with the Travis County District Attorney's Office, have you looked at that complaint form?

A. I have. I've read it.

Q. And on that complaint form, does it have a place to have the statement and complaint notarized, therefore being sworn under oath?

A. It has a place, yes.

Q. And the complaint filed by Mr. Paul in that matter, which is called – we'll call it referral number one. Did he swear to that complaint that he was making all these allegations?

A. No.

Q. And then there's another referral. Did you become aware later of another referral?

A. I did.

Q. By Mr. Paul about another group of people he wanted investigated?

A. Yes. And that was also to the Travis County DA's Office.

Q. And again, is there a place there for it to be notarized so he could swear under oath?

A. Yes.

Q. On the complaint?

A. Yes.

Q. Did he do that?

A. No.

Q. So the two complaints that he wanted you to investigate with all of these allegations about all these people, did a single – did he swear under oath to a single one of those allegations?

A. No, sir.

Q. If he had, would that potentially – and if they were untrue, would that potentially subject him to a charge of perjury?

A. I believe so.

Q. So if he doesn't swear to it under oath, does it swear – does it particularly – potentially open him up to perjury?

A. No.



Q. All right. Now, let's go to after you have this meeting by outside counsel. When do you become aware, if you do at all, of the possible people that are being considered by the Attorney General to be the outside counsel?

A. After the August 12th meeting, the Attorney General did not talk to me about the Paul matter for a number of weeks. I believe –

Q. Keep your voice up. I still – the microphone, when you pull back – both of us, when we pull back, we get away. So again, keep the mic – would you tilt it just a little bit?

A. Let me turn it down. Is that better?

Q. Thank you. That is better.

A. All right. I can't –

Q. Go ahead.

A. I can't move the base, so I'm just trying to stretch it out.

Q. All right. That's okay.

All right. So when you leave that meeting after we talked about that the Attorney General was there for most of it, when is the next time that you did anything in relation to this particular matter with Nate Paul?

A. The next thing I recall hearing was on September the 3rd when – I had been making phone calls to Michael Wynne trying to get additional documents. I wrote a note to the Attorney General on August 13th, the day after the meeting, and I – I told him I had reexamined the copies of documents Mr. Paul and Mr. Wynne had given me, and I realized it didn't appear they had given me all the evidence they told us they had.

So I started making phone calls to Mr. Wynne, and I told the Attorney General in my August 13 note that there might be further steps I could take if they'd give me all the documents.

Q. All right. So if anybody was to suggest that you had refused to investigate or do anything else on this case, would that be an accurate or inaccurate statement?

MR. LITTLE: Objection, Your Honor, assumes facts not in evidence.

PRESIDING OFFICER: Sustained.

MR. HARDIN: I'm sorry, I'm trying to think if that was actually something that wasn't in evidence. Pardon me.

Q. (BY MR. HARDIN) Let me ask you this: Would it be an accurate statement today to say one way or the other as to whether you had refused to investigate this matter?

A. I did not refuse, and I did investigate this matter, and I continued after August the 12th to attempt to investigate it.

Q. In attempting to investigate it, how did you go about attempting to?

A. I told the Attorney General I needed all the documents Mr. Paul had, and I made numerous attempts to contact Mr. Wynne and request all the evidence they had been given by the magistrate judge at that February 2020 hearing.

Q. Had you ever – had he ever provided that to you?

A. No, sir. He never provided me any further documents after giving us the thumb drive on August the 5th.

Q. Did he ever – did address whether or not the hearing before the magistrate had been on the record back in February of 2020?

A. He did not – I believe he told me it was not on the record, but I'm not absolutely certain.

Q. Do you know one way or the other as to whether it was under – was on the record?

A. I don't have personal knowledge.

Q. Did he attempt to provide you any information of anything the magistrate said at that hearing?

A. He told me a few comments that had been made, and he told me the judge gave him some documents that afternoon, and that's all he said.

Q. Did you ask him to provide you those documents?

A. I did ask him to provide me those documents.

Q. Did he?

A. No.

Q. All right. How many times would you think – after the meeting in the Attorney General's Office that you described, the third meeting, how many times would you estimate you reached out to Mr. Wynne in an attempt to get further documents?

A. Five to six to seven times.

Q. And were you successful?

A. No. I never got a single piece of paper or another thumb drive or anything.

Q. Do some of those times you reached out, are they voicemails that you left for Mr. Wynne?

A. Yes, some were voicemails.

Q. How many times were you able to talk to him actually after the meeting in the Attorney General's Office seeking additional information?

A. The only record I have of reaching him is one time, and that was on September 14. We had a five-minute phone call.

Q. All right. And in that five-minute phone call, were you promised documents?

A. No, I wasn't promised documents, but I – I was promised he was going to talk to Mr. Paul that afternoon and that he would get back to me by the end of the day, and he never did.

Q. All right. So did you ever hear from him again about those documents?

A. No, sir.

Q. All right. Now, what impact did that inability to get documents from have on you?

A. It affected my thought process in a major way.

Q. Your microphone, please.

A. Number one, when you're doing a criminal investigation and you have a complaining witness telling you a story, you have to believe they're being truthful to act on what they're telling you. In other words, I can't just have somebody come in and tell me there's some crime being committed against them if they don't have some proof or if I can't corroborate it. You've got to have some evidence to believe that a crime occurred. And when you've got a complainant like Mr. Paul who's not being cooperative –

MR. LITTLE: Mr. President, I need to –

MR. HARDIN: I'll do –

MR. LITTLE: – object to narrative.

MR. HARDIN: I'll do question and answer.

PRESIDING OFFICER: One second, members.

MR. HARDIN: I'll do question and answer.

PRESIDING OFFICER: State your objection.

MR. LITTLE: I need to object to the narrative answer. It needs to be responsive to a question.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) All right. In addition – by the way, let me ask you something. When you talked about when Nate Paul first came to talk to David Maxwell, do you remember that?

A. Yes, sir.

Q. And in that interview I believe you said that it was just Mr. Maxwell, Nate Paul, and his lawyer, correct?

A. Correct.

Q. Now, did Mr. Nate Paul in that interview provide his oral recitation of what he contended happened?

A. Yes.

Q. What is your testimony as to whether if a person comes in, is orally talking to you about what they contend happened, do you consider oral statements as evidence?

A. I do.

Q. All right.

A. It's some evidence, yes.

Q. All right. So in evidence – what types of evidence do you, as a law enforcement professional, want and consider?

A. Well, there are many types of evidence. There's physical evidence. You could have tire tracks or something like that, fingerprints, DNA. That's physical evidence. You can have direct eyewitness testimony. That is evidence. That is powerful evidence. You can have circumstantial evidence.

Q. Was Mr. Paul providing you eyewitness testimony as to what happened at his search?

A. He was in part.

Q. And is that evidence?

A. Yes, sir.

Q. All right. Now, when somebody comes in, are they supposed to bring you a wrapped up, beyond a reasonable doubt case or do they – tell me what you expect them to be doing.

A. No, that's not the way an investigation works. You get an initial report by a complaining witness or by a police officer who's met with a crime victim or complaining witness, and then you work from there.

Q. Do you consider that information – that initial information as evidence?

A. Absolutely.

Q. And then what are you supposed to do as an investigator with that?

A. You follow leads suggested by that initial evidence, and you see if you can corroborate it, and you see where it takes you. You follow the road. You follow further evidence that you can get.

Q. So when – when Mr. Paul and his lawyer came to you in that initial interview, or came to Mr. Maxwell, and gave their version of what happened, do you consider that evidence that's to be considered as part of your investigation?

A. Yes, we did, and we treated it accordingly.

Q. Now, now we move forward to sometime in – I believe you said into September?

A. Yes, sir. Now we – we're in early September, I believe.

Q. All right. And what was happening then in early September?

A. Well, the first thing that happened was on September the 3rd, Ryan Vassar told me that the –

MR. LITTLE: Objection, hearsay.

Q. (BY MR. HARDIN) Without going into what he told you.

A. All right.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) On September the 3rd –

MR. HARDIN: Thank you, Your Honor. I'm sorry.

Q. (BY MR. HARDIN) On September the 3rd, did you have – did you become aware of an outstanding proposed contract?

MR. LITTLE: Objection –

A. Yes.

MR. LITTLE: – hearsay, same situation. It's derivative of the hearsay.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) At some – let me ask you this: Did you see the contract at that time?

A. No.

Q. Were you aware – did you become aware of people that the Attorney General was considering to be appointed as outside counsel?

A. Sometime in late August or early September, yes.

Q. Did you – did you have names of people he was considering?

A. I got those names on September the 14th.

Q. Whom did you get those names from?

A. Jeff Mateer.

Q. All right. The two names that you –

MR. LITTLE: Mr. President, objection, hearsay. Move to strike. This was a backdoor attempt at getting hearsay in.

MR. HARDIN: Your Honor, he's not testified to any statement. He's talked about information he obtained. Whether or not that is true or not, we don't know. We're not offering it to show that those were the actual two, but what he acted on.

PRESIDING OFFICER: Overruled.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) Now, when you became aware of these two names that you understood to be, did you do anything in connection with either one of them?

A. Well, that was on –

Q. Just yes or no.

A. Yes.

Q. All right. When?

A. Well, did I do anything with those two names?

Q. Yeah.

A. No, I didn't.

Q. All right. Had you met either one of the two men that you understood were under consideration?

A. No, sir.

Q. The two names you were acting on were who?

A. The names were Joe Brown, a former United States Attorney in the Eastern District of Texas, and Brandon Cammack.

Q. Now, did you know anything about the career or past of either one of those two men?

A. I knew about Joe Brown's career.

Q. What did you know about Joe Brown?

A. That he'd been a long-time District Attorney in Grayson County and Sherman and had then become the United States Attorney for the Eastern District of Texas under President Trump.

Q. So you knew that he was an appointee of President Trump, correct?

A. Yes, sir.

Q. And did you know what party he belonged to when he was the District Attorney in Grayson County?

A. Well, I didn't know that. I could make an assumption –

Q. Oh, if you didn't know it, that's okay.

A. But I do know now.

Q. That's all I'm asking you.

All right. Now, did you do anything as it applied to either one of those applicants?

A. No.

Q. When you found out after that those two were being considered, did you – in between that early part of September and what date did you find out?

A. Well, I found out on September the 14th those two names.

Q. You found out. Did you do anything in response to getting that information?

A. I did on the 16th.

Q. What did you do?

A. Well, on the 14th I had spoken to Michael Wynne asking for documents. On the 15th, I called him and voicemailled him again, with no response, to request the documents. On the morning of the 16th, the Attorney General called me into his office.

Q. And what did he want?

A. He said, What documents are you trying to get from Nate Paul? Write them down on a piece of paper. Give me Michael Wynne's phone number. They're not going to give you the documents because they don't trust you. I'll try to get the documents for you.

Q. I'll try to get the documents?

A. That's what he said. He said he would try.

Q. Well, let me back up a second. When the Attorney General comes to you, why had you reached out to Michael Wynne before that?

A. Why had I reached out to Mr. Wynne previously?

Q. In September.

A. The reason I was reaching out to him –

Q. Microphone.

A. – is I was still trying to get all the documents I believed they had, and he would not give me a definitive answer as to whether he had given me all his evidence.

Q. Were you – were you – had you refused to do anything further in the investigation?

A. No, sir.

Q. Were you willing to continue the investigation?

A. Yes.

Q. And so when you hear that they're about to hire an outside counsel, what was your concern and your position?

A. My concern was that if Nate Paul wasn't going to cooperate, we shouldn't be doing the investigation. As I said earlier, I thought the whole idea of investigating the federal and state authorities doing this federal investigation on Nate Paul and essentially mounting a counterattack was ridiculous, was highly out of the ordinary, and was completely improper unless there was solid proof of a criminal act. And I didn't have that.

Q. So what – what were you going to do by trying to get additional arguments as it applied to hiring of an outside counsel?

A. Starting on August 12th when I realized the Attorney General, who initially told me he agreed with me and then did a 180 and came at me in opposition to my idea to close the investigation –

Q. You mean – are you referring to the third meeting?

A. The third meeting on August 12th.

Q. Okay.

A. I was concerned the Attorney General was turning against me, that he might fire me because I wouldn't agree with what he wanted. And I was trying to find a way to prove to him that Mr. Paul's theories had no merit and we had no business taking Mr. Paul's side against the federal authorities who were investigating him for criminal activity.

Q. What was your attitude at that time, Mr. Penley, about the Attorney General in terms of what was motivating you here?

A. Well, I felt like he was under Mr. Paul's influence. I didn't know to what extent. That became clear to me as things unroll and as we go forward in time. My concerns that he was – either had been bribed or been blackmailed or somehow was being controlled by Nate Paul increased over time.

Q. Well, let's talk about – let's talk about in terms of how you felt about him. Have you ever said anything about – in terms of the subject of trying to protect him against himself?

A. I did tell him that. We had a very long conversation about that.

Q. All right. I'll get to that conversation in a moment, but at the –

PRESIDING OFFICER: Counsel, excuse me. We're a little past our juror break.

MR. HARDIN: This would be a good –

PRESIDING OFFICER: Is this a good time to break?

MR. HARDIN: It is. Thank you.

PRESIDING OFFICER: We'll take a break until 10:50. So ten minutes before 11:00 be back. Thank you.

(Break was taken at 10:31 a.m. to 10:54 a.m.)

#### **AFTER RECESS**

PRESIDING OFFICER: You may continue, Mr. Hardin.

Not yet. We need a witness. Bailiff, get the witness.

I made sure all the jurors were there and you were there. I missed him.

(Witness retakes the stand)

PRESIDING OFFICER: Mr. Hardin.

MR. HARDIN: Thank you, Your Honor.

Q. (BY MR. HARDIN) Now, Mr. Penley, by the way, as we move into the things that happened in the month of September of 2020, did you, yourself, ever reduce – produce any real extensive notes as to what you remember about the events that occurred during that time?

A. Yes, sir, I did.

Q. Oh, well – oh, not only turn it on, but lean up. Okay.

A. Yes. The answer is yes, I did write notes, and I produced a seven-page memo.

Q. And have you asked, and therefore have with you – if you could have those notes available to you as we talk about matters that go forward.



A. Yes, sir, I have them right here.

Q. All right. Now, what I'm going to instruct you and suggest to you is if at any time you think you need to refer to them to refresh your memory, you can refer to them, but then testify from what you believe at the time. If you – your notes tell you something that you can't remember exactly, certainly you want to be telling the judge and the other side that. Okay?

A. Yes, sir.

Q. Now, let's go forward. I believe you were at the stage of talking in terms of trying to assure the Attorney General you were willing to continue to investigate, correct?

A. Yes.

Q. And what was your hope – that if you continued to investigate, what was your hope that would accomplish?

A. My hope was I could dissuade him from believing that this investigation had any merit and should be continued.

Q. All right. Now, at that time, were you personally upset with the Attorney General?

A. No, sir.

Q. What was your mindset as to what you wanted to try to do for him?

A. I thought he was misguided. I thought he was biased against law enforcement to his detriment. I thought he was too aligned with Nate Paul, whether through friendship or – as time went on, I began to believe other things –

Q. I don't want – I don't want the "as time went on." Okay? So having said that – we'll get to that. My point is when – when – we're in the narrative.

At the end of the day when you reached out to the Attorney General, can you tell me – after you found out about the fact that he wanted to appoint outside counsel, did you – if we get to the middle of August, at that time were you aware as who he had decided that he wanted to retain?

A. Not in the middle of August, but in the middle of September, yes.

Q. All right. Approximately when did you become aware of whom he wanted to do the investigation?

A. That would have been on the September 14th meeting with Jeff Mateer.

Q. All right. And then once you found out who it was, what was the – that he wanted to hire, what was the next thing you did in your involvement?

A. Well, I found that out on the 14th. On the 14th, I also spoke to Michael Wynne and kept trying to get documents. Then the next day, the 15th, I emailed Michael Wynne and left him a voicemail; no response. On the 16th, the Attorney General called me to his office.

Q. All right. Now, when he called you to the office, were you still – had you for two straight days been trying to get documents from Michael Wynne?

A. Yes.

Q. And did you personally talk to Michael Wynne either of those two occasions?

A. I spoke to him on the phone for five minutes on the 14th.

Q. What did you tell him?

A. I told him I needed the rest of their documents. I said, I've realized I don't think I have everything you got from the judge. Would you please give me the documents? And then he promised to get back to me; he never did.

Q. So the next thing you heard about it was on the 16th?

A. From the Attorney General, the next conversation was the 16th.

Q. And – and where did you have this conversation? Do you recall whether it was in person or over the phone?

A. It was in person in his office.

Q. And how did it come about? I mean, how was it? Did he call you? You call him? What?

A. He called me.

Q. All right. When he called you, what did he say?

A. He said, Come to my office. I want to talk to you.

Q. When he did – when you did come to his office, what happened?

A. He said, What are these documents you're asking Michael Wynne and Nate Paul for? I want you to write down a list of the documents on a piece of paper.

Q. Stop. Stop for a second. How would he know that you were ask – still asking Michael Wynne for documents?

A. Well, I only know of one way, and that would be Nate Paul was calling him.

MR. LITTLE: Objection, calls for speculation.

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

PRESIDING OFFICER: Sustained.

MR. HARDIN: Excuse me. I'm sorry, Judge.

Q. (BY MR. HARDIN) Do you know of any way else that was part of your conversation on the 16th or really – what was it? Was it the 16th with Michael Wynne?

A. My conversation with Wynne prior to that was the 14th.

Q. All right. Do you know of anybody else besides you and Michael Wynne that was involved in your conversation asking him for additional documents?

A. The only other party would be Nate Paul because he told me he was going to meet with Nate Paul.

MR. LITTLE: Objection, hearsay.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) All right. So other than Michael Wynne –

MR. LITTLE: Mr. Hardin, hold on. Hold on.

MR. HARDIN: Excuse me.

MR. LITTLE: Hold on. The objection was hearsay as to what Mr. Nate Paul told Mike Wynne.

PRESIDING OFFICER: I sustained it.

MR. LITTLE: Thank you.

PRESIDING OFFICER: Sorry, I think we were three talking over each other.

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

Q. (BY MR. HARDIN) Now, let me ask you this: When the Attorney General asked you to write down the names, did he tell you what – and the documents – was it the documents he said – he asked you to write down?

A. Yes.

Q. Did he – go ahead with the rest of that conversation.

A. He asked me to write down the documents. He asked me for Michael Wynne's phone number. Then the Attorney General told me that they weren't likely to give me any more documents because they didn't trust me. They didn't like the way the August 12th meeting had gone. They felt I was too aligned with Director David Maxwell. And then he said, I'll try to get the documents for you.

Q. Well, have you ever experienced a supervisor telling you that since the person who is asking you to do the investigation doesn't trust you, he wants you to get out of it and he'll try – and then he'll go get the documents?

MR. LITTLE: Objection, leading.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Let me ask you this: Have you ever had an experience like that?

A. No, sir, never before.

Q. Well, did he say why he was going to go get the documents instead of you?

A. He did not say.

Q. Did he offer any support for you in their allegation that they didn't trust you?

A. No. And, in fact, starting on August 12th, he had not supported me.

Q. So now you've got your Attorney General is against you on this issue.

A. Yes.

Q. And you're still – what was your policy or procedure as you were advancing, trying to still continue to find out if you could head off the special – not the special, but head off the outside counsel?

A. Well, number one, I was keeping Jeff Mateer informed of everything that was going on. I was sharing my views with him. He was my immediate supervisor, and so I frequently talked to Jeff in person or on the phone and updated him on everything I was thinking and doing.

Q. All right. So were you effectively taken out of the Nate Paul investigation after the call on the 14th?

A. Yes. Later I realized the Attorney General had cut me completely out of the loop.

Q. All right. But even at the time he did, had you ever indicated to him in any way that you were not willing to continue to look into the matter if they would provide you the documents they claimed to have?

MR. LITTLE: Objection, leading.

MR. HARDIN: That is not leading.

A. No, sir.

PRESIDING OFFICER: Overruled.

Q. (BY MR. HARDIN) Pardon me?

A. No. I never told the Attorney General I would refuse to investigate if they would cooperate.

Q. All right. Had you ever experienced before anything concerning continuing getting off of an investigation because you – or in spite of – let me put it another way: Have you ever had an experience in which an investigation continues to try to help somebody who won't cooperate with you?

A. No, sir. If someone won't cooperate, that's a giant stop sign.

Q. All right. Now, for one, after the 16th in your conversation with the Attorney General, when was the next time you had any involvement in this case?

A. The next time was on the 23rd.

Q. 23rd of September?

A. Actually, let me back up. I had the meeting with the Attorney General on the 16th. One other significant matter occurred on this case that day that related to me, and that was in my email I received a DocuSign email requesting approval or declination for an executive approval memorandum for an outside counsel contract for Brandon Cammack.

Q. All right. Can I –

MR. HARDIN: Your Honor, at this time I'll move to introduce Exhibit 236. I believe it is not in evidence.

PRESIDING OFFICER: It is not.

MR. HARDIN: I show it's not. Let me check with the true person.

PRESIDING OFFICER: Any objection?

MR. LITTLE: Briefly, if I may, Your Honor. This document isn't a complete – if Your Honor will take a look at House Managers' 236, it is a partial image of a DocuSign report, what I'll call a completion report, but it doesn't go to the bottom and include Mark Penley.

MR. HARDIN: Your Honor, if I may, this is the cover page – or one of the pages that will reflect what was happening with the document. It was already – there is a draft of it in evidence. I'll get that. If they object to this, then –

MR. LITTLE: It's just simply incomplete. We can't see what Mark Penley did and the dates at the bottom of 236.

MR. HARDIN: That's fine. In the interest of time, let me – I'll –

PRESIDING OFFICER: Sustained.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) Now, in the conversation that you had with him on the 16th, the other matter you said that you didn't complete was what?

A. The other matter on the 16th was I received a DocuSign email.

Q. Right. And what was the significant of you receiving that?

A. The significance was the – it was office practice for certain contracts to be approved by a number of people in the chain of command. And since this matter involved a criminal investigation, it was routed through me. And it was to go on to other people. The last signer was to be Jeff Mateer, the first assistant.

Q. Did you sign off and agree to this contract for Mr. Cammack?

A. I did not.

Q. And on the 16th of September, did you do anything in relation to it?

A. No. I saw it was there. I knew I wasn't going to approve it. I didn't touch it.

Q. And if you didn't touch it, does anything happen with the contract until you, the division involved, sign off on it?

A. It should not have.

Q. All right. And then when is the next time you had any contact with anyone about it?

A. The next time I had any news about the Nate Paul matter was on the 23rd.

Q. And what happened on the 23rd and what was your contact and with whom?

A. I had contact with Ryan Vassar. I got word that the Attorney General was asking where –

MR. LITTLE: Objection, hearsay.

MR. HARDIN: It is. You're absolutely right.

PRESIDING OFFICER: Sustained.

MR. HARDIN: You're absolutely right.

PRESIDING OFFICER: Thank you, Counselor, for that help.

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

Q. (BY MR. HARDIN) So when you – did you get to talk at all to the Attorney General during this time frame?

A. Not on – not between the 16th and 23rd, but I did on the 24th.

Q. All right. On the 24th, where did you talk to him?

A. He called me on the phone. He told me he was at the White House. He said he had just left a meeting in the Oval Office, and he wanted me to approve the DocuSign executive approval memo for the outside-counsel contract.

Q. What – what do you remember about that conversation?

A. I remember we talked for about ten minutes. And that was the day that I drew the line with the Attorney General that I would not cross, and I never did. I said I would not approve the contract. I said –

Q. Hold on.

MR. LITTLE: Object to nonresponsive, move to strike.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Hold on. What – just as best as you can remember, tell us exactly what and how he said, what he did, and then tell me your response to it.

A. He said, Mark, I'm at the White House. I just left a meeting in the Oval Office. I understand that the executive approval memo is with you. I need you to approve that contract.

Q. At that time, were you aware one way or the other whether the contract had been signed by the Attorney General?

A. No. I wouldn't expect –

Q. Just – there you go. Did you know?

A. I didn't know.

Q. All right. And so at that time, what was your level of knowledge of the status of the contract?

A. That it was stuck in my email inbox, and it hasn't – had not been approved through the normal office procedure because I wouldn't approve it.

Q. All right. What did you respond to the Attorney General?

A. I said, Ken, I cannot approve this and respectfully I will not, and I told him why.

Q. All right. Would you articulate for the jury exactly what you told him as to why you were not willing to approve that contract?

A. I told him that Nate Paul and his attorney were not being cooperative with us by giving us all the documents that I believed they had. They had gone to the media. Furthermore, there was no evidence of any crime. We had absolutely no scintilla of evidence that any criminal activity had occurred on the part of the federal agents, the state agents, the federal prosecutor, or the federal judge.

And I said, Ethically, Ken, I can't proceed with this investigation. And I'm the senior prosecutor in the agency; and if it's not right for me to do it, it's not right for me to delegate it to anybody else. I won't sign this.

Q. What was his response?

A. He said, Well, we'll have to disagree on this. I've got to go to a press conference. We'll talk later.

Q. What was your history with the Attorney General as to how he would handle or respond to areas of disagreement with you and the staff?

A. Well, by this time, I had realized he was very passive-aggressive.

Q. And what do you mean?

A. I mean he'd say something was okay or indicate he accepted your opinion one day, and then you would find out later he had gone around you or he was disagreeing with you, but he wouldn't come and tell me that.

Q. Over the months that this had been going on, had you become aware of anything involving Mr. Paul and the Attorney General – and this is as – I'm really at the day of the 24th of September. Had you at that stage become aware of other incidents that were occurring, or were you pretty much just knowledgeable of what – about the events that were affecting you?

A. I had heard a little bit about –

Q. I don't want to hear what you heard.

MR. LITTLE: Objection, hearsay.

Q. (BY MR. HARDIN) Only that if you had heard things.

A. Yes, I had heard some things, not much.

Q. But as a practical matter day by day, was your knowledge of things with the Attorney General and Mr. Paul pretty much generally restricted to the things that you've been telling the jury about that involved you?

A. Yes. My knowledge was siloed.

Q. All right.

A. I didn't know about these other issues until later.

Q. All right. Now, on the 24th when you told him that and he said, We'll just have to disagree –

A. Yes.

Q. – when was the next time you heard from him?

A. He called me again on the next day, Friday, September 25th.

Q. And what was – and do you know where he was at that time?

A. I don't know.

Q. And what did he say then?

A. He said, Are you available to meet with me tomorrow?

Q. What did you tell him?

A. I said yes.

Q. What happened? So what happened?

A. I said, Can I assume it's about the matter we discussed yesterday? And he said it was, and then we talked about scheduling.

Q. Where did he want to meet and when?

A. He wanted me to come to McKinney. I told him I had an event to go to in Denton in the middle of the day. I said, I'll meet you before or after. He asked me to meet with him at 2:00 o'clock in McKinney. He said he would text me a location, which he did later that day.

Q. All right. So then did you meet with the Attorney General of the State of Texas regarding Nate Paul and the contract for an outside lawyer to investigate? Did you meet with him about that matter on Saturday, September the 26th?

A. Yes, sir.

Q. What time of day and where did you meet?

A. The meeting was scheduled to begin at 2:00 o'clock. I was there before 2:00. He arrived about 2:20 or 2:15. We met until – for an hour and 45 minutes.

Q. And when he got there, where did you go? Where did you meet?

A. Well, he asked me to meet in one coffee shop, a Panera Bread; and I was there. He came inside and let's go sit outside, and he crossed the driveway. There was a Dunkin' Donuts across the driveway that had an outside table with an umbrella, and he wanted to sit there.

Q. So unlike what we're experiencing so far right now in September, was it a September day with more normal weather that was cool enough to comfortably sit outside?

A. Yes, sir.

Q. All right. And then who began the conversation?

A. He did.

Q. What did he say?

A. He said he was frustrated. He said, I felt like I did when I couldn't get Chip Roy to do what I wanted him to do. My staff's not doing what I'm telling them.

Q. Chip Roy was the previous first assistant; is that correct?

A. That's correct.

Q. All right. Now, when he – what did you respond to that?

A. Well, he then went on to talk about he wanted me to approve the contract. He was upset that I hadn't approved it or that Jeff Mateer hadn't approved it.

Q. I want to go back, if I can, to whether or not you did any preparation for this meeting.



A. Yes, sir, I did.

Q. Tell the jury what you did in anticipation of this meeting.

A. Well, in all honesty, I woke up at 5:00 o'clock in the morning, and I felt like the Lord woke me up and impressed upon me that I needed to get ready; this was a serious situation. Again, I felt like my job was in jeopardy. I didn't want to get fired. And I was hoping that I could get Ken Paxton to listen to reason.

And so I – I did my morning Bible reading. There was a verse in there. It said, Do true justice, Zechariah 7:9. And I wrote that on the top of my notes, and then I proceeded to write out a bullet point outline with all the problems with proceeding with the investigation of the Nate Paul matter, and I wrote down things that I felt like he needed to understand that were a danger to him personally and careerwise.

MR. HARDIN: So if I may, I – I'm going to ask if we can show him a copy of the first page – I mean, of the first – the notes that he prepared before the meeting. I have marked this as Exhibit 214. It's not in evidence, but I wonder if we have a copy we can show him that's clean. Mine's got all kind of markings on it.

A. Sir, I have a copy here.

Q. (BY MR. HARDIN) Pardon me?

A. I have a copy.

Q. I know, but I want to show you one that's got the exhibit. I want you to look at it, identify it, but I don't want you to testify about what's in it yet. I want you to look and see if that is a true and accurate copy of the notes you prepared in anticipation of meeting with the Attorney General.

A. Yes, sir.

Q. All right. Would you look – it's a two-page notes – well, it's three pages really, isn't it?

A. It's – it's front and back copies.

Q. All right.

A. There are three pages.

Q. All right. You went away from your microphone again.

A. I'm sorry. There are three pages.

Q. I've done it much more times than you have.

All right. And in those – do those notes accurately reflect your thoughts that you were reducing to writing in anticipation of discussing this subject with the Attorney General?

A. Yes, sir.

MR. HARDIN: Your Honor, I'll move to introduce. These have been produced. Both sides have these. Actually, I think we received these notes from the Attorney General's Office in the production. Or actually we got them from Mr. Penley, excuse me.

PRESIDING OFFICER: Any objection?

MR. LITTLE: Yes, Mr. President. These – Mr. Hardin has not provided me a copy of the document, but I'm extensively familiar with it. It's hearsay. It was not – these were not notes from a meeting with the Attorney General. These were the out-of-court statements of Mr. Penley expressed in an outline prior to the meeting. And hence, they are inadmissible hearsay.

MR. HARDIN: Do we have a copy for the attorney – for the Court? Does the Court have a copy? Oh, thank you.

PRESIDING OFFICER: I'm going to sustain the objection.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) Now, these notes that you have – are these – a copy of these same notes that we've talked about, Exhibit 214, do you have them up there with you?

A. I do.

Q. Can you tell the jury in general, from your own memory, all the things that you planned you were going to tell him?

A. Yes.

MR. LITTLE: Hold on. I believe that Your Honor sustained my objection to hearsay, and so any testimony from this document would also be hearsay.

MR. HARDIN: I didn't ask him to testify from it. In fact, I asked him the exact opposite.

Q. (BY MR. HARDIN) I said simply put them down. Now tell us in your own mind, and if you need to refer to them to remind yourself or something, but my questions to you are directed to what you told the – what you planned to tell the Attorney General –

A. Right.

Q. – in both tone and content for this meeting of the 26th.

PRESIDING OFFICER: Overruled. Continue. Continue.

A. Sir, what I planned to tell the Attorney General was, number one, this was a very dangerous investigation for him to continue. He was a friend of Nate Paul's. Nate Paul is a campaign donor to him. There was no evidence of any criminal wrongdoing. There was no legal basis to continue the investigation. There was no ethical basis to continue the investigation. In fact, I felt it was unethical to continue. I felt that Nate Paul was trying to manipulate me and Director Maxwell and the Attorney General to do an investigation that had no merit, and we shouldn't be doing it.

And then I also told him there was great risk to him. This could look like bribery. This could turn into a criminal charge against him. I told him this could turn into a media scandal if it got out. I said, You should not be doing this. Please back away from this. Let me handle this my way.

And then I – I had a section where I wanted to go over with him the practical difficulties of doing the investigation that he wanted us to do. As I explained previously, the issued set of search warrants were still under seal at the federal district clerk's office by federal court order. I had no way to get access to those. The original computer that the forensic experts –

MR. LITTLE: Mr. President, I need to object to the narrative testimony. This needs to be a response to a question.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) All right. So you're telling us what you planned to do. My next question is, did you tell him what you have just testified to the jury?

A. Yes. I told him all of those things and many others.

Q. And I'm about to ask you about the many others. So let's go now to the 26th itself. You get up at the morning; you write all these things out that you've been testifying about. What else did you tell him in an attempt to persuade him to drop the Nate Paul matter?

A. Number one, I told him I don't know Mr. Cammack. I don't know his experience level. It's my understanding he's never been a prosecutor. I'm not going to supervise him.

He told me at that meeting for the first time that Mr. Cammack had already been hired and was working and had been working on this for at least two weeks. I did not know that.

Q. What did you say in response to that?

A. Well, I said, I won't supervise him. And he said, Don't worry, I will.

Q. Well, did you know anything in the background of the Attorney General that would have qualified him to supervise a federal – or not a federal, but a state prosecution investigation?

A. Nothing whatsoever.

Q. So when you said you wouldn't supervise him and he said, Don't worry, I will, what did he say then?

A. Well, I think the conversation shifted at that point, and I was trying to tell him, Stop Mr. Cammack – in fact, this was at the end of the meeting. I had two recommendations for him. Stop Mr. Cammack and talk to Jeff Mateer about a way to get Mr. Cammack paid for whatever he's already done.

That was one of the Attorney General's big issues in the conversation. This guy's working, and I've got to pay him. And you won't sign the executive approval memo, so I don't have money in the budget to pay him with.

And then he threw out, I spent \$50,000 on my personal lawsuit last month. And then he made comments about his distrust of law enforcement and his concern about –

Q. What did he say about law enforcement?

A. He said – he said, You don't know what it feels like to be the target of a corrupt law enforcement investigation. I've spent \$50,000 on my case, things of that nature. He made many comments to me – or several, I'll say several – during the course of these months that indicated he had a negative attitude and a distrust of law enforcement.

Q. Did he particularly ever focus on DPS in his negative attitude?

A. Yes, I've heard him make negative comments about DPS.

Q. Like what?

A. He doesn't trust the director, and he feels like the DPS ran a corrupt investigation on him in the securities fraud matter.

Q. Did he have the same feeling about the Securities Board?

A. I did not hear him talk about the Securities Board.

Q. All right. Were you aware of one other – one way or the other as to whether a representative of the Securities Board had been involved in a search warrant?

A. Yes, I knew at least one of their agents was a task force officer with the FBI on the searches.

Q. And do you know who that officer was?

A. Yes.

Q. Who?

A. His name is Rani Sabban or Sabban.

Q. Will you spell Sabban or Sabban for the court reporter?

A. S-a-b-b-a-n.

Q. How would he know – do you know who – let me back up.

In your meetings with him back starting in July and into August, in one of those meetings, was there a conversation with him and Mr. – these are the three meetings we talked about.

A. Yes, sir.

Q. In which he specifically addressed the issue as to whether Agent Sabban was actually the applicant for the search warrant?

MR. LITTLE: Objection, leading.

Q. (BY MR. HARDIN) Did you ever hear –

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Did you ever hear anything from him during those meetings with you about Agent Sabban?

A. Yes, sir. You're talking about Nate Paul's comments?

Q. Yes.

A. Yes, I did.

Q. And in the meetings, did you ever hear him say that Agent Sabban was the affiant in the application for the search warrant?

MR. LITTLE: Objection, hearsay as I understand this to be Mr. Paul's comments offered for their truth.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Did you discover at any time that Mr. Wynne and Mr. Paul knew the identity of the agent that signed the application for the search warrant?

MR. LITTLE: Objection, hearsay. If necessary, I will take this witness on voir dire to establish that the basis for his knowledge is hearsay.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Did you ultimately discover that these folks in your meetings knew who had been the applicant in a search warrant that was sealed – application that was sealed?

MR. LITTLE: Same objection, hearsay. And I'm happy to take this witness on voir dire –

MR. HARDIN: I asked –

MR. LITTLE: – to establish that.

MR. HARDIN: I asked if he ever became aware.

PRESIDING OFFICER: It's sustained.

Q. (BY MR. HARDIN) All right. Now, would anyone be able to know the identity of the agent that signed the search warrant – the application for the search warrant if they had not had access to a sealed document?

MR. LITTLE: Objection, assumes facts not in this evidence and calls for this witness to speculate on that topic.

Q. (BY MR. HARDIN) Let me ask –

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Let me ask you this: Did you review the grand jury subpoenas that were ultimately served by Mr. Cammack?

A. Yes.

Q. Did you see the name of Agent Sabban on there?

A. Yes.

Q. Would Agent Sabban's identity be known to anybody that had not seen the sealed document?

MR. LITTLE: Objection, calls for speculation again.

Q. (BY MR. HARDIN) To your knowledge?

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Now, do you remember back when the presentations – they were making a PowerPoint presentation they brought to that meeting?

A. Yes.

Q. And do you recall what that PowerPoint presentation was called?

A. Yes, sir, I do. It was called the Operation Longhorn.

Q. Was that PowerPoint presented to you by Mr. Wynne and Mr. Paul?

A. Yes, Mr. Paul specifically.

Q. All right.

MR. HARDIN: Can I have the exhibit number, please, of the PowerPoint? It's in evidence. In fact, I think it was introduced by the other side.

PRESIDING OFFICER: It's in evidence.

MR. HARDIN: Could you put up Exhibit 152, please? Now, go to the next page, please.

Q. (BY MR. HARDIN) Do you recognize this exhibit, please?

A. I do. That's the document Mr. Paul gave me at the August 5th meeting.

Q. Fine.

PRESIDING OFFICER: One moment, please. Can you confirm, Mr. Hardin, that everything has been redacted from – this was the –

MR. HARDIN: Thank you very much. No, thank you very much.

PRESIDING OFFICER: This was the piece of evidence that we paused to redact information. Can you confirm that?

MR. HARDIN: I want to make sure.

PRESIDING OFFICER: I saw two thumbs up from Stacey.

MR. HARDIN: Two thumbs up says it has been, Judge. And I – we've done that in light of the other presentation. Thank you very much.

Q. (BY MR. HARDIN) In this search warrant, if we could – the search warrant discussion, rather, it talks about when it was executed, all right? And it says down at the bottom, I'll publish – I'll read that to you: According to the filings with the court in the Western District of Texas, each of these forms was signed and issued by Judge Mark Lane at 10:00 a.m.

Is Judge Mark Lane one of the officials they wanted investigated?

A. Yes. He's a federal magistrate judge in Austin, and they wanted me to do a criminal investigation on him.

Q. All right.

MR. HARDIN: Next page, please.

Q. (BY MR. HARDIN) Now, this sets out, does it not, that they – they have discovered through their forensic analysis of the metadata and what we've been talking about before. And it was emailed and given them by Alan Buie to the counsels Chuck Meadows and Aaron Borden. Those people were – back in August 14th of '19 were representing Nate Paul, correct?

A. Yes. My understanding was at that time he was represented by Austin attorney Gerry Morris and the Dallas law firm of Meadows & Collier.

MR. HARDIN: Next. Next page.

Q. (BY MR. HARDIN) Now, they point out to you that below is pertinent to how we discovered through forensic analysis and the document had been mailed by the federal prosecutor.

Alan Buie is the federal prosecutor, right?

A. Yes, he is.

Q. Okay. Then they give us the data that they've got there as to where this server is located.

MR. HARDIN: Can I have the next page, please?

Q. (BY MR. HARDIN) They have the addresses where the search warrant was to be executed on, right?

A. Yes.

MR. HARDIN: Next page.

Q. (BY MR. HARDIN) Now, do you have any idea how they would have all this information? Now, answer yes or no first.

MR. LITTLE: Objection, calls for speculation.

A. Do I have any idea?

MR. LITTLE: Hold on, Mr. Penley.

MR. HARDIN: I asked – the question was knowledge. I just asked if he had any knowledge of it.

PRESIDING OFFICER: If you can, answer yes or no.

A. Yes, I have some knowledge.

MR. HARDIN: Can I have –

Q. (BY MR. HARDIN) It talks, does it not, about Mr. Sabban, does it not?

A. It does. It mentions his name at the top.

Q. All right. Do you know if he – if he appears in any of the document of the original search warrant itself?

Have you looked at that to see of the part that was public if his name appears at all?

MR. LITTLE: Objection, lack of foundation for this witness's personal knowledge of that.

MR. HARDIN: I asked if he has read the search warrant –

PRESIDING OFFICER: Sustained.

MR. HARDIN: – that was public. Let me try again, Your Honor.

Q. (BY MR. HARDIN) Have you looked at and reviewed the search warrant that was public information is and was the search warrant that was ultimately given to the attorneys of Mr. Paul after the search?

A. Yes, sir.

Q. On – anywhere on that search warrant does it mention the name of Mr. Sabban?

A. No, sir, it does not.

MR. HARDIN: Next page.

Q. (BY MR. HARDIN) It lays out, does it not, the things that they're complaining about, right?

A. It does. And these were things we told them we had no jurisdiction over.

MR. HARDIN: Next page.

Q. (BY MR. HARDIN) Now, it has people of interest. And are these people that they wanted you to investigate?

A. Yes, they wanted us to investigate each of these people.

Q. Would you go down the list and see why – and tell us what they told you or what – what these people they were requesting to be investigated's roles were?

A. Yes. Rani Sabban was on the task force. He was at the search warrant that was executed at Mr. Paul's residence. Mr. Paul stated he had personal conversations with him during that search.

Agent Joy of the FBI, he was mentioned. I don't know which location he searched.

They represented that Ms. Sobrevilla-Dent was a courtroom deputy clerk to a United States magistrate judge.

Q. Yeah, can you explain to us why in the world you were supposed to investigate a courtroom deputy clerk of a federal magistrate?

A. I have no idea how there's a state interest in doing that. The federal authorities have full control over the federal district clerk's office, and their law enforcement and their Inspector General's Office has the full ability to go in and get all the documents needed to do such an investigation. We did not.

Q. All right.

MR. HARDIN: Now, if I can have the next page real quickly and let's move through this.

Q. (BY MR. HARDIN) They give you information. This man that they want you to investigate was actually a member of the board of the agency that had brought the charges against the Attorney General, correct?



A. Yes, I became aware of that.

Q. All right. That's all I need there.

I – did it have personal data about him that has been extracted from this?

A. Can I see that page again?

Q. Yes.

MR. HARDIN: Do you have the page?

Q. (BY MR. HARDIN) If you know. If you don't know –

A. And I'm sorry, could you ask the question again?

Q. Let's move on.

MR. HARDIN: You can take that down.

Q. (BY MR. HARDIN) But there were code words in this thing, weren't there?

A. Yes, there were.

Q. Well, did you have any idea what they were or what they were supposed to represent?

A. Oh, Operation Longhorn?

Q. Hold on. Are there – we're on top of each other.

PRESIDING OFFICER: Excuse me. Try not to talk over each other –

MR. HARDIN: Absolutely.

PRESIDING OFFICER: – for the court reporter.

MR. HARDIN: Absolutely. Thank you, Judge, Your Honor.

Q. (BY MR. HARDIN) Were there different little code names like Longhorn and other things? Do you remember what any of them were?

A. Well, the only one I knew at the time was Operation Longhorn. I've learned some since this summer.

Q. All right. Now, if I can, at the end of the day on the 26th when you were talking to him, that Saturday, you've talked about an almost two-hour conversation.

A. Yes.

Q. Do you recall at the end of the conversation – do you recall anything else that the Attorney General said to you in response to your urgings that you've described to the jury?

A. May I review my handwritten notes to refresh my recollection? Because there were many other things discussed.

Q. Yes. Don't read from the notes, but you can look at them and see if that refreshes you.

A. All right.

MR. LITTLE: To be clear, Mr. President, I do not know what notes he possesses up at the stand, and I would like to at least be able to review those.

MR. HARDIN: I thought we gave him 214. If we did not, could we, please.

MR. LITTLE: 214 are not notes, Mr. Hardin. That is his outline from before the meeting. So if he's using that to refresh his recollection, he will be using a document that has been –

MR. HARDIN: Which –

MR. LITTLE: – has been overruled as hearsay.

MR. HARDIN: Which, in more years than I'd like to admit, a witness regularly does. So that is not –

MR. LITTLE: An expert witness.

MR. HARDIN: Excuse me. That's not a legitimate – this man has brought up his notes. They're not in evidence. They've objected to them. He is certainly allowed to look at documents not in evidence to refresh his memory. He just can't read from them.

PRESIDING OFFICER: Would you show counsel these notes?

MR. LITTLE: And, Mr. President, what I would like to do is take this witness on voir dire to establish that – wait, hold on a second. You said 214. This is 216. So you're asking him to review 216? These are his notes, 216 is.

MR. HARDIN: Pardon me?

MR. LITTLE: Okay.

MR. HARDIN: I've got a bunch of voices around me.

MR. LITTLE: You've got a lot of people talking to you.

MR. HARDIN: I'm sorry.

MR. LITTLE: Are you asking him to review 216?

MR. HARDIN: We've – you're right. You're right.

MR. LITTLE: These are his notes.

MR. HARDIN: Excuse me. Just so the Court knows what we're talking about. 214 is the document that he planned – of what he planned to talk about. He's right. 216 is what I'm asking him to look at and what he was about to look at. So I just gave you the wrong number. If you want 216 – well, you have 216 produced –

MR. LITTLE: No objection to 216. I plan to introduce it as well.

MR. HARDIN: All right. Neither one of them to answer your question earlier.

PRESIDING OFFICER: Have we settled this, Counselors? No objection –

MR. LITTLE: I believe we have.

PRESIDING OFFICER: – to what he's going to read from? Okay.

Q. (BY MR. HARDIN) All right. Now, have you reviewed – you've reviewed your notes from the day after. Did you type up those notes – write those things by hand before or after, during? When did you do it, the meeting?

A. I wrote these notes when I got home that evening after the McKinney meeting, and they're handwritten.

Q. Have you reviewed them?

A. No, sir, if I could have a minute. I wanted to be sure I had permission to.

Q. Go ahead.

A. (Witness reviews notes.)

Yes, sir, I've reviewed the notes.

Q. All right. Was there anything else that you recall? Does that help refresh your memory as to whether there was anything else in your discussion that the Attorney General said?

A. Yes, there were several things. Number one, I asked him why he was so interested in this investigation when he was not interested in all the other criminal investigations and cases we had pending in the office.

Q. All right. And what was his response?

A. His response was, I don't know about the other cases, but I know about this one, and I'm concerned about corrupt law enforcement because of what's happened to me.

Q. All right. Anything else you recall he said in that conversation on the 26th?

A. We discussed the fact that he had taken Nate Paul personally to the Travis County District Attorney's Office.

Q. Did you ask him or did he volunteer that?

A. I told him I had learned that. By this time I had heard that.

Q. And what was his response?

A. His response is, Well, I didn't request the investigation from them. They had a conflict, and they asked me if I wanted it, and I said yes.

Q. All right. What else?

A. I – I told him there was no state basis for believing there was any state offense. And he kept bringing up Nate Paul and Michael Wynne's complaint that the agents hadn't left a copy of this search warrant at the residence or the office, allegedly. I don't know if that's true or not.

Q. Is that something he wanted the Attorney General's Office to investigate about?

A. Apparently he did because he told me that the fact that I didn't think that was serious – which I didn't and I explained to him why. That's a Federal Rule of Criminal Procedure. That's not even a misdemeanor statute. And that's something the magistrate can deal with very easily if it's true. But he said that was a red flag to him that indicated I was too biased in favor of law enforcement.

Q. How was the tone of this conversation?

A. He was frustrated and that was the most – it wasn't a hostile conversation, but it was a difficult conversation.

Q. How did the conversation end?

A. I told him that I was trying to be a loyal subordinate and a friend, and I still considered myself a friend even up to that very day. And I was trying to walk him back from what I thought was a dangerous line he was trying to cross. And I told him all my reasons, that he could face criminal charges, bribery, other things. It could be a media scandal. He could get himself in a lot of trouble. He needed to leave this alone, to back away from it.

I explained all the practical investigation difficulties, that we shouldn't be trying to investigate the feds, and there were many things we couldn't investigate. We didn't have the power. We didn't have a way to get at those sealed search warrants. And if I'd called the U.S. Attorney's Office and said, Can I see your file with the original search warrants, they would have laughed and hung up the phone and I would have understood why. All that was under privilege at the U.S. Attorney's Office. They had an active investigation of Mr. Paul.

Q. So how did the – when the conversation was over, what was said between the two of you as you parted?

A. The way I left it was I made two recommendations, which he didn't object to and he didn't disagree with, but then I found out later he obviously didn't act on them.

Number one, I said, Stop Cammack from working and talk to Jeff Mateer and figure out how to pay his invoice and don't let him work anymore.

Number two, Let's you and I meet with Jeff Mateer. I can explain some options we've got. I don't think they're great options. You may want to pursue them, but I think they're a risk to the office. One of those options was calling the United States Attorney's Office, talking to one of the supervisors, see if they would just assuage our curiosity and tell us if there were any changes between the returned version of the search warrant and the issued version.

Q. And what did he say?

A. He didn't say anything to that. He just said, Well, I've got to go. I've got a dinner to attend.

Q. All right.

A. But he didn't agree or disagree.

Q. After that conversation on the 26th, without going into what you said, did you call Jeff Mateer and update him?

A. Yes, immediately after I left the meeting.

Q. And then after the 26th, when was your next involvement with anything having to do with Mr. Paul?

A. That was on the morning of Tuesday, September 29th.

Q. And without going into what people told you at this time, what happened on the 29th?

A. Mr. Cammack and Mr. Wynne served a search warrant in the name of Brandon Cammack, Special Prosecutor, Office of the Attorney General of Texas, on Independent Bank in Round Rock.

Q. What was your reaction to that?

A. I was apoplectic.

Q. Why?

A. Because it appeared to me that Mr. Cammack was working on behalf of Nate Paul's civil litigation interests and serving a criminal process, a grand jury subpoena on either a bank or a party to one of his civil lawsuits. He was seeking discovery through using criminal process.

Q. Had the Attorney General ever said anything to you in his conversations that Mr. Cammack was a special prosecutor?

A. No. At this point in time, the only thing he had ever told me was that he was working and beginning to gather information. He never told me a title.

Q. All right. What happened on the 29th when you found out that there – a community bank had been served a grand jury subpoena?

A. Well, Jeff Mateer called a meeting in his office at 3:00 o'clock for the deputies involved that became the whistleblowers.

Q. At the end of y'all's conversations, did y'all make plans to go to the government?

A. No, not that day.

Q. All right. And then what happened on the 30th?

A. On the 30th in the morning, we got another message that a second subpoena had been served, this time on Amplify Credit Union in Austin.

Q. And what was – how – what was your reaction to that?

A. I was even more apoplectic. I was furious that this was going on and the Attorney General was allowing it.

Q. And what was wrong with serving a grand jury subpoena on Amplify Credit Union?

A. Because, again, this looked like Nate Paul was using the power and authority granted by the people of Texas and this legislature, he had turned it over to Nate Paul for Nate Paul to go after –

MR. LITTLE: Object to the narrative.

A. – his business opponents.

MR. HARDIN: I asked – I asked him what was his opinion.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Did you have – I believe – let me ask you this: When you were so concerned, what was wrong – in a very succinct way, please. What was wrong with what they were doing?

A. Number one, these banks had nothing to do with referral number one, which was the only referral we knew about.

Number two, you can't use criminal process to conduct civil discovery, and that's what it appeared was going on because Mr. Paul's attorney was with Mr. Cammack at both banks.

Q. In all your years – first of all, have you been involved where the prosecutor was the one serving the grand jury subpoena?

A. No, sir, I haven't heard of that.

Q. Who was usually the one serving grand jury subpoenas?

A. A deputy, a federal marshal, depending.

Q. And then have you ever heard of the lawyer for the person bringing the complaint, who's also under a federal investigation, accompanying the prosecutor serving the subpoena?

A. No. In fact, the Code of Criminal Procedure does not –

MR. LITTLE: Object, nonresponsive.

MR. HARDIN: I'll get to that.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) What is – what is the law in terms as to whether or not a person representing the complainant can be involved in that circumstance?

A. The law says you can't. An interested party cannot be involved in serving a grand jury subpoena.

Q. Now, after this on the 30th, did you as a group ultimately go to the grand jury – go to the FBI?

A. Yes. After we learned about the second grand jury subpoena being served, we were extremely concerned as a group. I was extremely concerned personally, and we decided we had to go to law enforcement.

Q. And why did you go to law enforcement?

A. Because this had to be stopped. The Attorney General obviously wasn't listening to anybody. He had turned Mr. Cammack loose. We didn't know what Mr. Cammack was going to do. It appeared that Mr. Paul was controlling this because–

MR. LITTLE: Object to the narrative and speculation.

MR. HARDIN: I asked him why –

PRESIDING OFFICER: Sustained.

MR. HARDIN: I asked him why he went, what was in his mind.

Q. (BY MR. HARDIN) I – let me ask you this: What did you expect the consequences being of your going to the FBI?

A. I feared we would get fired.

Q. And was that the sense and mood of the whole group?

A. I think so. I think we all knew this was an incredibly dangerous and unique but outrageous situation. We were the only ones that could stop it, and we had to.

Q. When you went to the FBI, did you take any documents?

A. Did not take any documents.

Q. Would the documents all have been the property of the AG's Office?

A. Yes.

Q. So is that why you didn't take any documents? Just yes or no.

MR. LITTLE: Objection, leading.

Q. (BY MR. HARDIN) Why did you not take any documents?

PRESIDING OFFICER: Sustained?

MR. HARDIN: Excuse me.

Q. (BY MR. HARDIN) Why did you not take any documents?

A. I didn't take any because I felt like we were making the initial report based on our eyewitness personal knowledge of what we believed at that point to be criminal behavior by the Attorney General.

Q. And so when you went, did you take evidence with you?

A. I took my personal knowledge and the others took theirs.

Q. All right. Is that evidence?

A. Absolutely. We were eyewitnesses.

Q. So if a person is the victim of an aggravated robbery and reports it to the police, would it quit being evidence if just they report it as opposed to taking documents?

MR. LITTLE: Objection, leading and relevance.

A. Their personal experience –

PRESIDING OFFICER: Hold on. Sustained.

Q. (BY MR. HARDIN) What did you take with you that – would you – first of all, all of y'all going –

A. Yes.

Q. – did you take evidence in the meaning of evidence?

A. Yes.

Q. What did you take with you that was evidence?

A. Our personal eyewitness knowledge, our personal experiences, our personal conversations with the Attorney General, our personal – personal experience of him being – of him pressuring us to do things that were improper, unethical, and illegal.

Q. In your experience, how often is the initial report by a citizen of something that they consider criminal conduct, how often is – is that where the witnesses come in without any documents just to tell you what they believe they saw, they know that they think is improper? How – how often is that the way it gets to your desk?

MR. LITTLE: Objection, relevance.

MR. HARDIN: It's very relevant.

PRESIDING OFFICER: Overruled.

MR. HARDIN: Thank you.

A. That is very common.

Q. (BY MR. HARDIN) So if a person walks in to report what they believe is a criminal offense or improper conduct that should be investigated, do you send them away if they don't have paper?

A. No, sir.

Q. So what is your testimony as to whether or not how much from how many people evidence was presented to the FBI with a request for them to investigate?

A. The meeting lasted almost four hours. It consisted of us sitting around the conference table with two FBI agents, and our attorney Johnny Sutton was present. The FBI agents asked us to go around the table in turn starting with Jeff Mateer and tell our entire story. And as I said, it took almost four hours. That was four hours of eyewitness, personal knowledge from people directly involved with the Attorney General, the events I've described and the events the others were involved in, the others being the whistleblowers.

Q. Mr. Penley, after that meeting, did you, yourself, file any documents to attempt to or to quash the subpoenas that you had learned had been filed?

A. Yes.

Q. Yes or no. That's all I'm asking you.

A. Yes.

Q. And why was it that you filed a motion to quash those subpoenas?

A. Because those subpoenas were improper and they had to be stopped.

Q. All right. And what was improper about those subpoenas?

A. Number one, Brandon Cammack was not a special prosecutor, yet that's how he represented himself to the Travis County DA's Office.

Q. Now, at the end of the day after those subpoenas were quashed, what happened for – with you in terms of whether or not you went to the media or anything else? Did you?

A. I've never gone to the media, other than I think our attorneys filed – may have written an editorial sometime earlier this year.

Q. Was – at that time, what was the Attorney General's response in the media that you folks felt obligated to respond to?



A. The following week, the week of October the 5th, the Attorney General's Office issued two press releases that made negative comments about the group of whistleblowers, claiming that we had impeded an investigation, claimed that we were rogue employees, and later the Attorney General claimed we had even committed crimes.

Q. What was your – your group's response to that?

A. Well, everybody was outraged.

Q. All right. Let me ask you this: Did y'all – are you one of the plaintiffs in the whistleblower lawsuit?

A. Yes, sir. I'm one of four plaintiffs.

Q. Why did you decide to sue?

A. I sued because I was damaged by the Office's actions in violation of the whistleblower statute.

Q. And what financial impact did this all have on you?

A. It had a big impact. After – number one, I was put on investigative leave on October the 2nd by order of the Attorney General. On November 2nd, a month later, I was fired illegally under the Whistleblower Act. I was given ridiculous reasons for the firing.

Q. What were the reasons you were given?

A. The reasons I recall – and these came from the new first assistant who got rid of all eight of us within 45 days. He said I had lost the Attorney General's trust. I had violated –

MR. LITTLE: Objection, hearsay.

MR. HARDIN: I asked for the reasons he was given for firing.

PRESIDING OFFICER: Overruled.

A. He said I had lost the Attorney General's trust, number one. Number two, he claimed I used an insubordinate tone when he demanded to have my cell phone handed over to him so he could examine it without a search warrant.

Q. (BY MR. HARDIN) What – what is that? What is that about?

A. He claimed there were public information requests to the Office of the Attorney General, and he demanded to see my text messages.

Q. All right. Now, does that all become part of litigation later?

A. It became part of the litigation.

Q. All right.

A. And then the third reason was –

Q. What was – yeah, what was the third reason?

A. Yeah. Reason number three, he claimed that I had violated a direct instruction from the Attorney General when I filed the motion to quash and when I sent a cease and desist letter to Brandon Cammack, and that is untrue. He claimed that on September 16th when the Attorney General asked me for information about the documents I wanted from Michael Wynne and Nate Paul, at the end of that meeting, the Attorney General said, Don't do anymore on this. The context was, don't ask –

Q. That's okay. Hold on. I really, really want to finish up here with you to ask you this: After all you've been telling the jury about, after all you've been doing differently, would you do anything differently?

A. No, sir. I'd do the same thing all over again because it was the right thing to do and the only thing we could do, other than stand by silently and let crimes be committed. The agency was being abused; the laws were being abused. The behavior and the conduct of the Attorney General of Texas –

MR. LITTLE: Object to the narrative.

A. – was outrageous.

MR. LITTLE: Object to the narrative.

PRESIDING OFFICER: Sustained. Sustained.

MR. HARDIN: I'll pass the witness.

PRESIDING OFFICER: Mr. Little?

MR. LITTLE: Thank you, Mr. President. Just for planning purposes, when do you intend to break? I believe it's 11:55.

PRESIDING OFFICER: Take a break at 12:15.

MR. LITTLE: Wonderful.

PRESIDING OFFICER: Does that work? Or would you prefer to take the break now and start anew after lunch?

MR. LITTLE: I'd like to take a few minutes and get started, if we might.

PRESIDING OFFICER: Your witness.

### **CROSS-EXAMINATION**

BY MR. LITTLE:

Q. Mr. Penley, I'm going to hand you some of your notes here so that you've got them.

MR. LITTLE: You need something, Rusty? You left your cup of water? All right. Documents for you.

At this time, Mr. President, I'm tendering to the witness Exhibits 1009 to 1021. This is a series of notes in Mr. Penley's hand. May I approach?

PRESIDING OFFICER: Yes. Have they already been admitted or you're admitting them? Okay.

Q. (BY MR. LITTLE) Now, Mr. Penley –

PRESIDING OFFICER: Do they have a copy?

MR. LITTLE: They do. I've handed them to Mr. Hardin. We move for admission of Exhibits AG 1009 to 1021.

PRESIDING OFFICER: Any objection?

MR. HARDIN: Yes. I think these are – to repeat a famous objection, these are all hearsay, every one of them. They're the same kind of thing we offered to introduce through him and he objected to as hearsay. If he withdraws his objection to the notes of our witness, then I'll withdraw my objection to these. Otherwise, sauce for the goose and the gander and all that jazz works.

MR. LITTLE: Mr. President, may I respond?

PRESIDING OFFICER: Yes, you may.

MR. LITTLE: These notes – these notes that I've handed to Mr. Penley are notes of his present recorded recollection from the meetings with the Attorney General in various formats. Mr. Hardin has already offered House 216, which is his notes from September 26th. These are all of Mr. Penley's notes, and they are extensive.

MR. HARDIN: I'm sorry, I don't know how that's any different than what we just talked about.

PRESIDING OFFICER: I'm not sure I understood your reply.

MR. LITTLE: Recorded recollection is an exception to hearsay, and these are his notes just like House 216 which was admitted and offered earlier.

MR. HARDIN: If I may be heard. I think his memory is incorrect. 216 was not admitted. I asked and he objected to hearsay.

PRESIDING OFFICER: I remember he did not object. He said they were going to use those notes is my recollection. We can check the record.

MR. LITTLE: That's right, and it was offered and admitted.

PRESIDING OFFICER: Offered and admitted. He did not object.

MR. HARDIN: I think that was 214.

PRESIDING OFFICER: No. That's when there was confusion between 214 and 216.

MR. HARDIN: Yes.

PRESIDING OFFICER: So the 214, if my recollection is correct, were the outline before the meeting and 216 is the recollection after the meeting. And he did not object to that.

MR. HARDIN: I –

PRESIDING OFFICER: I may have not – maybe the clerk did not admit them into evidence, but you did not object. I remember you saying you were going to use those –

MR. LITTLE: That's right.

PRESIDING OFFICER: – in cross.

MR. HARDIN: That's fine. If it's admitted, then that's great. If he wants to admit these under the same theory, then I have no objection.

MR. LITTLE: Great.

PRESIDING OFFICER: Okay. These notes are admitted under evidence, which the numbers are?

MR. LITTLE: 1009 to 1021.

PRESIDING OFFICER: 1009 through 1021.

(AG Exhibit Nos. 1009 through 1021 were admitted.)

MR. LITTLE: Thank you.

Q. (BY MR. LITTLE) Now, Mr. Penley, just to be clear, we need to clarify something for the ladies and gentlemen of the jury, and I – I'm almost positive you have the answer. You conducted an investigation, right?

A. Yes, I did.

Q. And it wasn't a review, right? It was an investigation.

A. Technically the office called it a review. I'm using the term "investigation" the way I mean the term "investigation." We met with the witness. We looked at the evidence they gave us. We drew a conclusion, and that was the end of it.

Q. That sounds like an investigation to me. Don't you agree?

A. I do. It's semantics.

Q. You just never opened a file, right?

A. No, I didn't open a file. There was no basis to open a file and pursue any charges.

Q. David Maxwell – well, you don't – hold on a second. Let's be super clear for the jury. You don't –

MR. LITTLE: If you could, Mr. Hardin. He's beeping over there.

Q. (BY MR. LITTLE) Let's be clear for the jury. You do not need to bring charges to open an investigative file at the Office of Attorney General, right?

A. No.

Q. And you didn't open a file and David Maxwell did not either, did you?

A. I know I didn't open a file.

Q. Well, you know David Maxwell didn't open a file either, did you?

A. I've heard that.

Q. Yes. And to be clear, this was not an inquiry; it was not a review. You call it an investigation, yes?

A. That's my term. David Maxwell's term was review.

Q. There was nothing illegal about conducting the investigation that you conducted, was there?

A. We didn't take any illegal actions, no.

MR. LITTLE: Object, nonresponsive, just so I can get a yes, no.

PRESIDING OFFICER: Sustained.

Q. (BY MR. LITTLE) There was nothing illegal about the investigation you conducted, true?

A. That I conducted, that's true.

Q. That anyone at the OAG's office conducted, true?

A. No.

Q. Let's be clear about this. Did you see Mr. Maxwell break any laws in conducting this investigation?

A. No, I did not.

Q. Did you break any laws in conducting this investigation?

A. Absolutely not.

Q. Were you asked to do anything illegal?

A. Yes.

Q. Tell the ladies and gentlemen of the jury about that.

A. We were asked to obstruct a federal investigation. That's a federal felony.

Q. Interesting. Are you aware of Fifth Circuit and Ninth Circuit precedent that says you cannot obstruct an FBI investigation because it is not an official proceeding, Mr. Penley? You're familiar with that authority, aren't you?

A. No, I'm not familiar with that authority.

Q. Well, you worked at the U.S. Attorney's Office for 17 years. Surely you came across the fact that you cannot obstruct an FBI investigation as it is not an official proceeding, right?

A. I'm sorry, I lost your question there. What are you asking me?

Q. Yeah. In your 17 years working at the office of the U.S. Attorney in the Northern District of Texas, did you ever come across the precedent – the legal precedent that one cannot obstruct an FBI investigation because it is not an official proceeding?

A. I was never presented with that issue. And I was there 16 years, not 17, just to be correct.

Q. Did you ever once, in your 16 years, prosecute obstruction of justice relative to an FBI investigation?

A. No. That was never presented to me as a case.

Q. Not one time, true?

A. No. No, I mean, your statement is true. I did not do that.

Q. I want to be clear. You gave us a time line. We're going to go back through the time line in detail in a minute. But in September, you became concerned that the Attorney General might fire you, correct?

A. I think I became concerned after the August 12th meeting when he did a total–

MR. LITTLE: Objection, nonresponsive.

A. – reversal on me.

PRESIDING OFFICER: Sustained.

Q. (BY MR. LITTLE) You testified on direct that in September of 2020 you became concerned that the Attorney General was going to fire you, true?

A. I don't agree with the way you're wording the question. I was concerned in August and September.

Q. I'm only asking you about September.

A. Okay.

Q. I'm going to ask you about August in a minute.

In September of 2020, were you concerned the Attorney General was going to fire you?

A. Yes.

Q. And isn't it interesting that you came up with these theories of your boss's criminal escapades after you thought he was going to fire you, right?

A. What theories are you talking about, sir?

Q. Well, you and David Maxwell got together and you asked a series of questions, right? Is Ken Paxton being bribed was one of them, true?

A. Yes, we wondered about that.

Q. Is Ken Paxton being blackmailed, that was one of them, true?

A. Yes, we discussed that.

Q. Does Ken Paxton owe Nate Paul any money, true?

A. I'm sure that's something that came into my mind.

Q. Does Ken Paxton have – or does Nate Paul have some kind of information on Ken Paxton, that was one of the things you talked about, right?

A. It's certainly something I thought about.

Q. But you only started talking about those things with David Maxwell when you became – after you became concerned that Ken Paxton was going to fire you, true?

A. No, that's not true.

PRESIDING OFFICER: Counsel – do we know where this music is coming from, Bailiff?

MR. LITTLE: The bagpipes?

PRESIDING OFFICER: Yes.

MR. LITTLE: It's coming from the rotunda. I think now probably would be a good time for a break, Mr. President.

PRESIDING OFFICER: We will take a break now. We will return here at 1:00 p.m. sharp.

(Lunch break recessed at 12:04 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. Court is back in session.

Bailiff, call in the witness, please.

Mr. Little, that's blocking a little bit of their view. If you put it more in the – do you want the jurors to see it?

MR. LITTLE: I think that would be – I think probably the best place would be behind the witness stand.

PRESIDING OFFICER: Okay. I don't know if they can see it from there, so you may have to point it out.

Are you going to be referring to it from the podium to here?

MR. LITTLE: I might write on it.

PRESIDING OFFICER: Okay. Can you see from that side?

They cannot see.

MR. LITTLE: Well, then maybe we'll just ditch it.

PRESIDING OFFICER: I think you can put it – oh.

Mr. Little.

MR. LITTLE: Thank you, Mr. President.

MARK PENLEY,

having been first duly sworn, testified as follows:

**CROSS-EXAMINATION (CONTINUED)**

BY MR. LITTLE:

Q. Mr. Penley, have you ever testified under oath before today?

A. Yes, I have.

Q. And –

A. Excuse me, I'm sorry.

Yes, I've testified under oath.

Q. Did you testify under oath before the House Board of Managers?

A. No.

Q. Did any of the House Board of Managers Andrew Murr, Jeff Leach, Charlie Geren, any of them put you under oath to provide testimony in connection with the impeachment proceedings in the House?

A. No, I did not testify in the House.

Q. In fact, when you –

A. Not in a proceeding in the House. I did speak with their investigators.

Q. Did you review the video of your meeting with the investigators before testifying here today?

A. No.

Q. And during that proceeding, isn't it true that Ms. Terese Buess, who was hired as one of the investigators, told you that there was a legislative privilege that covered your testimony in that proceeding?

A. I don't know that she told me that. It was my understanding there was a legislative privilege.

Q. Just to be clear, when you testified there on video, did you tell the truth, the whole truth and nothing but the truth, so help you God?

A. Yes, that was my intent.

Q. Yes, and – it was your intent?

A. Yeah. I mean, I may have gotten a date wrong. I may have gotten an event occurred one day instead of another day, but it was my intention to tell the truth, the whole truth and nothing but the truth, yes, sir.

Q. Of course.

So if we have your statement from that interview that was conducted by the House Board of Managers and their investigators, we can rely on it as being true, correct?

A. I believe so. That was my intention.

Q. Okay. All right.

MR. LITTLE: At this time, Your Honor, I'm going to introduce AG Exhibit 68. May I approach the witness?

PRESIDING OFFICER: Yes, you may.

MR. LITTLE: Thank you.

PRESIDING OFFICER: It's not on our list, so you'll have to submit it at the right time.

MR. LITTLE: And we move for admission of AG Exhibit 68.

PRESIDING OFFICER: Any objection?

MR. HARDIN: No objection, Your Honor.

PRESIDING OFFICER: Admit AG 68 to evidence.



(AG Exhibit 68 admitted)

MR. LITTLE: Erick, Exhibit 68, if you would. Thank you so much.

Q. (BY MR. LITTLE) All right. To be clear, Mr. Penley, this is the referral that came to your office from the Travis County District Attorney's Office and it was dated June 10 of 2020, correct?

A. That's correct.

Q. It was received in your office sometime around June 17 of 2020, correct?

A. That's my understanding, yes.

Q. And when you got there, neither David Maxwell nor you were excited about the assignment at all and neither one of you really wanted to move forward with it, correct?

A. That's true.

Q. And what Nate Paul was accusing these people here, or at least complaining about, if true it was a 20-year felony. You would agree with that, correct?

A. An alteration of a federal or a document, yes, it would be a 20-year felony.

Q. And there's a state analogue to the federal statute concerning alteration of government documents, true?

A. Yes, I believe that's 37.10.

Q. So there was a state offense that had been alleged in this referral, true?

A. He was claiming there were state law offenses, yes.

Q. Yes. That's what I said. There is a state offense alleged in this referral, true?

A. Yes, if you believe what Nate Paul was saying.

Q. Yes. And it wasn't a crime to follow up on this. It wasn't obstruction of justice, it wasn't interference with an FBI investigation, true?

A. To a certain point, I agree.

Q. Very good.

In fact, when you were working at the U.S. Attorney's Office there was an FBI employee in the U.S. Attorney's Office – or I'm sorry, in the Northern District of Texas. His name was Jeffrey Fudge. Do you remember that person?

A. I don't.

Q. He was an FBI employee who was accused, indicted, and convicted of plugging other people's information into government databases and letting them know if there were investigations about them. You familiar with that?

A. I'm not.

Q. It happened your first year at the U.S. Attorney's Office.

MR. HARDIN: Pardon – pardon me, Your Honor. We're talking about something he doesn't know anything about. Now he's testifying about it, and I object to that.

PRESIDING OFFICER: Overruled. He can ask the question, but be careful of your line of questioning.

MR. LITTLE: I certainly will.

Q. (BY MR. LITTLE) Have you ever heard of an FBI employee named Kevin Clinesmith?

A. I believe so.

Q. Yes. At the same time that you were doing this investigation, an FBI employee was being investigated and subsequently indicted for providing false information in pursuit of a FISA warrant, correct?

A. I've heard that.

Q. Operation Crossfire Hurricane. You've heard of that before, correct?

A. I have.

Q. Yes. And so the allegations that are being made here, it's not a crime to follow-up on them and a state offense is alleged. True?

A. I felt it was appropriate to do an initial review.

MR. LITTLE: Object. Nonresponsive.

PRESIDING OFFICER: Sustained.

Q. (BY MR. LITTLE) True?

A. Could you ask the question again, please?

Q. Yes.

The state offenses that are alleged here, it wasn't a crime to follow-up on them, was it?

A. No, it wasn't a crime to follow-up.

Q. No. But your testimony earlier was you hoped to slow walk it?

A. Yes.

Q. Did you tell Michael Wynne that?

A. No.

Q. Did you tell Nate Paul that?

A. No.

Q. Did you tell your boss Ken Paxton that?

A. No.

Q. And, in fact, between June 17 and July 6, 2020, you only talked to David Maxwell about it, right?

A. Between what dates?

Q. June 17 and July 6 of 2020, you only talked to David Maxwell about it?

A. That's not correct.

Q. That was your testimony on direct. Would you like to correct it?

A. I would, if I may.

Q. Please.

A. I'm sure I talked to Jeff Mateer as well. In fact, we talked to Jeff Mateer when he handed us the referral on June the 18th probably.

Q. We may be talking past one another. You did no investigation between June 17 and July 6, true?

A. We didn't do any, no.

Q. Didn't do any work, true?

A. That's true.

Q. Okay. I'm going show you what's been marked as AG Exhibit 88, or at least a portion of it.

MR. LITTLE: We move for admission of AG 88.

PRESIDING OFFICER: Any objection, Mr. Hardin?

MR. HARDIN: No, Your Honor.

PRESIDING OFFICER: It's admitted into evidence, AG 88 – 68 – I'm sorry. Say that number.

MR. LITTLE: 88.

PRESIDING OFFICER: 88. I see it. Thank you.

(AG Exhibit 88 admitted)

MR. LITTLE: Mr. Arroyo, if you could publish AG 88 on Bates page HBOM 181004. And move ahead three pages from there. And blow up all the text in writing at the top, please.

Q. (BY MR. LITTLE) These are your notes, Mr. Penley, from your meeting with Ken Paxton on July 6 of 2020, true?

A. Yes.

Q. And in that meeting, at the top you write: Tampering with docs is a state issue per Mindy of Travis County.

Who is Mindy?

A. Mindy Montford, the first assistant at the Travis County District Attorney's Office.

Q. Did she tell you that?

A. No.

Q. You didn't know enough state law to know that there was a state offense alleged at this point in time, did you?

A. That's incorrect.

Q. So you knew there was a state offense alleged. You didn't need Ken Paxton or Mindy Montford to tell you that, true?

A. I believe I had discussed that with David Maxwell.

Q. You learned it from David Maxwell, right?

A. I believe so.

Q. Did you look up the law yourself?

A. I did.

Q. Good.

Next line says: He alleged they changed the search warrant.

The next line after that, if you would, read that to the ladies and gentlemen of the jury, please.

A. Ken just wants the truth, period.

Q. Ken just wants the truth.

And to be clear, for the ladies and gentlemen of the jury, who is Ken?

A. That's attorney general Ken Paxton.

Q. He told you he just wanted the truth, true?

A. He said he did.

Q. Yeah. And you believed him at the time, true? True?

A. At the time I believed him, yes.

Q. Yes. At the time you believed him?

A. That's right.

Q. Okay.

A. Not later.

Q. And so when you made these notes, you were making notes of what Ken Paxton was saying, and he was telling you he just wanted the truth?

A. That's right. I wrote down what he said.

Q. The truth about what?

A. About what happened with Nate Paul.

Q. And did you tell him you would get right on it?

A. We did. We started trying to schedule a meeting.

Q. I don't think so. Let's move on to our next –

MR. HARDIN: Object to the sidebar.

MR. LITTLE: Withdrawn.

PRESIDING OFFICER: Sustained.

Q. (BY MR. LITTLE) This is another – this is another portion of Exhibit AG

MR. LITTLE: Mr. Arroyo, if you could move to the next page 005.

Q. (BY MR. LITTLE) Mr. Penley, these are your notes of a subsequent meeting with your boss Ken Paxton, true?

A. Yes.

MR. LITTLE: And if you could, Mr. Arroyo, blow up the bottom half of that page, please.

Q. (BY MR. LITTLE) The date of this meeting is on or around July 16. Yes?

A. Well, that's my best belief. I didn't date this page, and I don't know specifically when it was. But from looking at other information, that's my belief, this happened on July 16th.

Q. And how long had you been working at the attorney general's office at this point?

A. About nine months.

Q. About nine months. Less than a year certainly, true?

A. Yes, I only worked there a year.

Q. And you weren't – you wrote the word "Ken," and you bolded it, correct?

A. Yes.

MR. LITTLE: Mr. Arroyo, can you bold that – can you highlight that for me?

Q. (BY MR. LITTLE) And to the right of it, you've wrote an asterisk. And it says: He's embarrassed?

A. That's what he said.

Q. He was embarrassed with you and David Maxwell, true?

A. He was embarrassed at the lack of progress on the Nate Paul matter.

Q. Because you hadn't done anything, true?

A. That's true.

Q. Below it says: We've had this for six weeks, exclamation point.

And Ken Paxton was upset with you that in six weeks, you and David Maxwell had done donut, nothing, true?

A. Which part of the question –

Q. Nothing?

A. – do you want me to answer first? You asked me if we had it for six weeks. That is true. And it's also true we had done no investigating in that six weeks.

Q. Ken Paxton was upset that you had done nothing for six weeks on a referral from Travis County that he was aware of, true?

A. That's true.

Q. Down, if you would, there's some discussion about *Texas Monthly*. Do you see the all caps statement that you wrote in your notes?

A. I do.

MR. LITTLE: And, Mr. Arroyo, if you would highlight that portion. And the portion below it and the line below it. You're on it. And below it.

Q. (BY MR. LITTLE) It says: Seek the truth, two exclamation points. And that's what your boss Ken Paxton told you to do, true?

A. That's what he said. I wrote down what he said.

Q. And what he said was to tell you to seek the truth, yes?

A. Yes, that's what he said. And that's what we did.

Q. And below that it says: Let results be what they are. True?

A. That's what he said, and that's what I wrote down, true.

Q. But at that point in time and that day he did not tell you to interfere with an FBI investigation, did he?

A. Not that day, no.

Q. He did not tell you to obstruct justice, did he?

A. Not that day, no.

Q. No, he didn't.

MR. LITTLE: Mr. Arroyo, if you would, please bring up Exhibit 1 – AG 1009. This has already been entered into evidence, Mr. President, before the break.

Q. (BY MR. LITTLE) Exhibit AG 1009 is on the screen here, and these are your notes from July 23, 2020, true?

A. Correct.

Q. And these are notes from your review of Nate Paul's earlier meeting with David Maxwell of which you were not a participant, true?

A. That's true.

Q. Yes.

MR. LITTLE: And in the middle, Mr. Arroyo, it says: The agents didn't. If you can highlight that portion.

Q. (BY MR. LITTLE) It says: The agents didn't leave search warrants behind. Violation of the law, true?

A. No, it's not a violation of the law.

Q. Is the Federal Code of Criminal Procedure the law or not?

A. It's a procedural code. It's not a statute.

Q. Okay. They broke the law as expressed in the Code of Criminal Procedure, true?

A. They broke the procedural rules, the Federal Code of Criminal Procedure, if that was true.

Q. Let's turn the page.

MR. LITTLE: Next page, Mr. Arroyo.

In the middle of the page there's a section that says: Metadata on PDF. If you could zoom in on that. It says – actually, don't zoom in on that whole thing. Just get the line below that as well – was created on 9-6.

Q. (BY MR. LITTLE) Can you read that okay, Mr. Penley?

A. I can. Thank you.

Q. All right. Very good.

It says: Metadata on PDF was created on 9-6?

A. Yes.

Q. If some – you would agree with me if someone was manipulating federal search warrants after they had already been served or after they had already been created, that is a problem, yes?

A. Could you repeat the question? You said "manipulated." I don't understand what you mean.

Q. If someone were changing search warrants after a judge signed them, that would be bad, true?

A. I'd agree if they were changing the text.

Q. Yes. Not just redactions, but changing the actual text, right?

A. If they were changing the text that the magistrate judge had approved, that would be a crime.

MR. LITTLE: And the next page, if you would, Mr. Arroyo. About three-quarters of the way down there's a paragraph that says "claim" above an asterisk, if you could zoom in on that for us.

No, above that, please. The next paragraph above.

Q. (BY MR. LITTLE) Yeah, the allegation here is that the search warrant for the file storage company Contego was fabricated after the fact, yes?

A. That was Mr. Paul's allegation, yes.

Q. All right.

MR. LITTLE: Next page, please.

Q. (BY MR. LITTLE) And on the last page you wrote the notes: Rani Sabban, TFO.

That stands for task force officer, yes?

A. Yes.

Q. State Securities Board, yes?

A. Yes.

Q. How did he get the name Rani Sabban?

A. Well, I know that he met Rani Sabban because he claimed that Rani Sabban had been executing the search at his residence, and they spoke to each other.

Q. So what you're saying is – I don't want to put words in your mouth – Nate Paul knew Rani Sabban was involved with the search warrant because he met him during the execution of the search warrant, correct?

A. Yes, he had personal knowledge of Rani Sabban because he met him during the search.

Q. Not because Nate Paul got some secret document from someone else, true?

A. No, that's absolutely false. And you've misstated my testimony.

MR. LITTLE: I'll object as nonresponsive to everything after "no."

PRESIDING OFFICER: Sustained.

Q. (BY MR. LITTLE) Now, we're going to look at AG Exhibit 110.

MR. LITTLE: Mr. Arroyo, if you would, AG Exhibit – I'm sorry not 110, 1010. There we go.

Q. (BY MR. LITTLE) All right. These are your notes from a meeting with Michael Wynne on July 28th of 2020, true?

A. Those are my notes from a phone call with Michael Wynne, that's correct.

Q. Yes. A phone call.

And at the top it says: Wants to come to Austin to explain papers.

Yes?

A. Yes.

Q. And below that, it says: The agents didn't leave copies at the premises. But you already knew that, true?

A. I knew that from reviewing the first meeting, the July 21st meeting video, yes.

Q. Next line down says: Inconsistent signatures and stamps.

Yes?

A. That's what I wrote down because that's what Mr. Wynne told me, yes.

Q. Yeah. And these notes are from a phone call in advance of an August 5, 2020 meeting with Mr. Wynne (sic) and his lawyer, yes?

A. Correct. We set that meeting date during this call.

Q. Yes. And by this point in time, Mr. Penley, had you done any investigating at all?

A. Yes.

Q. And what did that include?



A. Well, it included watching the video of the July 21st meeting where Mr. Maxwell met with Mr. Wynne and Mr. Paul, listened to their complaints, listened to their theories, so I had reviewed all that. And he wanted to come have a second meeting, and I agreed to it.

Q. All you did was listen to them at this point in time, true?

A. Yes, that was an initial report by –

MR. LITTLE: Object, nonresponsive to everything after "yes."

MR. HARDIN: Can the witness finish his answer, please?

PRESIDING OFFICER: Sustain the objection – earlier objection.

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

PRESIDING OFFICER: Please let him have time to finish.

MR. LITTLE: I will do my best.

Q. (BY MR. LITTLE) Now we're going to look at Exhibit 1011, AG Exhibit 1011. And these are your notes from a meeting with Nate Paul and Michael Wynne, true?

A. Yes, that's the August 5th meeting.

Q. And you can see there by your first asterisk – hold on – it says: Thumb drive of docs produced?

A. That's true.

Q. They gave you a thumb drive, yes?

A. They did, yes.

Q. Now I want you to scroll down. Do you see the line that says J. Lane?

A. Yes, I see that.

Q. It says: J. Lane said he didn't have the original search warrant. Yes?

A. Well, I don't know if he did or he didn't. That's what Michael Wynne told me.

Q. Yes. And so what Michael Wynne told you in this meeting is that the magistrate, the federal magistrate judge informed them that he did not have the original search warrant, true?

A. That's what Michael Wynne said, true.

Q. And if that were true, that would be really surprising if a federal magistrate, for whatever reason, did not have the original search warrant, yes?

A. Yes, that would surprise me.

Q. Did you ever look for the original search warrant?

A. How would I do that, sir?

Q. Did you call anyone?

A. I raised that with the attorney general and the first assistant that that was an option.

MR. LITTLE: Object, nonresponsive.

Q. (BY MR. LITTLE) That was not my question.

PRESIDING OFFICER: Sustained.

Q. (BY MR. LITTLE) Did you call anyone at the magistrate's office, a clerk, a deputy clerk, the magistrate himself, yes or no?

A. No, I never called the federal magistrate or his staff.

Q. Did you call Alan Buie, perhaps?

A. No, I did not.

Q. Did you call any of his deputies at the U.S. Attorney's Office?

A. I did not.

Q. How hard would that have been to do?

A. It would have been problematic, in my view.

Q. It would have damaged your reputation and the office's reputation potentially, true?

A. Not my reputation. I wasn't concerned about that. I was concerned about the reputation of the office and our work with the federal authorities in the state of Texas.

Q. For you to call the feds, you would have worried that that would have harmed the reputation of the office?

A. Not to make a phone call but –

Q. Then why didn't you do it?

A. Because a phone call about this seemed to be high risk to the functioning of the Office of the Attorney General when we needed to work with federal authorities or appear in federal court, which our attorneys did all the time.

Q. That would have been high risk to make a phone call. You're going to tell these senators it was high risk for the Office of the Attorney General, for you to pick up the phone and make a phone call, yes?

A. Not to make a phone call, no. But to make a phone call about this, yes.

Q. Well, why didn't you do it?

A. The reason I didn't do it is because Nate Paul was claiming there was a grand conspiracy between a federal judge, two federal prosecutors, at least two State Agencies represented as task force officers, and a number of FBI agents. Nate Paul filed a civil suit against a hundred law enforcement agents in federal court in Austin over this, and I thought to call the U.S. Attorney's Office and say we have any belief that career AUSAs would be altering search warrants is crazy, especially when they have an ongoing investigation that's privileged.

Q. In any event, you didn't make the phone call, true?

A. I did not. For the reasons state.

Q. Yeah. Isn't it true that in these videos, first in the meeting with David Maxwell and Nate Paul and his lawyer and then with you also, Nate Paul's own lawyer said: We're not trying to interfere with the FBI investigation?

Didn't he say that?

A. He may have. I don't have a specific recollection.

Q. Isn't it true that Nate Paul's lawyer Michael Wynne also told you: We don't necessarily think that these are evil people. It may have been a comedy of errors or they may have just made some bad choices and not been able to get out of it?

A. I remember him saying –

MR. HARDIN: Pardon – pardon me. Is he soliciting hearsay? Surely not.

MR. LITTLE: If this – it's testimony from the video that you put in evidence about two hours ago, Rusty.

MR. HARDIN: Doesn't matter. I just simply asked: Are you asking what somebody else said out of court? Isn't that what you've been arguing about with me for the last week?

MR. LITTLE: Do you remember the videos you put in this morning and the transcripts? It's from there. I hope that clarifies it.

PRESIDING OFFICER: Overruled.

Q. (BY MR. LITTLE) All right. Now, let's go back to Exhibit – so just to be clear – hold on.

A. Which exhibit?

Q. We're going to go to AG 1012, please.

MR. LITTLE: If you could, Mr. Arroyo.

Q. (BY MR. LITTLE) This is a meeting – and you are in this meeting with the criminal investigation divisions forensics team, true?

A. Correct. And David Maxwell.

Q. And these are your notes, yes?

A. Yes.

Q. And you're talking about metadata, true?

A. Yes.

Q. And they told you that the results were inconclusive, true?

A. That was their words, yes.

Q. Yes. They didn't tell you that there was no proof of a crime or that no crime had been committed or that a crime had been committed. They didn't tell you any of those things, did they?

A. They said the metadata was inconclusive.

Q. And they didn't tell you that a crime had or had not been committed, true?

A. That's right. And I wasn't asking –

MR. LITTLE: Object, nonresponsive to everything after "that's right."

PRESIDING OFFICER: Sustained.

Q. (BY MR. LITTLE) Mr. Penley, focus with me. Inconclusive means we don't know, doesn't it?

A. It means it doesn't prove anything. That's what it means.

Q. It doesn't disprove anything either, does it?

A. That's right.

Q. It seems like if something is inconclusive it might require further investigation, right?

A. It's possible.

Q. I'm going to show you what's been marked as exhibit AG 88.

MR. LITTLE: Erick, if you can go back to that. I'm going to bring the page to you so you can see it.

If you would, Erick, go to the page ending in 7, 007. That – there, stop right there. Go back.

All right. Blow up all the text at the top.

Q. (BY MR. LITTLE) Mr. Penley, you got out of the meeting and you had Tina McCleod who works in IT said she sent you an email: Metadata is, quote, data that provides information about other data?

A. Yes. She sent me this email and – because I had sent her one.

Q. And at the bottom she said: Hope this helps. Yes?

A. That's what she wrote.

Q. You asked her to send this to you, yes?

A. I did.

Q. Because you didn't know what the heck metadata was before you walked in to that meeting, right?

A. That's not correct. I had a general impression of what metadata was. Nate Paul is making specific allegations that he could understand the metadata, and he claimed it proved the search warrants have been altered. And I was trying to go to our IT director who was at the deputy level and see if I could get a more definitive definition of metadata that would help me analyze his claim.

Q. Of course. And so what had happened was on this same day you had met with Nate Paul, his lawyers, and your – no?

A. No.

Q. Okay.

A. This was August the 6th.

Q. Yes.

A. This was the day after the meeting.

Q. Yes. So you met with your team, your forensic team?

A. On August 6, yes.

Q. And then you got out of the meeting and said, hey, Tina, can you send me a definition of metadata, please?

A. I don't remember if I sent the email before we met with the forensics team or after. Metadata was the central core of Nate Paul's complaints about the search warrant. That was the evidence that he and Mr. Wynne pointed to that would prove that state violations had occurred in the alleged alteration of a court document.

Q. And in order for you to assess those claims, you needed to know what metadata was, right?

A. Of course, yes.

MR. LITTLE: May I approach the witness?

PRESIDING OFFICER: You may.

MR. LITTLE: Mr. Arroyo, back to Exhibit AG 88, the page ending in 003, please.

Q. (BY MR. LITTLE) What is this list Mr. Penley?

A. Well, it's a document that apparently –

PRESIDING OFFICER: Excuse me. We're on the wrong page up on the screen.

MR. LITTLE: Oh, wrong page.

Mr. Arroyo, 003, please. Other way.

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

MR. HARDIN: Your Honor, may I inquire if he's – asks the witness if these are his notes or his typing.

MR. LITTLE: No, it's in evidence. It was offered, admitted over your objection. No objection, actually.

MR. HARDIN: I don't believe this was prepared by him, so I don't know – if he is going to ask him about it, I'd like the record to reflect he's not talking to him about something he did not prepare.

MR. LITTLE: He produced it in response to –

MR. HARDIN: It doesn't matter whether he produced it. It matters as to whether this witness had anything to do with it.

MR. LITTLE: I'll try to lay a proper predicate.

MR. HARDIN: It looks to me like we received it from the attorney general's office.

PRESIDING OFFICER: Mr. Hardin, you can take the witness on voir dire and ask him.

MR. HARDIN: Yes.

**VOIR DIRE EXAMINATION**

BY MR. HARDIN:

Q. Mr. Penley, this particular exhibit, did you have anything to do with preparing it?

A. I don't recognize this document. I don't recall preparing this. I don't believe it's mine.

Q. Okay.

MR. HARDIN: That's all I have, Judge.

**CROSS-EXAMINATION (CONTINUED)**

BY MR. LITTLE:

Q. Do you remember ever seeing it?

A. I've seen it in the documents for this trial. I've seen it in the discovery.

Q. You produced it in response to your subpoena, yes?

A. I don't know that –

MR. HARDIN: He didn't – he didn't produce –

MR. LITTLE: Hold on. I'm asking the question.

A. I don't know that I did.

Q. (BY MR. LITTLE) Okay. We can go back and look.

A. And if I did, I don't know that I prepared it. Perhaps I received it some other way.

Q. The suggestions on this list are suggestions of things that the office might do. Questions it might answer in connection with the investigation, right?

A. I agree with that.

Q. Yeah. And it says: Can we talk to the AUSA Alan Buie. Right?

A. Correct.

Q. And you've already testified you didn't do that, yes?

A. Right. I did not do that.

Q. And none of the other questions, how is the document created, how is the document encrypted, what did he encrypt it with, what application they use, you never got the answers to any of those questions, did you?

A. No, I did not.

Q. Doesn't that seem like important information you might want to know?

A. No, not based on what I learned on August the 6th.

Q. Okay. So I want to fast forward in your mind now to August 12th. We're going in chronological order, if you couldn't tell.

August 12th, you believe, and your testimony on direct was, you believe Ken Paxton had – was no longer supporting you, true?

A. That's true.

Q. Yeah. And you came to that conclusion after the meeting with Nate Paul and his lawyers in which the attorney general was present, yes?

A. Based on what the attorney general said that was opposite of what he had told me three or four days earlier.

MR. LITTLE: And now if you would, let's take a look, Mr. Arroyo, at AG 1013.

Q. (BY MR. LITTLE) You and the deputies on August 13th, the day after you say you no longer felt supported by Ken Paxton, you got in a circle with your deputies, yes?

A. I didn't get in a circle. I briefed Jeff Mateer on what had happen the previous day.

Q. When you produced this document in response to a subpoena, you blacked out – you whited out the top of it, right?

A. Yes, because it –

Q. I just need an answer to my question.

A. Yes, I did. I redacted it.

Q. Yes. And we don't know what's under there because you didn't show us, correct?

A. That's true.

Q. Now we go to the rest of this item. This is – these are your handwritten notes from a meeting, true?

A. Yes.

MR. LITTLE: And below that, Mr. Arroyo, if you can blow up the text to the right below that.

Q. (BY MR. LITTLE) It says: Call Dan Cogdell?

A. Yes.

Q. That's what you wrote, right?

A. Absolutely.

Q. We're talking about that guy?

A. Yes, the guy in the good-looking sport coat over here.

Q. It says: Ask him if Maxwell and I say go no further with this. Did you call Dan Cogdell?

A. No, we did not, but we considered it.

MR. LITTLE: Object, nonresponsive to anything after "no."

PRESIDING OFFICER: Sustained.

Q. (BY MR. LITTLE) Below that –

MR. LITTLE: Mr. Arroyo, if you could highlight that –

Q. (BY MR. LITTLE) – it says: Possible bribery?

A. Yes, I wrote that.

Q. On August 13th of 2020, you had absolutely no evidence, physical, documentary, eyewitness, or circumstantial that Ken Paxton was being bribed by anyone, did you?

A. I disagree with your statement. I had circumstantial evidence.

Q. Oh, you had circumstantial evidence?

A. Yes.

Q. Well, at some point on August 13th, did you go to your boss Ken Paxton and say, attorney general, I'm concerned. I have circumstantial evidence that you've taken a bribe. Did you do that?

A. Not on the 13th of August. I did it later.

Q. You didn't do that because you knew you would get fired, right?

A. I said possible bribery. I didn't have evidence to confront him with. Not at that time.

Q. Oh, but you just told the ladies and gentlemen of the jury you had circumstantial evidence?

A. Yeah.

Q. So did you confront him with the circumstantial evidence?

A. No. The circumstantial evidence –

MR. LITTLE: Object, nonresponsive to everything after "no."

MR. HARDIN: Please be allowed to respond.

PRESIDING OFFICER: Sustained, your objections.

MR. LITTLE: Thank you.

Q. (BY MR. LITTLE) Mr. Penley, below that it says –

MR. LITTLE: If you can zoom back out, Mr. Arroyo.

Q. (BY MR. LITTLE) – he's using OAG/playing KP.

Did you tell your boss you thought that Nate Paul was playing him?

A. Not on August the 13th.

Q. Why not on that day?

You had his phone number, right?

A. I'm sorry?

Q. You had Ken Paxton's phone number, right?



A. Yes, I did.

Q. Why didn't you confront Ken Paxton with your circumstantial evidence of bribery and the idea that Nate Paul was playing him on August 13?

A. Because I was trying to find a way to convince him to listen to reason and get away from this investigation which I thought was highly dangerous to him and harmful to the office and injurious to the respect for the law in the state of Texas.

Q. But also because if you had done that you should expect to get fired, don't you think?

A. I could have been. And I was concerned about getting fired ever since Ken Paxton did a 180 and turned against me in the August 12th meeting all the way to the end.

Q. Okay. So just to be clear, for the ladies and gentlemen of the jury, your concerns about bribery did not arrive until you thought Ken Paxton might fire you, yes?

A. No, that's not correct. You're misstating what I thought.

Q. I have your notes here.

A. Yes.

Q. This is the first document I've ever seen where you've written the words "possible bribery." Will you agree?

A. I don't have all the documents I've written. I've written a lot, so I can't agree to that unless you want to show me all the documents.

I began to be very concerned about what was going on in his mind when on about August the 8th, more or less, I told him I recommended closing the investigation. He looked me in the eye and said, okay, fine, all I ask you to do is meet with them and tell them. And then two days later he told me he wanted to attend the meeting. And then in the meeting when I announced to Mr. Paul and Mr. Wynne, I recommended we close the investigation because the metadata theory didn't prove a crime, Ken Paxton began making negative comments to me.

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

PRESIDING OFFICER: Sustained.

Q. (BY MR. LITTLE) Appreciate your answer, Mr. Penley, but my question was a little bit different.

On August – by August 12, you thought, This guy might fire me, yeah?

A. I did.

Q. On August 13th, you wrote down, Maybe he's being bribed, yeah?

A. Yes, because I thought that.

Q. And you didn't confront him that day because to do so probably would have resulted in you being fired, yes?

A. Could be.

Q. The safer strategy is to wait a month and go to the FBI with whatever circumstantial evidence you have and adopt whistleblower status for the same information, right?

A. No, I don't agree with your characterization.

Q. Okay. In any event, in this memo, you say that the metadata is inconclusive, right?

A. I'm sorry. Where are you pointing me to?

MR. LITTLE: Zoom back out, Erick, if you would, please.

Q. (BY MR. LITTLE) Yeah, metadata is inconclusive. No proof of crime. No disproof of crime either. Right?

A. I wrote down: Metadata is inconclusive. No proof of crime. And that was my belief at that time, and it still is.

Q. In any event, I think you can tell the jury, and they will agree, you didn't do any investigating after that, right?

A. No, that's not true. I tried to investigate. I tried to get the rest of the documents that Nate Paul and Michael Wynne had told me they had on August 5th. They told me they had gotten a bunch of documents from Judge Lane, and I never felt like they'd given me all the documents.

Q. You had already told Nate Paul and his lawyer the day before that you were going to close the investigation before you had those documents, true?

A. That's true.  
And the attorney general didn't accept it.

MR. LITTLE: Object, nonresponsive to anything after "true."

PRESIDING OFFICER: Sustained.

Q. (BY MR. LITTLE) All right. I'm going to show you what's marked as Exhibit AG 1014, please.

We're going to move ahead in time from August 13th of 2020 to September 4th of 2020. Can you see this document in front of you on the screen or in your hand, you've got a copy of it physically?

A. Yes, I think I can see it better on the screen if you'll blow it up. Thank you.

Q. This is an email from general counsel – this is Lesley French at the OAG. And she's sending it to FLD contracts. It says: FLD, please see the attached – please see the attached partially executed contract and disclosures for Mr. Cammack. I have reviewed the disclosure statement of Brandon Cammack and am satisfied with the choice of outside counsel for this matter.

Do you see that?

A. I do see that.

Q. Okay. And on September 4th, you got the DocuSign that day. Yes?

A. I've said in writing that I got it that day, but now that I've reviewed a lot more evidence, I think I made a mistake, and I believe I've got it for the first time on September the 16th is when it reached my email inbox.

Q. Well, that's not what you testified to under oath before the House Board of Managers, is it?

A. That's why I said I made a mistake.

Q. Yeah.

A. You're correct.

Q. And when you – and I think you'll agree – I'm not going to have to pull your transcript out – you testified to the House Board of Managers and their investigators that you got it on September 4th and then you went on vacation and said, I'll take care of that when I get back. That's what you told them, yes? And now you're telling a different story, yes?

A. Well, you've asked two questions at least. I'll answer it this way, if I may.

Yes, I told the house managers I thought the date I first received the executive approval memorandum was on September the 3rd or 4th, whatever date is in the transcript. I don't argue with that. I now believe I first received it on September the 16th, so I'm correcting my testimony.

Q. You're correcting your testimony that you gave to the house impeachment board's investigators, yes?

A. Yes, that's true.

Q. We should believe what you're saying today and not then, yes?

A. Yes.

Q. Okay. Our next exhibit in time, if you would, we're going to go back to Exhibit AG 88. And I'm going to show you the next page.

MR. HARDIN: Your Honor, and because it was – if I may, because this was a group offer, they're all, of course, Exhibit 88. If counsel could on each one of those pages where he does it for us, give it some type of identifying so we can know and be able to pull back up later.

MR. LITTLE: Well, they're already in. I'll identify by Bates number, if that's okay.

So, Mr. Arroyo, if you'll go to the Bates ending in 008.

MR. HARDIN: I realize they're in evidence. What I would like is a Bates number each time so I know which one to look for.

PRESIDING OFFICER: Would you accommodate him, please?

MR. LITTLE: We'll do our best, yes.

Mr. Arroyo, go to page ending in 008.

Give me all the text, Erick, if you would.

Q. (BY MR. LITTLE) This email is sent from Mark Penley to Brittany Hornsey copying Drew Wicker.

Hi Brittany, I received a voice mail from the General today. He's requesting that all documents I have on the Nathan Paul matter be copied and given to Elise.

Did I read that correctly?

A. You did.

Q. The attorney general just sent you to the showers, didn't he?

A. I'm sorry?

Q. He just came to the mound and took the ball out of your hand, said, "Give me the file. I'll take it from here," yes?

A. He didn't say that.

Q. That's what you should have inferred from that, right? The attorney general came and got the file from you, yes?

A. You're asking me to speculate. I don't know what was in his mind. I know I got a voice mail from him while I was on vacation asking me to get the file to one of the executive assistants on the executive floor, which I did.

Q. You knew that was not a good sign, right?

A. No. I had been given a warning that he was working up an outside counsel contract, and that was consistent with the idea that he was going around me and David Maxwell and trying to hire outside counsel.

Q. He's taken the ball out of your hands, yes?

A. That's your phrase. I'll accept it if you want me to.

Q. Okay. I do. You going to accept it? I –

A. I'll accept that he was trying to take the case out of my hands. There was no ball.

Q. Very good.

Let's move to Exhibit AG 1015, if you would.

And these are your notes from a side huddle with Jeff Mateer, Blake Brickman, and Ryan Bangert, yes?

A. Yes, that's correct.

Q. And at the bottom you – we've got more redactions, yes?

A. Yes. They were irrelevant topics that came up in a meeting that had nothing to do with this case.

Q. Well, I guess we'll have to take your word for it, won't we?

A. Well, yeah.

Q. Below that it says: NP file returned Joe Brown, Cliff Stricklin, outside counsel contract.

So you knew about it?

A. Yes. The purpose of the meeting with Jeff was so he could update me on things that had gone on during the week I was gone. And he told me that the attorney general had considered hiring Joe Brown, a former United States attorney and former

district attorney in Sherman, he'd been the U.S. attorney in the Eastern District of Texas. He also, I believe, had conducted a phone interview with Cliff Stricklin, an attorney in Denver.

Q. All right. Let's move ahead in time a little bit.

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

Q. (BY MR. LITTLE) Mr. Penley, I'm showing you what's been marked as Exhibit AG 124.

MR. LITTLE: Erick, would you bring that up, please.

Q. (BY MR. LITTLE) This is the second referral from the Travis County District Attorney's Office to Brandon Cammack on September 23rd of 2020, yes?

A. Yes.

Q. And when you made your report to the FBI, you didn't know about this, true?

A. That's true.

Q. And when you – I believe the word you used on direct was "apoplectic"?

A. Yes.

Q. When you were apoplectic about the grand jury subpoenas being served by Brandon Cammack, it was because you believed they were being used for civil discovery in a criminal matter, true?

A. That's true.

Q. But, in fact, they were related to this second referral in a bid rigging investigation that had been referred to the Travis County DA's Office over to Brandon Cammack?

A. You lost me on the second question. Could you repeat that, please?

Q. Yeah, let me try again.

The grand jury subpoenas Mr. Cammack was serving were relating to this referral in a bid rigging investigation that had been made from Travis County District Attorney's Office to Brandon Cammack, true?

A. That's not completely true. It's partially true.

Q. It's a lot true, isn't it?

A. It's partially true. I'll explain if you want me to.

Q. You can do that on redirect, I bet. We'll try. But here's what I want you to understand and want you to appreciate and agree with me on. You didn't know about this and the subpoenas that Mr. Cammack was serving were related to this referral, yes?

A. A, I didn't know about this. I agree.

B, all of the 39 grand jury subpoenas he obtained from Travis County did not relate to referral No. 2. Part of them referred to referral No. 1.

Q. Thank you.

Going to move to Exhibit AG 92.

PRESIDING OFFICER: I do not believe 124 was admitted previously.

MR. LITTLE: We move for admission of AG 124.

PRESIDING OFFICER: Any objection?

That's the document, Mr. Hardin, he had been working from before that one you were just handed.

MR. LITTLE: He has seen 124, and this is 92.

MR. HARDIN: I have no objection.

PRESIDING OFFICER: I show that Exhibit 124 is admitted into evidence.

(AG Exhibit 124 admitted)

PRESIDING OFFICER: Now are you offering another?

MR. LITTLE: AG 92, Mr. President.

PRESIDING OFFICER: Any objection on this one, Mr. Hardin?

MR. HARDIN: No, Your Honor.

PRESIDING OFFICER: I show that Exhibit 92 be admitted into evidence.

(AG Exhibit 92 admitted)

PRESIDING OFFICER: Continue.

Q. (BY MR. LITTLE) Mr. Penley, after ten days here in Exhibit AG 92, you admit – or you finally state: I'm not signing the outside counsel contract.

Yeah?

A. You said after ten days? What – you lost me at ten days.

Q. Well, your testimony today was that you got the outside counsel contract DocuSign on September 14th. You told them you got it on September 4th. Whether you've had it for ten days or 20 days, you are now finally telling someone I'm not signing it, yes?

A. I received it on September the 16th, as I previously stated, so eight days later. After the attorney general called me and asked me to sign the outside counsel contract, I told him I could not and I would not, and I gave him all the reasons why. He told me to talk to Jeff Mateer and to forward this contract to Jeff Mateer.

Q. All right.

A. Which I did.

MR. LITTLE: Let's move to Exhibit AG 1017, Erick.

Q. (BY MR. LITTLE) These are the notes that have already been entered into evidence, I guess on both sides, but these are your notes from September 26, right?

A. Yes, these are my after meeting notes on September 26 from McKinney.

Q. Okay. This is discussion about hiring outside counsel, at least in part, yes?

A. Yes, that was discussed.

Q. Okay.

MR. LITTLE: Erick, about – give me the – zoom in on the last half of the page, please. Higher. There you go, stop.

Q. (BY MR. LITTLE) Do you see the line about four lines down it says: I said. Do you see that?

A. Yes.

Q. It says: I said I don't need him, and we shouldn't be spending money on him when we can't give raises to our employees?

A. Yes, I see that.

Q. You said that, didn't you?

A. I did.

Q. None of that is your business or decision or authority at the Office of the Attorney General, is it?

A. I don't totally agree with you. I don't have the ultimate authority, but I have a duty to tell him about things going on in my area of responsibility. We couldn't give raises to our people. I felt like he was wasting money on outside counsel on an improper investigation, and I was trying to express that to him.

Q. Do you understand that there are 900 outside counsel contracts every two years at the Office of the Attorney General?

A. I didn't know that, but I'll take your word for it.

Q. And your explanation here for one reason Ken Paxton shouldn't hire Brandon Cammack is I don't need him, we shouldn't be spending money on him when we can't give raises to our employees. That was what you said, yeah?

A. That's what I said.

Q. And Ken Paxton got upset and he said: So you're going to exercise veto powers over the budget for the agency?

A. He said that, yes.

Q. That was his response to you, yes?

A. Yes, it was.

Q. At the bottom, it says there's a chance of media exposure, second line from the bottom?

A. Yeah.

Q. You expressed you were worried about that, right?

A. I was worried for his sake, yes. And I warned him.

MR. LITTLE: Go to the third page, if you would, Erick.

Q. (BY MR. LITTLE) Again, we see on the third page the word "inconclusive." The theory advanced by NP was inconclusive, yes?

A. I'm sorry. Could you tell me – can you direct me to the part of the page you're looking at?

PRESIDING OFFICER: Yes. Can you highlight that for the jurors?

MR. LITTLE: Yes, it's about three-quarters of the way down. You see the word "inconclusive"? Says "theory advanced by" at the beginning of the line. Lower, Erick. Right there.

Q. (BY MR. LITTLE) About third of the way down the –

A. Yes.

Q. – theory advanced by NP was inconclusive, yes? You see that?

A. Give me – if I may have just a moment to read the paper.

Q. Yeah, take your time.

A. Yes, I wrote that.

Q. And toward the bottom of the page –

MR. LITTLE: And just leave it there, Erick.

Q. (BY MR. LITTLE) – it says: I'm willing to hit the reset button and start fresh if they will produce docs, right?

A. Yes, I told him that.

Q. You're three months into this referral, yes, and you're now telling your boss I'm willing to hit the reset button, General Paxton?

A. That's what I told him on September the 26th, yes. After repeated requests for all the documents.

Q. Turn the page, if you would.

MR. LITTLE: Erick, give me the bottom half.

Q. (BY MR. LITTLE) You said: I told him this is a dangerous case, a dim DA or U.S. attorney could charge him with a play-for-pay scheme if they learned about the investigation since Nate Paul is a campaign donor.

Yes?

A. Yes, I wrote that.

Q. Okay. You don't have any evidence that Nate Paul ever paid any type of bribe to Ken Paxton, do you?

A. I disagree with your statement.

Q. Tell the ladies and gentlemen of the jury what evidence you have that Nate Paul paid Ken Paxton any type of bribe. Go.

A. I've read the evidence that was filed in response to the motion for summary judgment that your team filed. I've read –

Q. Hold on a second. This is legal analysis based on what you've read, is that right?

A. You asked me if I had any evidence. I'm trying to answer the question, sir, yes.

Q. You're analyzing what's – evidence other people are offering in this case.



On September 26, did you have any physical evidence, documentary evidence, eyewitness evidence, or circumstantial evidence that Ken Paxton had committed or been bribed by Nate Paul?

A. I had circumstantial evidence.

Q. Anything else?

A. I had his behavior.

Q. Anything else?

A. The campaign donation.

Q. Anything else?

A. His absolute refusal to listen to common sense and reasoned legal positions. He wouldn't listen to anybody on the executive staff.

Q. Anything else?

A. There's 4,000 pages filed in response to the summary judgment. There's stuff in there.

Q. Did you have any of them?

A. I didn't have it on September 26. I know about it today.

Q. The bottom portion of that bottom paragraph says: I gave him the scenario that NP, if indicted, could make up a story and throw him under the bus to the feds. That's what you told him, right?

A. I did.

Q. You told him the risk was Nate Paul would manufacture false information that could harm Ken Paxton, yes?

A. That's the way I phrased it, yes.

Q. That's what you said, and that's what you wrote, yes?

A. Yes.

Q. We get to September 30th – or 29th and 30th your head explodes, yes?

A. That's true. Figuratively speaking, I hope.

Q. That's what you said under the – that's what you said to the House Board of Managers, right?

A. I did. And I was extremely upset when I found out about the grand jury subpoenas, yes.

Q. I'm going to show you what's marked as Exhibit AG 50.

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

PRESIDING OFFICER: Yes.

MR. LITTLE: Mr. President, we move for admission of AG 50.

PRESIDING OFFICER: Any objection, Mr. Hardin?

MR. HARDIN: No objection.

MR. LITTLE: Erick, if you would put that –

PRESIDING OFFICER: Admitted to evidence, please, AG 50.

(AG Exhibit 50 admitted)

Q. (BY MR. LITTLE) You signed this, yes?

A. I did, yes.

Q. It says: We have a good-faith belief that the attorney general is violating federal and/or state law.

Yes?

A. Correct.

Q. You had a good-faith belief on October 1st, 2020, yes?

A. Yes.

Q. Did you bring any documentary evidence or physical evidence to the FBI?

A. No documents, no physical evidence.

Q. And just to be clear, your testimony on direct was one of the reasons you thought Nate Paul had no credibility was he didn't give you any documentary evidence, true?

A. Based on his theory, there was nothing to back up his theory, correct.

Q. Yeah. And so it's fair to say if you had had documentary evidence of any crimes by Ken Paxton, you would have brought them to the FBI when you visited with them prior to this letter, true?

A. I disagree with you.

Q. Oh so, you would have sat on it?

A. No.

Q. If you had any documentary evidence of a crime by Ken Paxton, you would have brought it to the FBI, yes?

A. No.

Q. No, you wouldn't have?

A. No. This was an initial report by eyewitnesses. And it happened in a hurry.

Q. I agree with that. How much of a hurry did it happen in?

A. Well, in one sense it had gone on for three months, but what really took this to a crisis level was learning that Brandon Cammack – or Cammack, I don't know the exact pronunciation – was serving grand jury subpoenas –

Q. You've –

A. – that were designed to help Nate Paul in his civil litigation against his business adversaries.

Q. You've testified about that.

MR. LITTLE: May I approach, Your Honor?

PRESIDING OFFICER: Yes.

MR. LITTLE: We move for admission of Exhibit AG 97, please.

PRESIDING OFFICER: When you have time to respond, Mr. Hardin.

MR. HARDIN: No objection, Your Honor.

PRESIDING OFFICER: Admit AG Exhibit 97 into evidence.

(AG Exhibit 97 admitted)

Q. (BY MR. LITTLE) From your office email you forwarded grand jury subpoenas that were supposed to be secret to your counsel Johnny Sutton, correct?

A. That's partially correct, yes.

Q. And to be clear, you've never paid Johnny Sutton a dime, have you?

A. Not yet.

Q. You have some type of pro bono deal with him?

A. No.

Q. Who's paying for him?

A. We haven't agreed on a fee arrangement yet. We've agreed to discuss that in the future.

Q. Let's let that sink in for a second. This man who's a former assistant U.S. attorney with the Ashcroft Law Firm, I believe, it's in multiple states, he's represented you for three years and you haven't agreed on a fee arrangement yet? I want to make sure I understand.

A. That's right.

Q. Haven't paid him anything?

A. Haven't paid him anything.

Q. He's never sent you a bill?

A. No, sir.

Q. Sounds like a great guy.

A. He is. And he's a former United States attorney, not an AUSA.

Q. Some point in time you get placed on investigative leave, true?

A. On October the 2nd, correct, by the attorney general himself.

Q. And by that point in time, there was still no file related to your investigation at the OAG, yes?

A. I'm sorry. I didn't hear the full question. Could you repeat?

Q. There was no file at the time that you were placed on investigative leave in the OAG system related to the Nate Paul investigation, true?

A. I had a file with my personal notes on the case, but we had not officially opened an investigation file.

MR. LITTLE: If you would, Mr. Arroyo, bring up Exhibit AG 1020, please.

Q. (BY MR. LITTLE) October 10 of 2020, these are your notes from a conversation with David Maxwell, correct?

A. Yes.

MR. LITTLE: Blow up the bottom portion and highlight it, Mr. Arroyo. Highlight that bottom asterisk.

Q. (BY MR. LITTLE) Your plan while you were still at the Office of the Attorney General on investigative – you're on investigative leave on October 10, right?

A. That's true.

Q. Your plan is to cook up bar complaints on Brandon Cammack, Michael Wynne, and Ken Paxton, isn't it?

A. That was not my plan.

Q. It was David Maxwell's plan?

A. I wrote down – I write down what people say –

(Simultaneous discussion)

MR. LITTLE: Object, nonresponsive.

A. I wrote that down.

MR. HARDIN: Pardon me, Your Honor. He can't –

PRESIDING OFFICER: Let's back up. Let's slow down. Let him finish his answer, then you can object.

Go ahead.

Q. (BY MR. LITTLE) Time is at a premium, Mr. Penley.

It was David Maxwell's plan as of October 10 of 2020 to cook up bar complaints against Brandon Cammack and Mike Wynne and Ken Paxton, yes?

A. No, I don't agree with that. He said that. I wrote it down. That's what it means.

Q. And you wrote it down because – well, why don't you tell these people what he actually said?

A. The best recollection – well, I have no independent recollection of these notes, so I wrote down the word "cook up." We never did anything with it. We never even called the bar.

Q. But the two of you talked about it, yes?

A. That comment was made on that date, and I wrote it down on October the 10th. Yes, I wrote that down.

Q. And at – toward the top it says: Look at the defense fund. May need a grand jury subpoena. Right?

A. Right.

Q. That was part of your plan, wasn't it?

A. No, that was part of our conversation, and we were trying to find more links between Nate Paul and Ken Paxton.

MR. LITTLE: If you would, Mr. Arroyo, Exhibit AG 1021.

Q. (BY MR. LITTLE) These are your notes. Let's work from the top. When did you write this?

A. Hold on just a second. I guess I don't have a paper copy.

It was sometime after I was placed on investigative leave. I don't know the exact date.

Q. At the top it says: Google KP's defense funds?

MR. LITTLE: Erick, if you could zoom in on that. See if we can access that document.

Q. (BY MR. LITTLE) Who is "we," by the way?

A. Some of the whistleblowers. I can't name anybody other than myself.

Q. You guys are trying to dig for dirt on Ken Paxton, right?

A. We're trying to find evidence to defend ourselves because we were being unjustly treated.

MR. LITTLE: Next paragraph, Mr. Arroyo.

Q. (BY MR. LITTLE) At the top you write: Missy told him he could sign the contract and hire outside counsel.

Yes?

A. I wrote that down, yes.

Q. That's Missy Cary, the chief of staff of the Office of the Attorney General, yes?

A. That's correct.

Q. And your notes, your recollections from this meeting, were that you were all discussing it and the chief of staff said: Ken, you can sign that contract.

Yes?

A. Well, I don't know this was from a meeting. I believe it was from a phone call.

MR. LITTLE: Let's go to the bottom two lines on that page, if you would, Mr. Arroyo.

Q. (BY MR. LITTLE) The bottom you wrote: KP must be indicted by spring break.

You wrote that, right?

A. Yes.

Q. That was what you wanted, wasn't it?

A. At that point, yes, because I believed he'd broken the law.

Q. Of what year?

A. I'm sorry?

Q. Of what year?

A. The law of what year?

MR. LITTLE: I'll pass the witness.

PRESIDING OFFICER: Mr. Hardin, redirect.

MR. HARDIN: Thank you, Your Honor.  
Thank you. Thanks a lot.

### REDIRECT EXAMINATION

BY MR. HARDIN:

Q. Mr. Penley, I'll just take a few minutes with you. Just a few things I want to mention real quickly.

But what is your testimony as to whether or not at the time all of this was happening, you had seen the referral that is called the second referral.

MR. HARDIN: And if we could, put up the front page of AG Exhibit 124, please, Stacey.

That's okay. Thanks a lot.

Now, Stacey, if we could, put the – isolate the date there.

Q. (BY MR. HARDIN) So September the 23rd, correct?

A. Correct.

Q. But you're really – only everything blew up, we can all agree, can we not, on September the 30th, with y'all going to the FBI and so?

A. I'd say September 29th, the day before with the first grand jury subpoena being reported.

Q. Okay. But you went to the FBI on the – on what date?

A. On the 30th.

Q. All right. Now, this is just one week before that is my point, is it not?

A. Yes, sir.

Q. And had – were you ever – during any of the time this was going on, were you informed that after filing the complaint back in June, the referral, that Mr. – now after things are – you've been looking at one referral?

A. Yes.

Q. Is your testimony throughout this case y'all were only concerned with one referral?

A. Right. I only knew of one referral all the way to the point when I got put on investigative leave.

Q. All right. Did – have you since reviewed after this was all over, after you were terminated – well, back up.

Had you seen this referral number two from this gentleman before you were terminated?

A. I think I saw it between the time I was put on leave and terminated, which was a month. I think I saw it in between that time.

Q. And at the time – now did that – that lessen your view or change your view of Mr. Paul or did it increase the view you already had reached?

A. It increased my anger at the attorney general.

Q. All right. Hold on a second.

A. For doing all this.

Q. Hold on a second.

I want to move you now to –

MR. HARDIN: Stacey, Bates stamp – I think it's one – yes, Bates stamp 2443, please, Stacey.

Q. (BY MR. HARDIN) Now, you've heard on cross, you've been asked questions about when y'all met with the investigative committee that you weren't under oath, right?

A. Yes, I recall that.

Q. And I'm going to look at this. Does this page show – or – all right.

Do you see whether or not Mr. Paul, once again, had a choice of whether or not to swear to the allegations he was making?

A. Yes, I know that on both referral number one and number two, those forms from Travis County have a line for a Notary signature and a swearing that everything is true.

Q. Now, what is your opinion as to whether when he goes to the district attorney's office to file a complaint and has a chance to make his allegations, did he swear to those allegations?

A. He did not swear to either complaint in referral one or referral two.

Q. And when he didn't swear to the complaint, did you – once you found out about it, while you were, you say, on leave before you officially terminated, did you look at the allegations this guy was making this time?

A. I looked at the allegations with that combined with everything else that had occurred, made me look in a highly skeptical way at his claims.

Q. Well, let me ask you this: Did you look at this referral number two and say – and see that now he wants a federal bankruptcy judge investigated?

A. Right. That makes two federal judges he wants the state of Texas to investigate even though we told him he needed to go to the United States Department of Justice Inspector General's Office to take these claims.

Q. And to take him seriously?

A. He wanted us to take him seriously, I agree.

MR. HARDIN: Go to Bates stamp, if you can, Stacey, 124 – or that's the exhibit, excuse me. Bates stamp 2445.

Q. (BY MR. HARDIN) I want you to look at how many people now does he want an investigation of. For instance, look at – on Page 2445, let's scroll down. Will you just read out the names of the people he now wants y'all to investigate in addition to the people he wanted you to investigate in the original referral?

A. Yes, sir. Bryan Hardeman, Will –

Q. Do you know who – slow down.

Do you know who Bryan Hardeman is one way or the other?

A. I do not.

Q. Next one.

A. Will Hardeman.

Q. Do you know who he is?

A. I've read that's Bryan Hardeman's son.

Q. Do you know who Christopher Dodson is?

A. No.

Q. Are you aware that's opposing counsel in a case that he's in litigation with?

A. No, but I'm not surprised.

Q. Stephen Benesh, do you know who that is?

A. I do not.

Q. Do you know who Jason Cohen is?

A. I do not.

Q. Do you know who Mark Riley is?

A. I don't.

Q. Do you know that Mark Riley is engaged in a civil lawsuit with him?

PRESIDING OFFICER: One moment, Counselor.

MR. HARDIN: Yes, sir.

PRESIDING OFFICER: Can we take out that information, please, addresses?

MR. HARDIN: Pardon me?

MR. LITTLE: Just very briefly, Mr. President, assuming facts not in evidence.

PRESIDING OFFICER: I didn't hear what you said. I'm sorry.



MR. LITTLE: I'm saying assuming facts not in evidence. Mr. Hardin is saying that these people are certain things, and the witness has no knowledge of it.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) Do you know who Justin Bayne is?

A. I don't know him.

Q. Do you know whether Tony M. Davis is a federal bankruptcy judge?

A. Yes, I understand that he is a United States bankruptcy judge in the Western District of Texas in Austin.

Q. And do you know who Ray Chester is?

A. He is the trustee for the Mitte Foundation, which is involved in a lawsuit with Nate Paul.

Q. Is Ray Chester a trustee or is he opposing counsel representing the Mitte Foundation?

A. My understanding is he's an attorney, but he's also the trustee represented by counsel.

Q. Do you know whether – who Mr. Milligan is Gregory Milligan?

A. I believe he's an attorney in Austin somehow involved in that litigation.

Q. At the end of the day when you read this particular referral, is there any way, any way on God's green earth you would ever want to support a criminal investigation based on this guy?

A. Absolutely not.

MR. HARDIN: I have no further questions.

PRESIDING OFFICER: Recross, Mr. Little.

MR. LITTLE: No recross, Mr. President.

May I have a moment to collect all my goods from up there?

PRESIDING OFFICER: You may.

Mr. Hardin, Mr. Little, may this witness be excused?

MR. HARDIN: I would hope so, Your Honor.

MR. LITTLE: Subject to potential recall, of course, but yes.

MR. COGDELL: Mr. President, could I have one minute to talk with his counsel?

PRESIDING OFFICER: Yes.

MR. COGDELL: We're good, Your Honor. Thank you.

PRESIDING OFFICER: You may step down. Thank you.

Don't take all those. Leave those here for us. Thank you. Thank you, sir. Who's the next witness?

MS. BUSS: Mr. President.

PRESIDING OFFICER: Yes.

MS. BUESS: The House Board of Managers call –

PRESIDING OFFICER: Hit that. We can't hear. There you go.

MS. BUESS: There we go.

Mr. President, the House Board of Managers calls Katherine "Missy" Cary.

PRESIDING OFFICER: Bailiff, will you bring in Missy Cary.

(The following oath was given to the witness.)

PRESIDING OFFICER: Would you raise your right hand, take the following oath: I do solemnly swear that I – or affirm that the evidence I give upon this hearing by the Senate of Texas of impeachment charges against Warren Kenneth Paxton, Jr. shall be the truth, the whole truth, and nothing but the truth, so help you God.

THE WITNESS: I swear.

PRESIDING OFFICER: Please be seated.

Counsel, will you give your name for the record?

MS. BUESS: My name is Terese Buess.

PRESIDING OFFICER: You may begin.

MS. BUESS: Thank you, Mr. President.

KATHERINE "MISSY" CARY,

having been first duly sworn, testified as follows:

### DIRECT EXAMINATION

BY MS. BUESS:

Q. Good afternoon.

A. Good afternoon.

Q. Would you please state your full name –

PRESIDING OFFICER: Hold on. Both of you are going to have to get much closer to the mic and speak a – speak up a little bit more. Yeah. No, no, it's – the acoustics are not good in here.

THE WITNESS: Yes, sir. Is that better?

Q. (BY MS. BUESS) I can hear you. It's a big room. Can you hear me?

A. Yes, ma'am.

Q. All right. Would you please state your full name?

A. My name is Katherine Minter Cary, although I sometimes go by Missy.

Q. Is that a name your parents gave you?

A. It's a nickname. My sister and I were Missy and Prissy growing up, and, you know, I got the better end of that deal, so . . .

Q. So which name do you go by?

A. I think everyone here would know me by Missy.

Q. All right. Okay if I call you Missy?

A. It is.

Q. All right, Missy. Where did you grow up?

A. I grew up here in Austin.

Q. And what is your mom – what did your mom do?

A. She was a school teacher and a stay-home mom.

Q. How about your dad?

A. My father is an attorney.

Q. And where did he work?

A. Actually his first job was he was an assistant attorney general at the attorney general's office from 1965 when I was born to 1971. And then he had a private practice in a law firm here in Austin.

Q. Was he a role model for you?

A. He is a role model for me, yes.

Q. Is he why you became a lawyer?

A. He is.

Q. How about the attorney general's office?

A. Just, you know, when I was a kid he would take me up there. I was probably kindergarten or first grade, and it was like the scene from Mad Men, if you know the TV show. It was a cool place, and it was what I always wanted to be.

Q. So where did you go for undergrad?

A. I started at Hollins College, which is a girls school in Virginia, and then I transferred to Texas A&M where I graduated.

Q. What's your degree in?

A. In political science.

Q. Where did you go after that?

A. I went to law school at St. Mary's in San Antonio.

Q. And were you licensed to practice law?

A. I am. I'm licensed in Texas in 1990.

Q. After you got your license, where did you go to work?

A. My first job was here at the General Land Office. I was a staff – first, I started out – because I didn't have my bar results, and I learned quick that the appropriations act says you have to have a license to be a lawyer, so I started actually as a legal secretary or law clerk. And then when I got my results, I became a staff attorney there for five years.

Q. And when you got promoted to staff attorney, what kind of things were you handling?

A. I did employment law. I wrote legislation. I worked on the Open Beaches Act, the open – the oil spill response act. I did a little bit of collections for the permanent school fund. Different things like that.

Q. At the end of your five years, where did you move to?

A. I moved for the first time to the Office of the Attorney General.

Q. Okay. And which department were you assigned to work in?

A. In the administrative law division.

Q. And what kind of things did you handle?

A. So I – part of the time I was a litigator in administrative law, represented the state in court. The other duties were general counsel to various state agencies that didn't have their own general counsels. I did open records, open meetings. I drafted rules, tried cases about the Administrative Procedures Act, did some employment law.

Q. Sounds like all kinds of things?

A. Kind of the division that does a little bit of everything government oriented.

Q. Okay. Did you leave the attorney general's office?

A. I did. I left the attorney general's office short – for a while in 1997, and I was conscripted, so to speak, to work at the Texas Lottery Commission for Harriet Miers, Anthony Sadberry, and Judge Hill, John Hill, to work on a matter with the executive director at the time that was kind of well-known in the press.

Q. Okay.

A. So . . .

Q. Was there a scandal?

A. There was.

Q. And did it all have to get cleaned up?

A. It did.

Q. And did you assist with that?

A. I did.

Q. All right. After that work got done, where did you go?

A. After that work got done, I was asked by incoming attorney general, now senator, John Cornyn to come and be the attorney general's office's public information coordinator, so I came back to the attorney general's office in 1999. And I did the coordinator position for a year, and then I was given the division chief of the open records division next. And I think I held that position about six or seven years.

Q. And at the end of that, where did you go?

A. I was promoted to the general counsel position for the Office of the Attorney General, I think in 2006. I was the agency's general counsel.

Q. And after that?

A. After that, I was promoted by Governor Abbott when he was still attorney general to be the deputy for administration for the Office of the Attorney General, and I remained in that position when General Paxton came in. And did the same basic job for both of them.

Q. Tell us how many attorney generals you've worked for.

A. As attorney general, I've worked for four, and then John Hill at the Lottery Commission.

Q. Okay.

A. So five.

Q. Tell us the names.

A. So Dan Morales, John Cornyn, Greg Abbott, Ken Paxton, Attorney General Hill when he was on the Lottery Commission. And I also worked at the land office for Garry Mauro who was a statewide elected official.

Q. In 2014 when Ken Paxton became the attorney general, did you receive a promotion?

A. I did.

Q. And what were you promoted to?

A. I was the first female chief of staff of the Office of the Attorney General and the first person that worked their way all the way up from a line lawyer to a position that high in the agency.

Q. And who did you report to in that position?

A. I reported to Jeff Mateer who was the first assistant – well, actually, probably it was Chip Roy first – I can't remember. It was the first assistant, whichever one was there first.

Q. And eventually to Jeff Mateer as the first assistant?

A. I think Jeff was their chief of staff, yes.

Q. Okay.

MS. BUESS: May I have Exhibit 553, please?

It's not in evidence. It was used, I think, with the very first witness. And I'll offer it into evidence. It's an organizational chart.

PRESIDING OFFICER: Any objection?

MR. BUZZBEE: No objection, Your Honor.

PRESIDING OFFICER: Enter – I don't have a copy, but what's the number?

MS. BUESS: It's 553.

PRESIDING OFFICER: 553 into evidence.

(HBOM Exhibit 553 admitted)

PRESIDING OFFICER: In the future, if y'all can give us a copy, thank you.

Q. (BY MS. BUESS) Can you see the chart, 553?

A. I can.

Q. Okay. And what year is this chart reflecting?

A. This chart, even though it's dated September 2020, I think reflects the organization as of September of 2019.

Q. Okay. And are the names – have the names changed a little bit during your – the time that you were there? I'm interested, actually, in the divisions and the deputies, the slots. Can you – looking at the far left of the line of executives, can you tell us as chief of staff who you worked with during the period of time that you were working with Ken Paxton as your assistant – as your attorney general? Start at the left, if you would?

A. So there's a different org chart that's now come up on the screen. This organizational chart is the chart from 2019, for September 1st, 2019. And I'm happy to answer the question. I'm just not sure which chart you want me to answer the question for.

MS. BUESS: Are we on 553?

Q. (BY MS. BUESS) I'm interested in the divisions.

A. I understand.

Q. Can you –

A. Which chart are you interested in the divisions on? There's two organizational charts, and there – it's different, actually.

Q. How about the one that we're looking at right now. Does that help?

A. That helps.

Q. Yes?

A. Yes.

Q. All right. Let's start at the far left of the chart.

A. Okay.

Q. And can you tell us which divisions you supervised and spent the most time with?

A. The first assistant supervised all of the deputies. However, Mr. Starr and I sort of split the deputies by areas of our expertise to assist Jeff in his management of the deputies. So for me, I was most involved with the deputy attorney general for child support and the IV-D director, the chief information officer, which is the IT department, the deputy for administration, the deputy attorney general for criminal justice, the director of law enforcement.

And if you could shift it over a little bit.

And that would be all there. And then if you look above, directly reporting to me was the agency's public information coordinator who I oversaw. And then I also helped the first assistant with the ombuds person and the internal auditor.

Q. When you retired, how many years had you spent with the attorney general's office?

A. Just the attorney general's office, somewhere over 20.

Q. Okay.

A. 25 probably, 20, 20 – well, probably 20.

Q. And during the time that you were there would you say you developed certain areas of expertise?

A. I did over my career develop certain areas of expertise, yes.

Q. And those particular areas, do you actually teach – you teach other people about them?

A. I have taught other people in the past, yes, about my areas of expertise.

Q. What kind of places have you taught at?

A. I mean, I've taught at CLEs. I've taught at the National Association of Attorneys General. I was one of their instructor faculty. I've taught about how to run an attorney general's office, how to fund an attorney general's office, what the attorney generals do. I've consulted with other attorney generals across the country about their attorney generals offices, I've taught ethics, I've taught contracting, I've taught administrative law, I've taught open records many times, open meetings. Administrative law in general.

Q. And how about writing? Have you published any publications?

A. I have. I published law review articles and other writings.

Q. Okay.

A. Both unemployment law, procurement law, administrative law. I'm board certified in administrative law.

Q. I'd like to go forward to 2018, if you would?

A. All right.

Q. Okay. What building were you officing in at that time?

A. My office in 2018 was in the Price Daniel building, which is attached to the Supreme Court on this side of the street.

Q. What floor?

A. The eighth floor.

Q. And who officed around you?

A. It – I mean, my office was directly next to the first assistants, with his assistant in between us. And on the other side was the conference room and then the attorney general.

Q. So it would be fair to say the people around you were the executive team?

A. Correct.

Q. Was it all of the executive team or part of them?

A. It was part of the executive team. For example, the trial support division has its own building out on Oltorf, and the child support IV-D director always had an office in each place. The director of law enforcement and the head prosecutor also had two offices, as did the director of IT. But it was intended to be the executive staff on the eighth floor.

Q. So in 2018, can you tell us a little bit about the quality of the executives that were around you, who were they and what did you think of them?

A. Well, I mean –

MR. BUZBEE: Your Honor, objection. Relevance. It doesn't matter what she thinks of them. It has nothing to do with this.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) Can you tell us, please, the people that worked with you, did they mirror the policy choices of Attorney General Paxton?

MR. BUZBEE: Your Honor, again, relevance. Object.

PRESIDING OFFICER: Overrule this time.

A. They did. The executive team was created in order to further General Paxton or any attorney general's agenda and desires of where they want the office to go. And they did so.

Q. (BY MS. BUESS) And during the period from 2018 up to 2020, were you aware of how they were perceived by people outside of the office, other professionals?

MR. BUZBEE: Objection, Your Honor. That calls for speculation. How can she know what people outside the office thought about these people?

MS. BUESS: I can qualify.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) Are you familiar with how the executive group within your office was perceived by people outside of the office, for example, other professionals in Texas and even outside of Texas?

MR. BUZBEE: Objection, Your Honor. Personal knowledge. She doesn't have it. And to the extent she has any, it would be hearsay.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) Do you know what the general opinion was of the office from 2018 to 2020?

MR. BUZBEE: Objection, again, Your Honor. The general opinion of who? I mean, there could be – I mean, there's almost 30 million Texans. It could be 30 million opinions.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) Did the executive team meet regularly with Jim Mateer?

A. With Jeff Mateer, yes.



Q. Sorry.

And at those meetings, would y'all catch up on what was going on with each other's departments?

A. We had a Thursday executive meeting that included at times General Paxton and Mr. Mateer and the deputies, and we caught each other up on what was going on, yes.

Q. Can you tell us what General Paxton's involvement with the day-to-day operation of the office was?

A. His involvement was similar to most other attorneys general. Most attorneys general set the high level policy and high level direction of where they want the executive staff to go and then depend on the executive staff to complete those tasks and to follow that direction.

Q. So, Missy, you had worked in the office for a very long time at that point. As you looked around you at the people that you were working with, how would you describe them?

MR. BUZBEE: Objection, Your Honor. Vague and irrelevant.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) What kind of group were they?

MR. BUZBEE: Again, I don't – I have no idea what that means, what kind of group were they. It could be anything. Vague.

PRESIDING OFFICER: Could you be more specific? Thank you.

MS. BUESS: Yes.

Q. (BY MS. BUESS) Was there a description that you used for the people that you were working with? Did you call them something?

MR. BUZBEE: I'm sorry to interrupt again, Your Honor. It's the same objection.

PRESIDING OFFICER: I have to sustain.

Q. (BY MS. BUESS) Of all of the people that you worked with at the attorney general's office – and, again, I know they're like children, right, we don't like to say which ones are our favorite – but as a group, can you qualify, quantify them for us from 2018 to 2020?

MR. BUZBEE: Your Honor, again, I hate to slow this down, but that question is vague and as best I could tell irrelevant.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) Describe your office for us in 2018.

MR. BUZBEE: Is she – again, vague. Is she talking about the building? I'm not sure what she's talking about. Vague.

PRESIDING OFFICER: Yes, Counselor, can you be very specific?

MS. BUESS: Yes.

Q. (BY MS. BUESS) Can you tell me a little bit about the people who worked around you from 2018 to 2020, your executive team?

MR. BUZBEE: It's a compound question. Objection. She's asking about multiple people. We don't know who she's talking about, but to the extent it's more than one, compound.

MS. BUESS: I can go one by one. If counsel wants me to do that, we can do that.

MR. BUZBEE: You're on the clock. Yes, I want you to do that. Ask a specific question.

PRESIDING OFFICER: Okay. Sustained. Be specific.

Q. (BY MS. BUESS) Did you have an opinion about the people that you were working with, your executive team during that time period?

A. Yes.

Q. Tell us what that opinion was.

MR. BUZBEE: Objection, Your Honor. Vague. Which person is she referring to?

MS. BUESS: I'm referring to the entire executive team that we've talked about.

MR. BUZBEE: Again, I'm sorry to do this, but she can ask what's your opinion of Mateer to the extent that's even relevant. Probably not. But this is very vague. And to the extent it's not vague, it's compound.

PRESIDING OFFICER: I'm going to overrule. You can ask the question. You can answer what your opinion was of the overall team.

Q. (BY MS. BUESS) You can answer the question.

A. My opinion of the overall executive team was that they were incredibly professional. They were committed to General Paxton's agenda. And it – all in all, it was a credible set of legal minds.

Q. Is part of your responsibilities working with and supervising the security detail group?

A. Yes and no.

Q. Uh-huh.

A. I did not supervise the security detail because they worked for the Department of Public Safety, but I did liaison with the security detail as one of their points of contact myself and Jeff Mateer.

Q. Okay. How about the scheduler?

A. The scheduler did not report to me, reported to Jeff. But I did help at times with questions and things with the schedule.

Q. I want to talk with you specifically about spring of 2018. Okay?

A. Yes.

Q. All right. Was there an incident that caused you some concern?

A. Yes.

Q. I want to talk about that. Can you tell us where you were when it happened?

A. I believe you're referring to an incident at the Galaxy Cafe.

Q. I am.

A. In spring of 2018, I was at the Galaxy Cafe on West Lynn eating lunch by myself. They have very small tables that sit two by two. Very close to the person who's sitting next to you.

I was alone eating lunch, and there was a man and a woman that's sitting to the table directly next to me. Probably within 3 feet away. And they were having a conversation, and the woman of the group was sharing what I perceived to be –

MR. BUZBEE: Objection, I'm sorry. She's about to repeat hearsay. I object to that.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) As you sat and listened to the conversation, did you overhear some information that you felt was inappropriate?

MR. BUZBEE: This question calls for speculation and also hearsay. I object.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) As you sat and listened to the conversation, how did you feel?

MR. BUZBEE: Objection, relevance. Doesn't matter how she felt. I mean, it has nothing to do with this case.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) As you sat and listened to the conversation, did you decide to do something?

MR. BUZBEE: Objection, vague. I'm not sure what that means, Your Honor.

PRESIDING OFFICER: Overrule.

Q. (BY MS. BUESS) What did you do?

A. After listening to the conversation, I took a photograph of this person and took it back directly to Attorney General Paxton.

Q. And why did you do that?

PRESIDING OFFICER: Excuse me. Can you move closer to the mic?

THE WITNESS: Yes.

PRESIDING OFFICER: Thank you. Thank you, Ms. Cary.

Q. (BY MS. BUESS) And why did you do that?

A. Because I felt the conversation was –

MR. BUZBEE: Objection, hearsay.

Q. (BY MS. BUESS) I'm not asking for hearsay I'm asking what her concern was.

MR. BUZBEE: That's not what the question was, Your Honor.

MS. BUESS: I asked her –

PRESIDING OFFICER: Would you repeat the question?

MS. BUESS: Yes.

Q. (BY MS. BUESS) You took a picture of the woman. Why did you do that?

A. I wanted to talk to General Paxton about the – what I saw.

Q. Is security of the attorney general something that you as an employee were very concerned with?

A. Always.

Q. Was the conversation that you overheard causing you concern about safety for the attorney general?

A. No.

Q. What was it causing you concern about?

MR. BUZBEE: Objection. She hasn't said that she was caused concern. I mean, it assumes that she was concerned, and she hasn't told us that yet.

PRESIDING OFFICER: Sustained.

You can ask that question.

Q. (BY MS. BUESS) Were you concerned?

A. Yes.

Q. What were you concerned about?

A. The level of personal detail being shared in a public space.

Q. And was it directed to the Attorney General Ken Paxton?

A. No.

Q. Who was it directed to?

A. It was directed to a man who I did not recognize at her lunch table.

Q. Okay. The woman that was speaking, did you recognize her?

A. No.

Q. Did you do anything further before you left the restaurant?

A. No.

Q. Did you monitor the woman as she was leaving the restaurant?

MR. BUZBEE: Objection, leading.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) What did you do?

MR. BUZBEE: She's already said she did nothing else, Your Honor. Asked and answered.

PRESIDING OFFICER: Can you rephrase that a little bit?

MS. BUCESS: I can.

Q. (BY MS. BUCESS) Before you left the restaurant did you try to get any additional information about the woman?

A. I looked at the car she was driving when we were leaving at the same time.

Q. And what kind of information did you get about the car?

A. I noticed that the car – I noticed the kind of car it was, the color and that it was a car purchased in San Antonio.

Q. Okay. You had the picture in your phone, you had the car information. What did you do with that?

A. I waited for a time when I could talk to General Paxton privately, and I talked to him privately about what I had witnessed.

Q. Okay. Tell us what you told him.

MR. BUZBEE: Objection, hearsay.

MS. BUCESS: It's not offered for the truth of the matter asserted, Mr. President. It's to show the effect on this witness and the actions that she took as a result of it.

PRESIDING OFFICER: Overruled.

Q. (BY MS. BUCESS) What did you tell General Paxton about what you heard?

A. Basically what I just told the Court. And I asked him if he knew who she was.

Q. What information did you relay to him about what you had heard?

A. I relayed to him that I was sitting at lunch alone in the Galaxy Cafe, and I overheard loudly a conversation between two people and that the details that were provided by this person were surprising to me and of concern, and I wanted him to know about it.

Q. Specifically what details were you concerned about?

MR. BUZBEE: This is hearsay, Your Honor. You've already ruled on that.

PRESIDING OFFICER: Sustain.

MS. BUCESS: I'm not offering it for the truth of the matter asserted. I'm trying to show why she's doing what she's doing.

MR. BUZBEE: If it's not offered for the truth, then it's irrelevant.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUCESS) When you talked with General Paxton, what – how did he respond?

A. Told me that I had taken a picture of his realtor who was trying to sell his condo on Enfield and that he would talk to her.

Q. Did you believe that?

A. Absolutely.

Q. Was he concerned that someone was talking about his personal business in a restaurant out loud?

A. No.

Q. Did you believe him when he said it was his realtor?

A. Yes.

MR. BUZBEE: Objection. Asked and answered.

PRESIDING OFFICER: Overruled.

Q. (BY MS. BUESS) Did he provide a name for that person?

A. No, he did not.

Q. All right. Let's come forward now to May of 2018.

Did you have an occasion to go to an official function in San Antonio?

A. Yes.

Q. And did you see someone there that you recognized?

A. Yes.

Q. And who was – who was it that you recognized?

A. Same lady I had seen in Galaxy Cafe.

Q. Okay. A realtor at an official function. What kind of function were you at?

A. I was at a National Association of Attorney Generals' reception, a happy hour cocktail hour.

Q. Okay. Did you get the name of that person?

A. She was wearing a nametag.

Q. And what was the name?

A. Laura Olson.

Q. Okay. During the course of the spring and summer of 2018, did you come to learn what the relationship was between Laura Olson and the attorney general?

A. I did.

MR. BUZBEE: Objection, Your Honor. I'd like to lay a predicate for that. Otherwise, it's based on hearsay.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) How did you come to learn about the relationship?

A. The attorney general told me about it. I was also told by the security detail and the travel aides.

Q. And did you confirm that it was the named Laura Olson, same person?

A. I did.

Q. How did that make you feel about him telling you that she was a realtor?

A. Surprised.

Q. That he had lied to you?

A. Yes.

MS. BUESS: May I have House Exhibit 623, please.

Offer State's Exhibit 623 into evidence, Mr. President. It's a public record.

MR. BUZBEE: Your Honor –

PRESIDING OFFICER: Do we need to redact any of this?

MR. BUZBEE: I would think so, Your Honor. I mean, this is like a speeding ticket or something.

MS. BUESS: The information that's going to be put up is going to be redacted. It has been redacted.

MR. BUZBEE: Not my copy.

PRESIDING OFFICER: Yeah, nor on mine.

MR. BUZBEE: I don't think we should be using this private personal information about anybody talked about in this trial.

MS. BUESS: The hard copy will be redacted. What's going to be shown has been redacted.

MR. BUZBEE: I don't know what they're going to show.

PRESIDING OFFICER: Can you show us the redacted copy? Because ours is not redacted, nor counsel.

We'll break in 15 minutes. We're going to continue till the top of the hour.

MS. BUESS: Thank you.

PRESIDING OFFICER: I'm sorry, no, we're not – I said we're going to break in 15 minutes at the top of the hour. You may stretch your legs if you like, Senators, but we're going till the top of the hour.

MS. BUESS: If I may, I'm going to move on, and we'll come back to this exhibit.

PRESIDING OFFICER: Okay. We'll come back to that exhibit.

Continue.

Q. (BY MS. BUESS) During the spring and summer of 2018, were there some things that were happening within the office concerning Laura Olson that you were having to deal with?

A. Yes.

Q. Specifically, were there problems with morale?

A. Yes.

Q. In which areas of the office were you having difficulty?

A. Travel aides, security detail, Mr. Mateer.

Q. How about the scheduler?

PRESIDING OFFICER: To the witness, can you repeat that? We couldn't hear you clearly.

THE WITNESS: The travel aides, the security detail, and Mr. Mateer was my answer, Your Honor.

Q. (BY MS. BUESS) Let's talk about the travel detail. What kind of problems were you having to deal with?

A. The travel detail was calling about the hours they were working, the places they were being required to go. And they were concerned about the general's behavior.

Q. Okay. How about the bag man, what is a bag man?

A. It's a travel aide, and the travel aide is the employee of the Office of the Attorney General that's generally assigned to the attorney general, does things like make sure they're on time, has their speeches, make sure you get to the venue on time, keeps time – sort of time management, holds on to those – it's a close aide.

Q. Were there –

A. Personal aide.

Q. Were there problems with the bag man as well?

A. Yes.

Q. What kind of problems?

A. Complaining about the hours worked, the hours worked that weren't state business, expressing those concerns to me because I approved their leave or require them to take particular kinds of leave for nonstate business events.

Q. What kind of complaints were coming about the hours?

A. Too long hours, no vacation, odd hours.

Q. Okay. Were there complaints about security concerns?

MR. BUZBEE: Your Honor, I'm sorry to interrupt. We're talking about 2018?

MS. BUESS: We are.

MR. BUZBEE: So complaints in the office from 2018 that have nothing to do with the – any of the articles of impeachment. I would object to be irrelevant.

PRESIDING OFFICER: Overruled.

Q. (BY MS. BUESS) Complaints concerning security, what were the worries?

A. Similar concerns.

Q. Which were what?

A. Hours worked, nonstate business, disorganization, and changes to the schedule.

Q. Issues concerning not state business, what kind of things?



A. I mean, I think the affair was one of the concerns that was not state business. So were some of the different switches in the schedule between campaign events and state business.

Q. Who is JB Skees?

A. He was General Paxton's travel aide at the time.

Q. And for the court reporter, it's S-K-E-E-S, is that correct?

A. That's correct.

Q. All right. And what kind of problems did you have with him, if any?

A. I personally didn't have problems with JB. JB quit unexpectedly and refused to tell me or Mr. Mateer why.

Q. You ever had that happen before?

A. I have not.

Q. Were there issues with the attorney general's wife that you were having to deal with as well?

A. Some point in time, Mrs. Paxton was calling the office asking about the schedule or asking where he was, and the staff was uncomfortable sometimes answering those questions. And they were complaining about that.

Q. Why would they be uncomfortable?

MR. BUZBEE: Objection, speculation.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) Do you know what caused them to be uncomfortable?

A. Only what I was told.

Q. And what was your understanding?

MR. BUZBEE: This question is going to be related to hearsay, which she just set it up as hearsay, so I object, hearsay.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) With a problem like that – with the problems that you were having concerning morale, what did you do?

A. 2018?

Q. Yes.

A. I talked to Mr. Mateer. He and I talked about it. I also had a conversation with General Paxton directly by myself about it.

Q. Okay. Let's stop and talk about that. Do you recall when that was?

A. I cannot be precise, no.

Q. Do you recall what time of year it was?

A. It would have been the summer of 2018.

Q. All right. Where did you have that conversation?

A. In my office.

Q. Okay. And what did you talk about?

MR. BUZBEE: Objection to the extent she's going to relate what she said. That would be hearsay.

MS. BUESS: She's here for cross-examination.

PRESIDING OFFICER: Sustained. Sustained.

Q. (BY MS. BUESS) What was the topic of conversation?

MR. BUZBEE: Objection, asked and answered. She's already told us what the topic was.

PRESIDING OFFICER: Overruled.

Q. (BY MS. BUESS) What was the topic?

A. The topic was the ethical implications of a secret affair.

Q. Were you able to relay your concerns?

A. Yes.

Q. Did he confirm that he, in fact, was having an extramarital affair?

A. Yes.

Q. And did he tell you that that was with Laura Olson?

A. No.

Q. Not at that time?

A. No.

Q. All right. What was his attitude when you told him that things were not good within the office because of that?

A. He was contrite, and he listened to what I had to say very carefully.

Q. Did you get the feeling that he thought it was none of your business?

A. Maybe. But we had a good conversation.

Q. Okay.

A. A productive conversation.

Q. Were you able to help him understand why it was affecting the life of the office itself?

A. I tried to do that.

Q. How did you do that?

A. We talked about what had happened, previous public officials that I had counseled in similar situations. We talked about previous public officials and what happened to them in similar situations. We talked about the risk involved in secrets of this magnitude that began to bleed over into the work of the Office of the Attorney General.

Q. What kind of risks are there?

A. I mean, there's ethical risks. There's political risks. There's legal risks.

Q. What kind of legal?

A. These things can open one up to bribery, misuse of office, misuse of state time, things like that.

Q. How did he receive that information?

A. Well –

Q. Okay. Did you make a request of him to tell his wife Angela?

A. I did.

Q. How did that conversation end?

A. Contemplatively. And he – and then he left my office.

Q. Were voices ever raised during this conversation?

A. Not in this conversation, no.

Q. All right. Based on what you know of him in your experience working with him, how does Attorney General Paxton react to confrontation?

A. Generally very patient. And he listens well, and he takes in information. So I would say he reacts well to confrontation.

Q. Let's come forward to October of 2018. Was there an occasion that you went to the campaign headquarters?

A. I did.

Q. All right.

A. I think that was actually September of 2018.

Q. Okay. And who is – who is present at that time?

A. Jordan Berry, Jeff Mateer, Brantley Starr, Ben Williams, Marc Rylander, I think perhaps, myself. And I'm not sure, I could be leaving somebody out, but that's the ones that stand out.

Q. Okay. And what was the occasion?

A. We were invited to meet with General Paxton and Senator Paxton to talk about this matter.

Q. "This matter" being what?

A. The – the affair.

Q. Okay. Would it be fair to say that General Paxton confessed the affair to all of you?

A. I think that would be a fair characterization.

Q. Okay. Did he apologize to all of you as a group?

A. He did.

Q. Okay. Describe that experience very briefly, if you would, please.

A. It's an uncomfortable experience. It's an experience I had not had before in my life. Somber.

Q. Okay.

A. Be a word I'd use.

Q. How did General Paxton's wife take it? How was she responding?

A. She was sad and embarrassed, I believe. That was my impression.

Q. Was she crying?

A. She was.

Q. All right. When you saw that, what did you do?

A. My heart broke for her.

Q. And what did you do?

A. After the meeting had concluded, I think I hugged her, and I think I told her that I was sorry this had happened to her.

Q. And what happened after that?

A. We broke up and went home.

Q. Okay.

A. Went back to work.

Q. In September of 2018 after that meeting, did you believe that Laura Olson was out of his life for good?

A. Again, at that point, I didn't know her name, but I thought that this type of behavior was out of his life for good, yes.

Q. Let's talk about August 1st of 2019 coming forward now in time. Was there a change in your duties?

A. Yes.

Q. What happened?

A. Judge Starr was being promoted to the federal bench, so there was a vacancy. And the deputy first assistant position, which was equal to mine, both reporting to Jeff and helping manage the deputies and the way I described in the exhibit.

I – I was told that that was going to change. And when the new deputy first assistant came in, who was Ryan Bangert, that my duties would be changed and I would be reporting only directly to Mr. Mateer.

Q. Okay. Did you receive an explanation as to why those changes were being made?

A. It was my understanding that those changes were being made at the general's request because I had said no to him too many times is what I was led to believe.

Q. Let's talk about that. What kind of things would you say –

PRESIDING OFFICER: Counselor, excuse me.

I – the jurors have been here for two hours. Can we break?

MS. BUESS: Yes.

PRESIDING OFFICER: That's fine.

MS. BUESS: Certainly.

PRESIDING OFFICER: Members, come back at 3:20, 20-minute break.

(Recess: 2:58 p.m. to 3:22 p.m.)

#### AFTER RECESS

PRESIDING OFFICER: Bailiff, will you bring the witness back, please.

(Witness enters)

PRESIDING OFFICER: You have the witness.

MS. BUESS: Thank you, Mr. President.

Q. (BY MS. BUESS) Are you ready, Lacey (sic)?

A. I – can you hear me?

Q. I can hear you.

A. Okay.

Q. Do you have an exhibit in front of you, Lacey?

A. I do not have an exhibit in front of me. The screen is blank.

Q. Defense has it.

MS. BUESS: 623.

Q. (BY MS. BUESS) Missy, can you give me the number on there, please?

A. Exhibit No. 623.

Q. Do you recognize the person on there?

A. I recognize the name, yes.

Q. Do you recognize the photograph that's on that exhibit?

A. I recognize the photograph to be Ms. Laura Olson, yes.

Q. Is that the person you saw at the Galaxy Cafe?

A. To the best of my belief, yes.

Q. Is that the person that you know to have been having an affair with Ken Paxton?

A. Yes.

Q. All right.

MS. BUESS: Your Honor, at this time I would offer into evidence No. 623.

PRESIDING OFFICER: I don't have a copy of the redacted one. Or do we? No. I'm not sure if we – is it four pages?

MR. DONNELLY: Yes, Your Honor, the section is redacted on there.

PRESIDING OFFICER: Okay, thank you. Is there any objection?

MR. BUZBEE: No, Your Honor.

PRESIDING OFFICER: Admit Exhibit No. 623 into evidence.

(HBOM Exhibit 623 admitted)

MS. BUESS: Thank you.

Q. (BY MS. BUESS) The photograph that you took in your phone of the woman at the Galaxy that we now know to be Laura Olson, what did you do with it?

A. I deleted the photograph at the general's request.

Q. Did he ask you to do that when you first talked with him about the woman?

A. He did.

Q. When he told you it was his realtor?

A. He did.

Q. All right. I want to come forward now to the summer of 2019.

Were there continuing to be problems within the office, the type that we had talked about already?

A. Those problems began again, yes.

Q. Okay. Who were you hearing from? I'm not asking you what they told you, but what people within the office were talking with you?

A. Travel aides, Mr. Mateer, the security detail.

Q. Were there problems that were happening outside of Austin?

A. Yes.

Q. All right. Was there a further conversation that you had with Ken Paxton concerning the affair?

A. Yes.

Q. Did you learn that the affair was continuing?

A. From –

MR. BUZBEE: Objection. Speculation, Your Honor.

PRESIDING OFFICER: Sustained.

MS. BUESS: She can – thank you.

Q. (BY MS. BUESS) Did you learn that it was continuing?

MR. BUZBEE: Objection. Speculation, Your Honor. Anything that she has learned let –

MS. BUESS: It's been ruled.

MR. BUZBEE: Let me finish, please.

MS. BUESS: It's been ruled.

PRESIDING OFFICER: Excuse me.

MR. BUZBEE: Anything she might have learned would be based on hearsay or speculation.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) Did you have a conversation with Ken Paxton during that time period?

A. I did.

Q. That would be the summer of 2019?

A. Correct.

Q. Let's talk about that conversation. Where did it happen?

A. In my office on the eighth floor.

Q. Did you initiate it or did he?

A. He did.

Q. And what did y'all talk about?

A. We talked about Ms. Olson again.

Q. And did you learn that the affair was continuing?

A. Yes.

Q. Did he tell you that?

A. Yes.

Q. How did he tell you that? What kind of voice was he using?

A. He was frantically upset.

Q. At who?

A. I think he was frustrated, and he wanted to express to me that he was frustrated with me and that he – I didn't understand what he was trying to tell me. And he was trying to tell me – he came in and said he was frustrated and that he – I didn't understand he still loved Ms. Olson, and I – you know, he wanted – he wanted to work it out with me.

Q. What did you take that to mean?

A. For me to be more accommodating as far as the security detail, the travel aides, the – any of his requests.

Q. So in your very first conversation when he first told you he was having an affair, had you given him some advice, some professional advice?

A. I did. I gave him ethics advice.

Q. And what was that advice?

A. The ethics advice in 2018 was that when you try to keep things secret and you're a statewide elected official who is running for office, that it could be both ethically, legally, and morally challenging and that it was beginning to bleed over into the office.

Q. And is that what you were seeing?

A. Yes.

Q. All right. Your second conversation in the summer of 2019, did you give him some similar advice?

A. I gave him identical advice.

Q. All right. Did you tell him that he needed to get his life in order so that the office could get back on track?

MR. BUZBEE: Objection.

A. I did.

MR. BUZBEE: Leading and hearsay.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) What did you tell him he should do?

MR. BUZBEE: Objection, hearsay.

MS. BUESS: It's not hearsay, Your Honor. She's the declarant, and Mr. Buzbee knows she's available for cross. He can have time with her when I'm done.

PRESIDING OFFICER: Overruled.

Q. (BY MS. BUESS) You can answer.

A. I told General Paxton quite bluntly that it wasn't my business who he was sleeping with but that when things boiled over into the office and into the state work that it become my business and that I was having concerns about how the time and the effort of the – of the travel aides, the security detail, and myself was being spent.

Q. And I want you to tell us what his demeanor was when you told him that.

A. He was angry with me.

Q. How could you tell?

A. He raised his voice loud enough that it was heard outside my office even though the door was shut. He was – you know, his hands were waving, he was red in the face. He was upset with me.

Q. How did that conversation end?

A. He stormed off out of my office. He ended the conversation.



Q. And you mentioned that your duties had changed. Were you still managing all those different departments?

A. I was until September 1st of 2019. So at that time of the conversation I did – was still helping manage those departments.

Q. Okay. I want to talk a little bit now about outside counsel contracts. Is that an area of your expertise?

A. It is. When I was the general counsel of the Office of Attorney General it was my duty to process those, read them, approve them. I wrote the administrative rules regarding those contracts. I wrote the contract form, so I'm very familiar with the outside counsel contract process.

Q. In your time at the attorney general's office, have you approved and actually evaluated a few or many of those contracts?

A. Thousands of those contracts.

Q. All right. So you're very familiar with them?

A. I am.

Q. Do people come and talk to you and ask questions about outside counsel contracts?

A. They do.

Q. They ask you about a lot of things in that office, don't they?

A. They do.

Q. All right. All right. Want to talk a little bit about the rules because there are rules within the Office of Attorney General, are there not, for approving those contracts?

A. There's a procedure that's published on the agency's website, and there's also the administrative code, Texas Administrative Code 1 TAC Chapter 57 is related to outside counsel.

Q. Let's talk just a minute about the procedure.

Within the Office of Attorney General when one of those contracts is being drafted up, how – what's the approval process? Very quickly.

A. For the – for a contract for the Office of the Attorney General?

Q. Yes.

A. Those contracts are generally initiated by the deputy that's interested in having the contract. It's routed through a – sort of an audit procedure, which is called executive approval memo. Down in the general counsel division, the form is filled out with appurtenant information. There's a contract number that's established, it's put into a computer system, and it's reviewed for the requirements of the appropriations act and the rules.

Q. Is there a requirement that there's some kind of finding concerning the best interest of the state?

A. I think what you're referring to is in the appropriations act, Article IX, Section 16.01(a). There's a requirement before you can spend appropriated funds on an outside counsel for the state, a determination needs to be sent in writing to the controller that the contract is in the best interest of the state and it can be paid.

Q. Is there also a requirement that the attorney who's being hired be qualified?

A. There is.

Q. For the particular job at hand?

A. There is.

Q. And do you have to have money allotted for the contract?

A. Yes. It's –

Q. That's the procedure –

A. It helps to have money allotted for the contract, yes.

Q. All right. So –

A. Unless the attorney is working for free, but . . .

Q. The forms that were used within the attorney general's office during this time period, are they the forms that you designed?

A. They are.

Q. And the procedure where everyone has to sign off all the different levels, was that something that you worked up?

A. It's something I was involved in working up, yes.

Q. Okay. And it's computerized now. Is it always that way?

A. It was not. It used to be in paper with a routing sheet on top.

Q. All right. Are applications for those types of contracts given identifying numbers when they're going through the process?

A. They are.

Q. And is that important?

A. It's an important tracking mechanism to track the contract, and it's in the system, and then it's approved. And it also allows the accounting division and the budget division to know which funds to pay that contract – which funds to direct the controller to pay the contract out of.

Q. Missy, can you tell us when you first heard the name Nate Paul?

A. Not with precision.

Q. Ballpark?

A. Probably 2019. And I heard that name come up in the weekly updates from David Maxwell and Mark Penley.

Q. Were those at the meetings of all the deputy chiefs?

A. At times. And there were also private meetings at a regularly scheduled time with Mr. Mateer and myself and that particular deputy.

Q. And what was the context of hearing that name? What was going on?

A. I was aware that at first –

MR. BUZBEE: Objection. I'm sorry, Your Honor, to interrupt. This is based on hearsay. Objection, hearsay.

MS. BUESS: I'm not offering it for the truth of the –

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) Missy, when you heard the name Nate Paul, what was it in context to? Was it –

MR. BUZBEE: Your Honor –

Q. (BY MS. BUESS) – related to?

MR. BUZBEE: Can I finish, please? It's the same question, hearsay. Objection.

MS. BUESS: I'm not offering it for the truth of the matter asserted. I'm trying to show the context in which she's known that name.

MR. BUZBEE: That's not an exception to the hearsay rule, Your Honor.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) When you heard the name of Nate Paul, did you do anything? Were you involved at all?

A. No, I was just listening.

Q. Okay.

A. To that –

Q. At some point, did you become aware of a contract?

MR. BUZBEE: Objection, Your Honor. Hearsay.

MS. BUESS: I'll reword it.

MR. BUZBEE: She just said she wasn't involved and she heard about it, so everything she knows about it, somebody told her.

PRESIDING OFFICER: Sustained.

MS. BUESS: I'll reword it.

Q. (BY MS. BUESS) At some point, did you become aware of a contract that had been set aside for Brandon Cammack?

A. Yes.

Q. When did you learn about that?

A. I recall being told –

MR. BUZBEE: Objection. I'm sorry, Missy.

Your Honor, she's telling us right now that everything she knows is hearsay.

MS. BUESS: I'll reword it.

PRESIDING OFFICER: Sustain.

Q. (BY MS. BUESS) Without telling us what somebody said, tell us, first of all, the time frame of when you became aware of it?

A. I'm just not sure I can tell you the exact time frame.

Q. Okay. Ballpark is fine.

MR. BUZBEE: No it's not, Your Honor. That's pure speculation. Ballpark is not good enough under oath in court.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) Did you get a phone call from General Paxton about a contract for Brandon Cammack?

A. I did.

Q. When did that happen?

A. September 28th of 2020.

Q. All right. Where were you?

A. I was at my ranch in Mason, Texas. I got a call on my cell phone.

Q. Okay. Was this COVID? Were you at home?

A. I was.

Q. Working from home?

A. I was.

Q. All right. The first contact you had, what was it from the General?

A. The attorney general called and asked me for some advice given my experience in the outside counsel world about an outside counsel contract he was interested in entering into with Brandon Cammack. And so he called and asked me how the process worked.

Q. And what did you tell him?

A. I told him how the process worked. We talked about the statute. We talked about the rules. We talked about the internal procedure of how it worked. He was interested in pursuing an outside counsel contract with him.

Q. On September 28, did he make you aware that there had been a problem with the contract that had – was going through the office for signature for approval?

A. He did.

Q. Did he tell you who was holding it up?

A. He did.

Q. Who did he tell you?

A. Mark Penley.

Q. And did he ask you how to get that contract in effect without that signature from Mark Penley?

A. He did.

Q. What did you tell him?

A. I told General Paxton that I believed given my experience that he as the attorney general could sign an outside counsel contract with Mr. Cammack if he followed certain procedures that weren't able to be waived.

Q. Okay.

A. Which is the best interest standard in order to pay him. Then I also told him he could waive in writing based on one Texas Administrative Code Section 52.7(c), that if the attorney general or the first assistant waives the internal procedures in writing then they can all be waived. The ones that aren't statutory are required by the appropriations act.

Q. So the waiver can happen by the attorney general or first assistant, but it has to be in writing, is that correct?

A. That's what the administrative rule says.

Q. All right. You also mentioned that – that despite that, the standards of whether or not that contract is in the best interest of the state still applied, is that correct?

A. Standard of whether the contract met the best interest of the state in order to be funded still applied, yes.

Q. All right. So he can sign a contract on his own as long as he provides a written waiver.

How about funding?

A. So at the Office of the Attorney General there isn't an account set aside for outside counsel contracts. The money has to be moved from what is called the first assistants reserve, which is a – some funding that's at the first assistant's discretion. That money can be moved by – in writing to the budget people and set aside, the money. Then the money is coded and applied to the outside counsel contract.

Q. So can be done but should be done. Are those two different questions?

A. They are.

Q. Did you talk with him about the – whether or not it should be done?

A. I did.

Q. What did you tell him?

A. I – since he had already told me that Mark Penley was refusing to sign, we talked about why that could be that Mark Penley did not want to sign and why Jeff also did not want to sign and that it was going to be really hard to get over the best interest standard till we resolved that, which is the funding part, not whether or not it was legal for the attorney general to sign his own outside counsel contract.

Q. Okay. How did he respond when you told him that?

A. He was very appreciative of the advice. He asked me if I could text him the statutes and the rules and the procedure so he could see what we were talking about. And I did that.

Q. Before you hung up with him, did you tell him this was ill-advised?

A. I did.

MR. BUZBEE: Objection, leading.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) What did you mean by "ill-advised"? In your opinion, what does that mean?

MR. BUZBEE: Your Honor, if I could, obviously you sustained the objection and now she's going right back at it and now testifying herself.

PRESIDING OFFICER: Would you – sustained. And would you –

MS. BUESS: I'll reword it.

PRESIDING OFFICER: Reword it.

Q. (BY MS. BUESS) When you advise someone that a contract shouldn't be done, can be done but shouldn't be done, how did you tell him?

A. I would have used the word "ill-advised." That's just kind of a word I use.

Q. And did you tell him why it was ill-advised?

A. I did.

Q. What did you tell him?

A. Told him that his senior staff felt like that this contract was a problem and they didn't want him to do it and that we needed to resolve that and be on the same page.

Q. Okay. Were there continued – was there continued contact from Ken Paxton concerning this contract?

A. He emailed me back the next morning after I sent him the stuff in writing and said he appreciated it. He did call me back again the next day a couple of hours later, and we had – we had a conversation again. We talked about all these same things again. And I – then I think he might have reached out to me on October the 1st, but I did not return that call.

Q. Okay. That last phone call you had with him, what was the content of it?

A. It was very similar to the first – the content of the first conversation.

Q. So he wanted to know what was – how he could do it?

A. Follow-up questions about now didn't you say that I could do it this way or that way. And we went through that again and how the funding worked again and how to – how to make it happen.

Q. That last phone call that you had with him about how to make it happen, did you talk with him again about why he shouldn't make it happen?

A. I – my recollection is I was much firmer on how strongly the executive team felt that it was ill-advised.

Q. Okay. I want to talk about his demeanor on the telephone during that particular phone call. Would you describe it?

A. The second phone call?

Q. Yes.

A. His demeanor – it was like I was on speakerphone and somebody else was listening, which concerned me.

Q. Why did you think that?

MR. BUZBEE: Your Honor, I'm sorry. I'm going to have to object. This is rank speculation, and I object under 602.

PRESIDING OFFICER: Overruled.

Q. (BY MS. BUESS) You've known him for how many years?

A. Since 2015.

Q. You've known him through good times and bad times?

A. I have.

Q. Tell us, based on your knowledge of him, what your impressions were of that phone call of his demeanor.

A. It was unusual. It was like I was speaking to somebody besides him because he's very bright and he knew exactly what we had talked about the day before, and it was repeating the same thing like it was playing to an audience.

Q. Did you think that it was a phone call where it was a private phone call, like telephone to ear?

MR. BUZBEE: Objection. Again, Your Honor, this is speculation. She doesn't know if anybody was there with him, and she's just speculating.

MS. BUESS: I'll ask it a little differently.

PRESIDING OFFICER: Yes, rephrase.

Q. (BY MS. BUESS) Did you have an impression that you were not on a direct private telephone line with Ken Paxton at that time?

A. I was concerned about that, yes.

Q. What did you think?

MR. BUZBEE: Again, Your Honor, what she thought is irrelevant. And it's also speculation.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) That phone call obviously made you very uncomfortable. You've said that. What about it made you uncomfortable?

A. General Paxton's persistence to do this knowing his senior staff objected, which was very unusual. And it was also unusual to me that he chose to call me and talk to me about it since we were not on the best of terms.

Q. Let's talk a little bit – a little bit about these types of contracts.

To create a contract and assign responsibility to an outside attorney, are there certain parameters and limitations?

A. So the outside counsel process was designed in order to protect and preserve the attorney general's office's constitutional and statutory duties to represent the state. So necessarily a grant of an outside counsel approval is a granting that in the first instance, those activities would have been within the course and scope of something the attorney general's office could do. If that makes sense.

Q. And are the scope of duties of the attorney general's office lined up with civil law? In other words, are they civil properties?

A. I mean, it's civil. There are civil parts of it. There's also the ability of the attorney general's office to assist prosecutors on requests.

Q. Okay.

A. If that's what you're asking.

Q. That's what I'm asking.

A. Okay.

Q. So talk with me for just a minute about how we get to prosecution. What has to happen? What has to happen for the attorney general's office to be able to prosecute legally?

A. Well, if the attorney general's office wasn't provided statutory authority by the legislature to have sole prosecutorial authority in the area, those sorts of questions are ones that come from a request by a constitutional district attorney or county attorney for assistance as a general rule.

Q. Okay. So can the district attorney limit the scope of the ability of the office to do that kind of work?

A. I'm sure they can. They pick and choose what they decide to send over and what they ask for.

Q. During all the years you were at the AG's office, have you ever seen the Office of the Attorney General hire outside counsel to handle a criminal item?

A. I don't recall hiring outside counsel to handle a criminal item.

Q. Are those large divisions within the office?

A. Some of them are larger than others, but we do have – we have prosecutors on staff, we have peace officers on staff.

Q. Okay. So there are qualified people within the attorney general's office to handle those types of things?

A. There's – yes.



Q. Okay. I want to talk about the contract in particular, the Cammack contract. Have you seen it? Have you been able to look at it?

A. I have seen it.

Q. All right. I want to talk about the contents of that. The limitations were provided on that contract, were they not?

A. Yes.

Q. Was there an addendum A?

A. The addendum A is generally the scope of work that the outside counsel is being requested. That's how it's set up in the form.

Q. Okay. And based on your research, what did that addendum A track? What language was that?

A. Can you show it to me, please, ma'am?

MS. BUESS: Stacey, 227, please. It's in evidence.

THE WITNESS: If I could see addendum A, please, ma'am.

MS. BUESS: We need addendum A, please. Oops. Thank you. There we go.

Q. (BY MS. BUESS) Do you recall looking at that language?

A. I have read this language before, yes, ma'am.

Q. And was that language tracked from the Travis County District Attorney's Office referral letter? Did you take a look at that?

A. It appears to be very similar.

Q. Okay. And is it a limiting type of language?

A. Meaning by its nature all scope of services are limiting in their language.

Q. This particular contract, though, does it give –

MR. BUZBEE: Your Honor, I hate to object. Can we get some foundation here? This is – she was not involved in this other than the phone call she just talked about. And we heard Ryan Vassar who drafted this. So this is all something she learned later, and she shouldn't be up there testifying about it.

Q. (BY MS. BUESS) Missy, do you have a lot of experience –

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) – in these contracts?

MR. BUZBEE: I'm talking about this particular contract, Your Honor. She just asked it again. This witness was not involved in the drafting of this contract.

MS. BUESS: This witness does not have to be involved in the drafting of the contract to give an opinion concerning it or to talk about it. That's not required under the law.

MR. BUZBEE: Moreover – thank you for that.

Moreover, Your Honor, now she's asking her to give some sort of legal opinion, which certainly she's not been proffered as an expert. They don't have any experts in this case.

MS. BUESS: She's a person who teaches. This is an area of her expertise. She's talked about the thousands of contracts that she's looked at and approved.

PRESIDING OFFICER: Let me settle this. I'm going to overrule.  
Continue.

MS. BUESS: Thank you, Mr. President.

A. Can you repeat that question?

Q. (BY MS. BUESS) Can you look at addendum A, and there's a limitation in there concerning the ability to do what? What is it authorizing Brandon Cammack to do?

A. Let me take a second to review it, please.

Q. Certainly.

A. The contract provides that pursuant to a request basically from the Travis County District Attorney's Office that the outside counsel will conduct an investigation under the authority of the attorney general's office of the criminal allegations contained in the complaint.

Q. Okay. It says to conduct a review, does it not, in the very –

A. It does.

Q. – first paragraph?

A. It does. A review and then –

Q. Of the allegations?

A. A review of the allegations. And then the third paragraph, conduct an investigation.

Q. Okay. Does that particular contract authorize prosecution of a case?

A. The last sentence in the contract: Exclude legal services relating to post-investigation activities including but not limited to indictment and prosecution.

Q. So it excludes that?

A. Correct.

Q. All right. I want to talk about this contract, this contract that you were consulted about by Ken Paxton himself. Is there a problem with Ken Paxton authorizing signing a contract like this to provide services when he's authorized him at least two weeks ahead of time to start providing those services?

A. I have never been made personally aware of when Ken Paxton signed this contract, so I don't think I can answer your question.

Q. So what I'm asking you is: If he had authorized Brandon Cammack –

MR. BUZBEE: Your Honor –

Q. (BY MS. BUESS) – two weeks earlier –

MR. BUZBEE: I'm sorry.

MS. BUESS: Let me finish my question, please.

MR. BUZBEE: There's no reason to yell.

Your Honor, I'm sorry. I have to object that counsel is putting facts that are not in evidence. The witness has already told us she has no personal knowledge. This is completely improper and I object.

MS. BUESS: She is an employee who's familiar with the procedures and whether or not things are proper or not. In fact, she's being consulted about it, so I think I'm entitled to ask her.

PRESIDING OFFICER: Overruled. Overruled.

MS. BUESS: Thank you.

A. Can you repeat the question, please?

Q. (BY MS. BUESS) Is there a problem if the contract was signed by Ken Paxton and he had authorized the services to be performed weeks ahead of time before that date of signature?

A. The contract should have an – in the first pages an effective date of the contract. And I don't have in front of me what those effective dates were, but the effective dates need to line up. It's not the time of signature, it's the effective date of the contract. But there's still the problem of the funding. It's unresolved.

Q. What if there's no date at all because it's not been put on there?

A. Then I would be speculating as to whether or not the contract was signed before the date of the effective date of the work.

Q. Okay. Assuming that your advice to General Paxton about his ability to sign it under that little provision –

A. Uh-huh.

Q. – would it be properly done if he did not provide a written waiver?

A. If he did not provide the written waiver required by the rules, then the procedures should have been followed.

Q. Okay. So you either follow the procedures or you have to sign it and give a written waiver as the attorney general, is that correct?

A. That's the process.

Q. All right. So without that written waiver, where are we?

A. It's nearly a violation of the process. It doesn't make it illegal; it just makes it a violation of the process.

Q. How about funding it, what does it do to that?

A. Without the proper written indicators to the controller, they're not going to pay the invoices.

Q. Okay.

A. Even if the money is there.

Q. The addendum A talks about a referral from the Travis County District Attorney's Office. If General Paxton had added a second referral and told Brandon Cammack just do the whole job, is there a problem with that, with a contract that's not authorizing the work to be done?

A. I don't know that I'm comfortable speculating to that.

Q. Uh-huh.

MR. BUZBEE: Then I object, Your Honor. The witness has admitted, thank you, that this would be all speculation.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) What are your thoughts on that?

MR. BUZBEE: Your Honor –

MS. BUESS: I'd like you – I'd like to let her finish the thought, as far as she's not rendering an opinion, but I'd like her thoughts on it.

MR. BUZBEE: Again, Your Honor, she just said this would be mere speculation, so this is improper.

PRESIDING OFFICER: Sustained. Sustained.

Q. (BY MS. BUESS) Are you familiar with the attorney applicants who applied for this particular contract?

A. I'm familiar with their names.

Q. Okay.

A. Do not know them.

Q. Was Brandon Cammack the qualified candidate?

A. I don't think I was ever asked to weigh in to that question.

Q. I'm not asking you that.

Having looked at all these contracts and you've said you have to have a qualified candidate for the job, looking at those two, was Brandon Cammack the qualified applicant for it? Was he the best choice?

A. It was not my decision to make who the best choice was.

Q. I'm not asking that. I'm asking your opinion. As you sit here today –

PRESIDING OFFICER: Asked and answered, I think.

Q. (BY MS. BUESS) Would it ever be in the best interest of the state to pay for a free investigation to a private citizen when there's no state interest involved?

A. You're hypothetically asking me if it's –

Q. I am.

A. – proper to execute an outside counsel at zero dollars for an investigation where there's no state interest involved at all?

Q. Correct.

A. I'm not sure it's possible to execute an outside counsel contract where there's no state interest involved because the ability to contract with outside counsel derives from the ability of the attorney general's office to represent a particular client in a particular matter.

Q. We're talking about a cost, right? We're paying somebody other than an in-house attorney from the OAG to do the work requested, correct?

A. Statute – the Government Code at 402-0212 that describes outside counsel talks about the full-time employees of the agency don't count against as being outside counsel. It's when you hire a counsel that's not employed by the state.

Q. So my question is: When you're paying someone like Brandon Cammack outside of the state to provide services that benefit only one individual for a job that is not in the best interest of the state, do we have a good contract?

MR. BUZBEE: I'm sorry, Your Honor. Objection. Vague. The question is completely vague.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) You said that in order for a contract to be approved and signed from the office of attorney general for an outside counsel, the whole contract has to be in the best interest of the state, right?

A. Yes. I mean, that would be ideal. It's not because that comes from the appropriations act, but it is – the state should not perform acts with taxpayer dollars that are not in the best interest of the state, in my opinion.

Q. Right. And so if it's – if it's a job that's only going to benefit a citizen and has nothing grounded within a state interest, that's not a contract that should be approved, is it?

MR. BUZBEE: Objection, leading.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) Is that the type of contract that we want?

MR. BUZBEE: Objection.

Q. (BY MS. BUESS) That we should be approving?

MR. BUZBEE: I'm sorry. I don't know who "we" is, but objection. Vague.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) Let's talk about September 28th. That afternoon after you spoke with Ken Paxton about this contract, did your phone start blowing up?

A. I talked to General Paxton, I believe – I believe those phone calls were in the evening on the 28th, not in the morning.

Q. And who –

A. And so –

Q. Who were you getting the phone calls from?

A. So when General Paxton called me, because he hadn't looped me into his world in a while, I did call Jeff Mateer before I called him back, and Jeff relayed –

MR. BUZBEE: Objection, hearsay.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) Later on that evening, who did you speak with?

A. Mr. Mateer.

Q. Did you speak with anyone else other than him?

A. After I spoke to General Paxton, I don't believe so. It was late.

Q. Okay. Following day, did you receive some phone calls from other people within the office?

A. I did.

Q. Who did you hear from?

A. I think there was sort of a all – there was all involved deputies call with a number of the deputies that's been previously reported on that I was on the telephone for.

Q. Okay. And how long were you on the phone? What –

A. Hours.

Q. – time frame?

All right. How many of you were on that call?

A. I mean, I would – I would say six to eight of us at various times, sometimes up to ten. And people were in and out of the call.

Q. What was going on?

A. There had been some subpoenas issued by Mr. Cammack that some of the staff had known about and reported, and the deputies were getting together with Mr. Mateer to discuss those facts and the circumstances around what was happening at the time.

Q. Okay.

A. With him.

Q. Was Nate Paul at the center of that conversation?

MR. BUZBEE: Objection, hearsay.

MS. BUESS: Topic – I'm not asking her to repeat what was said.

PRESIDING OFFICER: Overruled.

Q. (BY MS. BUESS) Was Nate Paul the topic?

A. Yes.

Q. Did you learn about several things that had been going on in the office?

A. Yes.

Q. Any idea why you were not aware of those things before that date?

A. I believe that due to COVID, everyone being home and not on the same floor working together and people coming in and out on different days of the office in the middle of the pandemic, we were not – we were not all together at that time as a team in the same place at the same time. And so there wasn't complete awareness like there usually would have been of what each deputy was working on with relation to Mr. Paul and General Paxton.

Q. So as a result of that long phone call with the group, did you come to – I'm not asking you to repeat, but did you come to learn about those things that had been happening within the office?

A. I did.

Q. And what was the connecting theme of those things?

A. Mr. Paul.

Q. All right. As a person who's spent so many years worrying about ethics and how things should be managed within a government office, what were your thoughts about what was going on?

A. I was surprised at the level of involvement from the attorney general with one particular person that reached across so many levels of the executive staff all related to one person.

Q. In the course of your career, have you ever experienced something like that before?

A. Not related to a particular person as opposed to a particular topic.

Q. Okay. Tell us what your concern was ethically with what had happened.

A. I learned that the contract was executed even though the conversations I was having with General Paxton, he never told me that the contract was already executed. We were approaching the conversations as if it was not a fait accompli and had not been done. So I was very surprised by that, and I was surprised by how many different things related back to a use of resources by the agency for one person.

Q. So what's the big deal with that? Who cares?

MR. BUZBEE: Objection, Your Honor. I mean –

Q. (BY MS. BUESS) What's the deal?

MR. BUZBEE: – I don't know what that is. That's not a question. That's not a proper question. I object to it.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) What's the problem with all of those resources going to one person?

A. Besides it being unusual, it was unusual, and there was a lot of speculation about the underlying reasons during that phone call.

Q. Okay. Was there any resolution with that phone call? Was there a decision to do something?

A. On the 29th?

Q. Yes.

A. There was not.

Q. How about the 30th, the next day?

A. There was.

Q. And what did you decide to do? What did the group decide to do?

A. The group felt like some of the group felt like they had an obligation to report to law enforcement.

Q. Why would they do that? What was – what was the problem –

MR. BUZBEE: Objection, speculation. She's asking about people we've already heard from tell us what they were thinking. We've heard from them.

MS. BUESS: I'll reword it.

PRESIDING OFFICER: Sustained.

MS. BUESS: I'll reword it.

Q. (BY MS. BUESS) And at this point in time, what was the problem with what had been going on? What was the concern in your mind?

A. The concern in my mind was the immense amount of effort that was being put to the problems of one particular individual when so many of the executive staff disagreed with that. And I'm a consensus builder, and there was not consensus on how to move forward on these things.

Q. Was it the degree of that –

MR. BUZBEE: Objection, leading.

PRESIDING OFFICER: Sustained.

Q. (BY MS. BUESS) When you looked at all of the events that you learned about and you looked at the people that had been involved with it, did you, in your mind, figure out how much of the office had actually been dedicated to doing work for Nate Paul's benefit?

A. I did.

Q. What kind of number did you come up with? How did you – how did you describe it?

A. I think at the time I mentally came up it was six – more than 50 percent of the deputies' time of our entire executive staff.

Q. Have you ever seen anything like that in your career?

A. I had not.



Q. All for the benefit of who?

A. I think – I don't know that I can answer who it was for the benefit of. What I can answer is the commonality –

MR. BUZBEE: Objection.

A. – and the thread –

MR. BUZBEE: Sorry, ma'am. The witness just told us she can't answer the question. Next question.

Q. (BY MS. BUESS) And what was –

PRESIDING OFFICER: Sustained. Sustained.

Q. (BY MS. BUESS) What was the commonality of it that you were about to talk about?

A. Nate Paul was the commonality.

Q. All right. And the other – the other commonality would be who directed it. And who was that?

A. Attorney General Paxton.

Q. When the attorney general's office does something that totally violates its long-time policy, for example, something like open records and not disclosing information for pending law enforcement, you know, honoring the law enforcement exception, and not releasing documents that have to do with ongoing criminal investigations, what's the effect? What kind of things happen to the office and to the public?

MR. BUZBEE: Your Honor, that is a completely improper question. This person is not even involved in public information at the office. Moreover, it's – the question – it is three or four different questions.

PRESIDING OFFICER: Sustained.

MR. BUZBEE: It's improper.

Q. (BY MS. BUESS) Do you have experience in open records?

A. I do. I've – I was the public information coordinator for the Office of the Attorney General. I was the division chief of the division. And at the time that you're asking about, I was the supervisor of the public information officer for the Office of the Attorney General who had briefed that particular ruling to the open records division.

Q. So when you violate the policy, the long-standing policy to protect that type of information, what does it do?

MR. BUZBEE: Your Honor, that assumes – she just said she approved this, and now her – the lawyer is saying that she violated some policy. That's improper.

MS. BUESS: That's incorrect. I've not said anything like that.

PRESIDING OFFICER: Overruled.

Q. (BY MS. BUESS) What's the long-term effect? What happens? What's the concern?

A. The open records division changes long-standing precedent in their rulings, it can create confusion and it is a proactive statement of precedent on other rulings in that area.

Q. And when it's broken, what does that mean, that precedence gone?

A. All the governmental agencies have to adapt to that new precedent across the board with every request that's similar.

Q. Did you go with the others to the FBI?

A. I did not.

Q. Why not?

A. I had retired, and so I did not. I was invited to the meeting, and I was three hours away, and the meeting – I was told that unless you came in person, don't come.

Q. Did you have an occasion later on to go talk with the FBI about your observations?

A. I was subpoenaed by the grand jury to talk about my observations in 2021.

Q. Okay. And did you do that?

A. I did.

Q. Did you cooperate?

A. I complied with a lawful subpoena.

Q. And your name is not on the whistleblower letter, is that correct?

A. I am not a whistleblower.

Q. Why is that? Why did you not sign the letter?

A. Because I had – the time all this was happening, I had already submitted my notice to retire and my retirement was imminent. So for lack of a better word, I was a quitter. I had quit.

MS. BUESS: Pass the witness.

PRESIDING OFFICER: Mr. Buzbee, your witness.

MR. BUZBEE: Yes, Your Honor. Thank you.

### **CROSS-EXAMINATION**

BY MR. BUZBEE:

Q. Hello, ma'am.

A. Mr. Buzbee.

Q. You look like you're a little nervous.

A. I'm not nervous.

Q. Feeling good?

A. You know, I don't think anybody particularly wants to be here, Mr. Buzbee.

Q. Let me ask you something. You said you appeared in front of the grand jury?

A. I was subpoenaed to appear at the grand jury.

Q. And that was in 2021?

A. Yes, sir.

Q. And it's 2023 now?

A. Yes, sir.

Q. And that you told them everything you told us here?

A. I answered the questions –

MS. BUSS: I object. If she's appeared before grand jury, she cannot talk with us about what she testified to.

MR. BUZZBEE: She can tell me that if that's the case.

PRESIDING OFFICER: Sustain.

Q. (BY MR. BUZZBEE) So suffice it to say your story hasn't changed since 2021, right?

A. Can you explain to me what story I'm talking about?

Q. I'm wondering why the so-called whistleblowers who reported this to the Travis County DA's Office and to the FBI and maybe others and you who spoke to apparently the FBI or the grand jury at some point, why nothing's happened even though every single thing that we've heard in this impeachment has already been fully vetted. Can you tell me, has there been an indictment of our attorney general?

A. So your question is –

Q. Has there been an indictment of our attorney general?

A. Not that I'm aware of.

Q. Okay. You think that Laura Olson drives a red car. Is that what you told us?

A. I did not say that. I said the person at the Galaxy Cafe that I saw drove a red car. I've never said it was Laura Olson for sure.

Q. Why are you even telling us about somebody that drives a red car at the Galaxy Cafe when Laura Olson never owned a red car?

MS. BUSS: Objection. That assumes facts that are not in evidence.

PRESIDING OFFICER: Sustained.

Q. (BY MR. BUZZBEE) Do you know whether Laura Olson has ever owned a red car?

A. Do not.

Q. Do you know what kind of car Laura Olson would have been driving back in that time frame?

A. I do not.

Q. Okay. So you just got up here in front of all these people, people watching at home, our distinguished jury and was telling us about some unknown person driving a red car at Galaxy Cafe and you don't even know who that was, do you?

A. That would be correct.

Q. Why the devil are we even hearing about the Galaxy Cafe? You didn't know who that person was?

A. I never said that I did.

Q. How long did you work with these people over here to prepare yourself for your testimony?

A. I didn't work with them. I was asked to go in front of the house managers and interviewed as well as talk to you and your staff.

Q. There was – was there – are you sure there was some sort of attorney general's conference in San Antonio in that time frame?

A. The best of my recollection.

Q. There wasn't. I guess I'm trying to figure out how good is your memory?

A. Is that a question?

Q. Yeah. Not very good, is it?

A. No, sir, it's not.

Q. That's what I thought.

Ken Paxton was your boss before you retired, right?

A. Yes, sir.

Q. Your – you told us about all this teaching you've done and CLEs, continuing legal educations, right?

A. Yes, sir.

Q. You – you've taught students, you've taught other lawyers, right?

A. Yes, sir.

Q. And you sat up here and you were trying to explain to us contracts and how the process works, right?

A. Yes, sir.

Q. And your boss called you because he wanted to legally do the right thing, and you provided him advice, didn't you?

MS. BUSS: Objection. Calls for speculation on the part of this witness.

PRESIDING OFFICER: Sustained.

Q. (BY MR. BUZBEE) He wanted to know how to properly sign an outside counsel contract, didn't he?

MS. BUSS: Objection. Calls for speculation.

MR. BUZBEE: It's exactly what he told her.

MS. BUSS: Objection.

PRESIDING OFFICER: Overruled.

Q. (BY MR. BUZBEE) He wanted line and verse. What did he call you? Missy? Is that what he called you?

A. Yes, sir.

Q. Missy, look, I'm having a disagreement with this Penley fellow. He's refusing to do his job, he's insubordinate. I need to know under the statutes if I have the authority, the legal authority, to sign a contract. And you gave him advice, didn't you?

A. Yes, sir.

Q. And you said, Ken, you do. Isn't that right?

A. Correct.

Q. Why are we here? The guy did everything he was supposed to. He had some insubordinate people in his outfit. So –

MS. BUSS: I object. Counsel is testifying. Not asking questions.

MR. BUZBEE: That is a question. I'm not finished.

PRESIDING OFFICER: Sustained.

Q. (BY MR. BUZBEE) You knew that Penley refused to follow the procedure and sign off on the contract right? You knew Penley said, I ain't going to sign it, right?

A. I knew Penley said he did not want to sign it, correct.

Q. The only person in the office who has authority to sign the contract himself, unless designated, is Ken Paxton, isn't that right?

A. That is correct.

Q. Let's make sure we're all clear on that. This bureaucratic process that this person signs and this person signs and this person signs, all of their power and authority to sign a contract comes from the elected Attorney General Ken Paxton, isn't that true?

A. Subject to the appropriations act, the statutes, and the rules that we adopted, correct.

Q. That's right.

A. Yes, sir.

Q. So – and we saw Mr. Penley's notes, if he said in his notes: Missy told Ken he had the authority to sign the contract –

MS. BUSS: Objection. That violates the rule. Sorry. That violates the rule.

MR. BUZBEE: You keep objecting. This is a document that's in evidence, Your Honor. We all looked at it.

PRESIDING OFFICER: Overruled.

Q. (BY MR. BUZBEE) When we looked at Mr. Penley's notes –

MS. BUSS: I object. I object –

MR. BUZBEE: You can object again, but it's in the evidence, Your Honor. You saw it. We all saw it.

MS. BUSS: I object to him testifying about a document that this witness has not established that she's ever even seen. That's improper.

MR. BUZBEE: That's not right, Your Honor. When I asked her if Penley's notes are correct, that is Missy told Ken –

MS. BUSS: I am asking for a ruling, Judge.

MR. BUZBEE: – he had the authority to sign a contract, that's an incredibly appropriate question.

PRESIDING OFFICER: Sustained.

Q. (BY MR. BUZBEE) Now, you did tell Penley that you had told Ken he had the authority, right?

A. I told everyone on the phone call, then Penley was one of the members of the phone call, correct.

Q. Let's make sure we all get that right.

And your job at that point in time when you told Mr. Paxton that was?

A. His chief of staff.

Q. The chief of staff of the attorney general's office of the state of Texas advised her boss, the attorney general, that it was okay to sign an outside counsel contract, correct?

A. I told General Paxton that it was legal for him to sign the outside counsel contract, correct.

Q. And then later when everybody was scrambling around, you told his entire executive staff that you had told him that, right?

A. I was completely honest with them, yes, sir.

Q. And they still went to the FBI, didn't they?

A. They, in fact, went to the FBI.

Q. That's right.

Are you somebody that goes to church?

A. I'm not sure that's an appropriate question, is it? My personal beliefs.

Q. Well, it is when you're telling us about the ethical, legal, and moral implications of an affair. Remember telling us all that?

Remember saying that? Maybe – I think you said political, ethical, legal implications of an affair. Remember saying that?

A. I remember giving the attorney general my thoughts on those topics.

Q. Okay. So I won't get your thoughts on the topic.  
You ever met somebody that's perfect?

A. Never, sir.

Q. Okay. Was there only one person that was perfect?

A. In my belief system, there is only one entity that's perfect.

Q. All have sinned and fallen short of the grace of God, right?

A. I would agree with that, sir.

Q. Yeah. Sometimes people make stupid mistakes, correct?

A. Yes, sir.

Q. Sometime – I mean, imagine if we impeached everybody here in Austin that had had an affair, we'd be impeaching for the next hundred years, wouldn't we?

A. I don't think I should answer that question in this chamber particularly. I've been around a long time, Mr. Buzbee. I'm not going to go there with you.

Q. I'm quite sure you've seen a lot, have you not?

A. Indeed.

Q. Yeah, just because somebody has an affair doesn't mean that they're a quote, criminal, does it?

A. I would not associate that directly.

Q. Yeah. I mean, that would be incredibly hypocritical, would it not, if somebody said this guy is a criminal because he had a marital indiscretion. That would be really hypocritical, would it not?

A. I would not say that.

Q. Yeah, you would never say something like that, would you?

A. I would not.

Q. You even sent in those – when you were texting back and forth with Ken Paxton, your boss, you sent him the legal authority that gives him the authority to sign contracts, right?

A. Correct.

Q. Okay. And you also referred him to the attorney general's website, didn't you?

A. With the procedure, yes, sir.

Q. Yeah. So you not only told him over the phone, but you also sent him the exact statute and the website, the AG's website, right?

A. I did.

Q. Okay. Did you ever figure out how the grand jury subpoenas were actually obtained by Mr. Cammack?

A. I did not.

Q. Okay. You know, of course, he didn't have to appear in front of any grand jury. Right?

A. If you told me that, then, you know, I'll take your word for it. I didn't dive into that. Again, I told General Paxton that the contract was legal to sign.

Q. Okay.

A. But not – couldn't be funded. He had a funding issue.

Q. Okay. We'll talk about the funding issue.

The funding issue is something you – you know, of course, Cammack didn't get any money?

A. I do not know that.

Q. Okay.

A. But you're telling me Cammack didn't get any money.

Q. Young man did some – a lot of work, didn't get paid?

MS. BUSS: I object to defense counsel testifying.

Q. (BY MR. BUZBEE) I'm asking if you knew that –

MS. BUSS: I object.

PRESIDING OFFICER: Sustained.

Q. (BY MR. BUZBEE) Did you know that, that he never got paid?

A. I did not know that until you just told me.

Q. Okay. Let me ask you: Is – would it be an appropriate process for the attorney general, before you everyone try to go through the executive approval memorandum process, the – that's a bureaucratic process, is it not?

A. Correct.

Q. Okay. It's a bunch of procedural rules that have no force in law, right?

A. It's documentation that has – not the legal document.

Q. Right. You know, oh, got you, you didn't follow the procedure in the office. The AG can decide what the procedure in the office is, can he not?

A. He can waive the procedure in writing, yes, sir.

Q. He can waive it verbal. He can do what he wants as long as he's – he believes he's serving the people of Texas, isn't that right?

A. Well, he agreed to the rules that said it would be in writing.

Q. And he can change the rules?

A. If he goes to the Texas Administrative Code process in this instance, he could change the rules, yes.

Q. Let me just ask this, though, so we're all clear: Can the AG of our state send an email to the controller? Is there a controller in the office? Somebody in charge of the money?



A. It's – there is a controller in the office, and then there's the Texas controller.

Q. Yeah, I'm not – I'm talking about the internal one. Who was the internal controller in the AG's office?

A. Michele Price.

Q. Can the AG send an email to the controller within the office and say, set aside 50k or 25k for a contract I'm going to sign?

A. He can.

Q. Okay. Is that something that he has the authority to do?

A. Yes.

Q. Okay. Does anybody else have that authority?

A. The appropriations act in Article IX, Section 16, says that the communication needs to go to the controller. So that communication would need to be forwarded to the controller to prove that the attorney general felt it was in the best interest of the state.

Q. The attorney general. No one else?

A. The appropriations act uses the words "attorney general," and as you correctly stated, those kind of things he can delegate, but if he didn't delegate, it says attorney general, yes, sir.

Q. If he did not delegate, it would be illegal, true?

A. I don't understand the question.

Q. Let's say that one day Mr. Penley decides that he wants to set aside 50k to sign an outside counsel contract. That would be illegal, wouldn't it?

A. I don't think it would be illegal. I don't think anyone would do it for him. The controller would be following the procedures.

Q. You think so?

A. I do.

Q. Okay.

A. I would say staff –

Q. Let's look in evidence. We've already seen Exhibit 361.

MR. BUZBEE: Can we put it on the screen for the witness, Erick? You help me out here, Erick?

Everybody likes Erick, Your Honor.

PRESIDING OFFICER: And Stacey.

MR. BUZBEE: And Stacey. And Stacey.

If you don't mind, Erick, go to Page 4 of Exhibit – AG Exhibit 361.

Q. (BY MR. BUZBEE) You see that there in front of you: Jeff Mateer is authorizing \$50,000 to be set aside for a guy named Johnny Sutton.

Do you see that?

A. I do see this.

Q. Did you know that was going on?

A. No, sir.

Q. Did they tell you they were doing that?

A. No, sir.

Q. Do you think that that the first assistant has the authority to hire outside counsel be it with an email?

A. I do.

Q. You do.

But Ken Paxton doesn't?

A. I believe that Ken Paxton could have sent a very similar email if he did about the funding. I know he would have achieved the same result, if he did. You may show me that documentation, if you'd like. I don't have – I'm not aware of it.

Q. Is the – I thought we had this real strict bureaucratic procedure to hire outside counsel. Remember you telling us about all that?

A. We do.

Q. Okay.

A. And in that procedure the first assistant has been delegated that authority.

Q. No. Ken Paxton did not delegate any authority to hire Johnny Sutton. No. You know that's true?

MS. BUSS: I object. That's a misstatement of what she said.

Q. (BY MR. BUZZBEE) Do you know whether Ken Paxton –

MS. BUSS: Object.

MR. BUZZBEE: I'm going to rephrase the question.

PRESIDING OFFICER: Sustain.

Rephrase.

Q. (BY MR. BUZZBEE) Do you know whether Ken Paxton, the boss, authorized Jeff Mateer, the subordinate, to set aside \$50,000 for Johnny Sutton?

A. I have no personal knowledge of Johnny Sutton.

Q. Okay.

MR. BUZZBEE: Pass the witness.

PRESIDING OFFICER: Redirect.

MS. BUSS: No, sir.

PRESIDING OFFICER: Are – both sides can excuse the witness?

MR. BUZZBEE: We are finished with this witness.

MS. BUSS: Yes. Yes.

PRESIDING OFFICER: You may step down, thank you.

THE WITNESS: Am I excused?

PRESIDING OFFICER: You are excused.

THE WITNESS: Thank you, sir.

PRESIDING OFFICER: She asked is she subject to recall?

MS. BUSS: No.

PRESIDING OFFICER: Subject to recall?

MR. BUZBEE: No, Your Honor. I think we're done with this one.

PRESIDING OFFICER: Okay, thank you.

Who's your next witness?

MR. DONNELLY: Your Honor, the House calls Gregg Cox.

PRESIDING OFFICER: Bailiff will bring in Gregg Cox.

MR. DONNELLY: And, Mr. President, if I may in an attempt to hopefully expedite the process, I have one piece of evidence that I intend to show while Mr. Cox is on the stand. It is Exhibit No. 249 whose affidavit attached is No. 640. It's a video before the Senate finance committee from February 10th, 2021. It is a government record, and it is authenticated by the proper affidavit associated with it. We'd offer the same into evidence.

PRESIDING OFFICER: You're going to submit that, right?

MR. DONNELLY: I'm offering it as evidence, Your Honor, because I intend to play it with the witness.

PRESIDING OFFICER: It has –

MR. DONNELLY: To expedite, I was hoping to get any objections taken care of beforehand.

PRESIDING OFFICER: Do you have any objections?

MR. BUZBEE: No, Your Honor.

(Witness enters)

PRESIDING OFFICER: Mr. Cox, raise your right hand.

I do solemnly swear or affirm that the evidence I give upon this hearing by the Senate of Texas impeachment charges against Warren Kenneth Paxton, Jr. shall be the truth, the whole truth, and nothing but the truth, so help me God.

THE WITNESS: I do.

PRESIDING OFFICER: Please take your seat. Court will admit into evidence Exhibit 249 and Exhibit 640.

(HBOM Exhibits 249 and 640 admitted)

MR. DONNELLY: Thank you, Mr. President. May I proceed?

PRESIDING OFFICER: Yes, you may.

GREGG COX,

having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

BY MR. DONNELLY:

Q. Good afternoon, sir.

A. Good – good afternoon.

Q. I'm going to need you to speak a little bit closer to the mic. I'm never really told that nobody can hear me, but I know that acoustics are not great, so please step forward – or slide forward to make sure we can hear you.

A. Very good.

Q. Would you please introduce yourself to the honorable Senators?

A. Hi. My name is Gregg Cox.

Q. And tell us, sir, how you're currently employed?

A. I am currently the first assistant with the Hays County District Attorney's Office in San Marcos.

Q. Could you give us, please, a quick briefing of your history, professional, and perhaps even law school that led you up to this point?

A. Yes. I attended law school at the University of Texas. And actually during my first year of law school, I worked here at the Texas Senate. Took a year off from law school, worked for an accounting firm. And then when I went back during my second year, I got a job as a law clerk at the Travis County District Attorney's Office in the Public Integrity Unit.

Upon graduation and passing the bar, I was offered a position as an assistant district attorney, and I ended up staying with the Travis County District Attorney's Office for 30 full years.

Q. After leaving the district attorney's office in those 30 years of service, did you go to another government or quasi-government job?

A. I did. I initially went and was general counsel in 2021 at the Texas Civil Commitment Office, a small state agency that oversees people that have been civilly committed as sexually violent predators. I left there and went to the Texas District and County Attorneys' Association where I was assistant director of training. And then in January of this year, I became first assistant in the Hays County office.

Q. I appreciate that, sir. Thank you.

During your time at the Travis County District Attorney's Office, you indicated you were director of special prosecutions division. Did that include investigations into public corruption?

A. Yes, it did. I served as director of special prosecutions, which included the state funded Public Integrity Unit while it existed for 15 years, the end of 2021 to the end of 2016.

Q. I figure you might get some questions about that, but I'll let my colleagues take care of that.

Let's move on then to your time at the district attorney's office towards the end, who was the district attorney – not the last elected district attorney that you served under, but second to last? If I'm asking that right?

A. So –

Q. Let me ask it a better way. Do you know Margaret Moore?

A. Yes.

Q. Okay.

A. 2017 through 2020, Margaret Moore was district attorney. During her administration, I was serving as director of operations.

Q. Very good.

Did she ask you at some point to speak with her – or let me ask you this: Did you flag a concern for her related to a possible open records request?

A. In October of 2020, one of my responsibilities was overseeing public information. I became aware of an open records request that the office had received related to Ken Paxton and Nate Paul. I didn't know what was going on. I asked a question about that. She briefed me on some things that had been going on that I had been unaware of and then asked me to start joining into some meetings with some individuals related to that.

Q. Is it fair to say that up unto that point you had not heard the name Nate Paul in relation to the Travis County District Attorney's Office?

A. That's correct.

Q. Very good.

Then who did you speak with at Ms. Moore's request?

A. Initially, I spoke with a couple of lawyers that represented the Mitte Foundation.

Q. And let me back up. I poorly phrased that question, as I often do.

Back that up to say, Ms. Moore, you indicated, wanted to speak with you –

A. Yes.

Q. – about this request. Did you speak with Ms. Moore, and was there anybody else present?

A. I spoke with Ms. Moore and Don Clemmer, I may have spoken with Mindy Montford, although I can't recall that for certain.

Q. And based on what you learned during that conversation, was there a next step that you took?

A. I drafted up a real brief overview of potential criminal offenses that could be relevant to the situation that they briefed me on, and then we set up a series of meetings to gather more information.

Q. Do you recall approximately when it was that you drafted this initial – I'm going to call it a skeleton outline?

A. If I am recalling the dates correctly, the initial conversation was on October 21st of 2020. I drafted the first memo on October 23rd, which was Friday of that week. And then Monday, Tuesday, and Wednesday of the following week, we had a series of meetings. And then I believe it was on October 28th that I drafted a more thorough memo about the situation.

MR. DONNELLY: Your Honor, if I may approach the witness after I ask the following question?

Q. (BY MR. DONNELLY) I'm going to show you what I'm – I don't intend to introduce into evidence but would ask if you would rely on your memo to refresh your memory?

A. Sure.

MR. BUZBEE: Objection. Your Honor, he hasn't said that he doesn't remember anything yet.

MR. DONNELLY: Fair enough.

MR. BUZBEE: He can't sit up there and testify from a document that's clearly hearsay.

MR. DONNELLY: Your Honor, I'll rephrase. I apologize. Thank you. And, Mr. President, I keep saying "Your Honor." Force of habit.

PRESIDING OFFICER: Whatever is comfortable for you.

MR. DONNELLY: Thank you, sir.

Q. (BY MR. DONNELLY) Do you have a full recollection of each and every item that you outlined in your October 28, 2020 memo?

A. I have a reasonably good recollection of it.

Q. Do you feel that looking at that would assist and aid you in your testimony in order to provide comment to the ladies and gentlemen of the jury and not waste a lot of time?

A. I do.

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

MR. BUZBEE: Your Honor, may I, again – and, again, I'm all about saving some time, but this is not proper to give him a document that he hasn't said – he hasn't asked a specific question about do you remember this, remember that. You don't just refresh a recollection with an entire document. That's not how it works.

MR. DONNELLY: Your Honor, respectfully, I've yet to hear a single objection on this issue from Mr. Buzbee, other than his complaints about it. I will proffer to the Court, if I may, sir.

MR. BUZBEE: It's hearsay. Not allowed.

MR. DONNELLY: If I may, sir – if I may, sir. Thank you. I've allowed you to continue your objections, and I ask you to give me the same decency.

Your Honor, this witness is testifying that he created a report. He has testified here today that he doesn't have full memory of everything contained in that report. And, Mr. President, he has said that it would assist him in providing testimony to the jury.

PRESIDING OFFICER: Overrule the objection.

MR. DONNELLY: Thank you.  
May I approach, Mr. President?

PRESIDING OFFICER: Yes, you may.

MR. DONNELLY: I hope I'm not the only one that's ever happened to because my wife will take care of me later on.

Q. (BY MR. DONNELLY) Sir, tell me after your initial meeting with Margaret Moore and Mr. Clemmer, what steps did you take, if any?

A. So the initial conversation, I was provided a briefing of some facts that they knew at that point. I then went and looked at some open source information to gather some additional facts, and I drafted an earlier version of this memo that did not include any fact summary. It only included an outline of potential criminal offenses that might be avenues of investigation.

I provided that to Ms. Moore on Friday, the 23rd. And then we had the series of meetings that I referenced a moment ago. And I drafted this memo after that series of meetings.

Q. Do you recall the individuals who you spoke with? And I'm not asking you what they said, just the identity of those individuals.

A. Yes. As I started mentioning a little bit ago, two attorneys from the Mitte Foundation, however you say that. Then we had a meeting that Monday afternoon, a video meeting over Zoom with Mr. Mateer. The following day we had a telephone conference call with Mr. Maxwell. And then the next day, Wednesday of that week, we had a rather lengthy conference call with Mr. Penley.

Q. Then did you summarize – did you summarize those facts as you knew them within this report that I provided to you, which you had drafted around October 28th?

A. Yes. I took detailed notes. And then I wrote this fact summary and the rest of the memo after that.

Q. Very good.

And, again, I'm not going to go into you about the specifics in your report. You're here to testify about your memory.

So let me ask you: As a result of your conversations – let me back that up.

Would you call what you did an investigation?

A. I would call it a preliminary investigation.

Q. Would it be fair to describe it as a limited investigation?

A. Yes.

Q. So in this preliminary limited investigation, you spoke with multiple individuals. And were you able to identify in your mind possible criminal offenses?

A. Yes, I was.

Q. And who would have been the subject of the possible criminal offenses?

A. Primarily, Ken Paxton. But there were other individuals that were also identified as potential suspects.

Q. Very good.

I'd like to ask you which offenses you identified, and I'm going to ask you one by one to just go slowly.

Could you tell me, please, what you believe the first potential offense you identified was?

A. Potentially bribery.

Q. Bribery.

What else did you identify?

A. Accepting a gift to a public servant.

Q. Very good.

Next?

A. Official – abuse of official capacity under 39.02 of the penal code, which has two different ways of committing the offense. One is misusing something of value belonging to government for an improper purpose. Second part is violating a law relating to your office or employment.

And I believed that there were commissioned – there were potential offenses under both of those sections.

MR. DONNELLY: Ms. Manela, could I please ask you to bring up on the screen the two – the three potential criminal offenses that have been identified?

MR. BUZBEE: Objection, Your Honor. We all know that Ken Paxton's not been charged with anything. This is completely improper. He – possible – possible criminal violations. This is completely improper.

MR. DONNELLY: Your Honor, this information goes directly to rebut inferences provided by the defense team concerning any possible investigation that may have occurred.

Additionally, it goes specifically to articles of impeachment regarding potential abuse of power, potential bribery. Many of the other ones we're about to elicit from this witness, Your Honor.

MR. BUZBEE: May I be heard one further time, Your Honor?

Imagine that it would be proper in a court for somebody to come here and say he's possibly did this, possibly did that, possibly did this. Incredibly improper. That's pure speculation. He hasn't been charged with anything. And even if he were charged, he'd still be innocent.

MR. DONNELLY: Your Honor –



MR. BUZBEE: So this is completely improper, and I object to it because it's speculation.

MR. DONNELLY: Mr. Buzbee, I apologize for interrupting you.

If I may, Your Honor, just briefly. This witness is here to testify to his perceptions, his opinions. They are opinions that can be challenged. He is a lay witness under rule 701. And he is using his information and rationally based on his perception is providing opinions which would be helpful to the jury to understand a fact in issue. He is available to be cross-examined by Mr. Buzbee who I'm sure will take him on cross-examination and test his credibility.

MR. BUZBEE: He hasn't responded to the objection, which is this is all speculation. I mean, he could say that about everybody here. Possible this, possible that. That's why as the gatekeeper the Court can't allow it.

MR. DONNELLY: And, Your Honor, again, I've responded directly to it as a rule 701 lay –

PRESIDING OFFICER: Okay. Hold it.

MR. DONNELLY: I apologize.

PRESIDING OFFICER: I got it.  
Overrule the objection. Go ahead.

MR. DONNELLY: Thank you.  
Ms. Manela, if you would, please.

Q. (BY MR. DONNELLY) I bring up on the screen – I just want to make sure these are three that you have identified here in court. Is this an accurate and correct summary of the testimony you've provided up to this point?

A. It is.

Q. Please, sir, the next potential offense that you've identified?

A. We were also concerned about some election code violations if certain factors came into play about how money may have been transmitted or handed over. And along those same lines, money laundering under 34.02 of the penal code.

Q. Money laundering is listed now on here. Is that accurate – an accurate summary of what you've stated?

A. That is.

Q. Very good.

What is the next offense that you identified?

A. Tampering with a government record and possible perjury related to personal financial statements filed under Chapter 572 under the Government Code.

Q. And, Mr. Cox, I'll ask you: As you turn to the side, just make sure to keep your voice up so we can all hear you.

A. Yes.

Q. Please, sir, what's the next one you identified as a potential offense?

A. Coercion of a public servant under 36.02 of the penal code.

Q. And, again, what's showing up on the screen, does that accurately reflect the testimony you provided?

A. It is.

Q. Next offense?

A. Official oppression under 39.03 of the penal code. And retaliation under 36.06 of the penal code.

Q. And, again, those two that have just popped up on the screen, do those accurately reflect your testimony?

A. Yes.

Q. Next offense that you potentially identified?

A. We discussed whether there could be under penal code 15.02 of the penal code or under penal code Section 71.02, either a criminal conspiracy to commit any of those offenses, including the ones that haven't been put on the screen that I mentioned or engaging in organized criminal activity with connection to these offenses.

Q. Was there also – was there also an identification of a potential Government Code section violation?

A. Yes. Chapter 572 of the Government Code not only has the financial disclosure rules, it also has standards of conduct for state employees in Subchapter C. And there was what appeared to be a fairly clear violation of one of the provisions of that section.

Q. Sir, the information that's displayed on the screen now, is this an accurate summary of the – of your testimony here today specifically as to the potential offenses that you personally identified?

A. Yes, it is.

MR. DONNELLY: Your Honor, I've marked for identification purposes Exhibit No. 660, which is the entirety of what is shown on the screen. And I would offer the same into evidence as summation.

PRESIDING OFFICER: It is admitted into evidence.

(HBOM Exhibit 660 admitted)

MR. DONNELLY: Thank you, Your Honor.

PRESIDING OFFICER: Did you object –

MR. BUZBEE: I was going to, Your Honor.

PRESIDING OFFICER: I'm sorry. Excuse me.

MR. BUZBEE: Why don't we –

PRESIDING OFFICER: I mean, I thought you had already allowed it earlier, and it had not been admitted. So state your objection.

MR. BUZBEE: Why don't we write on there that – accurately reflect the testimony of potential or possible instead of just putting the statutes on there. He – the witness clearly said that he speculated this might have been some offenses. And so it would be really improper to put that into evidence without clearly identifying that these are all potentials or possibles that have never been indicted on. Ever.

MR. DONNELLY: May I respond, Your Honor? Or, Mr. President, may I respond?

PRESIDING OFFICER: Hold on.

MR. DONNELLY: I know Mr. President has indicated his desire not to have to look at too many numbers, so I'm probably going to make it worse by suggesting the following, but the Texas Supreme Court under Uniroyal Goodrich Tire verse Martinez and in Speier verse Webster College have adopted that charts that summarize or perhaps emphasize testimony are admissible if the underlying information has been admitted into evidence.

This is simply a summary. Mr. Buzbee may question the witness at his leisure concerning the qualifications and any particular changes that he believes are appropriate for this jury to understand.

MR. BUZBEE: Your Honor, it has to be a fair summary. No one's challenging that you can do a summary, but it has to be a fair summary, and that's not fair.

PRESIDING OFFICER: I'm going to sustain the objection. You are allowed to bring it in. He said these were possible, so I'm going to sustain the objection.

MR. BUZBEE: And so can we have it – if it's going to come into evidence, write "possible" on it or "potential"?

PRESIDING OFFICER: Yes.

MR. BUZBEE: That's not – yes, thank you.

PRESIDING OFFICER: Do you agree?

MR. DONNELLY: I'd be happy to – I'd be happy to identify it as the testimony which has been provided as possible evidence, and I'll even identify that it's by Mr. Gregg Cox.

PRESIDING OFFICER: And then are you –

MR. BUZBEE: If he write – if he writes that on there, because that's going to be on the front page of the newspaper, and let's make it clear that this guy didn't have any evidence of that.

MR. DONNELLY: Your Honor, may I do that at a break so as not to take any further time, but before formally submitting into evidence?

PRESIDING OFFICER: Yes. On each one, each item.

MR. DONNELLY: Yes, Your Honor.

PRESIDING OFFICER: All right.

MR. DONNELLY: Mr. President, excuse me. Either, thank you.

Q. (BY MR. DONNELLY) Sir, after you've identified these possible potential offenses, and, again, this is your opinion, and as you've described to us, you have worked in the criminal field for some 30 years, is that accurate?

A. Correct.

Q. What, if anything, did you do?

A. After discussing this with Margaret Moore, the decision was made to reach out to the U.S. Attorney's Office, make sure that moving forward with an investigation would not interfere with any ongoing federal investigation. And I was tasked with making those calls and setting up meetings about that.

Q. The Chapter 572 of the Government Code offense that you flagged, was that one that you discussed with Margaret Moore?

A. I believe so, yes.

Q. Do you recall the complete language of Section 572 of the Government Code?

A. Not off the top of my head.

Q. Could you recite it off the top of your head?

A. I could not.

Q. If you had a copy of the statute, would it assist you in providing your testimony here today?

A. Yes, it would.

MR. DONNELLY: Your Honor, for identification purposes only and not for admission, I'd offer 661 of the House Board of Managers exhibit to the witness and to counsel so they may review as the witness testifies.

PRESIDING OFFICER: Are you bringing it forward?

MR. DONNELLY: Yes, Your Honor. But, again, not offer as – not offered into evidence but merely for purposes of reliance during his testimony.

PRESIDING OFFICER: Okay.

MR. BUZBEE: May I have a copy?

PRESIDING OFFICER: Yes.

Q. (BY MR. DONNELLY) Sir, could you identify for us – and you don't have to read directly from it, but are you familiar after having looked at this document with 572.002?

A. Yes, I am.

Q. And does it provide – tell us what your thought process was – and if you need to refer to the documents, please do – but what your thought process was as to why this would be a potential violation?

A. Well, actually, 572.002 sets out who the various officers are that are subject to this. 572.051 sets out the standards of conduct.

And what I referenced earlier in my testimony about the violating a law related to his office or employment under 39.02 of the penal code, this would constitute a law relating to someone's office or employment.

And the Subsection A says that a state officer should not accept or solicit any gift favor or service that might reasonably tend to influence the officer or employee on the discharge of his official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer or employee's official conduct.

Q. So after flagging these potential violations for your elected District Attorney Moore, what actions did you take?

A. I reached out to the U.S. Attorney's Office, spoke with the then manager of the Austin branch of the U.S. Attorney's Office, Ashley Hoff, and we ended up setting up a meeting.

Q. Was the idea to reach out to the local United States Attorney's Office yours or Ms. Moore's?

A. I believe it was mine, although I can't say that Ms. Moore didn't also suggest it.

Q. Was there any concern – well, let me ask – let me ask it a different way. Was there any concern about an ongoing investigation?

A. So much of what we were talking about related to Nate Paul, and we knew that Nate Paul was the subject of a federal investigation. We were concerned that if we jumped into this and opened an investigation, we were going to interfere with an ongoing federal investigation. So we just wanted to basically deconflict with the feds before we took any action.

Q. Is that common? That deconfliction, is that common?

A. That is common.

Q. Don't want to run into each other on the investigation?

A. Correct.

Q. Want to make sure the witnesses know that there are potentially two tracks going?

A. Exactly.

Q. Fair enough.

Do you recall who all you – well, let me ask you this: You set up a meeting, correct?

A. We set up a couple of different meetings. Initially, we had a conference call, Margaret Moore, Don Clemmer, and myself from the district attorney's office. Gregg Sofer, Ashley Hoff, and Christina Playton from the U.S. Attorney's office. And we talked through a lot of the facts, and then we agreed to have an in-person meeting the following week. In between those two meetings, I was advised that because Mr. Clemmer and Ms. Moore –

MR. BUZBEE: Objection, hearsay.

PRESIDING OFFICER: Sustained.

Q. (BY MR. DONNELLY) Can you tell us whether or not there were multiple people from your office who were going – who were supposed to be meeting with the U.S. Attorney's Office?

A. When we set up the in-person meeting, I was the only person attended so that no potential witnesses were involved.

Q. And did those potential witnesses include individuals from your office?

A. Correct.

Q. Fair enough.

Without getting into the content of what was discussed at that meeting, did you believe you had a path forward to continue your investigation?

A. That's what we were trying to determine, was whether there was a path forward that did not interfere with a significant federal investigation that was going on.

Q. Did you believe that you, after that meeting, had a path forward?

A. After that meeting, I was still unclear. The in-person meeting we had included people from Washington D.C. that came down for the meeting. And then shortly after that meeting, I had a telephone call with someone from the U.S. Attorney's Office. And at that point, we stood down.

Q. You stood down. Was that your desire to stand down?

A. I was frustrated by that.

Q. Is it fair to say that you had additional investigation that you wanted to achieve?

A. Yes.

Q. And I should phrase that differently.

Was it something that you wanted to achieve or you felt the evidence would lead you to follow?

A. It was something I felt was worthy of investigation. It involved important issues involving the state of Texas, and I was concerned that as I had seen happen too often, the federal government would sit on it for a long time, and then we might not see anything happen.

Q. Does that appear to have been the case thus far?

A. It does.

Q. Finally, sir, as you were going through Section 572.051, I'd ask you to take a look at Subsection D of that statute.

A. Yes.

Q. As it relates to the testimony that you previously provided that an officer, an employee – a state officer or employee should not solicit gifts, favors, services, or bribes, does it indicate who is responsible for drafting the policies that would go throughout the entire state?

A. Subsection C of that statute says that each state agency shall adopt a policy, and it places the burden of drafting a model policy of these standards of conduct and making sure that ethical policies are in place on the attorney general.

MR. DONNELLY: I'll pass the witness, Your Honor.

PRESIDING OFFICER: Mr. Buzbee, we were going to break in five minutes. We can go 10 or 15, if you want to start, and then we'll break, or do you want to break now?

MR. BUZBEE: Let's just break.

PRESIDING OFFICER: Okay. Members, we'll break now. This is your late afternoon break. We'll come back at 5:15 and then we'll go to about 7:00.

(Recess: 4:53 p.m. to 5:18 p.m.)

#### AFTER RECESS

PRESIDING OFFICER: Bailiff, please bring in the witness.

(Witness enters)

PRESIDING OFFICER: Looks like I'm missing a juror or two, or one anyway. A few over here.

I believe we have everyone.

Mr. Buzbee.

MR. BUZBEE: Yes, Your Honor.

PRESIDING OFFICER: Your witness.

#### CROSS-EXAMINATION

BY MR. BUZBEE:

Q. You know, they say that you can indict a ham sandwich. You ever hear people say that?

A. I've heard that saying.

Q. In fact, you recall that our – the former governor of our state was indicted just for exercising his veto. Remember that?

A. He was not actually indicted.

Q. He was indicted. Governor Rick Perry was indicted.

A. I thought –

Q. For exercising his veto. Did you not know that?

A. I thought they did an investigation that resulted in a no bill.

Q. No. You're misinformed.

He was indicted by a Travis County grand jury. Did you not know that?

A. I did not know that.

Q. And he said over and over and over, my gosh, all I did was exercise a veto. You can indict a ham sandwich.

MR. DONNELLY: Respectfully object to this line of questioning as being wholly irrelevant.

PRESIDING OFFICER: Overruled.

Q. (BY MR. BUZBEE) So here we have a Travis County – in Governor Perry's case a Travis County grand jury indicted him for exercising his veto, and you just went through this litany of possible maybes with regard to Ken Paxton, didn't you?

A. That's correct.

Q. He might have done this, he might have done that, right?

A. Correct.

Q. I guess what you were saying is that, hey, I'm analyzing the law. If any of this foolishness is true, this might be the criminal violations, right?

A. That would be accurate.

Q. And you know for a fact that you're not supposed to come into a court like this and testify about what somebody might or may have done, isn't that right?

A. I was answering the questions that were asked.

Q. You would have never – I mean, have you ever been in court before as a prosecutor.

A. I have.

Q. So you know for a fact that that is not proper, don't you?

A. This is not a criminal trial.

Q. Right. It's not proper to go into a court that's – and testify on live stream and to jurors about something that someone might have done. That's incredibly misleading, incredibly prejudicial and wrong, isn't it?

MR. DONNELLY: Objection, Your Honor, to asked and answered. Mischaracterizes the evidence as presented by the witness.

PRESIDING OFFICER: Overruled.

A. I was asked to identify the possible avenues of investigation that I outlined in the memo to the district attorney.

Q. (BY MR. BUZBEE) Possible, maybe, potentially. We don't know, right? You don't know at all, do you?

A. I don't understand that question.

Q. You were just sitting up there and making a bunch of silly guesses, weren't you?

A. I would not agree with that.



Q. And you just testified in this historic impeachment proceeding in response to the House's questions about all of the potentials or the maybes or the possibilities. Right?

A. I was talking about the memo that I wrote for the district attorney outlining – outlining the avenues of investigation had the feds not waived us off and we had moved forward.

Q. The feds waived you off, you say?

A. Yes.

Q. Y'all were excited about this. We got a chance to get Ken Paxton, isn't that true?

A. That's not accurate.

MR. BUZBEE: Let's look at, Erick, AG Exhibit 170, Brickman 202.

Q. (BY MR. BUZBEE) You tell me if this is right. It's in evidence.

MR. BUZBEE: Bring up – bring that right there on 10-27-2020, Erick. Right there, Erick.

Q. (BY MR. BUZBEE) Let me just read this so we'll understand what y'all really were up to.

My phone conference with Margaret Moore and her team went well today. They are excited about pursuing this investigation and will coordinate their efforts with the U.S. Attorney Office so that both pursuits complement each other. They obviously want to move quickly as they have time constraints. They are not going to wait on the feds.

Did I read that right?

A. You read it correctly, yes.

Q. Uh-huh. So the DA's office of Travis County – Margaret Moore, is she a Democrat, Republican?

A. She's a Democrat.

Q. Okay. So the Democrat – elected Democrat district attorney of Travis County was excited. She had a chance – she had a chance to go after Ken Paxton for just an entire litany of things, according to your little memo, right?

A. I disagree with the description of "excited."

Q. And you're telling me that the feds waived her off, that's what you're telling me?

A. Correct.

Q. The feds under whom – who was in charge of the feds?

A. At that time, I believe it was still Attorney General Barr.

Q. Okay. Who was the president at that point in time?

A. Donald Trump.

Q. Oh, think about that for a minute. You're telling me that this elected Democrat who you claim the maybes, the possibilities, the potential, all kinds of crimes, that she as an elected Democrat decided stand down, Donald Trump says stand down. You think that we really believe that foolishness? You think we believe that?

A. I have no idea what you believe.

Q. Nobody believes that. And you don't believe it either.

MR. DONNELLY: Objection, Your Honor.

Q. (BY MR. BUZBEE) Do you?

MR. DONNELLY: I object – sir, thank you – to the form of the question and offering an opinion that he is not entitled to offer in testimony.

PRESIDING OFFICER: Sustain.

Q. (BY MR. BUZBEE) You don't believe that either, do you?

A. I don't even know what you're saying right now. What was your question?

Q. (BY MR. BUZBEE) Now, you had told us that potentially, possibly, maybe abuse of official capacity, right?

A. Correct.

Q. Potential, maybe, who knows, acceptance of gift to a public servant?

A. Correct.

Q. No clue if that was true or not, was there? You had no clue, did you?

A. Can I explain the purpose of –

Q. I'm asking you whether you had any clue that any of those things were true?

A. Based upon the information provided by the three witnesses that we had interviewed, yes, it appeared that it was true.

Q. You thought it was true, so you had probable cause to make an arrest, and that's what you did, right?

A. No.

Q. Okay.

A. A preliminary investigation is to determine whether or not to move forward with an investigation. That was the stage we were at.

Q. Probable cause means you have enough for an arrest, right?

A. Probable cause would give rise to justification for an arrest.

Q. You didn't have justification for an arrest, did you?

A. We were at the point of making a determination of whether to move forward with an investigation.

Q. There was no indictment, right?

A. Correct.

Q. There was no arrest, right?

A. Correct.

Q. And yet – and yet, you came here in front of all these fine people and told us a bunch of maybes, isn't that right?

A. I came here and answered questions about the memo.

Q. Uh-huh. And looking at this litany that your – the lawyer wanted to put into evidence one of those was possibly, maybe, who knows, engaging in organized criminal activity, right?

A. That is something I outlined in the memo.

Q. That sounds bad, doesn't it?

A. It's a offense under the penal code.

Q. That sounds like there's something really going on bad at the AG's office, right?

A. That is your characterization of that.

Q. That's something you would never want to be a part of, right?

A. I don't understand your question.

Q. Well, I'm just trying to figure out. I mean, if that's what's going on at the AG's office, if you really believe that, you certainly never would want to be a part of it, right?

A. I'm not an employee of the attorney general's office.

Q. I mean, my point is, you would never engage in such activity, would you? This might, maybe activity you talked about?

A. The activity that was being alleged on the part of Mr. Paxton?

Q. You would have never engaged in any of these so-called potential crimes yourself, would you?

A. Correct, I would not.

Q. You would never want to be a part of anything like that, would you?

A. That is correct.

Q. You wouldn't want to be associated with something like that, would you?

A. That is correct.

Q. You have dedicated your life, you claim, to the rule of law, right?

A. Correct.

Q. And so there is no way, no way you would ever want to be associated or affiliated with that kind of criminal conduct, isn't that right?

A. I am not following your line of – you're talking about the conduct described in the memo about Mr. Paxton after the interview of the three witnesses?

Q. I'm talking about criminal – organized criminal activity. You'd never want to be a part of that?

A. Correct.

Q. I mean, if you really believed it, if you really believed that, you certainly wouldn't want to be a part of it, right?

A. Correct.

Q. You applied for a job at the AG's office, didn't you?

A. I did.

Q. Let's make sure we let that sink in. You applied for a job after this silly memo you wrote, didn't you?

A. Yes.

Q. Let it sink in. You wrote this silly memo where you talk about potential violations of law and months later you apply to work at the AG's office, didn't you?

A. That is correct.

Q. And you know what the kicker is? Who wrote your letter of recommendation?

A. Margaret Moore. She wrote a general letter of recommendation that I could use with any employer. It was not specific for that job.

Q. She wrote you a letter of recommendation. This whole thing should be dismissed, don't you agree?

A. No.

Q. Yeah.

MR. BUZBEE: I think the point has been made, Your Honor. I pass the witness.

PRESIDING OFFICER: Your witness on redirect.

MR. DONNELLY: Thank you, Mr. President.

### **REDIRECT EXAMINATION**

BY MR. DONNELLY:

Q. Mr. Cox, did you speak with the elected District Attorney Moore to determine whether or not there was an ongoing active investigation at the Travis County District Attorney's Office?

A. Yes – please ask that again.

Q. Fair enough.

You indicated to us that prior to writing your October 28, 2020 memo, you had had a conversation with Margaret Moore, is that accurate?

A. Yes.

Q. Did you learn whether or not there was an ongoing investigation at the Travis County District Attorney's Office concerning the allegations made by Nate Paul?

MR. BUZBEE: Objection. The question calls for hearsay.

PRESIDING OFFICER: Sustained.

Q. (BY MR. DONNELLY) Did you review documents or were you – did you ask for any documents, you personally ask for any documents that would show whether or not there was an ongoing active investigation concerning the complaints made by Nate Paul?

MR. BUZBEE: Now he's asking to testify about documents not in evidence. Hearsay. And best evidence rule.

MR. DONNELLY: All right. If I may, Your Honor, best –

PRESIDING OFFICER: Sustained.

Q. (BY MR. DONNELLY) Did you have an opinion as to whether or not there was an ongoing investigation into the complaints made by Nate Paul?

MR. BUZBEE: Objection. His opinion is completely irrelevant.

MR. DONNELLY: Your Honor, we've established that under rule 701 and others as a testifying witness, he's allowed to testify as to what his opinion is based on the evidence as he knew it.

MR. BUZBEE: I didn't say that he was an expert, Your Honor. He's not an expert. That's improper.

MR. DONNELLY: And as Mr. Buzbee knows without making these foolish arguments, 701 deals with lay witness opinions.

PRESIDING OFFICER: Sustained.

MR. DONNELLY: If we could, please, Ms. Manela, play Exhibit 249.

MR. BUZBEE: This goes beyond the scope of the cross.

MR. DONNELLY: And, Your Honor, as you know –

MR. BUZBEE: If I can finish, please. I'm sorry, sir.

MR. DONNELLY: Of course.

MR. BUZBEE: He's expanding the recross or the – his redirect. It's improper. He never mentioned that video that went into evidence, so he can't talk about it now.

MR. DONNELLY: If I may, Mr. President?

PRESIDING OFFICER: Under the rules – it was very clear in the rules that the Senators passed 25 to 3 that direct – redirect would have to be on what was already covered.

MR. DONNELLY: I apologize then, Your Honor. I didn't understand the rule as it relates to that specific issue. We'll provide the testimony through an additional witness. Thank you, sir.

Pass the witness.

MR. BUZBEE: I have nothing further for this witness, Your Honor.

PRESIDING OFFICER: Are you both finished with the witness?

MR. DONNELLY: Yes, sir.

MR. BUZBEE: Yes, Your Honor.

PRESIDING OFFICER: Okay. You're able to go.

MR. HARDIN: Your Honor, we call Margaret Moore. We call Margaret Moore.

PRESIDING OFFICER: Okay. Before we call the witness, I want to be correct. Not in the rules being on direct to direct was what we discussed when we all met now two weeks ago, that redirect would be on what was brought in the testimony on direct. That's what we discussed.

You may bring in the witness.

(Witness enters)

PRESIDING OFFICER: Would you please raise your right hand.

(The following oath was given to the witness.)

PRESIDING OFFICER: I do solemnly swear or affirm that the evidence I give upon this hearing by the Senate of Texas of the impeachment charges against Warren Kenneth Paxton, Jr. shall be the truth, the whole truth, nothing but the truth, so help you God?

THE WITNESS: I so swear.

PRESIDING OFFICER: Please have a seat.

Your witness, Mr. Hardin.

MR. HARDIN: Thank you, Your Honor.

MARGARET MOORE,

having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

BY MR. HARDIN:

Q. Ms. Moore, I'm going to ask you, we've had trouble with this microphone with all of us, mine and the witness. So if you would try to stay closer than you would ordinarily stay with a microphone, I'd appreciate it.

A. Will do.

Q. All right. Would you state your name, please?

A. My name full name is Margaret McCarthy Moore.

Q. Ms. Moore, how are you – going to go through with you a little bit of history of your background and all, but I want to really kind of relate it to your personal and professional background.

Where'd you grow up?

A. I grew up in Waco, Texas.

Q. And did you live in Waco all the way through high school?

A. I did.

Q. And after high school, what did you do?

A. I came to The University of Texas here in Austin.

Q. And did you attend and graduate?

A. I did. I earned a BBA in accounting in 1970, and then I started law school here.

Q. All right. After graduate school or after law school, what year did you become licensed to practice in the state of Texas?

A. 1973.

Q. And then what did you do?

A. At that time, I was working in the legislature. In 1973, I was working in the House. I got my license – I passed the bar in April of that year.

I ended up coming back and working the constitutional convention in '74 and worked in the – in 1975 during the session and then I – when I became a lawyer, I really wanted to be in the courtroom, so I was able to – I was appointed the juvenile public defender for Travis County in 1976.

Q. All right. And then you had a series of other jobs. What led you in to where you became the elected district attorney of Travis County?

A. I was hired as an assistant district attorney in 1977. I had gotten to know Ronnie Earle when he was in the legislature, and he gave me a job in the DA's office.

Q. How long were you there?

A. I was there until I was elected county attorney in 1980. I took office in 1981.

Q. As the county attorney?

A. Yes.

Q. How long were you the county attorney in Travis?

A. Four years.

Q. Pardon me?

A. Four years.

Q. Okay. And then after your tour, would that be 1985?

A. Correct.

Q. And then what was your next position?

A. Mommy.

Q. All right.

A. I had a – I had a daughter, and I remarried in 1984 and we had two sons, one in '85 and one in '87. And my husband was a litigator, so we made the family decision that somebody ought to be home with these kids. So I did not go back into the practice of law until much later.

I did, though – during that time, I did serve twice on the Travis County Commissioners Court as an appointee to fulfill unexpired terms.

Q. What year did you become the elected district attorney for Travis County?

A. Well, I was elected in 2016, and I took office January 2017.

Q. All right. So some of the things we're going to be talking about occurred in 2020. You were, of course, a Democrat, correct?

A. That is correct.

Q. And then what was the outcome of the March 2020 – or, really, I think there was a runoff, was there not, in the race in the primary?

A. 2020 I was defeated in a runoff in July.

Q. All right. So from July the 20 – July of 2020, you were in effect a lame duck to the end of the year, were you not?

A. Yes.

Q. All right. Not a phrase we all enjoy, but it was a reality, correct?

A. Correct.

Q. All right. I want to take your attention, if I can, to Attorney General Paxton.

Had you had a particular mission and intent as to the kind of relationship you hoped to have with Attorney General Paxton as you were elected district attorney as a Democrat and he was the elected attorney general as a Republican?

A. Well, in general, my aim as district attorney was to establish good relationships between the Travis County District Attorney's Office and all of the law enforcement agencies that – and that included the attorney general's office. I – I had – did work there under General Abbott for nine and a half years, so that was an office that I had a particular fondness for.

Q. Well, I appreciate that.

So at the time that General Paxton was the attorney general and you were the district attorney, you had how many years experience previously working for the attorney general's office?

A. Nine and a half.

Q. And what year – what – when was that era?

A. I went to work there in 2000 – sorry.

Q. That's okay.

A. 2005 to 2014.

Q. And was Governor Abbott at that time the attorney general?

A. He was.

Q. Was he the attorney general for the entire time you worked for the attorney general's office?

A. Yes, he was.

Q. All right. Now, how would you describe into the period of May, June, or whatever of 2020, how would you describe your relationship and dealings with the attorney general?

A. He had – General Paxton himself?



Q. Yes.

A. Had been – I considered him a friend. I didn't know him well, but he'd been very generous with helping with matters that we asked him to help with. I considered him a friend.

Q. All right. In May of 2020, did you become aware of any type of request that he was making regarding a particular matter?

A. Yes.

Q. And what was that and how did you become aware?

A. My first assistant was Melinda Montford, known as Mindy Montford, and she told me – informed me about –

MR. BUZBEE: Objection, hearsay.

A. She –

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) So did you become aware of a conversation that Mindy Montford had with the attorney general?

A. I did.

Q. And as a result of that conversation, did you authorize or agree to any type of meeting with the attorney general on behalf of members of your staff?

A. Of course.

Q. All right. And when you say "of course," what do you mean?

A. I did consider him a friend, and I'd considered the relationship between the DA's office and the attorney general's office to be a very important working relationship. So an elected official, the highest legal officer in the land, wants to have a meeting –

Q. All right.

A. – with me or my folks, it's going to be yes.

Q. And who attended this meeting and what type of meeting was it? Were you informed as to where it was and all?

A. It was a lunch meeting to discuss a case that the attorney general felt should be investigated by the DA's office.

Q. So was the original contact, then, with a proposal for the attorney – by the attorney general for the district attorney's office to investigate a particular case?

A. It was directly between General Paxton and Ms. Montford.

Q. Had you ever yourself at this time or before heard the name of Nate Paul?

A. Not that I recall.

Q. All right.

A. No.

Q. And then were you present at the meeting?

A. No.

Q. And to your knowledge who was present at the meeting?

A. Mindy Montford, Don Clemmer, who was my director over special crimes, Mr. Paxton, Mr. Paul, and Mr. Wynne, an attorney from Houston that represented Mr. Paul.

Q. All right. Now, at this lunch, did you know anything about whether there was perhaps another person? Have you ever heard of a Mr. Drew Wicker?

A. I have not.

Q. So do you have any knowledge one way or the other as to whether he was at that lunch?

A. I do not have that knowledge.

Q. When lunch was over, did the – Mr. Clemmer and Ms. Montford come back to report on it to you?

A. Yes, they did.

Q. And as a result of what they reported, what was your reaction as to what y'all intended to do with the attorney general's recommendation? Or request, rather?

A. Well, the allegations that were reported to me that Mr. Paul turned out to be his complaints that Mr. Paul brought to Mindy and Mr. Clemmer were ridiculous and their communication to me was to that effect, and I agreed with them after they described it to me.

MR. HARDIN: Can I have exhibit which is in evidence 88 up on the screen, please, or on the iPad, please.

Is that 68 instead? Do I have the wrong number? I'm trying to read handwriting on here.

MR. BUZBEE: Are you talking about the first referral?

MR. HARDIN: That's the right exhibit.

MR. BUZBEE: 68.

MR. HARDIN: Do I have the right number?

MR. BUZBEE: Yes.

MR. HARDIN: 68? Thank you.

Q. (BY MR. HARDIN) Now, did you – did you become aware was the issue as to what to do about a complaint by Mr. Nate Paul that he wanted to have investigated by the DA's office?

A. Yes.

Q. All right. And once you found out enough about it, did you actually read the complaint that is before you as – on the screen whether it's 68 – if we could go over to the other page, where it says "request to investigate." Did you know anything about – do you recall when you reviewed it and formed whatever opinions you had about it?

A. I do not recall when.

Q. All right. But did you ultimately become aware of what the allegations were here, what the contentions were?

A. Oh, yes. I was aware of the allegations, but I didn't see the RTI till later, if I did it –

Q. So –

A. I don't know when that was.

Q. What was your position as to what your office was going to do with this complaint?

A. Well, it was going nowhere.

Q. All right. Well, if it was going to go nowhere, what do you mean by that?

A. I mean it would have been handled like with courtesy. You're here, fill out the form, and then it would have been followed up by a rejection letter.

Q. Does the rest of this exhibit –

MR. HARDIN: If you could, Stacey, just go through – give about five seconds on each page.

Q. (BY MR. HARDIN) And ask if this – if this document showing her is the kind of form and complaint that your office would do? And I want to go particularly to page – I want to make sure that we're not publishing any of the identifying data on the – on the complaint.

So here you see the signature of Mr. Paul. You notice – do y'all request that they swear to these complaints, or is that there in case they choose to?

A. No, it's a practice that they swear to the complaint.

Q. Okay. Can you stay with that microphone, ma'am. Pretty please.

All right. Now, this, of course, has a place for somebody to notarize and swear to it if they choose to, correct?

A. Correct.

Q. And what is the policy in your office ordinarily? Do people swear to these complaints? Are they asked to, or what is – what's customarily done?

A. My belief is that they were asked to swear to it.

Q. All right. Well, we notice here that this didn't happen here, correct?

A. It did not.

Q. All right. Now, on the next page, I don't want to show the people over. I'm going to read you some names, but with no identifying data on the screen until it gets taken out. And I don't know whether it's been taken out of this particular screen. I want to just read names to you without us publishing them and see if you recall these names being names that were proposed that they would be investigated based on this document.

A Mr. Sabban, a Mr. Preston Joy, a Mr. Jason Ernst, a Mr. Alan Buie, Ms. Gupta, a Judge Mark Lane, and then a series of other – one other person and some others.

Now, did you – were you aware of the nature of who some of these people were at the time you were informed about this?

A. Absolutely.

Q. And is this another reason that you're saying it wasn't going anywhere?

A. It was going nowhere in my office.

Q. And does that mean that y'all had no intention of either investigating or prosecuting with this kind of allegation?

A. None whatsoever.

MR. HARDIN: If we can, Stacey, if we can move over now. Skip the people and go to Bates number 68 – excuse me – Bates number 9036, 9037.

Q. (BY MR. HARDIN) And I want to represent to you this is Mr. Paul laying out what – his contentions or so. And ultimately, did you folks decide what you were going to do with this case –

MR. HARDIN: That's fine. You can take it down, thank you.

Q. (BY MR. HARDIN) What were you going to do with this case if it was going to go nowhere? What did you do?

A. I decided to send it to David Maxwell.

Q. And by the time you were going to send it to Mr. Maxwell, how long had you known him, and what was your view of his competence and ability, et cetera?

A. I don't remember how long. I –

Q. And I want you to get back to that microphone.

A. I said I don't remember how long. I knew of his reputation because I worked in the AG's office. I thought very highly of him. I knew that he was a former Ranger and was working with the Rangers. He had a very, very stellar reputation as an investigator.

I sent – I decided to send it to him because it was – I was quite confident that he would view this complaint the same way I did.

Q. And so what you thought when you – when you sent it – when you came up with the idea of sending it to the AG's office, why did you send it to the AG's office instead of just politely telling Mr. Paul, no dice. Nice to have met you, we're not going to do anything?

A. Because I didn't want to offend Mr. Paxton.

Q. If, in fact, Mr. Paul had come on his own not being sponsored with the attorney general and made this same complaint, what would you have done?

A. We would have sent a rejection letter.

Q. Pardon me?

A. We would have sent a rejection letter.

Q. All right. But because it was sponsored to you by the attorney general, what did you do?

MR. BUZBEE: Your Honor, I'm going to object. There's been no evidence of any sort of, quote, sponsor, so I object to that.

MR. HARDIN: We just had a luncheon in which he sponsored it. I don't know what he means.

PRESIDING OFFICER: Overruled.

MR. HARDIN: Thank you.

Q. (BY MR. HARDIN) Go ahead.

A. Had it not been for Mr. Paxton's personal interest, it would have been handled routinely, but because I valued the relationship with Mr. Paxton and considered him to have been a friend, I didn't – I didn't want to offend him. And this seemed to be a delicate way of having the matter reach –

Q. So –

(Simultaneous discussion)

Q. (BY MR. HARDIN) Yeah, so let me ask you, if you sent it over to him –

MR. HARDIN: If I can, can I have 668, please.

This is in evidence, Your Honor.

Actually, it's AG 68. Again, I'm misreading handwriting, and I apologize for it.

Q. (BY MR. HARDIN) All right. No, I'm sorry. Let's go to 124. Now, could you read this?

A. Uh-huh.

Q. All right.

A. Yes, I can.

Q. And could you identify what it is, please?

A. This is a letter from Don Clemmer to Brandon Cammack of sending a second complaint that Mr. Paul filed with our office.

Q. I'm sorry. This is not – this is the second referral?

A. Yes.

Q. I wanted to go to the first referral.

MR. HARDIN: I apologize. I'm probably giving you the wrong number, Stacey. I want the first referral, please. Thank you.

Q. (BY MR. HARDIN) Now, if you would look at this, who – this letter is signed by whom?

Signed by whom there? You can see below.

A. By Don Clemmer, yes.

Q. All right. Was this letter written at your suggestion?

A. It would – yes, it was written after we discussed what we – what I wanted it to say.

Q. Did you instruct or discuss with Mr. Clemmer the language he would use in describing to Mr. Maxwell while he was sending it?

A. Yes.

Q. All right. I want to particularly – to look at the last sentence where it says – or the next to last sentence, the two last two sentences: 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.

Did you consider this a – an official recusal from you?

A. Absolutely not.

Q. All right. And then why did you – why did you – why does it got that sentence in there saying that since he was – Department of Public Safety is one of the subjects, it would be inappropriate to send to them? Why is that in there?

A. Well, public – matters of public integrity are – we're required to involve the Texas Rangers. One of the named – the people in the complaint, it was a Ranger. But this letter was written to send it over, but not to in any way endorse it as needing to be investigated.

Q. Had y'all done any investigation of this complaint?

A. I think the one thing we ascertained is that there was indeed a – an active federal investigation. And other than that, no.

Q. All right. And do – and did you at any time intend and expect the attorney general's office to conduct an investigation?

A. No.

Q. And, in fact, this letter doesn't ask for an investigation, does it?

A. No.

Q. This letter says for them to do what with it?

A. Review it.

Q. And by that language, knowing Mr. – and with Mr. Clemmer having worked with David Maxwell, what did you want to make sure that Mr. Maxwell understood that language meant when you sent it to him?

MR. BUZBEE: Objection, Your Honor. This witness did not send this letter. Mr. Clemmer would be the one to answer that question –

MR. HARDIN: I'm asking what she –

MR. BUZBEE: Can I finish my objection, please?

Mr. Clemmer –

(Simultaneous discussion)

MR. HARDIN: Not if you're using my time.

PRESIDING OFFICER: Stop. Stop. Stop. Court reporter can't report –

MR. HARDIN: I understand.

PRESIDING OFFICER: – record –

MR. HARDIN: I am going to request, though, that this man learn to object the way it's supposed to be. Otherwise, he's using up our time unnecessarily. He's been speaking through objections all day, and I respectfully ask that the Court to keep that in mind.

PRESIDING OFFICER: Sustained your objections.

MR. BUZBEE: Thank you.

PRESIDING OFFICER: I sustained the objection, continue.

MR. HARDIN: All right.

Q. (BY MR. HARDIN) Now, what did you expect is what I'm asking, not somebody else, but what did you expect when you sent that kind of language over there?

MR. BUZBEE: Objection, speculation.

MR. HARDIN: No, I asked what she expected. I'm not asking her what she expected –

Q. (BY MR. HARDIN) Let me put it this way: What did you expect and want to happen?

PRESIDING OFFICER: Overrule.  
Go ahead.

A. I expected David Maxwell and any of the criminal lawyers in the AG's office would view this matter as absolutely baseless and not worthy of investigation. I expected it to be a dead issue.

Q. (BY MR. HARDIN) And –

A. On arrival.

Q. And, in fact, did you give Mr. Clemmer instructions to call Mr. Paxton ahead of time and warn him it's coming – Mr. Maxwell, not Mr. Paxton?

A. Yes, I did.

Q. And –

A. I did not want David Maxwell to think that I didn't have a good enough sense to know this was ridiculous.

Q. All right. Now, during that time when it happened, did you ever authorize that Mr. Cammack or anyone else associated with the attorney general's office, did you yourself authorize them to conduct any kind of criminal investigation?

A. No.

Q. Did you appoint anyone as a special prosecutor?

A. No.

Q. Did you appoint anyone as a pro tem prosecutor?

A. No.

Q. Tell the jury the distinction in your mind of what a special prosecutor is, if such a position exists, if – what a pro tem prosecutor is, and what you did or did not do as a result?

A. A pro tem district attorney is appointed when the district attorney recuses, and that's a formal process. It requires the district attorney to ask the Court's permission to recuse. And when the Court does recuse, a pro tem is appointed to take the place of the district attorney.

Q. And what is the process that happens? I mean, is there a very, as you mentioned, formal process? Let's say that the attorney – the – your office concludes it's wrong, appropriate for you to conduct an office – was a matter of ethics or public policy and decide that you're going to recuse yourself and ask an attorney pro tem, would it be –

A. Yes.

Q. – to be appointed?

And that would be like a DA in an adjoining county?

A. That is the law now. Or it could be the attorney general's office.

Q. All right.

A. We had that –

Q. And then –

A. An instance of that.

Q. If you decide to do that though, what would the process be?

A. A motion would be made in court.

Q. A written motion?

A. Correct.

Q. All right. A written motion is made to a judge, and what would that written motion say?

A. It would say that the district attorney because of a conflict or for whatever other reason, it's usually a conflict, is asking the Court's permission to recuse and the Court then, please appoint a district attorney pro tem to handle. And it's always a specific matter.

Q. All right. And did any of that – and then does the judge ultimately, for it to be effective, enter an order?

A. The judge rules on the motion and enters an order and usually at that time appoints – has found someone to be appointed. It is, you know, not uncommon to assist the judge in finding someone, but I've also had the judge say who she wanted.

Q. Right. So if one is an appointed pro tem, it ultimately results in a judicial order, does it not?



A. It does.

Q. All right. Did that happen in any way, any of those procedures you described, did any of that happen in this – involving anybody being asked to look into the complaint of Mr. Paul?

A. No.

Q. Now, how would a special prosecutor work if you were going to appoint a special prosecutor?

A. The way we use the term "special prosecutor" in my experience has been that the district attorney appoints someone to handle a special matter. And that person is not on the payroll of the district attorney, but is sworn in by the district attorney and becomes essentially like any other assistant DA. It's under this – when the pro tem is appointed, the DA loses all control over the lawsuit. The DA is out of it. And with a special prosecutor, the district attorney continues to supervise the handling of the case.

Q. And they're actually sworn in by a judge?

A. No, they're sworn in by me.

Q. All right. Did you do any of that in this case?

A. No.

Q. So was either a attorney pro tem or a special prosecutor under that term, were either of those positions engaged in by you on this complaint of Mr. Paul?

A. No, they were not.

Q. And when this file went from you to the attorney general's office following the letter of Mr. Clemmer, did you – and by that time, had you hired, retained, appointed, sworn in, any of those things, any lawyer, to look into and work with you on the complaint of Mr. Paul?

A. No.

Q. And after that case file left you and went to the AG's office, did you in your office have anything to do with investigating that file?

A. No, we did not.

Q. Other than helping Mr. Cammack get his grand jury subpoenas, other than that, did you do anything to assist Mr. Cammack in investigating this case?

A. No.

Q. And did anybody in the attorney general's office ask you to aid in any way Mr. Cammack?

A. No.

Q. Did the attorney general ever ask you in any way to aid Mr. Cammack?

A. He did not ask me. I don't know that he asked anyone.

Q. So was Mr. Cammack ever hired or employed by your office in any way?

A. No.

Q. I believe I have the right number. I just want to make – if I could check. This is a video that is in evidence.

MR. HARDIN: I'm going to ask Stacey, Exhibit 249, I would ask her to queue it up and play it for the jury, please.

Q. (BY MR. HARDIN) And I will ask you to listen, then I'll have a question afterwards.

(Video playing)

Q. (BY MR. HARDIN) What is your testimony –

(Video playing)

Q. (BY MR. HARDIN) Is that testimony truthful?

A. No.

Q. How untruthful is it? In what way?

A. It is astonishingly untruthful. There is no way that anyone could interpret the facts as my appointing Mr. Cammack as a special prosecutor. I couldn't pick him out of a lineup today. I don't know him.

MR. HARDIN: Pass the witness.

PRESIDING OFFICER: Mr. Buzbee.

MR. BUZBEE: Yes, Your Honor.

### **CROSS-EXAMINATION**

BY MR. BUZBEE:

Q. Hi, Ms. Moore.

A. Hello.

Q. How are you doing?

A. I'm doing well. Thank you.

Q. Good.

MR. BUZBEE: Erick, could you pull up Article V, the impeachment article, so we can look at it real quick.

Q. (BY MR. BUZBEE) As he's doing that, Ms. Moore, you're telling us all that there was never in this situation an attorney pro tem, true?

A. Correct.

Q. Let's look at the article of impeachment article.

You see the language that says: Attorney General Warren Kenneth Paxton misused his official powers by violating the laws governing the appointment of prosecuting attorneys pro tem.

You see that?

A. I do.

Q. There was never a prosecutor pro tem with relation to Mr. Cammack, isn't that true?

A. There was not one appointed.

Q. Okay. It sounds like when you learned about the complaint of Nate Paul, your initial gut reaction was, that is absolutely ridiculous what he's alleging, true?

A. True.

Q. But you know, of course, that sometimes the FBI does, in fact, violate people's rights, right?

A. I've never witnessed that.

Q. But you've certainly read the news reports about it, haven't you?

A. I've read news reports alleging that.

Q. I mean, there's a lot of them, but did you hear about the FBI admitted flawed forensic testimony in 32 death penalty cases?

A. No.

Q. How about when the FBI conducted improper searches of U.S. officials using a foreign database?

A. I don't know about that.

Q. How about when the FBI improperly spied on activists?

A. I don't recall reading about that either.

Q. How about when the FBI misused an intelligence database and performed 278,000 searches?

A. I didn't hear about that.

Q. And the reason I keep asking you about these repeated alleged FBI abuses is because when you first heard about this alleged FBI abuse, the first thing you thought was ridiculous, correct?

A. No, that's not correct. That's not what I said.

Q. You knew that a federal judge had ruled that FBI agents had conducted illegal searches of businesses?

A. I don't know what you're alluding to.

Q. How the FBI violated the privacy rights of tens of thousands of Americans?

A. Mr. Buzbee, I'm not aware of that article.

Q. Seems to me that that might be something you make yourself aware of before you side –

MR. HARDIN: Excuse me. Excuse me. This is all irrelevant. Using it to attack one agency or another is irrelevant to what the attorney general did in this case, and I object to being extremely irrelevant.

MR. BUZBEE: Your Honor –

PRESIDING OFFICER: Overruled.

MR. BUZBEE: Thank you.

Q. (BY MR. BUZBEE) You –

MR. HARDIN: Judge, the second thing is he's testifying.

MR. BUZBEE: I'm asking the witness –

MR. HARDIN: Cross does not give him the right to simply sit up there in an unsworn way and make these kind of allegations. He's testifying and not asking a question.

MR. BUZBEE: I'm not making any allegation.

PRESIDING OFFICER: Please –

MR. BUZBEE: My question –

PRESIDING OFFICER: – address the witness properly.

MR. BUZBEE: Yes, Your Honor.

Q. (BY MR. BUZBEE) My question to this witness who claimed or who said in her statement that she gave the Board of Managers that her initial reaction was this entire claim against the FBI was ridiculous, I'm just asking her whether she had heard very similar claims and had seen very similar claims reported all over the United States with regard to the FBI?

MR. HARDIN: It does not allow him to be talking about irrelevant other circumstances, Your Honor, to make his point.

PRESIDING OFFICER: Okay. Well, he stopped. He stopped.

MR. HARDIN: Thank you.

PRESIDING OFFICER: You put a stop to that, right? We asked him to go straight. Ask the questions properly.

Go ahead.

MR. HARDIN: Thank you.

A. May I answer?

Q. (BY MR. BUZBEE) I don't know, the lawyer's objecting. I don't know. I'll move on.

A. No, I'd like to answer because you've misstated what I saw and what – why I responded that way.

Q. Uh-huh.

A. It wasn't just against the FBI. It was a whole range of agencies that was a conspiracy that I felt was absolutely incredible and without basis.

Q. Uh-huh.

A. That's not just the FBI. The Texas Rangers, the U.S. Marshal, the U.S. Magistrate, the U.S. Attorney's Office, all of those together, the securities board.

Q. You –

A. That's why I considered it incredible.

Q. Well, couldn't you have just said, you know what? I don't think the Rangers would do that. I don't think the magistrate would do that. But you know what? That – those FBI folks, they may have done that. You could have just investigated that, right? What you could have done –

A. Mr. Buzbee, I worked with the FBI.

Q. Uh-huh.

A. I worked with the FBI to have a prisoner – I mean, an accused murderer surrender at the border the very first month I was in office. I worked with the FBI investigating the in this city. I stood next to the U.S. attorney himself watching assistant U.S. attorneys and FBI agents and other law enforcement officials drawing up search warrants to submit to a magistrate. I did not find this allegation of a broad conspiracy among all these agencies to have any merit.

Q. Based on no investigation, true?

A. Correct.

Q. Yep. So what you decided to do rather than investigate it, you decided to refer it back to the AG's office, right?

A. I decided to send it to David Maxwell.

Q. Yeah, you said part of the allegation was against the Texas Rangers, right?

A. Yes.

Q. So you sent it to the hall of fame Texas Ranger, didn't you?

A. He was the chief investigator in the AG's office.

Q. Trying to get this right.

You thought it would be inappropriate to send the allegation to the Texas Rangers, so you, instead, sent it to the Texas Ranger, right?

A. What I'd really like – I think would be truthful here is that I wasn't concerned about sending it to the Texas Rangers because it wasn't worth sending. I did think that the chief investigator in the attorney general's office would view it the same way.

Q. So I'm just trying to remember who it was sent to.

So one of the allegations was against the U.S. Attorney's Office?

A. Yes.

Q. And the referral was to a U.S. – a former U.S. attorney, right?

A. I don't know to whom you –

Q. Mr. Penley, a former U.S. attorney?

A. Mr. Penley was not named in that letter.

Q. Yeah.

A. That was specifically sent to David Maxwell.

Q. Well, we all know now, and I know you weren't here, you wouldn't know this, but – but just so we're clear, the allegation among others was against Texas Rangers and U.S. Attorney's Office, and you sent it to the AG's office where the head of both – the both of the divisions that would have looked at this would have been a Ranger and a U.S. attorney. Did you realize that?

A. I didn't know Mr. Penley.

Q. Let's look at the referral letter.

MR. BUZBEE: AG 68, Erick, please.

MR. HARDIN: Pardon me, Your Honor. Just to correct – just to correct the record, I believe he mistakenly referred to Mr. Penley as a U.S. attorney, and I don't want that to stay unchallenged. He, of course, was an assistant U.S. attorney. I don't want to suggest that was being looked at by a U.S. attorney.

MR. BUZBEE: A former assistant U.S. attorney. I think we all know who he is. He testified.

MR. HARDIN: Thank you.

Q. (BY MR. BUZBEE) Now, let's look at the referral. Clemmer at the time worked for you in the office, right?

A. Yes.

Q. Okay. He had the authority to send this letter, true?

A. Yes.

Q. And he sent the letter to Mr. Maxwell. You've told us that, right?

A. Correct.

Q. And he says: Would typically forward such a complaint to the Public Integrity Unit of the Texas Rangers for review. Right?

A. Yes.

Q. However, since an employee of the Department of Public Safety is one of the subjects of the complaint, referrals to the Rangers would appear inappropriate. Correct?

A. Yes, he says that.

Q. Okay. Now, you also made a comment with Mr. Hardin about you typically would require someone making a criminal complaint to swear to the complaint, is that right?

A. Yes, the form.

Q. Is it required?

A. I don't – I didn't review every single complaint, but it's my understanding we had that policy, yes.

Q. That was the policy in the office is to require the complainant to swear to the complaint?

A. Yes.

MR. BUZBEE: May I approach the witness?

Q. (BY MR. BUZBEE) Do you see the document I just handed you, ma'am?

A. I do.

Q. And who – it's an email, is it not?

A. It is.

Q. An email from whom to whom? From who to whom?

A. There's two, it appears.

Q. Is this email from people within your office?

A. And it's both – both of the emails on this piece of paper are from Todd Bircher to Don Clemmer. And then the next one is Todd Bircher to M. Wynne.

MR. BUZBEE: Your Honor, we move for admission of this – of this piece of evidence.

PRESIDING OFFICER: Any objection?

MR. HARDIN: I have no objection.

PRESIDING OFFICER: Admit AG Exhibit 0242 into evidence.

(AG Exhibit 242 admitted)

Q. (BY MR. BUZBEE) And we'll put on the screen Exhibit 242, which I think His Honor put into evidence, allowed into evidence.

And let's – just so we know what the – your underlings – Mr. Bircher was one of your subordinates, was he not?

A. He was.

Q. And let's look at what he told Mr. Paul's lawyer in writing. I'm going to read it. You tell me if I get it right.

Please see the attached RTI, which includes instructions on submitting your client's complaint. Feel free to contact me with any questions you may have. Again, no need to get a Notary's signature on it.

That's what your people told Mr. Paul's lawyer, isn't that true?

A. That's what this email says, yes.

Q. And yet, and yet, there's been suggestion here that the complaint, Mr. Paul, a suggestion that he knew that was baloney, and that's why he didn't get it notarized, did you know that was a suggestion being made?

Did you know that was the suggestion –

A. No.

Q. – being made?

A. I've been under the rule, so I haven't heard anything.

Q. I figured that.

But what we know specifically is exactly what Mr. Paul's lawyer was told is what he did. He did not get it notarized, did he?

A. No, he did not.

Q. Now, I want to focus with you, if you would, on the second referral. It's in evidence, AG Exhibit 124. Let's take a look at that one.

Were you aware that your subordinate Mr. Clemmer was doing – was sending a second referral?

A. I don't know when I became aware of that. It very possibly was after this. I don't know.

Q. Okay. So it could be the case that when Mr. Clemmer sent a second referral directly to Mr. Cammack in Houston, you didn't have any idea about that at the time?

A. That could well be the case. I just don't recall.

Q. Now, certainly Mr. Clemmer – I mean, common sense would dictate Mr. Clemmer knew who Mr. Cammack was, right?

A. I don't know what – he addresses this to him.

Q. Right. He knew who Mr. Cammack was. Otherwise, why would he send him the letter in Houston, the referral in Houston, right? That's common sense, isn't it?

A. It would appear.

Q. Yeah, okay. Is it typical – let me ask it this way: If a special prosecutor is appointed and an additional matter comes up within the office and they want to continue to use the special prosecutor, is that sometime done?

A. That did not occur in my administration.

Q. Uh-huh. Now, I want to look at some things that were happening, maybe you didn't know about them. Did you not realize that the people within your office were assisting Mr. Cammack in obtaining grand jury subpoenas?

A. I didn't know it until recently.

Q. Okay. You had no idea that there were multiple people in your office who were guiding Mr. Cammack in obtaining grand jury subpoenas?

A. I did not.

Q. But you will admit now that you know it now, right?

A. I do know it now.

Q. So let's be clear. Even though you didn't know it, you admit that there were multiple people in your office who were assisting Mr. Cammack in obtaining grand jury subpoenas related to both the first and second referral, isn't that right?

A. That's what I believe to be the case, yes.

Q. Yeah. As an example, let's –

MR. BUZBEE: Let me offer, hopefully without objection, I need to know if this is in evidence, House Managers' Exhibit 186. We offer House Managers' Exhibit 186. It's their exhibit. Copies?



PRESIDING OFFICER: It's not. It's not in –

MR. BUZBEE: We offer –

PRESIDING OFFICER: – evidence yet. Any objection?

MR. BUZBEE: We offer House Managers' 186.

PRESIDING OFFICER: Mr. Hardin, any objection?

MR. HARDIN: May I have just a second?

PRESIDING OFFICER: Yes, you may.

MR. HARDIN: I have no objection.

PRESIDING OFFICER: Admit 18 – is it 186? Yes, 186 into evidence.

(HBOM Exhibit 186 admitted)

MR. BUZBEE: Yes, Your Honor.

And, Erick, bring up House Managers' Exhibit 186 that's now in evidence, and go to the third page. Make it the fourth page, Erick, please. There we go.

Q. (BY MR. BUZBEE) Now, there's some email traffic between Brandon Cammack and someone named Gayla Schwab. Do you know that person?

A. Yes.

Q. Who is she?

A. Her position was bailiff of the grand jury.

Q. Okay.

MR. BUZBEE: And let's go to the next page, Erick.

Q. (BY MR. BUZBEE) And notice here that Gayla Schwab, who's legal secretary at the grand jury unit, is sending email – an email to Brandon Cammack. Do you see that there at the bottom?

A. No, not on this page. I'm seeing the email from Bailey Molnar.

Q. Look at – look at the email. It says: Hi, Brandon. I was directed to forward your request to Don Clemmer, director of our special prosecution division, to handle this – to handle this matter.

Do you see that?

A. No, that's not the page that's on my screen.

Q. Okay. Well, my eyes are terrible, so I can't see really your screen.

MR. BUZBEE: Erick, third page. Exhibit 186. Email at the bottom to Brandon Cammack from Gayla Schwab. There we go.

Q. (BY MR. BUZBEE) Now, can you see the email where she is referring Mr. Cammack to one of your subordinates?

A. Yes, I see that.

Q. And do you see –

A. Thanks for enlarging it.

Q. I know it's hard. We're going to try to roll through this quickly.

And do you see that your subordinate, Mr. Clemmer's response to Mr. Cammack right above it?

A. I've seen it, but this is illegible.

Q. How about now?

A. There we go.

Q. He says: Let me know what type of case this investigation involves so I can get the right people to assist you. Thanks.

That's what he says to Mr. Cammack, right?

A. Yes.

Q. He says: Cammack, let me know what case this is so I can get the right folks to help you.

Right?

A. What he says.

Q. Okay. And then –

MR. HARDIN: Your Honor, excuse me. Excuse me, Mr. Buzbee.

Could I ask if the juror – the witness would like a paper copy to have in front of her? If so, I'll be glad to give her one.

PRESIDING OFFICER: Can you read this?

THE WITNESS: I can when they enlarge it.

MR. BUZBEE: Just trying to slow us down.

PRESIDING OFFICER: All of us need it enlarged so . . .

MR. BUZBEE: Yeah. And we'll enlarge.

(Simultaneous discussion)

MR. BUZBEE: Best I can. I can't see it either, Ms. Moore.

Q. (BY MR. BUZBEE) And do you see Mr. Cammack's response?

MR. BUZBEE: Bring it up.

Q. (BY MR. BUZBEE) It says – it's on September 23rd, 2020, at 4:25 p.m. You see, he says: I've been appointed on a referral from your office to the AG's office regarding a matter involving public corruption. I'm trying to get grand jury subpoenas issued.

Do you see that?

A. I do.

Q. He explained in detail what he was up to, didn't he?

A. I'm not sure about the detail part, but he does say.

Q. I mean, it's in writing what he was – he was telling your subordinate what he was doing, right?

A. He does.

Q. He's getting grand jury subpoenas –

A. He does.

Q. – for a corruption investigation, right?

A. Yeah, he just doesn't mention that it was the Nate Paul case, but – but he does – it's a matter involving public corruption. I'm – I'm reading this. The first time I saw it was last week.

Q. Right. And that – that was the first referral. Let's look at the first page of this exhibit. And we can see at the top another email to Mr. Cammack from your subordinate, Don Clemmer.

MR. BUZBEE: Pull it up, please.

Q. (BY MR. BUZBEE) And here's where your subordinate is sending a referral to Mr. Cammack. That is the second referral, isn't that right?

A. Yes, September of '20.

Q. Okay. So if there's any suggestion by anybody that your people weren't helping this young man obtain grand jury subpoenas, that would be false, isn't that right?

A. They did help him.

Q. They even filled out the forms for him and sent it to him via DocuSign, didn't they?

A. Yes.

Q. Let's let that sink in. They filled out the form, emailed it to him using DocuSign, and all he had to do was DocuSign for the applications for the subpoenas, isn't that right?

A. That's my understanding.

Q. Who put the word "special prosecutor" on the DocuSign that was sent to this man?

A. I do not know that.

Q. So according to you, it could be possible that your subordinates in the office put that language in the DocuSign that this young man signed electronically, isn't that right?

A. Yes, but I notice that he uses that term, "special prosecutor," for the OAG.

Q. Yeah.

A. So I wouldn't be surprised if they used his language.

Q. I mean, they certainly didn't tell him don't use that language, did they?

A. No, I wouldn't think that a secretary to the –

Q. It was more than a secretary, ma'am. You know it was more than one person, don't you?

A. There was –

Q. You know –

A. Mr. Buzbee, do you want me to answer these truthfully, or do you want to just –

Q. No, no, I prefer you not lie. Yes, of course, I'd prefer you not lie. I'd prefer you to follow your oath.

Will you agree that there were multiple people involved in your office in assisting this young in getting grand jury subpoenas issued?

A. I would agree that multiple people offered to assist him. I do not believe multiple people filled out the forms.

Q. I want to show you something that's in evidence, and you just tell me if it's true. It's –

MR. BUZBEE: I'm going to get yelled at for this, but it's Exhibit 127, Exhibit 19, Erick. It's already in evidence. 127, Exhibit 19, Erick. There we go.

Q. (BY MR. BUZBEE) Now here's some language in this letter sent to Mr. Cammack shortly thereafter. And it says: It has come to our attention that you appeared before the Travis County grand jury.

Can we agree that Brandon Cammack never, never appeared in front of any grand jury?

A. Ever? I have no idea –

Q. With relation to this particular matter?

A. Well, he wouldn't have appeared in person before a grand jury.

Q. I mean, all he did –

A. All the grand jury proceedings at this time were, in fact, over Zoom anyway.

Q. He didn't even do a Zoom, all he did –

A. I don't think he did. I mean –

(Simultaneous discussion)

A. It would –

Q. (BY MR. BUZBEE) You see the point –

A. May I finish?

Q. Yeah, I'm sorry. Go ahead.

A. It would be unusual for anyone issuing a grand jury subpoena to actually appear in front of the physical grand jury.

Q. Right. Because what we know happened was some of your folks in the office helped him fill out forms, and he signed them electronically with DocuSign, right?

A. That's what it appears to be happened.

Q. Okay. Now, is it true that your office was excited about pursuing an investigation against Ken Paxton?

A. I can't speak for the entire office.

Q. Well –

A. But I was not excited about any of this.

Q. Okay.

MR. BUZBEE: Your Honor, I pass the witness.

PRESIDING OFFICER: Redirect, Mr. Hardin.

MR. HARDIN: Yes, Your Honor.

Your Honor, I move to introduce – I move to introduce Exhibit 243.

PRESIDING OFFICER: Any objection?

MR. BUZBEE: This is beyond – this is, of course, beyond the scope of her direct, as you know, and so I would object to it.

PRESIDING OFFICER: As I said earlier, and I corrected myself. It was not within the rules, but we discussed direct – redirect would be on what was discussed on direct.

MR. HARDIN: I understand, but part of this cross was challenging whether or not her office was involved and what her office's involvement with this – this is her answer to an attorney general public relations statement that he made, which also sets out her position about this entire matter. And she sent it to him on October the 9th long before any of this was looked at.

PRESIDING OFFICER: Hold on one second, Counselors.

I'm going to overrule the objection because it does go to the cross testimony.

MR. HARDIN: Thank you. Can you put it up, please?

### **REDIRECT EXAMINATION**

BY MR. HARDIN:

Q. Now, I'm going to ask you to publish it by reading it. If you look up close to the microphone, I'd like for you to read to the jury what you told Mr. Paxton on October the 9th of 2020 through this letter?

A. It's addressed to Ken Paxton, attorney general of Texas, the Office of the Attorney General via email and by hand delivery.

Dear Attorney General Paxton: On June 10, 2020, my office sent to David Maxwell a letter referring a request to investigate, in parenthesis, RTI, filed in our office by Nate Paul. The RTI was received by us after you asked my office to hear his complaints. The referral to the OAG was made with your approval. We did not conduct – conduct any investigation into the merits of the matters complained of. In referring the matter to the OAG, we concluded that ours was not the appropriate office to either address the matters raised in the complaint or to conduct an investigation into them.

The referral cannot and should not be used as any indication of a need for investigation, a desire on the Travis County DA's part for an investigation to take place, or an endorsement of your acceptance of the referral.

My office has closed this file and will take no further action. Furthermore, I have instructed my employees to have no further contact with you or your office regarding this matter.

Any action you have already taken or will take pursuing this investigation is done solely on your own authority as provided by Texas law. The newly surfaced information raises serious concerns about the integrity of your investigation and the propriety of your conducting it.

Sincerely, Margaret Moore.

Q. Now, Ms. Moore, are you aware that if one is a special prosecutor that they are to be supervised by the authority appointing them a special prosecutor?

A. Yes. A special –

Q. And –

A. And a properly appointed special prosecutor is supervised by the prosecuting authority.

Q. And if somebody is appointed as a special prosecutor – or let me strike that. Another way.

Do you consider when a person that says that they are a special prosecutor for the attorney general, when that person contacts your office and asks for help in getting out subpoenas, tells you he doesn't really have experience in doing that, and your people assisting him, do you consider that in any form in any way supervising his later investigation?

MR. BUZBEE: Objection, leading.

PRESIDING OFFICER: Sustained.

Q. (BY MR. HARDIN) You can tell me either way. What is your opinion as to whether that is some type of supervision?

A. Number one, I don't know that there's any such thing as a special prosecution for the Office of the Attorney General. A prosecution is – the authority to prosecute is limited to the elected district and county attorneys of the state. So I don't even know what a special prosecutor for the OAG is, but that's – this person was not appointed by me and was not supervised by me.

Q. And was he authorized – would he be authorized to do any prosecution in the state of – in Travis County without your approval?

A. No.

Q. And is that built into the statutes that say only the elected district attorney of a county has the authority to approve and conduct prosecutions?

A. That is the law, and I knew that.

Q. Finally, finally, the video that we saw?

A. Yes.

Q. Did you – did you notice that the attorney general made no attempt to correct that untruthful testimony given before the finance committee?

A. Not in the clip that I saw.

MR. HARDIN: That's all I have. Thank you.

PRESIDING OFFICER: We need to admit Exhibit 243 into evidence. I have not admitted it into evidence yet.

MR. HARDIN: Thank you very much.

(HBOM Exhibit 243 admitted)

PRESIDING OFFICER: Mr. Buzbee, recross.

MR. BUZBEE: Yes, Your Honor.

Let's look at – you said 247, is what it was, or 3? Or 243?

PRESIDING OFFICER: 243.

MR. BUZBEE: 243.

PRESIDING OFFICER: Yes, sir.

MR. BUZBEE: Put on the screen, Erick – it's our AG 19, same exhibit. This –

### **REXCROSS-EXAMINATION**

BY MR. BUZBEE:

Q. Ms. Moore, at the time you wrote this letter, you didn't even know about the second referral, did you?

A. I easily could have. It's October 9, and the second referral was sent to Cammack on the 23rd. What happened in between is the motion to quash the subpoenas issued by Mr. Cammack were granted by – the motion was granted to quash those subpoenas, and when that happened, all of this was brought to my attention. So I could by October 9th have seen this second referral.

Q. Let's just make sure that we can agree on something. You didn't mention any second referral in this letter, did you?

A. No, I didn't.

Q. No mention whatsoever of the second referral in this letter, is there?

A. No.

Q. Okay. One thing you said in this letter in the third paragraph, your office has closed this file, right?

A. I do say that.

Q. So up and until that point, y'all had an open file on this referral, didn't you?

A. I don't – I don't know that we did. I saw this. I don't have a full recollection of exactly what was going on at that moment, but I don't think we ever actually opened a file.

Q. So you just closed an already closed file is that what you're saying?

A. Could have, yeah.

Q. So how many times do you have to close a file before it's closed?

A. Well, Mr. Buzbee, I'm sorry, but I – you know, this matter was dead on arrival, and it remained that way in my mind and –

MR. BUZBEE: Objection, nonresponsive.

A. – all along.

PRESIDING OFFICER: Sustained.

Q. (BY MR. BUZBEE) Now, one of the things that happened after all this came out in the newspaper, in addition to you sending this letter, you also told one of your subordinates to put everything that had happened in writing, didn't you?

A. You want to be a little more specific?

Q. Do you remember Mindy Montford?

A. Oh, yes.

Q. You encouraged Mindy Montford to do a full statement of what the office had done with regard to these referrals, right?

A. I encouraged her to make a statement about what occurred, yes.

Q. And that statement is AG Exhibit 44.

MR. BUZBEE: And we offer it, Your Honor.

PRESIDING OFFICER: Can you give us a copy of it?

MR. BUZBEE: Is it in evidence or not?

It's in evidence, Your Honor.

PRESIDING OFFICER: It's already in evidence.

MR. BUZBEE: I'm sorry about that.

Erick, please put Exhibit 44 on the screen.

Q. (BY MR. BUZBEE) In response to your encouragement, one of your subordinates, Mindy Montford, did, in fact, put everything that happened, at least from her point of view, in writing, isn't that right?

A. Yes.

Q. Let's look at what she put in writing. And she swore that this was true, did she not?

A. Yes.

MR. HARDIN: The scope has been exceeded by this based on the Court's rulings.

MR. BUZBEE: No.

MR. HARDIN: I don't believe – I don't believe anything that this is relevant to that – I never mentioned Mindy Montford. I didn't discuss that at all.

MR. BUZBEE: Your Honor, you let him put into evidence over my objection her letter about how things went down. And now to complete the record, I'm going to put – I've put in evidence, it's already, there, what her subordinate who is directly involved said went down. It's perfectly within the line of the recess.



MR. HARDIN: He's perfectly entitled to call her as a witness. And we would welcome that. But I'm not objecting to the exhibit. But going into this subject is what I'm saying is contrary to the Court's previous ruling.

PRESIDING OFFICER: I think he gave the explanation why it's not contrary to the Court's rule that we discussed because it had been introduced. Overruled.

Q. (BY MR. BUZBEE) Let's look at the affidavit that was done.

MR. BUZBEE: And just, Erick, so everybody knows, look at the last page of Exhibit 44. So we'll know when Ms. Montford swore that this was – what actually happened under oath. Go to the last page.

Q. (BY MR. BUZBEE) Can you confirm with me, Ms. Moore, that she did this in January of 2021?

A. Yes.

Q. Okay.

MR. BUZBEE: Now, Erick, go back to the second page of this exhibit. Last paragraph.

Q. (BY MR. BUZBEE) Ms. Moore, I just want to make sure that I get this right. Don Clemmer and I discussed the meeting with Margaret Moore by phone. That's true, isn't it? The meeting with Nate Paul?

A. Thank you for enlarging it.

Q. There you go.

A. Is she referring to the meeting with –

Q. The lunch meeting with Nate Paul.

A. The lunch meeting. Okay, yes.

Q. Yeah. She goes on to say at the beginning of the last sentence in that paragraph: The district attorney's office no longer has the resources to conduct broad-based investigations.

MR. BUZBEE: Go to the next page, Erick. Pull it up so we can read it.

Q. (BY MR. BUZBEE) This is what she said was the truth at the time – to conduct broad-based investigations on its own so we knew we were not capable of thoroughly looking into the allegations.

Am I right so far?

A. Yes.

Q. She said: When we receive complaints from individuals such as Mr. Paul's, it is our normal course of business to refer these cases to the Texas Department of Public Safety, the Office of the Attorney General, the FBI, or a local police department with jurisdiction to investigate.

That's what she wrote, true?

A. True.

Q. That's what she swore was the truth, right?

A. Yes.

Q. Then she goes on to say, skipping a sentence: It was decided that we should refer the matter to the OAG for review.

You see that?

A. Yes.

Q. She goes on to say: It was our intention to have the OAG review the matter and determine whether or not it rose to the level of a formal criminal investigation.

Do you see that language?

A. I do.

Q. Okay.

MR. BUZBEE: Let's go to the bottom, Erick, the sentence – pull up the last half of the last paragraph. The sentence starts: I've also told General Paxton – that sentence.

Q. (BY MR. BUZBEE) She says: I did inform General Paxton at the time – that time that the district attorney's office did not have sufficient resources to look into Mr. Paul's claims and that we believe the only agency that could properly review the matter would be the OAG.

That's what she swore was true, correct?

A. It's written here, yes.

Q. She then says: It should be noted that at no time prior to this conversation did General Paxton ask that we refer this matter to his office. To my knowledge, the idea to refer the Nate Paul matter to the Office of the Attorney General –

MR. HARDIN: Pardon me. Pardon me.

MR. BUZBEE: Okay.

MR. HARDIN: Pardon me. My problem, Mr. Buzbee, excuse me, I'm having trouble following it. Can you point us to which page he's on and just tell me so I can –

MR. BUZBEE: Does the witness know where I am?

Q. (BY MR. BUZBEE) Ms. Moore, do you know where I am?

A. I'm reading it here.

Q. Sure, you do. We all know where I am. Let me keep going.

MR. HARDIN: Excuse me. Excuse me.

PRESIDING OFFICER: Give him the courtesy of catching up.

MR. BUZBEE: Fourth line from the bottom of the second page.

MR. HARDIN: Thank you.

MR. BUZBEE: Third page.

Q. (BY MR. BUZBEE) It should be noted that at no time prior to this conversation did General Paxton ask that we refer the matter to his office. To my knowledge, the idea to refer the Nate Paul matter to the OAG came from our office.

Did I get that right?

A. Yes.

Q. General Paxton was not certain his office could even review the matter. Do you see that?

A. I do.

MR. BUZBEE: Your Honor, I pass the witness.

PRESIDING OFFICER: That will – we'll adjourn in a moment. I want to get you the timestamp here.

Time remaining, House, 9 hours, 19 minutes, and 12 seconds.

Respondent, 12 hours, 14 minutes, and 15 seconds.

Tomorrow will be another long day. We'll come in at 9:00. We'll go to about the same time, 6:30 to 7:00, whenever the natural ending. Until then, we are adjourned.

You may be dismissed. Thank you.

I'm sorry. Can she be excused, Mr. Hardin?

Mr. Buzbee, can she be excused?

MR. BUZBEE: Yes, sir, please.

MR. HARDIN: Yes, Your Honor, but with the same understanding she could be on call.

PRESIDING OFFICER: All right. Thank you.

(Proceedings recessed 6:50 p.m.)

