

(Intro music)

Kelsey Reichmann: Welcome to Sidebar, a podcast by Courthouse News Service. We are back from our summer break, taking you, dear listener, on a political field trip to the Lone Star State. There's no one better to be our guide than Courthouse News reporter and full-time Texan Kirk McDaniel. Hey, Kirk.

Kirk McDaniel: Howdy, Kelsey. This exploration of current Texas events will be more than just about politics. We are talking about titans of Texas law, history, FBI investigations, impeachment and corruption.

KR: Hmm, seems like a lot to cover.

KM: You've got that right, and there is no other central figure that ties all these topics together more than Texas Attorney General Ken Paxton.

KR: Ah, a name I am familiar with. Texas kind of pioneered a trend over the last decade of becoming a plaintiff-in-chief against the federal government. Paxton followed in the footsteps of his predecessor, Greg Abbott, in challenging many of the Biden administration's policies. In 2021, Texas argued the same number of cases as the federal government, the court's most common litigant.

KM: Yeah, Paxton is a controversial figure, to say the least. He has been a fierce defender of so-called Texas values on the national stage and has been a self-generating news machine since he became the state's top cop back in 2015. For nearly 10 years, he has acted as a fervent culture warrior, taking on anyone who dares to bring progressive values to the nation's second-most populous state. But don't just take my word for it.

Jonathan Saenz: I think that Ken Paxton has been one of the strongest and finest and most successful attorney generals that the state of Texas has had.

Tom Nesbitt: This was just raw grimy. Corruption by Ken Paxton, which he's no stranger to.

Cal Jillson: Ken Paxton succeeds on talent, on boldness and in seizing the moment.

Stephen Paulsen: He is a true culture warrior.

KR: For a statewide elected official, Paxton sure seems to garner quite a bit of attention.

KM: He has been able to wield great influence over national policy, more so than any other official in the state. He is also the most well-primed for higher office at the federal level, or possibly in a key role in a second Trump administration, which makes it all the more important for folks to know who the embattled, but undefeated, Ken Paxton is.

KR: Well, if there's anything that I know about him, it's that he is definitely a Republican.

KM: Definitely.

KR: So, on the Republican spectrum of Mitt Romney to Donald Trump, Paxton is...

KM: Oh, he is Trump most certainly, but you may find it interesting that, unlike Trump, Paxton has a long history in politics.

Cal Jillson: Ken Paxton was, in the early 2000s, elected to the Texas House from Collin County, which is a northern suburb of Dallas. My name is Cal Jillson. I'm a professor of political science at Southern Methodist University in Dallas and I teach, generally, courses in American government and in Texas politics.

KM: From a humble start as a state representative in 2003, Paxton had his eyes set on higher political office. In 2011, he was elected to the Texas Senate, where he continued to push a conservative agenda. A few years later, Paxton decided to make a play for statewide office, just as some controversy surrounding him began to bubble up.

CJ: And in 2014, he was elected attorney general of Texas even though in that 2014 campaign, there was a sense that grand juries were at work, and he might likely be indicted for investment fraud.

KR: Whoa, pump the brakes. People believed he might be indicted on fraud charges, and he was still elected?

KM: Oh, yes.

CJ: The indictment didn't come until several months after he had won that first term, but he was elected with those grand jury proceedings and potential charges hanging over his head, and he was elected over a very squeaky-clean Republican candidate named Dan Branch, honest as the day is long. Paxton has these issues hanging over his head, but Republican primary voters were looking for a fighter.

KR: So, what were the allegations made in this indictment?

KM: A state grand jury charged him with two counts of securities fraud and one count of failing to register with state securities regulators. Prosecutors accused him of selling stocks in a technology company that has now gone defunct without disclosing to potential buyers that he was receiving compensation from the company. Cameron Thompson, the federal court reporter for Courthouse News in Houston, covered some of the biggest developments in this case. He told me that covering the case was actually quite complicated because of the many bumps in the road it took to getting to trial.

Cameron Thompson: ...was held in three different counties, initially in Tarrant County, then it moved to Collin County and then finally moved to Harris County, and so you have three counties, and, in that time, you also have four judges, and so just the shuffling around of who's actually overseeing the case delayed it. But what's often pointed to as the biggest thing was a pay dispute, because Collin County appointed two special prosecutors in this case.

KM: If you're keeping track, that securities fraud case went on for nearly 10 years before it reached resolution and even then, the pay dispute Cameron mentioned is still ongoing. So, the case was really this big legal rat nest. It took so long that Paxton actually attempted to get the case dismissed for violating his right to a speedy trial, which was a bit of a head-scratcher because he caused some of the delays himself.

KR: But a resolution has been reached, right?

KM: I'll let Cameron explain the specifics.

CT: March 26, that's the last conference hearing before the trial. A couple days before rumors started to circulate that a deal had been reached and overnight, almost, our expectations changed of like we're just going to get the last little update before the trial to, oh, the case could actually get dismissed. This could be it. And then we all show up there Friday morning and, lo and behold, the case was settled. The deal that was ultimately reached was over the course of 18 months, Paxton would have to pay \$271,000 in restitution, he would have to do 100 hours of community service in Collin County and he would have to take 15 hours of legal ethics classes. But in exchange for that, he did not admit guilt and he kept his legal license, and he kept his position as attorney general.

KR: So, the state's top cop avoided potential jail time, but, as you said, the case took nearly a decade to resolve. How did this case hanging over his head affect his reelection campaigns in 2018 and 2022?

KM: Well, Democrats leaned into the indictment in attack ads during the 2018 election. Justin Nelson, the Democratic candidate in that race, lost and Paxton served another four years as Texas AG. During his 2022 campaign, however, Paxton was primaried hard. A U.S. congressman and a justice on the Texas Supreme Court made spirited efforts to win the nomination, but it was a Bush that got the closest.

KR: A Bush?

KM: George P. Bush. He's the son of former Florida governor, Jeb Bush, and the nephew and grandson to former Presidents George W. Bush and George H.W. Bush, respectively. He was Texas' land commissioner when he threw his cowboy hat in the ring, and, while his campaign echoed many of the Trumpian talking points about immigration and the woke left, he took specific aim at Paxton and his legal issues.

Campaign ad: Enough's enough. George P. Bush is a veteran who will restore honor and integrity to the attorney general's office.

KM: Bush lost to Paxton in the 2022 runoffs and Paxton won reelection. I think one key factor in that race in the end was who got the endorsement of Trump.

Donald Trump: An attorney general who has really led the way, somebody who has been brave and strong: Ken Paxton. My complete and total endorsement.

KR: What about Republican voters? What's Paxton's appeal to them? He must be doing something right in their eyes to have been reelected twice.

KM: Well, for one thing, he delivers for them. That is what Jonathan Saenz told me when I spoke to him for this episode. Saenz is the president of Texas Values, a conservative advocacy organization that promotes traditional Christian values. We talked about Paxton's record as AG and how he has used his position to go after issues important to groups like Texas Values.

Jonathan Saenz: I think there's a strong case to be made for him being one of the best leaders on faith, family and freedom and pro-life issues in that position, certainly when needed, when it counted most.

KM: Saenz recalled a time during the Obama administration when Paxton got involved in an issue Texas Values had with a school district that was poised to allow transgender students to use restrooms that matched their gender identity.

JS: We showed up and organized people to go to the school board meetings, but when Attorney General Paxton got involved, that certainly got a lot more attention and, I think, put us in a position to have success. As a matter of fact, there was litigation that he got involved in and not too long after that Fort Worth ISD backed away from that policy. I think that early victory in demonstration of public leadership was key, and I don't think people are always used to seeing the attorney general in a state get out front like that and do press conferences and being involved, and it was an important moment.

KM: Paxton fought for what his base of voters elected him to do, but it never seemed that his mounting legal issues weighed him down. Professor Jillson told me that this is evidence of a changing Republican Party.

CJ: The Republican Party has changed a lot over the years. It used to be in both political parties that an indictment would squash a career and now we have Donald Trump, the Republican candidate for president in the last three election cycles, constantly in legal jeopardy and turmoil, losing cases on sexual assault, on slander, being assessed hundreds of millions of dollars in penalties, and still the Republican nominee for president. So, if that is the legal and cultural and political environment, then Ken Paxton is a perfect candidate because he too has been under scrutiny for more than a decade. He claims, as Trump does, that this is a vendetta by his enemies in the Democratic Party and by RINOs who can't stand a true Republican standing by his convictions and so are trying to take him out. He's the victim.

KR: So, Paxton is both a victim of his enemy and the fiercest warrior against them?

KM: Oh, most definitely. His rise to statewide office really coincides with Trump's rise to power and the new right that now holds both these figures up as champions of the cause. But if you think the securities fraud case was Paxton's greatest legal and political challenge, that title goes to his impeachment trial last year.

KR: We'll be back after a quick break.

Erik Uebelacker: Hi, this is Erik Uebelacker, a reporter for Courthouse News based in New York City. I cover high-profile trials and any issues pertaining to New Yorkers. On September 18, I'll be at Manhattan Criminal Court for the sentencing of former President Donald Trump, unless his conviction gets overturned. Trump is trying to argue that presidential immunity should clear him on all charges. I'll be covering those efforts, too, at [courthousenews.com](https://www.courthousenews.com). You could also follow me on Twitter. That's U-E-B-E-Y. Now back to Sidebar, a podcast from Courthouse News.

KM: A lot happened in 2020.

KR: Understatement of the century.

KM: Of course we were in the midst of a pandemic, but here in America there was also massive social upheaval over the murder of George Floyd during a presidential election that was stressful, to

say the least. And in Texas, there was one more thing to add to that pile of news coming out of the attorney general's office.

News clip: Now the Texas attorney general is being sued by several former employees. They claim Ken Paxton abused his office to benefit himself and a top donor.

KM: In the fall of 2020, eight people working at the attorney general's office went to the FBI to report their boss for being corrupt. They claimed that Paxton abused his office to help Nate Paul, a political donor and an Austin real estate mogul, with legal troubles in exchange for bribes. The whistleblowers accused Paxton of using his office to aid Paul, who was being investigated by federal agents. Now it is also worth mentioning that Paul was arrested in June 2023. Federal prosecutors have accused him of lying on financial records to secure loans for his companies.

KR: Whoa, this is a lot. So, Paxton helped Paul, and you said the whistleblowers claimed he did so in exchange for bribes. What did that get him in return?

KM: They said Paul paid Paxton back with renovations to one of Paxton's homes here in Austin and a job for a woman with whom Paxton was allegedly having an affair with.

Tom Nesbitt: What they saw was just grimy corruption by Ken Paxton, directed by Ken Paxton. They urged him to stop it, and when he wouldn't and they saw crimes being committed, they went to the FBI. My name is Tom Nesbitt, I'm a lawyer with the Austin law firm of DeShazo & Nesbitt and I represent James Blake Brickman, who's one of the whistleblowers and plaintiffs in the Texas Whistleblower Act lawsuit against the Office of the Attorney General of the state of Texas.

KR: Nesbitt mentioned others went to the FBI. Who were they?

KM: There are a couple of key people to note of who went to the feds and ended up suing. There was Mark Penley, a deputy attorney general for criminal justice, Ryan Vassar, a deputy attorney general for legal counsel, and David Maxwell, the office's director of law enforcement and a former Texas Ranger with nearly 50 years of law enforcement experience. Paxton's own second-in-command, First Assistant Attorney General Jeff Mateer, was also one of the whistleblowers, but he did not sue the office as the others did. It's also worth emphasizing that these men are conservative throughout. Take Blake Brickman, for example.

TN: Blake Brickman is very much a conservative Republican. He had worked prior to being recruited to the attorney general's office; he had worked for a number of a United States senator from the state of Kentucky. He had worked for Matt Bevin, the governor of Kentucky, who was widely viewed when he was in office as the most conservative governor of any state. Blake Brickman brought true conservative credentials and a conservative philosophy to that office.

KM: Brickman and his fellow plaintiffs filed their lawsuit under the Texas Whistleblower Act, which essentially protects public employees who accuse their employer of wrongdoing. Together they allege that after they went to the FBI, Paxton retaliated against them for doing so.

TN: For the sitting attorney general to essentially turn his office over to a now indicted criminal defendant to do lavish favors for that person while receiving lavish favors from that person in return is pretty extraordinary. And that these eight whistleblowers went and reported it to law enforcement after trying to get Mr. Paxton to stop is extraordinary. And that is Paxton himself and through his

surrogates there, immediately and just so obviously retaliated against them. This is a kind of an ordinary cause of action, but with extraordinary facts.

KR: The employees went to the FBI. Are you saying that the feds acted on the complaint?

KM: You raise a great observation. The FBI has been investigating Paxton for the alleged crimes since 2020. But even more than what investigators might be doing, the case itself moved in a direction that I am not sure Paxton expected. In early 2023, just as the Texas Legislature was reconvening for a regular session, the attorney general's office says it's going to settle this whistleblower lawsuit for \$3.3 million and take down a press release calling the plaintiffs rogue employees. But paying out the settlement proved to be not as straightforward as the AG's office had hoped. For one thing, getting it through required getting the Texas Legislature involved.

Ann Johnson: It wasn't until February that Attorney General Ken Paxton asked the Texas Legislature to pay a settlement fine for the whistleblowers. My name is Ann Johnson, and I proudly represent Texas House District 134, which is in Houston. I am a state representative in my second term running for my third. I am a lawyer by background and I'm a prosecutor by background.

KM: Representative Johnson and four other lawmakers, three Republicans and two Democrats — she is one of those Democrats — were assigned to the House General Investigating Committee. While Paxton was making the rounds at the Capitol asking the state to fund his settlement, the investigating committee raised its eyebrows at the request.

AJ: The Legislature paying an amount of money of taxpayer funds has an obligation to ask questions as to what we're doing, and he refused to answer questions, and so it put the Legislature in a position of what do you do with this scenario? And so, a team of investigators were put together, and they began looking into the matter to figure out basically is there a there there? Is there an issue here with the attorney general?

KR: Could Paxton have paid for the settlement himself? Couldn't he have just avoided all these additional eyes on the case?

KM: Many Democrats in the Legislature asked that exact question, but Paxton's team always responded that that wasn't an option. They reasoned that because the whistleblowers sued the office and, by extension, the state, then it was the state who was obligated to fund the settlement. Here's a clip of Assistant Attorney General Chris Hilton telling the House Appropriations Committee that. Also to give you a visual, Paxton is sitting right next to Hilton during this exchange and Hilton was largely responsible for answering any questions that the committee had.

Committee clip: The key monetary term is the \$3 million.

Chris Hilton: \$3.3 million.

Committee clip: And so, is the Attorney General's Office going to, and or asking for the state to pay the \$3.3 million?

CH: Under the Whistleblower Act, the agency, the Office of the Attorney General, is the proper defendant and so, under state law, because the agency is a defendant, that money needs to be

specifically appropriated by the Legislature, and my understanding is that typically is handled through the miscellaneous claims process.

KM: It was answers like that that spurred the House to do some of its own digging.

AJ: Ken Paxton got the Legislature involved. Ken Paxton forced the investigation into Ken Paxton by coming to the Legislature and saying effectively, which he doesn't deny, and he doesn't deny to this day, he violated Texas law, he wanted a get-out-of-jail-free card, and he wanted taxpayers to pay for it. Those investigations, those interviews, the collection of evidence and documents and things that were there, that it became very clear from the investigative team that had a long history in public corruption, public integrity investigations said that clearly the attorney general is the top cop on the take in Texas and this is a moment in Texas history where you have to make a decision bigger than politics of whether or not you're going to try to clean up your own mess.

KM: All of this took place in secret. Other lawmakers, the media and, most importantly, the public had no idea that this investigation was going on. So, when the committee came forward and revealed that they had been investigating Paxton, it surprised many, and it was even more shocking what they wanted to do with their findings just days before the Legislature would adjourn for the regular session.

Committee audio: The chair moves that the committee adopt the articles of impeachment against Warren Kenneth Paxton, attorney general of the state of Texas, as embodied in the draft resolution, and direct the chair to file that resolution with the chief clerk of the House. The clerk will call the roll.

KM: In total, there were 20 articles of impeachment filed against Ken Paxton. Together, they painted a picture of a public servant who had abused their office to help a donor and accepted bribes, a person who retaliated against those who called him out for wrongdoing, and a man whose crimes constitute such betrayal of the public's trust that he should be removed from office and be ineligible of ever returning.

Stephen Paulsen: I mean, it was an insane legislative session.

KM: That is Stephen Paulsen, my fellow reporter based here in Austin and Courthouse News' features editor. He and I covered much of the 2023 session, primarily the laws that lawmakers were working on to get passed, on issues ranging from health care for transgender youth to banning offices of diversity equity inclusion on college campuses. None of us expected that this is how the session would end.

SP: Texas, having grown up here and having seen it become more and more conservative, there's often been sort of an element of kind of politics for show kind of going on, and I mean it was one of the most remarkable moments of my life in terms of Texas politics.

KM: I remember waking up early the morning the articles of impeachment were going to be voted on and just feeling how the tone of the entire session, the air inside the Capitol, had shifted. Suddenly, the eyes were all on this body that was going to determine the fate of one of their own. Paxton's response?

Ken Paxton: Every politician who supports this deceitful impeachment attempt will inflict lasting damage on the credibility of the Texas House, which I served in. The House is poised to do exactly what Joe Biden has been hoping to accomplish since his first day in office: Sabotage our work, my work, as attorney general of Texas.

KM: But just a day later, the Texas House of Representatives stunned everybody. Here is the Republican chairman of the House General Investigating Committee, Andrew Murr, addressing the House before the full vote.

Andrew Murr: Members, I respectfully ask that you approve these articles. Send this to trial. Move adoption.

Vote clip: The question of court on adoption of the resolution. Does the record vote require the Constitution to click to read the bill? Should the speaker, voting aye. Should Mr. Longoria, voting aye. Mr. Murr, voting aye. Have all members voted? There have been 121 ayes and 23 nays. Two present not voting, three absent. The resolution is adopted.

KM: 121 to 23. A body of 150 lawmakers overwhelmingly voted in a bipartisan fashion to impeach.

SP: And when the vote happened, I mean, not just, there were quite a few not just was it a big margin voting for impeachment in the House, but there were some pretty conservative people there. Paxton's allies were really leaning into this, this idea that it was sort of a showdown between the moderate Republicans, the RINOs, if you will, and then sort of the true, you know, Trump's important, Paxton's important red meat kind of Texas conservative, and I think that that's simplistic. I think one of the things that was so remarkable about it is that it was this rare moment in Texas politics that did feel about principles and didn't feel about just the game of politics.

AJ: I am incredibly proud that the Texas House, in that moment, chose facts, chose integrity and voted their conscience. Of course, there were people on the floor that were beginning to beat this drum of what we would see as a political machine.

KM: The perspective of those 23 House lawmakers that voted against impeachment was that it shouldn't have happened in the first place. They called it a rushed process and politically motivated. Many of these same critics accused House Speaker Dade Phelan of helping orchestrate the impeachment to take out Paxton, who was earlier in the session accusing Phelan of being drunk on the House floor. Jonathan Saenz over at Texas Values shared many of these same concerns.

JS: The decision for the attorney general to have to face impeachment charges in the House was all coordinated and put together by Speaker Dade Phelan and some other people that he convinced and so I don't think it had any. I think it was almost a convenient thing for him to take some of the arguments and criticisms that were maybe coming up in these other circumstances and then put it all together and decide he was putting all his focus and his target on the back of Attorney General Paxton.

KM: The impeachment vote was a turning point in Texas history and politics. It was a moment in which everyone in the House chamber and all those watching from the gallery knew that they would leave the Capitol that day changed. Some, like Representative Johnson, were proud of the work that they had done to hold Paxton accountable. Saenz was disappointed, seeing this as proof that the

leadership in the House weaponized its power to oust another official they didn't like. At that time, we were all in shock of what had just occurred, but it didn't take long for us to be reminded that it was only just the beginning.

KR: I remember seeing all the news about the House impeachment in late May. Then it was months later, and the impeachment was back in the headlines. What happened in all that time?

KM: Well, after the House vote, the matter immediately went to the Texas Senate. If you recall, General Investigating Committee Chairman Andrew Murr asked his fellow lawmakers to send this case to trial. So, the Senate took the summer to set that trial up. Lieutenant Governor Dan Patrick and members of the Senate were totally silent on the issue, except when they worked to adopt the trial rules and set a date.

KR: And what was Paxton up to during this time?

KM: He was suspended under the state constitution from acting as AG, which meant that Governor Greg Abbott had to appoint someone to serve in his stead. He was also busy assembling his legal team.

Tony Buzbee: The impeachment articles that have been laid out by the House are baloney. Just so we're clear, the allegations are untrue. They are false.

KM: That is Paxton's lead defense attorney, Tony Buzbee, speaking to reporters at the Texas Republican Party HQ here in Austin. Also representing Paxton was his longtime lawyer, Dan Cogdell, who also represented him in his securities fraud trial.

Dan Cogdell: To say this case is not about politics has the credibility, the believability and the sincerity of the fellow that's trying to convince his wife that he goes to the strip joint for the food. It's not about the naked women, sweetheart, it's about the food. Nonsense.

KR: These guys sound like quite the characters.

KM: Characters they are, indeed. Their stamp on Texas legal history is just about as big as their personalities in the courtroom. Buzbee's history is primarily in prosecution going after BP following the Deepwater Horizon oil spill, Texans quarterback Deshaun Watson for alleged sexual misconduct and rapper Travis Scott for the fatal crowd crush incident at the Astroworld Festival. Cogdell, on the other hand, has spent much of his career in criminal defense. He has successfully defended people accused of white-collar crimes, from Enron to bribery at Houston City Hall. He was even portrayed in a Showtime miniseries, "Waco: The Aftermath," by actor Giovanni Ribisi for his defense of Clive Doyle, a Branch Davidians member, who was in the group's Waco compound when it came under siege by the FBI. They are no joke.

KR: Well, did the prosecution have much luck getting anyone to match their status?

KM: The House pulled out all the stops to get the best of the best for their side as well. Dick DeGuerin, another criminal defense attorney from Houston, was one of the lawyers tapped to help prosecute the case. He defended David Koresh, the leader of the Branch Davidian sect at Waco, as well as Robert Durst, the New York real estate heir, who was accused of killing his neighbor. DeGuerin was actually featured in the HBO documentary "The Jinx." Joining him was Rusty Hardin,

another white-collar defense attorney who represented the accounting firm Arthur Andersen in the wake of the Enron scandal, as well as several athletes and media personalities. Finally, there was Justice Harriet O'Neill, a Republican and former member of the Texas Supreme Court, also another influential voice when it comes to jurisprudence in Texas.

KR: So, it sounds like both sides really called in the big guns.

KM: At the time, many of us in the press were just amazed at the star power assembled for this trial, referring to them as the titans of Texas law. I actually had the great pleasure of getting to speak to someone who worked with Rusty Hardin and was on the impeachment team.

Lara Hollingsworth: I'm Lara Hollingsworth and last summer I worked with Rusty Hardin and so was able to be part of his team for the impeachment trial of Ken Paxton. I've moved firms. I started a new Houston office at an appellate boutique, Durham, Pittard and Spalding. We started with a deep dive into those prior proceedings and found that they all had rules, right, that the Senate had passed, and so we became, we familiarized ourselves with them and then we went a step further. We said, look, we need to not just sit here and wait. We needed to put together kind of our proposal. So, we ended up filing a list of suggested rules and we tracked incredibly close to what had happened in prior proceeding.

KM: On June 21, 2023, the Texas Senate adopted the rules for the impeachment and set September 5 as the start date. Under the state constitution, getting a conviction on any of the articles required a vote of two-thirds of the senators. That proved to be a high bar to pass in a chamber consisting of 19 Republicans and 12 Democrats. To make that even more difficult, of the 31 senators, one was not allowed to participate in the trial due to a conflict of interest: Paxton's wife.

KR: Wait, his wife is a member of the Senate?

KM: Yep. Under the rules, his wife Angela was required to be in her seat for the entire proceeding and counted as present but was not allowed to cast votes or even ask questions.

KR: Talk about an awkward environment.

KM: But even allowing her to stay in the chamber and essentially sit among the rest of the jury was seen as an error by the prosecution.

LH: When we were dealing with Angela Paxton, we knew we had someone that wasn't impartial. I mean, it was not possible. And you know, by the way, we have a lot of statutes in Texas when it comes to just jurors down at the courthouse in a standard proceeding that say anybody related to a party cannot sit on the jury, right? Makes sense. We all, I think no one was really truly disputing it and my opinion was that was a problem because by making her present they gave her an automatic no vote. I was like they didn't even give her the chance to try to impeach her husband. Not that anyone thinks she would have done it, but that changed the numbers, right? Because we were required to get two-thirds vote to impeach.

KM: Hollingsworth recalled one rule in particular that shifted who held power in the chamber.

LH: The rule that I think ultimately had the biggest impact on this trial, that was different from any impeachment trial in the country that we are aware of and I believe to be unconstitutional when

they did it, is the Senate completely ceded every bit of their authority to act as a judge. The rules stated that the lieutenant governor was going to act as the sole judge of every ruling that was occurring during the trial.

KM: And that is exactly what happened. Patrick, who was being advised by a retired state appeals court judge, made calls, as a judge would, on objections.

KR: I know a lot of politicians who have backgrounds in law. Does Patrick?

KM: No. Before entering politics as a state senator, he was a conservative talk radio broadcaster in Houston.

LH: Strategically from our standpoint, we were nervous about lieutenant governor's ability to be impartial. I'm not going to hide that. Didn't have to be, by the way, Dan Patrick. They could have selected someone else. That's not in the constitution. As a matter of fact, the lieutenant governor has zero constitutional authority when it comes to impeachment, none. But yet he still became, to me, the biggest factor in this trial.

KM: With his power, the lieutenant governor decided not to compel Paxton to attend every day of his trial and, even more importantly, he ruled that Paxton could not be called as a witness by either the prosecution or defense.

Senate audio: The motion is granted, the attorney general cannot be compelled to testify. This is consistent with the reasoning and judgment in the United States Supreme Court *Boyd v the United States*. The court's ruling is clear. You may not call the attorney general as a witness.

KM: We also saw key witnesses such as Paxton's alleged mistress, Laura Olson, be turned away from testifying under the same rules. For nearly two weeks people watched as the case was laid out for all to see. The biggest highlight of the trial for many of us reporters was for the first time to hear from the whistleblowers, to get to know their side of the story and what they reported to the FBI. It was on a Friday that both sides concluded presenting evidence and holding witness testimony. The senators were sent off to deliberate and the rest of us crowded the halls of the Capitol waiting to get that call that a verdict had been reached. The next day, September 16, we learned of Paxton's fate: not guilty on all charges. The vote was primarily along party lines, with two of the 19 Republican senators voting to convict on 13 of the articles of impeachment. In the years since, much attention has gone into the impact of the rules on the trial. As Representative Johnson reflects on the experience, she believes that Paxton survived by those rules. If the trial was held in a much more clearly defined civil or criminal situation, would the outcome have been different?

AJ: Absolutely, if the trial were held in either a criminal court or a civil court, I think Ken Paxton is absolutely held to account. And how do I know that? I know that because he knows he is toast the minute that a real jury that doesn't have a political bone to it, that at the point that he has to take the stand, that he's going to have to testify about some things that he clearly doesn't want voters to know, and that's the key.

KM: Of course, others who were watching the trial saw a process that was fairly executed. In my conversation with Jonathan Saenz, he lauded Lieutenant Governor Dan Patrick's work in leading the Senate through the process.

JS: The difference, the contrast between how the House handled this issue and how the Senate held this issue, and I don't think it's any secret. There was no goal at all from Lieutenant Governor Patrick or an interest in impeaching Ken Paxton, never was it his idea. Now he realized that he was in a particular role and that the process could be important and the House did something so now the Senate had to decide what they were going to do. I think Lieutenant Governor Patrick is one of the strongest leaders we have. I think that was difficult for him as well. I mean, as you can imagine, he and Ken Paxton are very aligned on a lot of issues. I think from what I can tell, you know, they respect each other. No one really sees them as sort of having differences of opinion on different issues. You know, and also the fact that one of his members, that's you know, Ken Paxton's wife, Senator Angela Paxton, serving in the Senate and you know, and being a fellow colleague when Ken Paxton was in the Senate himself. And so, if we should be following, in my opinion, any member of, you know, the leadership in this in the House or the Senate moving forward on how these issues should be handled, it should be to Lieutenant Governor Dan Patrick.

KM: Impeachment is not a legal process, it's political and, as we know all too well, money is power in politics. For those who find the Texas Senate got it wrong by finding Paxton not guilty on all charges, they say that the money played a role and tipped the scale. In the lead up to the trial, Patrick took a \$3 million donation from a pro-Paxton group. He defended accepting the donation by saying that he has taken just as much money from a group that Paxton has declared a political enemy. But that hasn't stopped people like Hollingsworth from seeing the role money played in the outcome of the trial.

LH: Honestly, I think the biggest factor was money and I think it was the donors on the back end. Never, ever in a trial, does the public have access to the people, the jurors making the decision, right? But these senators were going home every day and they were hearing from their constituents, right, they were hearing from constituents and donors as to what they thought. And, by the way, those constituents and donors, some may have been listening to the evidence, but a lot didn't care what the evidence was. They had made their mind up, and so they are talking to the jurors telling them what they think. And so do I think that Lieutenant Governor Patrick put his thumb on the scale? You bet. Do I think that it was crazy that he took that massive donation and forgivable loan beforehand? Yes. Do I think that he should have been removed as the presiding officer? Yes. Do I think any of it ultimately made the difference? I don't know.

KM: Money aside. There was a particularly quick shift in the lieutenant governor's tone following the end of the trial. Some point to this as evidence that the outcome was baked in the start. He castigated the House for conducting a flawed, rushed process and praised the words of one of the few Republican lawmakers who voted against impeachment. Patrick also proposed the Legislature make sweeping changes to the impeachment process in the next regular session. He was very clearly upset with what the House had brought to the Senate.

Dan Patrick: Millions of taxpayer dollars have been wasted on this impeachment. Thirty-one senators and a large Senate staff that made this trial possible have put their family life, their jobs, their business on hold for the last three months after already being here from January to June. I'm going to call next week for a full audit of all taxpayer money spent by the House, from the beginning of their investigation in March to their final bills they get from their lawyers. We will provide our cost as well that were forced on us by the House impeachment.

KM: For Hollingsworth, that speech felt very personal and pointed toward the prosecution in a way that cut deeper than politics as normal.

LH: You know we're getting the votes, we're not getting the impeachment. While I was sitting there at the table, someone comes up, taps me on the shoulder and hands me a note and the note says there has been a credible threat of violence on the House managers and you're safe here in the chamber, but soon as the proceedings are over, we need you all to quickly gather your stuff and proceed to the back door they wanted us to go out. And I don't, I can tell you the same person that tapped me on the shoulder and handed me the note I watched him go and give a note to Dan Patrick. I don't know if it was the same note. I'm assuming he probably knew that there had been a credible threat. I can't imagine he wasn't told that. And then he gives that speech, that vitriol, and he says first of all, he just lies, I'm just telling you he was lying. But he painted a target on the House managers' backs knowing that there was a credible threat of violence on their lives. That, as we sat there, in that moment, I will go to my grave thinking he knew that. I can't prove it, but I can tell you the facts as I saw them, and it was one of those moments that I thought this is truly not about the fact that we disagree, this is just about power. Because he could not let go of his opportunity to overtly politicize, raise money, do whatever, make the powers that be that were funding him happy that he was attacking those House managers. He could not in that moment recognize, or didn't care to recognize, how much danger we were presently in, and he did not care. He just threw gasoline on that fire. And I will tell you that never in my life had I personally experienced what I believe to be something that was so evil.

KM: For this episode, I reached out to the attorney general's office and the lieutenant governor several times for comment. Neither responded, and they've largely gone silent on talking about the impeachment trial. However, their actions during the latest election cycle do give us some insight into how the impeachment changed them as public figures and what they are willing to do to go after those within their own party who supported impeachment from the start.

KR: Since his acquittal, Paxton has remained quite busy with many more lawsuits against the Biden administration. It seems like everything is back to normal.

KM: In a sense you're right, but things have changed. For one, Paxton has split his time working as AG to oust Republicans that voted to impeach him in this year's primary elections, including going after Dade Phelan, the speaker of the Texas House. Here is Courthouse News' Cameron Thompson again.

CT: Just to reinforce how much weight Paxton has, not just in Texas but nationally, not only was Paxton putting pressure behind Phelan's opponent to get Phelan ousted, he got Trump involved in that. Trump made some statements on that race and it's probably not very often that a presidential candidate will speak on a state house race in a state he's not even from.

KM: Despite Paxton and Patrick campaigning against Phelan, the representative secured the support of his Beaumont district, but others weren't so lucky.

CT: So, Speaker Phelan ended up surviving by less than 300 votes, but that was kind of an outlier. A lot of the other races that Paxton was putting his pressure behind went his way.

KR: Now that the primaries are over, what's in store for Paxton's future?

KM: Well, he appeared in New York besides Trump during the criminal hush money trial earlier this year. Paxton was also in Milwaukee during the Republican National Convention last month.

KP: Hi, Ken Paxton, attorney general at the Republican National Convention. I'm so excited to be here, so grateful that our president is coming in today and that he's well and alive, ready to lead not only the party but the nation, and I'm so proud to be here.

KR: So, he's obviously out campaigning for Trump.

KM: But he might also be auditioning for a new job. Rumors are that Paxton may be making a play for higher political office or possibly a key position in a Trump administration 2.0. Here's Professor Calvin Jillson at Southern Methodist University again.

CJ: Ken Paxton has been attorney general for a decade. He'd like to be in higher office, maybe the United States Senate. He might think that Trump would appoint him as attorney general or as a number two or three role in the U.S. Justice Department.

KM: Remember, Paxton filed lawsuits hoping to overturn the 2020 election results, which came at a great cost. The Texas Bar Association charged him with professional misconduct. He has, time and time again, proven to Trump that he's willing to go the distance.

CJ: He was willing to work as hard as he could and maybe step over the line on Trump's behalf. Trump likes that, he expects that and doesn't always get it from people in his administration, you think of former Vice President Pence. But he values people who are willing to step over the line in support of him. So, the question is would Donald Trump take Ken Paxton and say, "I like the way you fight, I'm going to make you attorney general of the United States."

KR: And what is this about Paxton possibly running for the U.S. Senate?

KM: Well, just rumors, but Paxton may challenge Senator John Cornyn. During the impeachment, Texas Senator Ted Cruz came out strongly supporting Paxton, but Cornyn showed some receptiveness to the charges. When the verdict was handed down, Cornyn said he accepted the results but wasn't sure that the story was over yet. In a post-impeachment interview with conservative commentator Tucker Carlson, Paxton said that the time for new representation might be now.

Tucker Carlson: Why don't you run against him?

KP: Hey, look, everything's on the table for me. Now that I've been through this and I've seen how guys like John Cornyn have represented the state of Texas and not represented us, I think it's time somebody needs to step up and run against this guy that will do the job and do it the right way and represent us and worry about what's going on at the border.

KM: Paxton's words highlight just how the Republican Party is changing. Cornyn has been my state senator since 2002. He belongs to a certain breed of Republican that doesn't appear to be the culture warrior that Paxton is. But while the sky might be the limit, Paxton is not totally free of the baggage that might hold him down. That whistleblower case that rocked his office and led to the impeachment still lives on to this day. Here again is Thomas Nesbitt, the attorney for one of the whistleblowers.

TN: I would just probably say to people that haven't been following this very closely since the impeachment is that these four, out of the eight whistleblowers, there are four plaintiffs, and they are not going away. They still stand fighting for the truth to come out and that Ken Paxton is running from the truth as fast as he can and hiding. But this lawsuit goes on and we simply really await the first step of civil litigation, even though we're almost four years into it. We want to take discovery, we want Ken Paxton and those in his office that aided him in this corruption to have to answer for their conduct. And we're not going anywhere.

KM: Right now, we are waiting for the Texas Supreme Court to weigh in and decide whether that case will continue and if Paxton will be deposed of. Earlier this year, Paxton said in a filing that he would not contest the lawsuit after the state high court allowed the case to continue. So, this has just been another series of delays in seeing the case get resolved. The whistleblowers have been, and will continue to be, toxic to his ambitions. Reports in the state have said the FBI is assembling grand juries and signaling possible actions in the coming months. Despite the scandals he faced since becoming the state's top cop, Paxton has emerged triumphant time and time again, almost stronger than he was before and certainly more emboldened. For us in Texas, we have gotten to know who Ken Paxton is throughout many of his legal troubles, as well as his hyper-conservative tenure as attorney general. He represents the new American right and how the tenor of our politics has forever changed.

KR: Thank you, Kirk, for giving all of us non-Texans a peek into Lone Star State politics, and I think it'll be good preparation for our next episode. Allegations aren't true until a judge issues a final order, but that doesn't stop people from believing them. In the weeks leading up to the 2024 election, reporter Amanda Pampuro recalls efforts made by a former Colorado clerk to prove the "Big Lie" in court before taking our very own Kirk McDanie, on a tour of pre-election litigation being used to build a foundation for distrust of voting rolls and ballot counts. We all remember the flurry of post-2020 lawsuits, but this time around, lawyers aren't waiting until after the election to contest the results. Tune in to see where the Big Lie is now and how it could impact upcoming elections. Make sure you subscribe to Sidebar on all your favorite streaming platforms so you don't miss out. If you liked this episode and wanted to share your thoughts, leave us a review on Apple Podcasts. For more stories like this, check out [courthousenews.com](https://www.courthousenews.com) or our social media pages for more. See you next time.

(Outro music)