House Committee Report
of 1/18/22 and 1/19/22

MINUTES

House Select Committee on Investigation

Representative Spencer Gosch, Chair
Representative Mike Stevens, Vice Chair

Fourth Meeting, 2021 Second Special Sesssion
Tuesday-Wednesday, January 18-19, 2022

Room 414 – State Capitol
Pierre, South Dakota

The fourth meeting of the House Select Committee on Investigation was called to order by Representative Spencer Gosch at 3:38p.m. (CST) via teleconference and in Room 414 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering roll call: Representatives Doug Barthel, Ryan Cwach, Spencer Gosch (Chair), Jon Hansen, Steven Haugaard (via Teams), Kevin Jensen, Kent Peterson, Jamie Smith, and Mike Stevens (Vice Chair).

Staff members present were Justin Goetz, Chief Research and Legal Analyst; Reed Holwegner, Director; and Sara Frankenstein, Special Counsel.

NOTE: *For the purpose of continuity, the following minutes are not necessarily in chronological order. This meeting was webcast live. The archived webcast is available at the LRC website at sdlegislature.gov.*

Public Testimony

Testimony of Secretary of Public Safety Craig Price, Colonel Rick Miller of the South Dakota Highway Patrol, and Sergeant Kevin Kinney.

The witnesses appeared before the Special Committee pursuant to a subpoena regarding the investigation that has been given to the Committee through HR 7001 regarding the conduct of Jason Ravnsborg, the Attorney General of the State of South Dakota surrounding the death of Joe Boever, and whether that conduct involved impeachable offenses pursuant to S.D. Const., Art. XVI, § 3.

The witnesses were sworn under oath by the Chair prior to testimony. They were asked if the Attorney General or his staff for his office in any way contacted them to influence the method of their investigation. All answered No.

Questions from Representative Stevens to Secretary Craig Price: Secretary Price responded that he did not personally do any of the on-site investigation. The North Dakota Bureau of Criminal Investigation was brought in to assist them with the investigation because of the conflict with the South Dakota Division of Criminal Investigation. Secretary Price authorized the posting of the state crash report on the South Dakota Public Safety website. He was in contact with legal counsel and the Governor about posting it, but the decision was his and he was not told not to post the report. A promise to the public that the investigative report would be released when it was complete and at the appropriate time. At the time the crash report was posted, he considered a portion of the investigation complete although additional work still needed to be completed. The videos had been released after the decision had been made by the Hyde County State's Attorney to move forward with the misdemeanors. He believed that it was appropriate for due process reasons. The Hyde County State's Attorney objected to some things but because Public Safety was the custodians of the records, it was Public Safety's decision to release and make them public. The State's Attorney was not in favor of them doing press conferences or anything publicly with this particular investigation. He was not aware of another case in which Public Safety released a death investigation before a state's attorney filed charges, but again asserted his belief that he was legally allowed to release the report. He also

indicated that when he was Superintendent of the Highway Patrol, there were active criminal cases in which he reported directly to the Governor.

Questions from Representative Jensen to Sergeant Kevin Kinney: Sergeant Kinney testified that they looked at trend lines and all the different evidence, into three different categories: vehicle pieces, blood, and paint chips. He testified that they are indicating that essentially the Attorney General's vehicle was on the shoulder of the road when the crash occurred and was very confident in the location of the crash. He further indicated that the results accounted for any drift resulting from traffic.

Questions from Representative Hansen to Sergeant Kevin Kinney: In response to Representative Hansen's question regarding on page 6 of the crash report, there is a diagram, and it shows the location of the vehicle on the very north side of the road at the time of impact. A supplemental report shows the area of impact closer to the lane of travel. Sergeant Kinney responded that the Hyde County State's Attorney asked them to recalculate a trend line based on the blood marks on the edge of the roadway and to consider that alone then it puts the trend line back out towards the westbound lane of travel but that is completely disregarding all of the other evidence that's on the side of the road. Sergeant Kinney testified that Mr. Boever's face went through the windshield of the Attorney General's vehicle and part of his glasses fell off his face on the floor of the front seat and the other part of his glasses in the back seat. To do that, his face had to come through the windshield. He believed that after the impact occurred, the Attorney General started to steer back towards the roadway and then Mr. Boever came off of the vehicle and slid into the ditch. That is how those marks made their way on the side of the road like they did.

Representative Hansen asked what the driver distraction was in the report, and Sergeant Kinney responded that the only indication that he was aware of is the Attorney General's own statements, which said that he was messing with the radio and the cruise control.

Question from Representative Hansen to Secretary Craig Price: Representative Hansen asked how it was determined to release the preliminary crash report to the public but not the more detailed report from Trooper Berndt, which included skid mark testing and the ability to stop, based on the headlights and whether they were on bright, and all those things.
Response: Secretary Craig Price said he felt it was appropriate given where they were at and getting some feedback to the public as to what work had been done, and they had some press conferences and talked about the work that had been completed to that point.

Questions from Representative Barthel to Sergeant Kevin Kinney: Representative Barthel asked about the trajectory of the body after the car struck the body. Sergeant Kinney responded he did not know whether it can be determined how long he rode on the vehicle with his face through the windshield, Mr. Boever was struck on the right side of the passenger side of Mr. Ravnsborg's vehicle, which is why his right leg was severed just below the knee, and then he would have went up onto the hood of the vehicle, his face through the windshield. There is a distinct hole in the windshield, when he came off and that was probably when he broke the mirror, that would force him to go off to the right. If one was only including that information, it would look like he would have been out in the roadway, but all the other evidence on the shoulder cannot be disregarded. Sergeant Kinney did not believe any part of Mr. Boever went underneath the vehicle. As far as how the blood got into the wheel, it would be guessing, but there would be a lot of blood coming from his right leg that was severed completely, and that's the blood found on the shoulder of the roadway. There was a piece of fork that was found on the side of the road that had blood on it, and it was presumptive positive for human blood, which is towards the beginning of all the evidence, but there was not enough there for them to be able to match it to Mr. Boever.

Questions from Representative Hansen to Sergeant Kevin Kinney: The witnesses' testimony seem to indicate Mr. Boever was walking toward his truck so if he is walking west and Ravnsborg is driving west, how does his face come through the windshield?

Response: The report from the Ramsey County Coroner indicated that based on the way that the bone was broken, Mr. Boever would have been walking east bound towards Highmore. The right side of his body would have been the side that was closer to the roadway, so it makes sense that he was walking back to Highmore and that is what the evidence indicates to us.

Question: Why did the sheriff respond to the accident and not the highway patrol?
Response: The closest law enforcement officer will typically respond. If the responding law enforcement officer happens to be a police officer from the city, a deputy sheriff from a county or a state trooper will typically handle the crash and investigate it if it is beyond their scope of capabilities, and they need some assistance. Somewhere over 80% of the fatal crashes that happen in South Dakota, the Highway Patrol is requested to come and investigate them because of the expertise. It is not a requirement that the state be notified.

Question: A lot of the report mentions the fork. If you take the fork out of the equation, then that does change the trend line by about 5.2 feet based upon a supplemental report, thus my earlier question about traffic on that road. Speculating the fork had been carried by Mr. Boever or was just laying on the side of the road, what would the likelihood of that fork being blown off into the grass? There seems to be a conflict in the two reports.
Response: It was going to be speculation as to whether the fork could have blown off the side of the road. The facts that we have though are that the vehicle parts did not move. We know the vehicle parts are bigger and they are less likely to move. It is highly unlikely the glass being blown over and staying in a straight line. It wasn't just the fork that was excluded. The Hyde County State's Attorney asked us to remove the fork and all of the high velocity blood spatter that was along the edge of the roadway, which we know that the wind is not going to blow away. The only concern she had was that we didn't have enough blood to make sure that it belonged to Mr. Boever. It still showed that the overall trend line is within one degree of where it was previously, and it still showed that the vehicle would have been traveling down the north shoulder of the highway.

Questions from Speaker Gosch: Question was asked about there being a substantial amount of blood that was not human in that exact location. The response was that that was correct that there was DNA that came back as non-human and most likely would have been from a deer or something of that nature that would have been there from whenever.

Question: How did the investigators know that the glasses were on Mr. Boever's face and not his head.
Response: There was a witness statement that they saw the subject and he had glasses on.

Question: Were there any skid marks available to prove that Mr. Ravnsborg had swerved at all.
Response: There would not be any skid marks unless there is non-ABS braking. There were no tire marks that would indicate he was steering back onto the roadway.

Question: What kind of stopping distance would have to happen for the momentum change to allow a severed limb to travel forty-eight to forty feet.
Response: If you consider a vehicle that's traveling at 68 miles per hour, it could throw an object a significant distance.

Question: There are two scenarios and the report states, that all four tires stayed on the shoulder. They were on the shoulder at point of impact. If that's the statement then there was really no sideways momentum of the body, the body essentially was a few feet into the ditch. The other scenario, there were two visual scrapes from which DNA samples were taken, one very close to the rumble strip and one close to the grass line, a few feet further was where the body was located and you would think that would indicate a linear trajectory of the body starting from near the rumble strip, hitting the pavement at that location, going further, and then landing at its final location. If the leg was severed upon impact, that suggests that the point of impact would be closer to the rumble strip just off the laws of momentum. When looking at the map, a straight line goes from the blue marks that are evidence points

that are collected on the edge of the road through the body out towards the leg. There were clear DNA samples, large DNA samples, that were visible closer to the rumble strip. If Mr. Ravnsborg came back to the rumble strip, then something changes to the point where there are no skid marks, but the body hits at the rumble strip on the shoulder before it enters into the grass. The leg, again, in a straight-line trajectory from where those marks end up which would suggest that it severed on impact. The impact would likely have been closer to the rumble strip if you were to draw a straight line.

So going off of this, one could see the front piece of the bumper and the blood with bone marking, which would indicate very close to the rumble strip. If you were to draw the straight line to continue with the blood spatter due to the leg and then continue to where the body location was, it would indicate a straight trajectory. This could explain that the severability of the leg was done closer to the rumble strip.
Response: The area of impact was back here (pointing to the map). The leg became severed back here and ended up found there. We see it at final rest and that leg falls within that corner of trajectory. So, if you were to draw lines and it forms a V back to this position it could easily land right where it was based on the area of impact being here. Just because the leg is in line with the body and the markings that are on the edge of the road, that doesn't mean that's where it became severed for there to be bone fragment in there. It could just as easily been his right leg coming down on the ground as he's coming off the vehicle. I don't believe that his leg was severed way down there. I believe it was severed here and it was thrown to where it came to final rest.

Question: So, you're also saying that that portion of the bumper flew coincidentally the same distance.
Response: the bumper could have easily came detached from the vehicle and rolled down or was maybe he was even struck by the vehicle again and it ended up in that final resting location.

Question: It looks like the glass would be on the driver's side, not the passenger side. How would the glass have gone in a linear line across the body of the car and landed in a linear outline?
Response: I guess I don't know exactly how it happened, but that's where it ended up.

Question: Why not ask the North Dakota Highway Patrol to do the investigation?
Response: Because our troopers responding to the scene that next morning and we have the level of expertise. It's objective work when collecting evidence from the perspective of reconstructing a scene.

Question from Representative Ryan Cwach. It's your testimony and your belief that all four wheels of the car went over the rumble strips?
Response: That's correct.

Question: Why was the supplemental report created and why is that conclusion different from the one that is your opinion before us?
Response: That supplemental report was asked by the Hyde County State's Attorney for us to look at just those points and those points alone. You get a trajectory line that's a trend line different than all the other trend lines that we had created. That trend line completely neglects all of the evidence that was still there that we collected the next morning of the crash.

Question: Did the Hyde County State's Attorney indicate to you why she wanted that additional trend line done?
Response: If I remember correctly, she wanted to have a different trend line just because they weren't able to positively ID blood as Mr. Boever's blood, and that would be the blood on the fork.

Question: So, the line in the straight-line mark there would've been your first indication of DNA that was confirmable as Boever's.
Response: Anything that I might tell you is going to be an opinion based on my part as to what the AG did after he struck the pedestrian because I don't have any tire marks that would indicate invasive swerve to the left or anything

like that. Based on what I do see there, I believe he turned to the left, body came off of the right side and tumbling body will go off to the right side.

Questions from Representative Stevens. Did you see pictures where the glasses were located?
Response: Yes, I have. There was a lens that was located on the floorboard of the passenger side. And then the rest of the frames were located in the backseat.

Question: What's your understanding why the sheriff didn't see the body either?
Response: I can't speculate on why the Sheriff didn't see the body. Trooper Berndt found the light as we were mapping the scene.

Questions from Representative Hansen. The blood smear and some bone scraping on the road is what you base your blood trend lines off of those markings?
Response: Those are included in the overall trend lines for the blood and the overall trend line with all the evidence together. All the evidence that we collected was utilized to create the trend lines.

Question: I'm wondering if he can just comment on how there was 5.2 feet worth of discrepancy between the initial determination and the secondary determination.
Response: It's based off of a linear regression and if you don't include all of the evidence your line's not going to be where it's supposed to be. That trend line is looking at just those specific points, it's completely neglecting all the other blood that we located on the scene. But even if you include just that blood trend line with all the other vehicle parts and paint chips, it still puts the point of impact back at where we indicated that it was previously.

Question: Was there anybody that disagreed with the point of impact?
Response: John Daly from Jackson Hole Scientific was hired to oversee to make sure that we were doing things correctly and so he would've been our outside person that we had review all of the information that we had, and he based his own conclusion that we did everything correctly.

Question to Secretary Price: Are you aware of anybody that disagreed with the point of impact?
Response: I'm not aware of anybody that disagrees that point of impact other than the Attorney General's statements.

Questions from Representative Barthel. Regarding airbag activation. Response was regarding how the crash data retrieval or airbag control modules work in general. If you imagine in this case, we have a vehicle that struck a pedestrian that pedestrian is not going to slow the vehicle down enough to cause an airbag deployment and so when Trooper Berndt did download there was no event that was recorded inside the module.

You mentioned that there were no skid marks because it had ABS brakes, but if you slam on your brakes, doesn't it still leave at least a little shadowing.
Response: There is no indication that we could see that there was a heavy breaking in that area. To see any marks on the roadway is going to be very difficult. But we did look.

Question from Speaker Gosch: Secretary Price, did you ever call the state's attorney while she was trying to make a decision as to charge this?
Response: Yeah, several conversations throughout the process.

Question: Did you at any time share your opinion as to what the charges should be?
Response: I did not personally share my opinions. I think that the officers that were doing the work were the ones that shared their opinions on the evidence gained and gathered.

Question: Can you share with us what was your reasoning for talking to the state's attorney?
Response: I think it's important as being the overall one responsible for the criminal investigation to have communication with the prosecuting attorney. Three to five different phone conversations making sure she was getting what she needed to make sure that our officers were getting her the information. Public Safety was fully cooperative.

Questions from Representative Haugaard. Any discussions with the state's attorney along the lines of what charges they might file?
Response: I did not. I had discussions after charges were filed about how I didn't agree with what was filed.

Question: Your conferences or discussions with the State's Attorneys reduced to writing? Were there emails sent back and forth with Emily Sovell?
Response: I don't remember specifically most of it was verbal conversation and there wasn't a ton of it.

Question: Any emails or memorandum that we haven't seen that would be between you and any of the parties involved, the prosecutors, or the Governor's office?
Response: I don't know. I know that the information that we were requested to provide has been provided. I'm not aware of other information. I'd have to go back through and look at all my emails. I would expect there'd be some email communications flowing back and forth. When this thing took place back in September, we had daily phone conferences with all the investigative team for weeks. We would meet in the morning to determine what our plan of action was for that day of what needed to be done in regard to the investigation. And we would talk the next day and summarize what had been done and what still needed yet to be done.

Question: In the event that semis were to drive on, what is a very busy road, was that taken into account in terms of the displacement of lighter debris as shown in your diagram of all the paint chips being in the grass.
Response: I'd say that was taken into account by the use of the trend lines and separating them out individually and then grouping them altogether. The intention of that was to make sure that there wasn't a significant difference or anything that would show a disparity in what we were collecting and there is nothing that gave us an indication that the vehicle parts or the blood moved. The blood is something that is going to hit the ground. It's going to stay exactly where it's at. When you consider all the evidence, they fall within one degree of each other.

Question to Secretary Price: Why was information released to the public without having the entire matter finished as far as the investigation?
Response: In the past they released information to the public through press briefings or press conferences during critical incidents. I don't recall releasing written documents. We promised that we would be as transparent as possible with the public. Given the nature of the individuals involved and again, we had the legal authority to do that and that was part of that pledge to be as transparent as we could. The crash report that was released it's not uncommon for those to be publicly available before cases go to criminal trial.

Question from Speaker Gosch: Why did Judge Brown order it to be removed?
Response: I don't know why the Judge told us to take that information down and the videos of the interviews with the Attorney General that'd be the question for the Judge. I don't think that our attorneys agreed with his decision.

Questions from Representative Haugaard: Regarding conversations with the Governor and whether the release of the information was at the Governor's direction.
Response: Advised by legal counsel not to talk about specific privileged conversations that he had with the Governor, but she did announce in the press conference or one of the press conferences that there would be information that would be released.

Question: You are insisting that you wanted to be transparent with the public, I would think that you ought to be transparent with this committee as well.
Response: I'm not going to waive executive privilege, but I can tell you this, the Governor didn't give us any investigative direction on this case. Now, she did promise things to the public that I know are publicly available through the press conferences and we acted in a legal manner when we released that information so that we can balance between keeping the public informed and keeping the integrity of the investigation. I took the advice from legal counsel and then the decision to release and put the information out there was mine.

Question from Speaker Gosch: About disagreeing with the State's Attorney's analysis. Did you have conversations with her regarding that after she had filed the charges?
Response: Yes. I expressed that was not of the opinion that I would have. I did not pressure her to change her charges.

Question: Did you release an opinion to the media that she was wrong. In a press release.
Response: I sent you the information that you had requested, it was back in September maybe.

Question: Is it customary for you to second guess prosecutors publicly?
Response: There's very few cases. There would be of public nature. But this was. It is customary for law enforcement to gather facts, evidence, make recommendations to State's Attorneys and prosecutors on what they believe the chargers should be, it's ultimately up to the prosecutors and we respect that. We don't always agree with it.

Question: Do you feel it's appropriate for the investigators to issue an opinion, disagreeing with the prosecutor in a manslaughter case, that could potentially taint a jury?
Response: I was not concerned about a Class 2 Misdemeanor going to a jury trial.

Question from Representative Haugaard: Will you provide copies of notes and emails in regards to this matter which deal with the Governor's office?

Response from Speaker Gosch: That would be a committee decision and I think that in the event that the committee decides to ask for such information that would be appropriate to do through a subpoena. Any further questions of the committee? Hearing none I want to thank you, gentlemen very much for your time. I want to remind you, you are not relieved of your subpoena and I would ask that you please sign the register in the back there that you testified here today.

Testimony of Mr. John Daily, Jackson Hole Scientific Investigation:

Questions from Speaker Gosch: We would like to call Mr. John Daily with the Jackson Hole Scientific Investigation. Mr. Daily was put under oath. First question, we are starting off with every individual that comes before us. Did Jason Ravnsborg, Jason Ravnsborg's office, the office of the Attorney General or the DCA in any way, call you or try to influence you, your role in this investigation?
Response: No.

Question: Would you please walk us through your involvement and this investigation?
Response: I was called by Kevin Kinney around the twentieth or so of September. He basically told me what happened, and he wanted to know if I would be willing to kind of overlook or oversee the case. I think part of the reason is because I've trained him, and I've trained Trooper Berndt, and I've trained all of the troopers who were involved in this case, so I agreed to.

Question: Are you an independent organization? Are you affiliated with the government?

Response: I am an independent organization. I was paid by the State of South Dakota whose budget, I imagine, was in the Highway Patrol.

Questions from Representative Stevens: From the standpoint of the records, did you request specific records or were you given access to all of the records.
Response: I was given access to all the records, and I used what I felt I needed to use.

Question: And from the standpoint that you didn't do any on site investigation yourself?
Response: No, I did not.

Question: So, when you were looking at the information, what specific type of things were you most interested in to come up to your conclusions?
Response: Well, I looked at several things. Going back to the training that I had given I also know that and this type of a collision. In this type of collision, debris will be projected in the direction the vehicle is going, and you want to look for the "v." Kinney mapped everything on trend lines. I agreed with their conclusions as to the origin being on the shoulder of the road. I reviewed the calculations, and they all seem correct. I just looked at what Kevin did, and I agreed with what he did.

Question: Is there a margin of error here?
Response: Yes, it was small, within the bounds of what experience should tell us it should be.

Question: There is nothing regarding a traffic count, but what might have changed?
Response: Paint chips would be most susceptible to moving. Very thin, but won't move far. Blood won't move.

Question: What were the defining factors that were important to you in the report in informing your opinion?
Response: I know the experience of the persons who created the report, and I trust them.

Question: Was there a single piece of evidence that everything in the report hinged on?
Response: Not a single piece of evidence; everything is important.

Questions from Representative Hansen. How long have you known Mr. Kinney and Mr. Berndt?
Response: I've known Kevin since 2004. He was in my applied physics class and was one of the first people ever to get a 100 percent on the final examination, which is why I talked him into getting a degree in mechanical engineering. Mr. Berndt, known him not quite as long, but I've had him in a few classes as well. And I know him to be quite competent.

Question: And you said that you trust their conclusions.
Response: Yes, I do.

Question: We've been talking about trend lines, and I think that there may be three in this case, paint chips, car debris, and blood. Do you ever give one more weight than the other?
Response: Well, you look at each trend line and number one you see if there's any gross deviation one to the other, there are not in this case if you take the totalitarian view of each piece of evidence that's in that particular trend line.
Question: There was some blood that was more towards the rumble strips. You agree with the conclusion that the point of impact was at the very north side of the shoulders.
Response: That's correct.

Question on his degree of confidence in the conclusion that all four wheels were on the shoulder of the road.
Response: Ninety five percent confident that all vehicle wheels were on the shoulder of the road.

Question: You indicated that you thought that the Attorney General was distracted, and then you sort of speculated about his cell phone. Do you know with confidence that he was distracted?
Response: I can't think of any other reason that he would be driving down the shoulder of the road and not be able to see someone alongside the road or on the shoulder carrying a flashlight. To me, that's a classic case of driver distraction, turning away for a minute or drop something on the floorboard. I don't know, but he was not paying attention to the driving task.

Question from Speaker Gosch: Would you say that this was more of a procedural analysis rather than investigative, so you more made sure that the tasks, which will be completed were adequate, they did them right, but you didn't actually do any of the formulas, you didn't show up on scene, you didn't get any of the evidence, you analyzed what they provided you right?
Response: That's exactly right.

Questions from Representative Ryan Cwach. Where do you work?
Response: I own a company called Jackson Hole Scientific Investigation in Jackson, Wyoming, since 1982. I did traffic crash reconstruction. I teach traffic crash reconstruction. I've been on the adjunct faculty at the University of North Florida. They instituted a police technology and management program in 1982. I'm starting my fortieth year with them. I spent twenty-five years and seven months with the Teton County Sheriff's Office in Jackson, Wyoming. I have reconstructed well over a thousand accidents. I have a bachelors and master's degrees in mechanical engineering. I've written three textbooks in the field.

Question: A distracted driver versus an impaired driver, when you look at a crash scene is there typically differences?
Response: Oftentimes there won't be, and you don't know that until you look at the person, the person doing the driving.

Questions from Representative Barthel. I know they've spent a lot of discussion about the trend lines and where evidence paint chips and those sorts of things where they were found and whether or not they might've been moved by the wind or traffic or whatever. In order for those trend lines to change, you literally have to have not all but a strong majority of all their debris move right? Gigantic truck comes by and blows everything all off to literally change all those trend lines, is that correct?
Response: Yes.

Question: If just a few items were blown around or are moved by the wind or whatever probably wouldn't change the trend lines.
Response: That's what I'm saying.

Questions from Representative Peterson. Did you find anything unusual about this case as you compared it to any other cases you've worked on over the last forty years, whether for South Dakota or any other States that you've worked for.
Response: Not really, I've worked crashes, much stranger than this one.

Testimony of Special Agent Jeramie Quam of the North Dakota Bureau Criminal Investigation:

Questions from Speaker Gosch: Special Agent Quam was put under oath. First question we are starting off with every individual that comes before us. Did Jason Ravnsborg, Jason Ravnsborg's office, the office of the Attorney General or the DCA in any way, call you or try to influence any part of your investigation?
Response: No.

Question: I know that you are the expert in the latent blood luminal portion of the investigation, correct?
Response: Correct.

Question: Could you give us an overview of what your involvement in this investigation was?
Response: There was a section of Highway 14 that they wanted to use the Blue Star, an agent that reveals bloodstains. So Blue Star comes in contact with blood, it is fluorescent blue in color.

Question: Looking at photo and asked to explain.
Response: Towards the right side of the picture of the grid, of course, and you see the wet area and that's where Blue Star has been sprayed, and in the back corner, you see where Blue Star fluorescent thing. And then, of course, we're taking pictures of it. After that area is swabbed for DNA, that is sent off for analysis.

Question: And the areas that were swapped that illuminated in your grid in your investigation, what was the result?
Response: I didn't know this until last week when I spoke to the case agent, but none of the swabs that we did on that grid area, had any human DNA.

Question: So that would indicate that there was an animal that was hit or struck in that area?
Response: There could be, you know, other things that Blue Star will give them a false positive for, some cleaning detergents, bleach. There could've been a frog that got ran over there a week ago.

Question: What was the reason for picking this spot to spray with luminal?
Response: Just to be all encompassing of the whole road.

Question: How do you know where to start? How do you know where to stop?
Response: It was in the area that we chose was in the proximity of the location of the first piece of debris from Jason Ravnsborg's vehicle. And then we may be speculating but where they thought the initial point of impact was.

Question: This illumination that goes off to the side of the road was not in any way tied to this investigation.
Response: Knowing that none of the DNA swabs from any of the areas that luminous came back to human DNA, so I would say it's non evidentiary because of that.

Question: Were you asked to do anything out of the ordinary through this investigation?
Response: No, I had a pretty limited specific role in this investigation.

Questions from Representative Hansen. When you got to the scene there wasn't any debris left in the road or was there?
Response: No, there wasn't.

Question: When you are doing the Blue Star and you did the grid, did you think at the time that was all the Blue Star that was to be conducted, did you know that there was another area?
Response: I was not aware of that.

Question from Representative Haugaard: It looks like there were eight swabs done. How many were identified as human?
Response: None were identified as human.

Testimony of Trooper John Berndt with the South Dakota Highway Patrol:

Questions from Speaker Gosch: Trooper John Berndt sworn under oath. First question we are starting off with every individual that comes before us. Did Jason Ravnsborg, Jason Ravnsborg's office, the office of the Attorney General or the DCA in any way, contact you and to influence in any way, your role in this investigation?
Response: No.

Question: Could you please introduce yourself and tell us what your role in this investigation was.
Response: My portion of this investigation was to the crash reconstruction. To determine the physics involved with the crash itself.

Questions from Representative Stevens. The accident report that is on file with the Department of Public Safety that is something that you prepared?
Response: Yes.

Question: When you are doing that report, it indicates there's some areas that were still under investigation. And one of them was dealing with the light. The exact time of crash was one of them. Since you've prepared that report, have you been able to answer any of those questions?
Response: The time of crash was based on the cell phone information that was within the reconstruction report. The time of law enforcement arrival was estimated based on the time of a photograph taken by Attorney General Ravnsborg. There is only one photo on the evening of the actual crash. He did state that the Sheriff arrived around the time he was taking that photo, we do know the time that he was taking that photo and that's listed in the full reconstruction report.

Question: Was there ever a conclusion as to what that distraction was or if there was a distraction.
Response: There was a distraction, but what that distraction is we've never determined.

Question: What were your duties as far as in this investigation?
Response: My general duty is crash reconstruction. I deal with the majority of fatal crashes, serious bodily injury, a felony crash, to do an investigation. Just like if a DCA agent would go to a murder scene and investigating a murder, my obligation is to make a determination of a causation of a crash.

Question: Were you than the individual who would've been in charge of directing what everybody was supposed to be doing?
Response: No, North Dakota Special Agent Arnie Rummel.

Question: When you're doing your part, does that include interviewing anybody?
Response: I interviewed one person, the tow truck driver, James Laffey.

Question: And when did you get on the scene?
Response: It was mid-morning or right around noon and I believe on Sunday the day after the crash, the thirteenth of September.

Question: And had the body been removed at that time, or is it still there?
Response: It was still there.

Question: What about the light that we've heard about?
Response: That was in the grass. I was actually the one that discovered the light.

Witness testified about a diagram showing where they put the vehicle at the time of impact.

We base this on the evidence that you see here. The evidence that you see is red, blue, and black. Blue would stand for any blood that we located at the scene, red would be any paint chips that we found at the scene, and black would indicate any vehicle parts that we saw at the scene.
Based on that evidence, we create trend lines. Those trend lines gives us what we refer to as a cone. It gives us a general direction and travel of what happened and when it happened and where it occurred. The basic similarity I can give to this, and in plain terms, if you take a handful of sand and you throw it on the ground, it spreads out. We do the same with the evidence. We create trend lines. There is, as you can see identified here, a fork. That fork was taken from the scene by BCI to North Dakota and processed by their lab and it was determined to be human blood. The evidence down here is also blood. This blood also determined to be presumptive human. So, we have human blood in this area, and we have known human blood in this area and then throughout these are very small droplets. The one significant thing that we found is we literally crawled on our hands and knees looking for any evidence that we couldn't see, as we were standing there. As we crawled, we found nothing in the west bound lane with exception of one small bolt and that small bolt was about two inches from the fog line. We look at the totality of everything. All of our evidence is on the shoulder.

Question: And then so the blood that you found that you determined to be human, who's blood was it?
Response: This blood that was on the fork and in this area, it's my understanding that that was ruled to be human, but it wasn't determined to belong to who but based on the high velocity spatter with the high concentration it's believed to be Mr. Boever. This blood down in this area was determined to be Mr. Boever. The significant thing about it is that in this one line that you see that travels in a direction slightly back to the lane of travel from the shoulder had a bone marking in it that bone marking was collected by BCI, it was determined to be from Mr. Boever. We have red paint chips on vehicle parts belonging to Mr. Ravnsborg's vehicle scattered throughout another significant piece that we located was fragments from the windshield. There was a long continuous line of glass. It was non-reflective glass, and it was similar in nature to the glass that was found inside Mr. Ravnsborg's vehicle. When you think of that type of glass, there was a large hole in Mr. Ravnsborg's windshield. Think of snow on your windshield as you're driving down the road, the snow blow over your hood it'll land on the ground behind you. The same as going to be true with this glass.

Question: How did you get down to that territory?
Response: I'm currently assigned as the district crash coordinator. I oversee all major crashes in northeast South Dakota, and Hyde County is a part of that area.

Question: I initially asked you about the light and can you describe for us what the terrain is like, the length of the grass, the type of things that you saw as it relates to this all occurred.
Response: Where the light was located was where you see the separation between the shoulder in the ditch. There is some sparse grass, mostly gravel, and the light was in there in the evidence photographs. There is a picture of a light exactly as how I found it there are also pictures of the grass at nighttime in the area where the light was found in that grass is roughly nine to twelve inches high. It is a thin grass.

Question: Would you have an opinion as to why that light would not have been seen at the time when everybody went back to see it that night.
Response: We did exemplar testing at night. We took Mr. Boever's flashlight that we found on the scene. We took an exemplary vehicle, a vehicle that was the exact same year make and model. We put the exact same headlights in that exemplary vehicle that Attorney General Ravnsborg had in his vehicle. We had Agent Rummel walk on the shoulder as Mr. Boever was walking based on our calculations and based on witness statements, he was approximately a foot from the ditch as he was walking, so he's almost in the grass as he was walking and when he was struck. We had Agent Rummel walk in that same location that same area and as he did, so we had them hold the flashlight, three different ways. We had them hold the flashlight up above. So, it was pointing forward. We had him hold it at the ground, as if he was walking forward and then we had him hold it backwards. We don't know in

which position Mr. Boever had it, but we do know that at times we could see it and there were times we couldn't see it.

Question: Could you describe the size of the flashlight?
Response: It was a small three-to-four-inch-long flashlight. When I found it, it was daylight hours, and I couldn't see a light just because of the daylight. One of the agents from BCI collected the flashlight, and when they picked it up, the light was on, and they could see the light, and I could see the light when they showed it to me. I recall it being parallel to the road; so, it is in the same direction as West, but I don't recall which way the lens was facing.

Question: Was that recreation videotaped?
Response: Some of it was. High beam or low beam was a big factor that we found. Based on the amount of time and the amount of distance it varied from, a second or two here or there.

Question: Do we know whether or not Mr. Ravnsborg's vehicle was on high beam or low beam?
Response: He stated that it was on low beam. The tow truck driver moved the vehicle the night before. When we talked to him there wasn't a recollection if it was high beam or low beam.

Question: I'm assuming that if it was on low beam the amount of time that one would be able to see someone walking along the side of the road would be very limited?
Response: It would be limited but you would still see them. It is very limited amount of time that he would be able to see a person but based on the condition he would've seen a person.

Question: Did you have any opportunity to talk to the sheriff at all?
Response: The sheriff approached me when I arrived, and I requested him to exit the scene and wait for BCI.

Questions from Representative Hansen. This Blue Star quadrant, why is it so far east?
Response: That was the original area if a person is being struck, then you're going to look prior to the information that is going to be leading up to that you're not going to have instantaneous blood spatter. We know where there's blood spatter; we want to go prior to that blood spatter. We knew that we had a sample from that so we wanted to go prior to that to start testing and look for anything that might give us an indication that there was human blood or any blood in that area and that's why we went further to the East prior to impact. My obligation to the quadrant was to map those squares. I've never been trained to use Blue Star.

Question: What is your typical role in accident reconstruction?
Response: To make a determination and causation of what the crash was, the vehicles position, the people position, calculate speeds, calculate direction. I have investigated and reconstructed over a hundred fatal crashes in my career, a variety of crashes, some of which unfortunately involve pedestrians. During pedestrian crashes we have a multitude of ways that we get an attempt to calculate speed based on impact and on this particular one, unfortunately the body rode on the vehicle. If the body rides on the vehicle, the normal calculations that we would generally use, we are not able to use because there needs to be a vault. There needs to be an impact; there needs to be a departure.
In general terms, you're going to have one of three types of impact and body departures. You're going to have a direct impact where the body flies forward: you're going to have a vault for the body comes up and flies over the top of the vehicle; or you're going to have an off fender throw where it hits the fender and it throws off to the side. On those three types of car pedestrian crashes, we can calculate based on the departure of the body, the angle of the windshield, different things. Mr. Boever's face came through the windshield, and he rode there for a short time. We can see that the glasses came inside the vehicle. The autopsy report with the lacerations, the abrasions when a body rides on the vehicle we don't know exactly when it separates from that vehicle. We know that Attorney General Ravnsborg doesn't make a significant break to stop. It takes him 614 feet to stop. That is not normal. With all of that being taken into consideration we tried to do something outside of the normal. North Dakota offered

their service to come in and Blue Star. Maybe if we Blue Star it will go further back, and we could determine more. We can try to find an area where we can start where we can truly work from. Unfortunately, we didn't find that. The things that we rely on in this investigation are the evidence at the scene that we located all on the north shoulder. Attorney General Ravnsborg later testifies everything was on the north shoulder. We have several witnesses that identify Mr. Boever walking on the shoulder near the grass. They identify Mr. Boever walking with a light. We took all of that evidence, and we created the trend lines. North Dakota assisted with the Blue Star. We created the quadrant. We tried to figure out a way to determine where, when, how, why, and in the end the best piece of evidence that we had was Attorney General Ravnsborg's State cell phone. That provided us with the most evidence regarding speed, that provided with the most of evidence regarding times, we were able to calculate a lot of information with Attorney General Ravnsborg's State cell phone. And the crash scene itself allowed us to determine an area of impact, but it did not allow us to determine speed at impact unfortunately, so we relied on technology for the speed. And based on Mr. Boever's body we relied on science and witness statements.

Question: You indicated earlier that you said that there was a distraction, but you don't know what the distraction was correct?
Response: Representative Stevens asked me how long would you see a person with your low beams on. You'd see them. The only way you don't see them is because you're distracted. Mr. Boever's face came through the windshield, his glasses are inside the car. He doesn't see that. It takes him 614 feet to stop from the area of impact. Normal stopping distance on that I want to say it was less than 200 feet. It's significantly less than 614 feet. Why does it take a person to stop so long? Generally, a distraction. The biggest one that I'm not mentioning right away is why is he driving down the shoulder. He's not just driving on the shoulder a little ways based on what I show and what the calculations show is that he's driving so far on the shoulder that he's almost going into the ditch when he strikes Mr. Boever. To drive that far onto the shoulder, to take that far to stop, to say that you never saw the person, and their face came through your windshield, I'm sorry, but that's a distraction.

Question from Representative Hansen. Response: There was a request made by the States Attorney, if we remove the fork, if we remove the high velocities splatter, remove the paint chips, remove the vehicle parts, remove all that initial high velocities splatter to include only the body slide, that's where you see those long marks where bone is scraping, where the body is sliding and where the final rest of the body and the final rest of the leg. But at the top of your screen directly under the legend is Mr. Boever's leg, it was severed during the crash. We created one single trend line, it excluded everything with exception to where the body slid where the body was and where the leg is, we excluded everything else and when we did that, it did change the angle of approach for the impact, and it showed that the impact would've occurred near the fog line. But we had to exclude all other evidence. What happens if I exclude just the fork and the high velocity splatter in that area? I've never made that I haven't done that. I can tell you that it's not going to change significantly because when we exclude all of the other evidence with the exception to the blood where the body slides there. It made a slight change in the angle and approach, but it wasn't hugely significant. Your question was if I remove only the fork and high velocity splatter, the answer to that is I have not done that. My estimation is not going to change much at all from what, I'm calculating based on that foot from the grass.

Questions from Representative Cwach. About conversation with the tow truck driver, when did you have that conversation?
Response: It was within a week of the crash. I believe it was the fourteenth. It was an in-person conversation. I went up to the tow yard where he's employed at, Black Hills Towing. He wasn't sure on the time he arrived at the scene.

Question: Did he meet the sheriff when he was there?
Response: Yes. He said they had no conversation. He just pulled up. He never went east of Attorney General Ravnsborg's vehicle. When he pulled up to the area where the sheriff and the vehicle were, there were two field approaches across the road, one on the north, one on the south. He was able to pull into that field approach and

make a U turn and then he said he backed up approximately a hundred or so feet. He didn't recall any parts or anything laying around there the only thing that he stated about seeing anything was that he commented that some vehicle parts had fallen off of the Attorney General's vehicle during the transportation from Highmore to Pierre, and fell on his tow truck. The vehicle remained on the tow truck overnight and then the next day when this was all discovered they had not removed Attorney General Ravnsborg's vehicle from the tow truck so they just drove the tow truck down to the Pierre evidence building and drove it directly off. So, anything that would've fallen off onto the tow truck, it's my understanding would've been there when they delivered it to the evidence building. He did indicate he didn't have any conversation with the sheriff, and the sheriff was present the whole time he was there.

Question regarding cell phone information: Response: For some reason approximately two minutes prior to the crash happening, Attorney General Ravnsborg's cell phone started locating every single second; so, we have a location update on his cell phone for every second, for several minutes prior to the crash. During those location points we were able to calculate the speeds.
The speeds do relate to what we calculate based on other methods there are but there was a video that we calculated speed from there's some other things we use that to calculate in relationship to positioning his vehicle on a shoulder versus in a driving lane that I wouldn't have the confidence to say. If I recall correctly going through town as he approaches the 45 zone, it begins to slow down as he's going through town, he's in the high forties I believe. There was a gas station they had a video security system that we were able to depict the Attorney General's vehicle traveling past just seconds prior to the crash from that video. We see the vehicle accelerate as it starts to approach and as the vehicle gets to where the area of impact is we calculate the speed of 68 miles per hour. That was the calculated impact speed is 68 and that is how it was calculated was from the cell phone data.

Question: How long was he actually on the shoulder before impact?
Response: There was two exemplar testings conducted. One of which I've already described with an exemplary vehicle at nighttime. There was an exemplar testing, what would refer to as skid testing. We took Attorney General Ravnsborg's vehicle back to Highmore, and I drove it through the crash location. There was a few things that we determined from this number one brakes worked flawlessly the ABS engaged correctly. He had very good breaking. When I drove through the scene there was no drifting of the vehicle, the vehicle maintains its lane without me touching the steering wheel, it was able to maintain the lane. It was able to stay in the lane, and it was able to break if a person stepped on the brake, there was no skidding. There was no pulling. Also, I did some breaking on the shoulder in order to get on the shoulder. I had to drive across the rumble strips, driving across the rumble strips. There was definitely a noticeable vibration and sound inside the vehicle.

Questions from Representative Barthel. Your testimony is that the vehicle was on the shoulder completely with all four wheels prior to impact or at the point of impact. With what degree of certainty would you say that that vehicle was completely on the shoulder when the impact happened?
Response: I would say that the vehicle not only on the shoulder but that the vehicle crossed the rumble strip with the right and left side tires, and I would say one hundred percent.

Questions from Representative Haugaard. Could you replicate the debris field to consider a different point of impact? It seems like something of a stretch to say that this vehicle is on the shoulder for a long period each side. That it continues on to another 600 feet up. It seems like a lot of presumption.
Response: It is somewhat disconcerting to believe that a person would be that distracted drive that far onto the shoulder and take that long to stop.

Question regarding quadrants. Response: I don't recall what the methodology was to determine those quadrants.

Question: Did you say earlier you don't believe this was a vault, you believe the body was carried.
Response: It was not vaulted.

Question from Speaker Gosch regarding who collected evidence. Response: The South Dakota Highway Patrol, we documented the location of that evidence. Our job was to reconstruct the crash and make a determination of the causation of the crash; North Dakota's job was to collect the evidence and work alongside of us during the investigation. The reason that we didn't bring the North Dakota Highway Patrol was because the South Dakota Highway Patrol was already on scene. I received a call from my Captain Randy Ericsson and requested that I respond to the scene. As to why North Dakota would've never been involved, I was not a part of that conversation.

Speaker Gosch: Many of you are still going to remain on subpoenas. We want to make it clear that you are not to talk to the other individuals we are about to interview; and please do not discuss the conversations or the investigation amongst yourselves either until we have an opportunity to be thorough, hence the sequestration before we came in today.

Motions and Recess

Representative Stevens moved, seconded by Representative Peterson, to release Mr. Jeramie Quam and Mr. John Daily from subpoena. The motion prevailed on a roll call vote with 7 voting AYE, 1 EXCUSED, and 1 NOT VOTING. Voting AYE: Barthel, Cwach, Hansen, Haugaard, Peterson, Smith, and Stevens. EXCUSED: Jensen. NOT VOTING: Gosch.

The committee recessed at 8:21 p.m. on Wednesday, January 18, 2022.

Reconvene

The committee reconvened at 3:38 p.m. on Thursday, January 19, 2022, in room 414 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering roll call: Representatives Doug Barthel, Ryan Cwach, Spencer Gosch (Chair), Jon Hansen, Steven Haugaard, Kevin Jensen, Kent Peterson, Jamie Smith, and Mike Stevens (Vice Chair).

Staff members present were Justin Goetz, Chief Research and Legal Analyst; Reed Holwegner, Director; and Sara Frankenstein, Special Counsel.

Testimony of Supervisory Special Agent Arnie Rummel and Special Agent Joe Arenz.

The witnesses appeared before the Special Committee on Investigation pursuant to a subpoena regarding the investigation that has been given to the Committee through HR 7001 regarding the conduct of Jason Ravnsborg, the Attorney General of the State of South Dakota surrounding the death of Joe Boever, and whether that conduct involved impeachable offenses pursuant to S.D. Const., Art. XVI, § 3.
The witnesses were sworn under oath prior to testimony. They were asked if the Attorney General or his staff for his office in any way contacted them to influence their part in the investigation. Both answered No.

Asked to introduce themselves: My name is Joe Arenz, I am Special Agent with the North Dakota Bureau of Criminal Investigation assigned to the criminal investigations field office in Bismarck, North Dakota.
Arnie Rummel, I'm a supervisory Special Agent with the Bureau of Criminal Investigation in North Dakota.

Mr. Arenz was asked to explain to the Committee his involvement in this investigation. Response: I was contacted on September 13, 2020. In the morning sometime, I don't recall the exact time. It was through a text message. They were looking for agents that could go to South Dakota to assist with an investigation involving a vehicle pedestrian

accident involving the South Dakota Attorney General Jason Ravnsborg. We went down there. We went to the scene. When we got there, it was approximately 4:00 p.m. The South Dakota Highway Patrol was already there. They were controlling traffic flow through the area. They walked us through the scene, gave us an overview of what had been reported to them. They pointed out Joe Boever's body, which was still at the scene, and part of his leg that had been severed during the accident. From there we assigned agents to different roles to include photography. We had some drones that we were going to use for some fly overs evidence collection. We also did an interview of the sheriff, which is what my main role was that night in helping oversee the scene. And then going and helping collect evidence. Once we were done at the scene, we went back to Pierre to a hotel that they had set up for us. I called Attorney General Ravnsborg and left him a voicemail to give me a call. We said we wanted to interview him as soon as we could.

Arnie Rummel explained his role in the investigation was to oversee the investigation and went along to assist in locating evidence, making decisions as to a different things that needed to be done during the process.

Questions from Representative Stevens. Asked each one to give their background as far as their training, expertise, to number of years in law enforcement.

Response: Joe Arenz said that he has a bachelor's degree in criminal justice from Saint Cloud State University, attended law enforcement training academy or a skills program in Alexandria, Minnesota, at Alexandria Technical College. Has three years of experience working for the Mandan North Dakota Police Department. During my time with Mandan, I spent the majority of those three years as a patrol officer; then after three years I went over to the Bismarck Police Department and worked there for approximately 12 years. I spent three years on patrol and then I was assigned to our investigations division. I started out as a property crimes investigator and I spent approximately two years as a property crimes investigator, then I changed portfolios to domestic violence and sexual assault and did that for approximately six years and then I moved into a gaming portfolio as a gaming investigator for a short time. With my time with the police department, I was also sent to polygraph school, and I am a licensed polygraph examiner in the State of North Dakota. I attended the South Dakota Department of Public Safety polygraphs school in 2013. In 2015, I went to the North Dakota Bureau of Criminal Investigations. I was assigned as an agent in the Bismarck field office working criminal investigations. I've worked numerous types of crimes to include homicides, assault, sexual assault, property crimes. In 2017, I attended the National Forensic Academy in Knoxville, Tennessee; that's a ten-week school on crime scene investigation, crime scene processing, where you become certified in shooting reconstruction and bloodstain pattern analysis. Since then, I have maintained my certifications and continue to be a field agent out of our Bismarck office.

Question: Does any of your training have anything to do with the reconstruction?
Response: No, I don't have any accident reconstruction training.

Mr. Rummel responded that he began his career in 1981, worked over 40 years in law enforcement. In his first five years, he worked patrol for the Dickenson Police Department, then was investigator for the Dickinson Police Department an additional five years, and then 30 years ago he took a job with the Bureau of Criminal Investigation. He supervised the task force for 21 years and in 2013 became a regional supervisor. He has been through the FBI National Academy, through Northwestern University Crime Scene School. He has about 4,000 hours in law enforcement training.

Question: Do you have any training as far as reconstruction is concerned?
Response: I used to take care of accidents 35 years ago, but actually not as a true reconstructionist.

Question: As regional supervisor, what are your duties?
Response: I supervise a group of agents, also the supervisor for certain crime scenes if so requested.

Question: Were you the person who received the first call to be involved in this matter?
Response: Yes, I was. Initially I was called by a chief agent with the South Dakota DCI, saying there was a crash. They needed somebody from outside to investigate. We reciprocate like that. They basically gave me the details as it involved a crash where somebody was killed; and the Attorney General being involved, I deferred that call to the director. They had tried to call the director prior to that. A few moments later, they were able to get ahold of him and then the director informed me that they would like me to form a team and go to South Dakota to help investigate this.

Question: What was your understanding that your responsibilities or duties were going to be in relationship to this matter?
Response: I was the person that was going to oversee the investigation. That would have also included the South Dakota Highway Patrol.

Question: What did you do once you received that phone call?
Response: I chose people to come and help with this and proceeded to drive. In route I spoke with a couple of the Highway Patrol, including Rick Miller, and I believe both John Berndt and Kevin Kinney. They were kind of telling me where they're at and so forth.

Question: How was the work allocated?
Response: When I arrived on the scene, they asked me what they should do. Prior to that I already had told them to go ahead and start mapping what they had. They would give me updates while we were driving. They had marked some things and were continuing to look as we got there. They showed Agent Arenz and I around, pointed out different things and continued to do their work. They asked if they should start plotting and I said yes because it takes a long time. By the time we arrived in South Dakota, it was nearly 5:00; so, we were kind of pushed for time before it was going to get dark, which makes it more difficult for all of us to do our job.

Question: How did you allocate the duties?
Response: The scene was quite large; it involved a ditch, a roadway which complicates things. So, we're working on that, making arrangements for the coroner and things like that. You got to keep it moving along. The South Dakota Highway Patrol handled the reconstruction because North Dakota agents don't do that. The North Dakota agents concentrating a lot on the searching as well as documenting, photography, interviewing any witnesses that came along. Joe and I went and interviewed the sheriff.

Question: When you're talking about searching, you're searching for whatever evidence that you might find?
Response: Yes, which is quite unique because you don't know what's evidence, you have to be able to tie it to, we know, it's a red car. There are skid marks there that, you know, we were documenting and only learned later that it had nothing to do with this crash. You end up looking at a lot of different evidence that may or may not be consequential. We go through that and try to document and collect what we can. We decided that we would talk to the sheriff and find out what he knew of the situation and go from there. At that point, we really didn't even have the identity of Mr. Boever.

Question: How long was the scene secured?
Response: It was after dark. I'm estimating that somewhere after 9:30, 10:00. Traffic was allowed to go back and forth; they were still using the eastbound lane.

Question: Who is the first person that you interviewed?
Response: The sheriff was interviewed by both of them. Agent Arenz was the person that was actually asking the questions for the most part, and I was there more of a supervision role. The Hyde County Sheriff was approximately 70 years old. He lived right in the area there. He only lived a couple of minutes away from where the accident happened. He said he had been contacted by dispatch at approximately 10:20, 10:25 on September 12 for a vehicle

accident out on Highway 14. I know that it came up in the 911 call through the dispatcher about the vehicle hitting something, the dispatcher indicated that it was a deer. Jason Ravnsborg had called 911 and spoke to a dispatcher, and he had said that he'd hit something, and the dispatcher asked him if it was a deer. And he didn't know at that point what he hit so the sheriff came out. The sheriff looked at the vehicle and said that he had walked around the area and looked to see if he could see what he had hit and didn't see anything. He didn't feel that the vehicle was drivable. The sheriff then took Jason Ravnsborg to his house and loaned him one of the sheriff's personal vehicles and said Jason could go back to Pierre for the night. And then the sheriff stood by and waited for a tow truck to come and tow the vehicle.

Question: Did the sheriff indicate what his actions were that night when he got to where Mr. Ravnsborg was?
Response: Just examining the vehicle really. He did say that there have been a lot of deer accidents out on that road. Interview took 20 minutes, and then I requested that the sheriff provide a written report also. I interviewed him three times in total throughout this whole investigation as we would get more information. There was a couple of times that we went back to the sheriff to just follow up on additional information. The most important thing that stands out to me is that he had seen a light illuminating in the grass, right off the roadway when he was out there. But then he just thought it was part of Jason Ravnsborg's vehicle that was still illuminating even though it was detached from the vehicle. He did not go look at it.

Question: Did he ever indicate how close he came to Mr. Boever's body?
Response: He had said that he walked a ways down but never said specifically how close he ever got to the body or the light. He could see the light in the grass from short distance away, but he never walked over to look at it.

Question: Could you tell the committee the geographic layout of where the light was in relationship to Mr. Boever's body?
Response: You have your two-lane highway; then you have your shoulders of the road, and then it goes to grass, which wasn't very long. I would have estimated it was eight inches long. Maybe that flashlight was right on the edge of the grass and the shoulder of the road, and it was still at four or five o'clock when we got there that day. It was still lit up. It was still on. The flashlight would've been east of Mr. Boever's body.

Question: When the attorney general notified that they had found Mr. Boever's body, approximately what time was that?
Response: I believe it was approximately 9:30 on September 13.

Question: Would Mr. Boever's body be in a position where other vehicles driving by could've seen his body?
Response: I don't know if they could've, if they had been looking for it maybe, but people aren't looking for that and so it's hard to say on whether they could or couldn't have seen it from where it was at. It wasn't very far off the roadway or into the grass from the shoulder, but we never received any information that way, so I would have to say that nobody saw it.

Question: What other activities did you do that day you got there?
Response: I helped oversee what our agents were doing, and I also helped collect some of the evidence including swabbing some dark colored staining on different parts of the highway.

Question: At some point you indicated that you called the Attorney General the same day that you got there.
Response: It was approximately 10:30 that night. He returned the phone call approximately 1:00 the next day.

Question: Did he indicate to you what took so long for him to call you back?
Response: He just said due to the circumstances with the media attention and scrutiny that was going on, he had shut his phone off.

Question: And during the time that you interviewed him, did he always promptly show up?
Response: Yes, he did.

Question: Did you have to get a warrant, or did he consent to any searches?
Response: He consented to do extractions and analysis of his two cell phones and also provided a written consent for us to use his vehicle and for the highway patrol to do skid testing using his vehicle. I think we ended up getting search warrants later on for some, but the initial cell phone extractions he signed written consents for. He didn't ever prevent them from getting any information. He was cooperative in that regard.

Question: When did you have your interview of Mr. Ravnsborg?
Response: The first one would have been on September 14th at the Pierre Police Department.

Question: Why don't both of you give your impressions as to what took place, what you learned through that interview.
Response: Mr. Ravnsborg explained to us is that he had taken his personal vehicle to Redfield, South Dakota, for a political dinner that day. He had left, I believe, around 3:00, 4:00 in the afternoon from Pierre to Redfield. He provided us with the route that he drove. He said he got there and had dinner there. He did not have any alcoholic beverages. He did later on also provide us with the name of the server and guest list.

Question: Did you find in your subsequent investigation that that information is true and accurate?
Response: Yes, supervisory Special Agent Rummel actually followed up on that, but found that to be accurate from speaking with the server and also reviewing his receipt from the purchase he made at the dinner. There wasn't any alcohol involved, not that we believed. He described being at the dinner, leaving the dinner after 9:00 p.m. He explained the route he took back to Pierre, which was just reverse of the one he took to get there. On his way home, he had called his father. He said he calls his father every night.
During his travel, the phone dropped; he ended up in a dead area with no cell phone service. So, once he got out of that dead area, he then called his father back just to let his dad know that he'd not hung up on him and that he'd just gotten bad reception. He remembers getting to the area of Highmore, South Dakota, going through the town, remembers as he gets through when he's on the west side of Highmore that he looks and sees a speed limit sign of 65 miles per hour. He remembers seeing a sign that says 48 miles to Pierre and then the next thing is he hits something. He said he pulled over. Got out, walks back toward Highmore because he wanted to know where he was for certain to be able to give dispatch a proper location. So, he said he started walking back towards Highmore to where he could see the sign that said Highmore. Turned around, told dispatch that and waited for law enforcement.

Question: And from your investigations and following his cell phone, what he said, was that accurate?
Response: At the time of that interview, we were just trying to get a statement from him. We didn't have any cell phone information; that was only later on; and then we got that cell phone information and found that some of what he said was not accurate.

Question: From the standpoint of after he gave you his route and what he did, was there anything else that you found curious in his rendition of the facts?
Response: There was a statement that he made that caught my attention during the interview. I don't have the exact quote, but it was something along the lines of, I didn't see what I hit until impact. Which it stood out to me is, potentially, he's saying that he may have actually seen it upon impact. But, through his whole statement he said he did not ever know what he hit.

Question: Approximately how long did your interview last?
Response: I believe that one was approximately an hour.

Question: When was your second interview?
Response: September 30. We were waiting to get more on the reconstruction from South Dakota Highway Patrol. They had been doing some of the work with the data they had collected and also more specifically was the cell phone data. We wanted to see what was on those cell phones.

Question: Were you aware of whether Attorney General Ravnsborg met with anybody in the DCI headquarters about this matter?
Response: Yes, it was brought to our attention that Attorney General Ravnsborg, while at DCI headquarters, had spoken to the commander there, Computer Forensic unit, who does their cell phone things like what ours do and questioned him on what sort of things we would be able to find on that phone.

Question: How many phones?
Response: One was more than likely part of what he gets as being the Attorney General for his daily activities and then he had his own personal cell phone.

Question: What information did he share with the staff?
Response: He wanted to find out what sort of information and capabilities they had and what sort of information could be located on those phones. That conversation was a couple of days after the incident, I believe on September 15. I believe he followed up with one of the staff members about the possibility of him being administered a polygraph for this case. It had been brought up during the first interview just as a possibility. He agreed to take a polygraph. As a polygraph examiner myself in looking at this case, him speaking to a few other polygraph examiners, it was kind of agreed that this would not be a good case for a polygraph to be administered.

Question: Did you obtain any other information that you felt was relevant prior to the second interview of Attorney General Ravnsborg?
Response: There was one other thing which I think is very important. There was a pair of dark framed glasses that were located in the vehicle, the two lenses and part of the frames. The frames were broke, and the two lenses and part of the frame were laying on the front passenger side floorboard. The rest of the frames were lying on the back seat behind the passenger seat. They were photographed and collected during that interview. I asked him about him wearing glasses and he said that he wore sunglasses. I showed the photo of the broken glasses to him, and he did not recognize those glasses, saying they weren't his. In processing the vehicle, they also found a red substance that appeared to have soaked into the fractured glass of the windshield and also blue fibers that were embedded into the windshield. We cut sections of the windshield out and those came back positive for Joe Boever's blood.

Question: Did you find any evidence that Mr. Boever's body had gone over the top of the car?
Response: No, we did not.

Question: After you processed the car, then what happened to the car?
Response: On the 15th it was brought back out to the scene where skid testing was done. The Highway Patrol did the skid testing.

Question: Was there ever a time where the South Dakota Department of Public Safety wanted to release the vehicle for the public to look at it?
Response: Yes, they had mentioned that was something that they would like to do. And I requested that they do not.

Question regarding second interview. Response: At the Pierre Police Department on September 30, 2020, we asked him about the cell phone usage. He said he hadn't been using his cell phone other than to call his dad. Talked to him a little bit about emails; he does have access to his email on his phone. I had a printout that had been made, basically outlining all of the phone activity around the time of the accident shortly before that. At that point I took

that print out and I slid it across to him and showed him the data that we hadn't told him that we knew he was using his phone. We showed him the data and then went into the questioning about the email; at which point we had knowledge that he had been using it to check emails and that he had some various different email accounts on his phone. He had a work one, and a national guard one, which he said he never would access from his phone because it would need a VPN. He had a campaign email and, I think, a personal email. He acknowledged that he had been using, when we questioned him about the website, he acknowledged that he does glance at that stuff once in a while, but he doesn't get into actually reading any event really. Basically, he changed his story from not using a cell phone to using his cell phone. But he did state that at the time of the accident he was not using his cell phone. That at the time when he went through Highmore, he had set the cell phone in the center console because he was going to try to focus, and he just wanted to have his concentration on cases that his office was working. So, he had turned the radio off, set the cell phone down, and that's when the accident happened.

Question: What does the cell phone records indicate?
Response: That the 911 call had been made at 10:24. That he had been on his phone on some internet site, some news articles up until I believe, 10:20 or 10:22. There was a couple minutes prior when his phone was last used. His phone had been locked, locked means basically that the phone would need a pass code to get into it. Another thing is that we had data; I believe it was an Apple health app that he had on the phone that counts steps. After the accident it showed that he had made, I believe, 848 steps, but I don't remember if that's the exact number of steps, which would've explained the walk from the vehicle to see the Highmore sign and then back. And so, then we confronted him about that and that's what he said he had went and walked out there to see the sign, turned around and come back. At that point we confronted him about where he parked, to go 400 steps. We estimated that he would've had to walk right past Joe Boever's body. So, we questioned about that, and at one point he made the statement along the lines of, I got there I turned around and that's when I saw him and then he said, no, I didn't see him. The only other person out there was Joe Boever, so it's the only one he could've seen out there. We did also tell him at that point that we had very good reason to believe those eyeglasses were Joe Boever's, based on videos and through statements people had told us that Joe Boever had been wearing glasses at the time. And we did tell him that from all the information we have is that Joe Boever's face had to have come through the windshield of his car, at least partially, causing those eyeglasses to go in there. He maintained that he did not ever see what he did.

Question to Mr. Rummel: About whether or not the South Dakota Highway Patrol wanted to show the car and you said that you didn't advise, right?
Response: I said that we still wanted to keep it as a piece of evidence and not to put it on display. They had asked me on a couple of different occasions, about different things, what we normally do and in particular was an initial report that they wanted to release, and I asked them not to release it and so they sent it to me to see if it would be okay to release because under normal circumstances it would've been released but in this particular case, I said, I wouldn't word it like that. I discussed with them that I thought that they should word it differently, and that's what they ended up doing. That document was like an initial incident report that would be the crash report that's on their website. I said I wouldn't put on there that he was distracted by his phone. I informed them that we weren't done working on this and that they should only put on there that he was distracted. Because at a bare minimum, we had evidence that he was distracted; and we're still analyzing the phone to make sure that we release accurate information; and at this point no one seems to know what the distraction was.

Questions from Representative Hansen to Mr. Arenz: Can you talk a little more about your observations once you get on to the scene?
Response: When we first got to the scene, there was a white pick-up in the ditch, which we later learned shortly after I got there, that would've been west of the accident scene that was Joe Boever's pickup and that he had struck a hay bale the night before. We believe that's probably why he was out walking that night. There was a trooper there, who ushered us through. The troopers were documenting different things on scene. We met with them. We saw a lot of debris lying just along the shoulder in the grass as we walked through it from where we parked over by the Hyde County Shop area, not very far away. It was a good place to stage and get vehicles out of the way. We

were working from that area, and we walked westbound. They pointed out debris we saw. I saw a lot of different types of debris, some glass headlight. A larger piece of the bumper was laying on the shoulder of the road. I didn't see the flashlight initially. We got to Joe Boever's body that was lying just a little ways into the grass. He was basically not clothed from the waist down, shirt had been lifted up, very white in color. I believe it was his left leg that was bent up over his head and his right leg had been amputated at approximately the knee. They showed us where his leg was lying in the ditch further west of where the rest of his body was. Little pieces of debris were scattered all over the place. There weren't a lot of larger pieces. I mean, there was one large piece, but most of it was smaller debris, and it did seem like it was all concentrated on the shoulder closer to the ditch on the north side. Then in the grass also we'd found some pieces. There was some darker staining on the roadway also on the shoulder, off the road.

Question from Representative Cwach about how the swabs are handled. Response: The swabs get packaged, sealed, and are taken to our crime lab in Bismarck where they do analysis testing to determine if it's human blood or some other substance. If they come back positive as human blood, then they'll get sent on for DNA testing. They have different analysts that determine if it's human blood and then it goes to another analyst.

Question from Speaker Gosh about to whom Arenz sent his report. Response: There was a request for us to release information to the Highway Patrol, but our policy pretty much said we're going to send it to the State's Attorney. The State's Attorney can dictate where it goes from there.

Question: Was there anything out of the ordinary or that you were requested to do or not to do by any entity?
Response: We don't normally end up blue starring areas as large as that. Usually when we use blue star, it's used in a smaller area and have just a little squirt bottle. We were using weeds sprayers out there doing it. That's not normal that we would do that large of an area. We don't get involved in a lot of accident investigations like that. Usually it's in more confined areas, that's just when it tends to be used more, a bedroom or something. It tends to be a little bit smaller area, and you usually have it more concentrated to a certain area of that room. Other than that, there were some ideas that had come up that were presented to me for some lab testing that I knew our lab had some limited capabilities. I was open to having these done somewhere else. Our lab at that time was doing basically DNA testing and maybe fingerprint testing.

Question: On the blue star quadrant that you did, what made you decide that area?
Response: The intent was to establish an area of impact, where the collision occurred and they're basically going off where the first debris was located. The area that we picked was specified to us as a starting point.

Question: Why did the South Dakota Highway Patrol do the work and not North Dakota?
Response: I think the South Dakota Highway Patrol did a very good job. Maybe it could have been cleaner had it been the North Dakota Highway Patrol, but there's some definite barriers there. We saw that ourselves coming out here, having to drive sometimes four hours to hopefully do an interview that someone might not even come in for. So, you know, we're driving a long ways to have the Highway Patrol do the same thing. I do see the barriers there, and so I really have to defer to the Highway Patrol and whether they felt there was a conflict or not.

Question: Do you think in your experience it's possible that ten hours of traffic may have displaced some of the debris?
Response: I believe it would be possible, but there was so much of it from what I remember seeing that was along the shoulder and in the ditch. I don't believe it displaced all of it; there may have been some pieces that possibly could have moved, but it was all not very far apart from each other.

Questions from Representative Ryan Cwach. Regarding the statement put out by Attorney General Ravnsborg on September 14th to the media, did the statement impact your ability to conduct the investigation?
Response: I recollect our first interview with him was on September 14th. It did not have an impact.

Question: A couple of things that I observe that he said in the second paragraph, there my vehicle struck something that I believe to be a large animal, likely a deer, is that your recollection of what he told you on that day.
Response: I don't recall him saying a large animal. I recall him basically saying he didn't know what he hit but that it could've been a deer.

Question: He says he didn't see what he had hit, and he stopped his vehicle immediately to investigate. Did your work find that he had immediately stopped his vehicle?
Response: He did travel a short distance down the roadway to the west.

Question: And then it says on the start of that first paragraph that he looked around the vehicle in the dark and saw nothing to indicate what he hit. Is that what he told you?
Response: I believe it was something similar to that. He had looked at the damage to his vehicle and took a photo of it.

Question: And then several times throughout, he mentions that the accident was on the road. And was that what he had represented to you too?
Response: Yes.

Question: Is there anything in this letter based on your knowledge of the investigation that stands out as being inconsistent what he had testified to?
Response: No, I think it's actually pretty much what he said.

Question: In the interrogations, he talks a lot about what he was doing with the radio; both before and after he mentions that he was listening to a Lakers game or a Twins game and then at one point he says he had turned the radio off. Other times he says that he may have been fiddling with the radio. What did you end up finding or what was your conclusion on that particular issue of what he was doing?
Response: I think at some point he was listening to some sports game. I just don't know when he turned it off.

Question: Did you find any other inconsistencies in his testimony about what he was doing other than the phone activity?
Response: No, not that I can recall.

Question: On page 88 of the second interrogation, you call him a liar, and I was curious if that was just an interrogation technique or if it is was a conclusion that you had actually reached?
Response: During that interview we had brought up the discrepancies from what he had said, and I said, some people are calling you a liar and I didn't want to say I am calling you a liar, I'm saying some people at this point because I'm still thinking we might want to interview them again during this interview.

Question: Did you interview them again?
Response: No.

Question: What are you referring to as what mistakes are being made?
Response: That he did not report what he had actually seen is my belief. The fact that he didn't know he saw something big. He said that he didn't see it until the impact. He's not being straightforward, and I think I say that later on. Some people call you a liar because some of the things we asked him about directly were not factual. He had made the statement he wasn't on his phone other than the phone call. That whole process driving down the middle of the road. Everything indicated he wasn't on the road. He was on the shoulder. And at other times he says that he didn't see anything until impact. When I was reading through these interviews again, the impression I got is a discrepancy.

The purpose behind the first interview was to get a statement as to what actually happened in his perception. The second interview after we find more information we ask them about the same thing, and then the story changes. Once that story changes, in my opinion, they are not being straightforward. In my mind he wasn't telling the truth. In the interviews, Ravnsborg denied using his cell phone for purposes of checking email, reading websites, until you actually showed him the cell phone data showing that he had been doing that. Then he asked to look at it, which we provided him the opportunity to look at, to show that the evidence in the cell phone is showing a lot more than just one phone call.

Question: In the interview you referenced a study or survey about when someone knows when they hit a deer versus when they hit something else. Could you tell me about those studies?
Response: As far as the study, it was a group of investigators were sitting at a table, some of them were troopers and other folks and I asked the question. For those of you who hit a deer. How many of you did not know what you hit? And for the most part everybody said, yeah, we knew we hit a deer. We saw it come over the hood. Or we saw it on the hood or, you know at the time of impact that we know it was a deer. There's deer hair on the car and so that was what I was referring to. It was kind of a technique to see if Ravnsborg would actually admit to what he had seen. He continued to say at that point that he didn't know what he had hit.

Questions from Representative Haugaard. Were all those comments recorded?
Response: Yes, the whole interview is recorded.

Question: And it is clear that forensically the phone was not being used at the time of the impact?
Response: Yes.

Question: As far as the debris itself, were you involved in measuring that debris material?
Response: I was not. A few months back, the debris material was turned over to the South Dakota Highway Patrol. The North Dakota BCI collected the debris and packaged it and labeled.

Question: The debris was unattended for approximately ten hours and the concern I think that most people would have is how was it disturbed. Was it exactly as it occurred then or is there something different about it? It is obvious the road was not closed so people are traveling down that roadway, and it would be important to know why. Don't you think that potentially the debris was disturbed, that it could have been moved?
Response: That's why they collect a lot of it, because with as much as was out there it wasn't all moved. You are limited on what you can do if it's not reported for ten hours.

Question: Mr. Arenz, you indicated that when it came to the use of the illuminating material, there was a decision made about where you use that liquid.
Response: We are going to make the area bigger than what they would think it would be just to cover a bigger area of it. When it comes to the Blue Star, he is trained for using that generally. Then the rest of it is a matter of taking sampling, sterile cotton swabs are what you generally would use wherever it glows, then you swab that area.

Question: Was there something else you thought that could be done for testing purposes that maybe wasn't done?
Response: They weren't limiting us on what we could do out there. They had a starting point, but had we wanted to spray the entire highway, they would've let us do it. They weren't stopping us from doing whatever we chose to do.

Question: Why wasn't a polygraph exam given to Ravnsborg?
Response: You don't want to do an exam that isn't going to be accurate. We actually discussed that and didn't feel that he would get a very reliable test doing that. In general, the consensus was that with the information we had, the likelihood of him not passing the test would be extremely high, even if he was telling the truth, due to other factors.

Question: Did you follow up on specific questions later to clarify your concerns that were raised in the early interviews about not seeing what he hit until impact?
Response: Yes, that was brought up in the second interview with him, and he was confronted with that. His position was that he didn't see what he hit, even though we explained to him that we felt differently. It wouldn't have worked for a polygraph. It was our opinions that even if he was telling the truth, if we had given him that test, he would've failed it. We're not going to give him a test that in our opinions he is setup to fail. Then it's not an accurate test. We didn't want to do anything that's not accurate.

Questions from Representative Smith. Did you at any time feel that you weren't being told the truth based upon other indications, body language, etc. while interviewing either the sheriff or Ravnsborg?
Response: I don't recall anything with the sheriff being deceptive that stood out to me. With AG Ravnsborg, I didn't really see much in body language during that. I'm better about watching my interview later on and picking up on that sometimes. While I'm in the middle of a line of questioning, I don't always pick up on that. I don't recall myself seeing anything that was extreme, I guess; I could tell he was uncomfortable, but that would be expected.

Question: Did you pick up anything when you went back and looked at these interviews?
Response: Not really, I didn't. Maybe he did. Part of the interview I was watching body movement and stuff like that and from the start of the interview I was more against the wall, as the interview went on, I move closer and closer to him and when he made a mistake or said something he would emphasize that. Something that really doesn't need to be emphasized possibly or he's not being totally truthful. Then the other piece that I just find very interesting is the comment he said, "I turned around and I saw him."

Question: So, my question is to both of you. Do you believe that the Attorney General knew that he didn't hit a deer and hit a person?
Response from Arenz: His statements that he made, made me believe that. One in the first interview and one in the second interview, would've indicated that and it did make me believe that was a very realistic possibility.
Response from Rummel: I agree the other part of that as he walked by a flashlight, that's on and there's a body that's two feet off the roadway and obviously deceased and he's all white, I believe he would have to see them is my opinion.

Questions from Speaker Gosch: About the mirror and you talked about it was broken because in your professional opinion possible that the body vaulting over the top, whereas it more realistic that it would have slide off to the side.
Response: I believe it slid off to the side.

Question regarding interview of Janet Kopecky, Nick Nemec's sister-in-law.
Response: She stated that she was driving by, had seen a pickup in the ditch and it looked like there was a light on in it. I believe she said that there was someone sitting in there if I remember right.

Question to Special Agent Arenz continued. Janet said that she is the sister-in-law to one of Joe Boevers's cousins. That night she had been coming home around 11:30 p.m. and she saw Joe Boever's pickup in the ditch and saw a dark colored vehicle parked by it in the ditch. As she proceeded east bound, she observed what we believe is AG Ravnsborg's vehicle parked along the shoulder of the road with its flashers on.

Question regarding interview of Nicole Baloun.
Response: I spoke to her on September 24th and basically what she stated is that about 8:25 she was on Highway 14, and she observed a white pick-up in the ditch, which she believed was Joe Boever's pickup in the ditch. And that there was someone sitting in the driver's seat at that time. Then she proceeded home.

Question regarding interview of Dean and Peggy Taylor.
Response: We met with Dean and Peggy Taylor on September 24th. They stated that they had been traveling on Highway 14. Dean was driving, Peggy was in a back seat and their daughter Matison was in the front passenger seat as they were driving on Highway 14. Peggy saw a male individual walking along the grass on the side of Highway 14. He was wearing jeans and a blue sweatshirt, which is what Joe Boever was wearing. That was at approximately 10:00 pm. Then we spoke to Dean Taylor who stated he observed a male walking westbound outside of Highmore, west of Highmore, walking on the north side of Highway 14 on the shoulder along the grass. He said the visibility was normal. He had seen the male when he turned on his high beams.

Question regarding interview of Shalon Arenholz.
Response: Spoke to her on September 24th, and she had stated that she is Joe Boevers next door neighbor. That on September 13th she had come home and that Victor Nemec, who is Joe Boever's cousin, was at the residence and he had asked Shalon if she had seen Joe because Victor had been looking for him and couldn't find him. Shalon didn't know where he was either. She did mention to me, that about a month and a half prior to this that Joe Boever had drank himself nearly to death and that he had some medical conditions, specifically bipolar, alcoholism, ADHD, and diabetes.

Question regarding interview of Matison Taylor.
Response: Same as Dean and Peggy Taylor, while they were on their way back to Pierre from Huron, she observed a male walking westbound on the outside of Highmore. The male was walking westbound at the time when they saw him, and he was walking right along the grass on the shoulder of the road.

Question regarding interview of Richard Ravnsborg.
Response: The best of my recollection Richard stated that Jason had called him that night. And they were talking, the call dropped, Jason called him back a little bit later on and said, "I didn't hang up on you dad." That ended their conversation and then that he got a call later on that night from Jason when Jason was, I believe, driving home from Pierre in the sheriff's personally owned vehicle saying, he had gotten in the accident.

Question regarding interview of sheriff.
Response: Covered that he had responded to the accident, encountered the Attorney General, examined the car, said he at one point did walk around looking also to see if he could see the deer, didn't see anything, saw the light glowing, thought it was part of the car that had come apart from the car that was still illuminated.

Question regarding interview of Anna Johnson.
Response: Anna had been driving on Highway 14, and she saw Boever walking along Highway 14. She went past him and then turned around and came back and asked him if he wanted a ride. He said no, that he was looking for his pickup. She asked if he was intoxicated. He said he wasn't, but she said he had been stumbling. When he was walking, she said he was walking along the shoulder of the road, and she thought that he had a flashlight or a cell phone light

Question regarding interview of Tim Bormann.
Response: Bormann is the Chief of Staff for Attorney General Ravnsborg. He was contacted by Ravnsborg after the accident. Ravnsborg also sent that photo that he took of the vehicle. When he sent it, Tim Bormann replied back asking if the deer was still alive or something along those lines. AG Ravnsborg told him that the sheriff had allowed him to use his personally owned vehicle to get back to Pierre and they made arrangements between the two of them that they would go back to Highmore the next day and return the vehicle. Prior to dropping the vehicle off, they went to a gas station and filled it with gas, this is the sheriff's vehicle. AG Ravnsborg wanted to go back to the scene of the accident and see if he could find what he had hit. He said they parked by a large piece of debris that was laying on the shoulder of the road. When they got out they went separate ways from the vehicle. Shortly after they got out of the vehicle, AG Ravnsborg yelled for Tim Bormann to come over to him. When he did, Tim Bormann

saw Joe Boever lying deceased in the grass. He said that after that they got in the vehicle and drove over to the sheriff's house and went and told the sheriff what they had found. The sheriff came out, looked at it, said he was going to contact DCI, and that Jason Ravnsborg and Tim Bormann should go back to Pierre. They then left and went back to Pierre. The sheriff stayed there until DCI or the Highway Patrol arrived.

Question regarding interview of David Natvig.
Response: David Natvig is the Director of South Dakota DCI. He's known AG Ravnsborg since they were in law school together. He said AG Ravnsborg isn't a drinker. They speak several times a day just due to their jobs; they keep each other posted on what's going on. That night he had received texts from Jason after the accident, had a photo of vehicle. Jason told him that he had hit a deer on his way back to Pierre. He had questioned Ravnsborg about what he was doing at the time of this accident and if he had been messing around with his radio or what he was doing, if he was distracted. AG Ravnsborg told him he passed the 65 mile per hour sign outside of Highmore, the sign saying 48 miles to Pierre, and then that's when he hit what he thought was a deer. It was the next day that Director Natvig learned that AG Ravnsborg struck someone with the car. I had asked Director Natvig if he was familiar with AG Ravnsborg cell phone usage while driving, and he said that AG Ravnsborg always has his cell phones, but that he hasn't really driven with AG Ravnsborg.

Question regarding interview with Victor Nemec.
Response: Victor Nemec is Joe Boever's cousin, and the night that Joe Boever had drove his pickup into the ditch, Joe Boever contacted Victor Nemec. Victor went out and picked him up and gave him a ride home. Victor said that when they got home that they talked for a while. Joe Boever told him that he'd dropped some tobacco in the vehicle when he was driving and that he was trying to pick it up and that's what led him going into the ditch and straight into the hay bale. Victor said they got to Joe's house. They talked for about a half hour. Victor looked around to see if there was any signs of alcohol. He didn't see any. The next day he didn't know where Joe was and eventually, he came out and met supervisory Special Agent Rummel at the funeral home and was able to positively identify the deceased as Joe Boever. He did state that when he was also at the house with Joe that they had tested his blood sugar because Joe Boever is a diabetic, and Victor had thought that Joe was a little bit off, seemed sluggish. But that Joe Boever's blood sugars were within normal ranges. He contacted the sheriff the next day to say he couldn't find Joe and then later found out that Joe is deceased.

Question regarding interview with Pierre Chief of Police Jason Jones.
Response: Jason Jones, the Chief of Police for the Pierre Police Department, has known AG Ravnsborg for over 20 years, went to college together. Also, some military things in common. Stated that AG Ravnsborg is not much of a drinker at all. Had found out about the accident through his dispatch because his dispatch center at the Pierre Police Department dispatches for five counties, and due to the nature of it, he was contacted. He was later notified that the vehicle was going to be towed to the police department for storage. He had a conversation with AG Ravnsborg; he had sent out a text to him, kind of saying thinking about you. He did talk to Ravnsborg, told him he was going to stop in Highmore for gas, didn't think any of the gas stations were open, so he continued on westbound, saw the speed limit sign, and the sign for how far it was to Pierre and then he hit something, and it turned out to be a person. AG Ravnsborg had asked Chief Jones about the whereabouts of his vehicle, and Chief Jones told him that it was at the Pierre Police Department.

Question regarding interview with Barnabas Nemec.
Response: The interview we did with Barnabas Nemec stemmed from a letter or an email that he'd sent to the prosecutor Emily Sovell. I believe it was on March 24th. If I recall correctly, myself and supervisory Special Agent Rummel traveled to Highmore because Barnabas Nemec was in Highmore. He had lived there but wasn't currently living there anymore. He was living in Detroit but had come back. He is one of Joe Boever's cousins. Barnabas and Joe grew up together; then they went their separate ways when Barnabas left town several years ago. They hung out together, got into some trouble when they were younger, but nothing too serious. But Barnabas said Joe took

medications for depression and anxiety and that Joe had talked about at some point if he were to ever commit suicide that it may be by throwing himself in front of a moving vehicle.

Questions from Representative Barthel to Mr. Arenz: When we talked about when he locked the phone and I think you said that was at 10:22., and then he made the 911 call at 10:24. So, you are assuming that he had locked the phone prior to the collision, but is it possible that after the accident happened he locked his phone, he's there for a couple of minutes, then calls 911?
Response: I think at first, we thought that was more likely but as more forensic analysis had went on, they were able to provide us with second by second speeds of the vehicle and by looking at the speeds of the vehicle you can see he hits a speed of 67 miles per hour right outside of Highmore and then gradually slows down. So, we have those second-by-second speeds, so the phone was locked prior to him ever decelerating to the point of stopping the vehicle and then when he stops the vehicle, right after that is when that 911 call was made. If you cross-reference that with the times of the phone activity, it would show that he stopped a few minutes after the phone had been locked So he would have been a lot further away from the scene of the accident had he struck someone and then taken that long deceleration back down to zero.

Question: I know there's been a lot of talk about eyeglasses that were found inside the car. Looking at the photo of the glasses in the back seat behind the passenger front seat, you see part of the frame of the eyeglasses laying on top of those papers. And the other photo, on the floor, at the corner of the floor mat, there you see a lot of the glass that's part of the broken eyeglass frames, it almost looks like kind of a black ring there at the corner off of the floor mat. Do you know when these photos were taken?
Response: Yes, I do. They were taken on September 14th while the vehicle was parked at the Pierre Police Department in the shop, that's when those photos were taken, during the processing by the BCI agents.

Question: Were you there when that happened, when the photos were taken or some of them?
Response: Yes, I actually did take some of them, but I didn't take those. I started off taking photos, when I was waiting for our photographer that was going to be assigned to do it. Once he got there, I turned that duty over to him, helped to oversee the processing of the vehicle. When AG Ravnsborg called, then I went into the actual Pierre Police Department. The shop that we were in is an outbuilding on the property, but it's not attached to the building.

Question: I'm curious how visible they were to the naked eye at night.
Response: I wouldn't be able to answer how visible they were. That would be hard for me to say.

Question: Was there anything else that ended up in the back seat of the car?
Response: I don't believe so. There might have been a little bit of glass debris potentially, but there was nothing else of significance.

Question: Do you think that the charges that he was ultimately charged with were appropriate?
Response: I have trouble answering that because I don't know the South Dakota laws. We have talked about it if he was in North Dakota, he would have been charged with a felony because our laws fit that. I was a part of numerous conversations with the prosecution team where we would meet with them and they discussed various different charges and what the elements were of that. They would need to be able to prove on different types of charges. I don't know how they came to the conclusion on the ones that they did charge, but I do know from their conversations that there were some issues with more severe charges, the way the laws are written and charging it and being able to prove it in court to a jury.

End of testimony.

Chairman Spencer Gosch: The witnesses were reminded that they are not yet released from the subpoena in the event that the committee may have something further down the road that they would like to ask them but thanked them for their cooperation.

Adjournment

Representative Peterson moved, seconded by Representative Jensen, that the House Select Committee on Investigation be adjourned. The motion prevailed on a voice vote.

The Committee adjourned at 6:13 p.m.

House Committee Report
of 2/24/22

MINUTES

House Select Committee on Investigation

Representative Spencer Gosch, Chair
Representative Mike Stevens, Vice Chair

Sixth Meeting, 2021 Second Special Sesssion
Thursday, February 24, 2022

Room 414 – State Capitol
Pierre, South Dakota

The sixth meeting of the House Select Committee on Investigation was called to order by Representative Spencer Gosch at 3:32p.m. (CST) in Room 414 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering roll call: Representatives Doug Barthel, Ryan Cwach, Spencer Gosch (Chair), Jon Hansen, Steven Haugaard, Kevin Jensen, Kent Peterson, Jamie Smith, and Mike Stevens (Vice Chair).

Staff members present were Justin Goetz, Chief Research and Legal Analyst; Reed Holwegner, Director; and Sara Frankenstein, Special Counsel.

NOTE: *For the purpose of continuity, the following minutes are not necessarily in chronological order. This meeting was webcast live. The archived webcast is available at the LRC website at sdlegislature.gov.*

Executive Session

Representative Peterson moved, seconded by Representative Hansen, that the House Select Committee on Investigation go into executive session. The motion prevailed on a voice vote.

The Committee went into executive session at 3:34 p.m.

Representative Smith moved, seconded by Representative Hansen, that the House Select Committee on Investigation come out of executive session. The motion prevailed on a voice vote.

The Committee came out of executive session at 4:22 p.m.

Public Testimony

Testimony of Tim Bormann from the Office of the Attorney General.

The witness appeared before the Special Committee on Investigation pursuant to a subpoena regarding the investigation that has been given to the Committee through HR 7001 regarding the conduct of Jason Ravnsborg, the Attorney General of the State of South Dakota surrounding the death of Joe Boever, and whether that conduct involved impeachable offenses pursuant to S.D. Const., Art. XVI, § 3.
The witness was sworn under oath prior to testimony.

Speaker Gosch: Would you please identify yourself for the record?
Response: My name is Tim Bormann. I am Chief of Staff at the Office of the Attorney General.

Questions from Representative Steven: Could you tell us a little bit about your background? Response: Born in Corsica, South Dakota, went to law school at the University of South Dakota, was State's Attorney in Faulkton starting in 2001 for about sixteen years. Spent some time as Mayor of Faulkton, and then in 2019, I took the position as Chief of Staff at the Attorney General's Office and have been there since. Graduated from law school in 2001. Went to law school with the Attorney General.

Question: Your job is one that he appointed you to?
Response: Yes.

Question: I would like to go back to the night of this incident. Could you tell the committee when you first became aware of that something had occurred with the Attorney General?
Response: I don't have the exact time, but I received a text message. It was after 10:00 p.m. on that night with a picture of the Attorney General's vehicle, with the damage to the front end. I mainly just remember the photo of the vehicle. I know I texted him back seeing if he was okay, what happened, and he said that he was okay, didn't know what he had hit.

Question: Looking at these texts under North Dakota Report 12, the text message indicates two people, was there someone else on text message?
Response: I believe judging from what I can see at the top that would have been Dave Natvig, DCI.

Question: On subsequent text messages with Attorney General, at any point did the Attorney General indicate that he had hit a deer, or is that something that you assumed?
Response: That is something I assumed.

Question: What involvement did you have with the Attorney General the next day?
Response: Later after those text messages I received a call from the Attorney General, voice call, telling me that he was on his way back from Pierre in a vehicle that had been lent to him by Sheriff Volek, and he asked me at that time if I would be willing to swing by the next morning, Sunday morning around eight, and follow him when he brought that vehicle back to Highmore to return to the Sheriff, and to give him a ride back to Pierre.

Question: Was there more than one phone call that evening from the Attorney General?
Response: I don't recall. I remember that call.

Question: Well, did he call you initially and to tell you that the sheriff had allowed him to use his car? Do you remember that?
Response: Yes.

Question: Then subsequently he called again and asked you to pick him up the next morning or follow him back to the sheriff's home?
Response: It could have been two calls. I don't recall if it was two calls, but that is the gist of the conversations I had with the Attorney General that evening.

Question: Was there any other conversations that you had with the Attorney General as to what occurred that night, other than him telling you that he borrowed a car and needed a ride the next day?
Response: Mainly just making sure he was okay, that he was okay to drive, that he hadn't been injured, and then setting a time for the next morning.

Question: What was his demeanor like?
Response: He seemed like someone who just had a scare, but from the phone call, he was just happy to be on the road getting home.

Question: Tell us what happened the next day.
Response: The next morning, I believe it was probably around eight; I was in my personal vehicle; I went to the Attorney General's house. Jason was waiting, pretty much ready to go, and backed out of his driveway. He backed out in Sheriff Volek's vehicle. I followed him back to Highmore. On that drive he had said that he wanted to fill Sheriff's Volek's vehicle with gas, return it to him with a full tank. We drove all the way into Highmore to the one gas station, which is on the south side corner where you turn into town, the Shell Station. He filled the vehicle with gas. While he was filling, I got out of my vehicle. He mentioned that he had seen some pieces of his vehicle and wanted to stop at that scene and just look around to see if he could get an idea of what had happened the night before. I was like, that's fine, and followed him to that site. He pulled in. There was a large piece of undercarriage from the car on the shoulder of the road. I parked a couple of car lengths or so behind. He got out, started walking west. I got out of mine started walking to the east. I was looking at glass and other bits of pieces that were along the roadway. We didn't touch that piece of vehicle. I started walking towards the east, towards town. He was walking towards the west, and then I heard him call my name.

Question: What were you there to look for?
Response: He stopped to get an idea of what it was he had hit, I guess, but I really can't conjecture as to what was in his mind, what he was looking for.

Question: When he calls out to you, how far away was he from his car when he called out to approximately?
Response: I honestly can't say. I didn't notice.

Question: About how long was it from the time that he started walking, would you say, until he called out to you?
Response: Not very long, maybe a minute.

Question: What did he tell you?
Response: He called my name. I turned and looked at him. He was motioning towards the ditch with one hand saying there's a man. I went over to where he was motioning and looked, and I saw Mr. Boever's body in the ditch.

Question: And where was the Attorney General standing at that time? Was he on the shoulder, was he on the road?
Response: He was on the shoulder.

Question: How far away was he from the decedent's body?
Response: I can't say with any great certainty. I had moved between him and the body; I was probably about 10, 15 feet. I was still on the shoulder. I did not step into the grass, and he was on the opposite side of me.

Question: And could you describe what the ditches looked like?
Response: It wasn't freshly mowed, but it wasn't completely overgrown. I wouldn't call it an overly steep ditch, but it did have some downhill slant to it.

Question: How far was the body from the road?
Response: My recollection maybe 5, 6 feet.

Question: Did the Attorney General ever get any closer to the body when he first discovered it?
Response: Not while I was standing there, no.

Question: And did you get any closer?
Response: I did not.

Question: What other things did the Attorney General have to say once he discovered the body?
Response: He did not say much of anything.

Question: Did he say that this isn't good?
Response: Not that I recall hearing.

Question: What did you and the Attorney General do?
Response: Based on where we were, we could see Sheriff's Volek's driveway. It is about a little over a quarter mile from the site where we were at. I might have said, we should get Sheriff Volek and get him back here, get someone on the scene as soon as possible. I knew that the sheriff was waiting for the Attorney General to return his vehicle. So, we drove directly to his house. When we pulled in the yard, Sheriff Volek came out of his house, I did not leave my vehicle. The Attorney General got out. He and the sheriff had words, discussed things. And then we got back into the vehicles, took the sheriff right to the scene where Mr. Boever's body was.

Question: When he talks to the sheriff, could you hear their conversation?
Response: I did not.

Question: Who got into what vehicles to go to the scene?
Response: The sheriff got into his patrol vehicle. The Attorney General got back into my vehicle. We drove back to the site, parked. Sheriff Volek got out, and we showed him what we had discovered.

Question: From the ride from the Sheriff's residence to where the body was located, did you have any conversations with the Attorney General?
Response: I did not say anything.

Question: What was his demeanor in the car?
Response: He was quite obviously shook. He didn't have a lot of color in his face.

Question: When you get to the scene, what happened next?
Response: Sheriff Volek went and took a look at the body, came back. I can't recall how close he got to the body.

Question: He got closer than you did?
Response: Yes, he did.

Question: It was obvious that Mr. Boever was dead?
Response: Yes. He informed the Attorney General that he was going to be calling DCI, Highway Patrol, get them in to take a look at the situation. Sheriff Volek then looked at me, told me to take Jason back to Pierre, and he said, don't leave him alone, stay with him, for the time being, will call when we get more information.

Question: You have been in law enforcement for how long?
Response: I have been involved since I was in Faulkton, either as a defense attorney and then a state's attorney.

Question: Did it surprise you that the sheriff would want the person who's involved in this incident to leave the scene without being interviewed?
Response: It didn't seem like normal operating procedure, but I've also never been a sheriff, so I wasn't about to second guess how he was going to handle things.

Question: Is that what you would have wanted law enforcement to do, to send the person involved in the incident home?
Response: As a state's attorney not necessarily, but as a state's attorney you get handed cases sometimes that you really don't like the way things are put together and you just have to deal with it.

Question: We were looking at those text messages and you may not know the answer to this, but I found it interesting that, the text message that was sent out was also sent to the DCI at the same time, do you know if that's his normal course of action?
Response: The Attorney General will text things to myself and Mr. Natvig, sometimes as a group text, and sometimes individually. I have really never paid attention as to when it makes sense and when it doesn't. It didn't really surprise me at the time. I assumed he probably had hit a deer or something. My initial reaction was he was showing us the damage he had done to his vehicle and that he was okay. The Attorney General and I were classmates in law school. Mr. Nativig was a year ahead of us in law school. Law school friends.

Question: When the sheriff told you to take the Attorney General back to Pierre, did you have any conversations with the Attorney General at that time?
Response: I did not, it was a very quiet drive.

Question: When you got back to Pierre, tell us what happened next?
Response: We went to the office. At that point in time Jason said he should probably call his dad, let them know what's going on. I sent him into his office. I went into my office. I contacted Charlie McGuigan and David Natvig, to let them know what had developed throughout the morning and what was going on. And other than that, I just sat in my office, let my wife and family know I wasn't going to be home for a while, waited, made sure he was okay, things were okay. I didn't get home until 4:30, 5:00 in the afternoon.

Question: How long is the drive from Highmore to Pierre?
Response: Fifty minutes to an hour, somewhere in that area. Would have gotten back to Pierre a little bit before noon.

Question: Was the Attorney General still in his office when you left?
Response: Yes. While at the office, he would get up, knock on the door, see if he was okay, needed anything. He visited with his father. Just sort of passing time, looking at things. I figured let him be and let him think about what was going on because it isn't a normal situation.

Question: Are you aware of any other phone calls he made besides other than that to his father?
Response: I believe he may have contacted his auto insurance. I was not privy to any other phone calls.

Question: So, during the time that he was there, he didn't ask you to come in and talk about the incident.
Response: No.

Question: As the chief of staff, did you have any other times that you discussed this matter with him?
Response: There was more discussions the next day, but that was more at looking at how things were moving forward from my point acting as chief of staff. One of my duties is also a public information officer and spokesperson for the Office of the Attorney General. And as I considered the situation through Sunday and then into the next morning Monday, it was my feeling that I could not adequately be the spokesperson for the Office of the Attorney General and also the spokesperson for him on a personal level with this matter. It was at that time I had to, for lack of a better term, build a wall and divide that off. He was going to need someone to handle that personal aspect of it. If I was going to handle the office aspect of it, I didn't think it was fair to be working for the State of South Dakota, the people of South Dakota, and taking the wage, but then doing that as part of my job, which it was not.

Question: Did you have any conversations with Mr. Natvig about this incident?
Response: Aside from letting him know the developments after we discovered that it was Mr. Boever that had been struck and that I had Jason at the office, that was really the extent of that conversation.

Questions from Representative Jensen: You stated when you got to the scene, you parked your car and you got out and you saw there was glass. Do you recall if there was any glass on the roadway or was it all on the shoulder, or can you kind of give us some recollection of where the parts of the car were?
Response: The large part that we saw that we stopped near was on the shoulder. My recollection is looking at the glass along the fog line.

Question: When you went to the sheriff's house and they had a conversation, how long did that conversation last?
Response: I really can't say with any certainty, a couple of minutes, but I really can't be held to an exact time.

Question: Can you give us a little bit of an idea what the nature of the conversation was on the drive back?
Response: There really was no conversation. It was very quiet. He was not in the mood to talk. I was not going to press him to talk if he didn't want to.

Questions from Representative Cwach. In the Attorney General's text message here, he says he hits something in the road, it didn't show any blood or anything in the car, and I was just curious if you had any conversations with him about the efforts that he made to look in the car for signs of what he hit.
Response: No, I didn't have any conversations with him about looking in his car. I think I might have asked him about fur or what he hit.

Question: And then on the car ride home, in the last text message in this chain, the Attorney General says he's still not sure what fully happened. Then he called you on his way back to Pierre. On that call back, when you guys spoke when he was driving home, did you follow up at all, figure out if he had learned anything more because that's the last text message in this chain?
Response: I did not, it was getting late by that time, the fact that he was almost back to town, just left it at that.

Question: Do you recall what time he called you on the way back?
Response: I do not; it was after 11:00 p.m. I was getting ready to go to bed when he sent the initial text with the picture of the vehicle.

Question: You mentioned on Monday, you had decided that you could not be the spokesperson for the office and for him.
Response: I could see that there were going to be a lot of interest, a lot of calls. I cannot adequately do my job representing the Office of the Attorney General if I was going to be fielding calls on the personal nature of the situation that he was in. That would not be fair to the people who pay my salary. At some point the Attorney General got an individual to take care of that for him. Mike Deaver would have been his name, and we started directing all such calls to Mr. Deaver.

Question: On that Monday the Attorney General put out a statement outlining his recollection of what happened on the Attorney General's letterhead, did you have any involvement with the drafting of that statement?
Response: I did not.

Question: Is the Attorney General's office fully staffed right now?
Response: I believe we have a couple of vacancies. I can't say for sure.

Question: Has this affected the ability of the office to get any work done in a timely manner?
Response: No, it has not.

Question: In your conversation with investigators, you mentioned something about the Attorney General telling you about listening to a Twins game?
Response: I recall but don't recall when that conversation was or when he heard that.

Question: What can be said of Sheriff Volek's conduct?
Response: It feels rude to say something critical now that Sheriff Volek is deceased. He was someone I knew for a lot of years when I was in Faulk County, and Mike was a good man. What I said in the interview with the North Dakota investigators I would stand by, but I really didn't want to feel like I came up here to throw Sheriff Volek under the bus.

Questions from Representative Jensen: When you pulled up to the accident scene, you were walking east back to Highmore?
Response: Yes.

Question: When you were looking at glass on the roadway, how far down the roadway were you when he called your name?
Response: Maybe 10-15 feet past my vehicle.

Question from Representative Hansen regarding the Attorney General's demeanor after he discovers the body.
Response: Again, he was very shook. Not a lot of color in his face. He's usually a little bit louder than when he talked at that point in time, he was rather subdued and quiet.

Question: What did he say?
Response: He called my name, "Bormann." I looked over, he goes, "There's a man." And that was about it.

Question: Did he say anything after that?
Response: If he did, I don't recall what it would be. He was standing to my right, a little bit behind me. I really can't tell you what his posture was. I found myself on a Sunday morning looking at a dead body in a ditch. I'm sorry, but I really wasn't paying attention to his body language at that time.

Question: Between the time that you received that text message the night before and then that morning, did the Attorney General ever tell you that he had hit a deer?
Response: Not to my recollection, no.

Question: Did it ever strike you at any time that he was uncertain about what he had hit?
Response: It was something that he said, I don't know what I hit, again that morning wanting to see if he could get some idea of what he had hit. But at the time did it strike me as odd, no.

Question: Did you ever get the impression that the Attorney General had thought that he had hit something other than a deer?
Response: I never really got that impression, but I can't say what was in his mind.

Question: When did the Attorney General first relate his story as to what had happened leading up to the impact?
Response: I heard more of it on Monday after the day started and began to progress. I don't remember when the conversation was had, but I know he talked about listening to the Twins game. He talked about calling his father. He talked about when he drove through Highmore, coming up to speed as he was on the way back to Pierre, and the accident occurred. When that information all came to me, I don't really have a distinct recollection of when that conversation occurred. It's things that I know I heard. And that's all I can really relate, but it is things like that that I know that I have to build that wall because I can't do my job for the Office of the Attorney General if I am neck deep in this other aspect.

Question: Did the Attorney General ever relate to you where he thought he on the road at the time of impact?
Response: Only what everyone else has seen that he said he believes he was on the road in the middle of the road. Most of these things I found as they came out in the news like everyone else did.

Question: Did the Attorney General ever say to you that he was on the shoulder of the road at the time of the impact?
Response: We never had a discussion like that. He never said that to me.

Question from Representative Peterson. Have you ever spent much time or ridden with the Attorney General when he's been the driver?
Response: Not as a driver, the few times that I did travel with him, I drove.

Question: Did you ever after the fact of when all of this happened, asked him if he was on his phone or distracted at the time of the event?
Response: I did not.

Questions from Speaker Gosch: When you met with him that Sunday morning, before leaving to go to Highmore, did he seem normal in his demeanor?
Response: He was ready to go when I pulled up to his house. He was on his way out the door. He was ready to go, hopped in the vehicle. I rolled down my window and said if you're ready, I'll just follow, and he said, okay. There wasn't a lot of conversation before we left town. Our conversation the night before was like I said, it was late, he had been through the accident, so I chalked it up to it's late, he hit something, and his car is sitting there waiting for a wrecker.

Question: Was there a noticeable shift in his demeanor once he discovered what it was he hit?
Response: I believe there was, like I said, it appeared that the color was gone, and I've known him for quite a few years. He was very shook.

Questions from Representative Haugaard: This was all Sunday, and you two apparently were the only two people at the AG's office, is that correct?
Response: Yes.

Question: The next Monday morning did you speak with him?
Response: Yes, unsure of time. He was having conversations. He was a bit quieter than normal, but he was willing to converse.

Testimony of David Natvig, Office of the Attorney General – Division of Criminal Investigation

The witness appeared before the Special Committee on Investigation pursuant to a subpoena regarding the investigation that has been given to the Committee through HR 7001 regarding the conduct of Jason Ravnsborg, the Attorney General of the State of South Dakota surrounding the death of Joe Boever, and whether that conduct involved impeachable offenses pursuant to S.D. Const., Art. XVI, § 3.

Speaker Gosch administered oath.

Questions from Representative Stevens: Please provide your background. Response: I graduated from South Dakota State in 1987. Went in the Army. Spent some time at Fort Bragg, North Carolina, my last duty assignment there was with the US Army Special Operations command. Came back to South Dakota. Ended up going to USD Law School in 1997, graduated in 2000. Went back to my hometown of Kimball, South Dakota, private law practice. Elected as Brule County State's Attorney and served in that position somewhere from about 2002 to 2018. Also prosecuted for the Crow Creek Sioux Tribe.

Question: You went to law school with the Attorney General?
Response: Yes, I was in the class of 2000, and he was in 2001.

Question: What's your current position?
Response: I'm the Director of the South Dakota Division of Criminal Investigation. The Attorney General appointed me to that position.

Question: On the night of this incident, when you first received the text messages from the Attorney General, is that when you first learned of what occurred?
Response: Yes, there were maybe three texts. I don't recall if I spoke to him in person that evening.

Question: Did the Attorney General ever tell you that he hit a deer?
Response: No.

Question: The next day, did you have any conversations with the Attorney General?
Response: No. I learned that the Attorney General had struck and killed an individual sometime that morning and his recollection is that Mr. Bormann called me, but he may have been on speaker phone with the Attorney General. I had assumed he had struck a deer. I don't believe I had any conversations with the Attorney General that day. The only conversations I had with him about the matter was that he did not know what he hit that night and he believed that he was on the road or in the lane of travel. I don't recall if the Attorney General told me he had called 911 but that there was a statement he made that he called 911. I have not looked at the statement or the report that the North Dakota individuals prepared from the interview that they did with him.

Question: Are you aware whether or not the Attorney General has had any conversations with any of the members of the DCI about this incident?
Response: I understand that there was a conversation with one of the supervisory special agents, Brent Gromer. We supply people with cell phones. The Attorney General had given both of his cell phones to the North Dakota investigators or someone in law enforcement. A replacement cell phone had been ordered for him, and he had come in to get his phone. I do remember there was some question about if his flashlight is on, is my phone locked but that was the extent of what I was listening to. I believe I walked out and got this cell phone and came back in.

Question: Do you recall the Attorney General asking anything about what information would be stored on his phone that the North Dakota investigators had taken?
Response: I think he may have said something to the IT guy, but I assume he was trying to figure out what you do if you don't have your phone and you're trying to get your contacts backed up, something like that. But I really can't speak to what else was said. I didn't assume it was anything that was to do with the investigation. We weren't involved in the investigation, the agent wasn't involved in the investigation, and from what I heard there was nothing that caused me concern.

Question from Representative Hansen. Have you reviewed any of the results of the investigation?
Response: No. We all understand that when there's a conflict which this was, I did not ever get involved in looking at any of these reports or anything from North Dakota or the Highway Patrol or anybody else.

Question from Representative Barthel regarding when DCI was contacted that there is a death involved.
Response: I believe the sheriff called for one of our agents, which is normal course of business. I believe that agent probably called my assistant director Brian Zabe, and I think at that point Brian said, we have a conflict here; there's no way we can investigate this case. I assume at that point that's when Brian made the phone call to North Dakota.

Question from Representative Cwach: Does DCI have any sort of policy or procedure in place relating to internal investigations?
Response: I don't know if we have a written policy, but it has been our practice since I've been there that if there's an issue like this, we go outside to look for some help. Typically, that's been North Dakota.

Question: Going back to the DCI agent conversation, why was the Attorney General allowed to ask the question?
Response: I think it was a spur-of-the-moment question. They just bumped into one another.

Question: What does Agent Gromer do for DCI?
Response: He was stationed in Rapid City. He happened to be in the office for an unrelated matter that had nothing to do with the Attorney General. He retired 3 or 4 months ago. He was the ICAC agent, internet crimes against children, deals with pornography and those type of things. He would have knowledge to deal with accessing and producing cell phone data.

Question: So, you thought this conversation occurred in the hallway between the two?
Response: The conversation with the Attorney General and Gromer probably occurred in the hallway because when I left, the Attorney General was headed up to my office to get this phone. Agent Gromer was not in my office, and neither was the AG. I believe Gromer was in the next office down from me.

Question: Most of their conversation occurred in your office, right?
Response: As far as I know.

Question: We know about this because Agent Gromer issued a statement about what happened. Is that a common practice for your agents to document something like this that they are not investigating?
Response: This is just a strange situation. They are trained to document everything. I assume that is why he did it. I have never spoken to him about it.

Question: You didn't have any concerns with the Attorney General asking Mr. Gromer questions about how cell phone data worked before he had his second interview with North Dakota?
Response: I guess that didn't concern me. I feel like what I saw was a pretty innocuous conversation between a couple gentlemen that knew each other; and he didn't interfere with the investigation because North Dakota was handling the investigation. We had nothing to do with it. My understanding was that North Dakota already had his phones.

Question: In your interview with North Dakota, you mentioned that you had seen him earlier on Saturday or you talked to him earlier.
Response: I don't believe that I saw him that day. I assume I probably spoke with him on the phone. There are cases going on across the state all the time that I try to update him on what the status is.

Question: Earlier you said it was a huge issue--the accident. Is it a huge issue in the office?
Response: I don't know if it is a huge issue. It has not kept me from carrying out my duties. I go out in the field a lot. I may have asked a couple of agents about this. The response is usually we are too busy to care about this other stuff.

Question: Have you observed if this incident has been an issue in the Attorney General's work?
Response: Not that I'm aware of. I run the DCI, the day-to-day operations of the DCI. He has given us the direction, the way he wants us to go to, to go after the big-time drug dealers, drug trafficking organizations, those kinds of things, but other than that we run the day-to-day operations and he's just not involved in that.

Question from Representative Jensen: Within DCI, to the best of your knowledge, who do you believe was tasked to be in charge of the investigation?
Response: My understanding was North Dakota was the lead investigative agency. I mean, they are the investigators.

Testimony of Emily Sovell, Sully County State's Attorney, and Michael Moore, Beadle County State's Attorney

The witness appeared before the Special Committee on Investigation pursuant to a subpoena regarding the investigation that has been given to the Committee through HR 7001 regarding the conduct of Jason Ravnsborg, the Attorney General of the State of South Dakota surrounding the death of Joe Boever, and whether that conduct involved impeachable offenses pursuant to S.D. Const., Art. XVI, § 3.

Speaker Gosch administered oath.

Michael Moore introduced himself as the State's Attorney in Beadle County. Emily Sovell is the Deputy State's Attorney for Hyde County and the Sully County elected State's Attorney.

Question: At any time during your investigation or the process of your investigation were you ever called, or influenced in any way from the Attorney General's Office, Department of Criminal Investigations or anything surrounding the Attorney General?
Responses: No.

Questions from Representative Stevens. Asked their legal background over the last few years.
Response from Sovell: I have been practicing law in South Dakota since 2001, and I clerked for the South Dakota Supreme Court for one year after finishing law school at the University of South Dakota. I have had a private practice in Sully County for just over 20 years and a part-time office in Hyde County for roughly 12 years. And I have been the prosecutors in both Sully County and Hyde County for over 10 years.

Response from Moore: I have been the full-time State's Attorney in Beadle County since 1997; prior to that I was Deputy State's Attorney for a few years. I prosecuted cases primarily in Beadle County, but on occasion I do prosecute cases for other prosecutors in other counties across the State.

Question to Sovell: Can you tell us how all this came to your attention and what your activities were, once you found out that there had been a death?
Response: I was initially notified by the Hyde County Sheriff Mike Volek that there had been an accident involving the Attorney General. There were some discussions with him throughout the day following the accident. He notified me that outside law enforcement agencies were being brought in. That was all underway by the time I was fully apprised what was developing.

Question to Sovell: What was your process as far as having such a case, a lot of notoriety, how you were handling the information that was coming in and what information you felt you needed in order to determine your job as state's attorney?
Response: It was a challenge. This was a case with a tremendous amount of public interest. A lot of calls, a lot of media inquiries and we have a very small office, so I did my very best to sort through what was coming in. I worked directly with the law enforcement officers that were on the ground as soon as I was able to identify who the lead primarily was with criminal investigators from North Dakota. Started to develop that relationship with them, so I knew who I could contact and work with.

Question: What input did you have in the investigation at all?
Response: I would ask questions, but I would let the officers who knew what they were doing do their job. If I had questions or if I had something that I needed to have done, I would notify the appropriate individual.

Question: Did you receive any support or information from the South Dakota Department of Public Safety?
Response: Certainly. The Highway Patrol officers that were on the ground doing the accident reconstruction were an integral part of the investigation. I worked mostly with the reconstructionists who were on the ground.

Question: Were there meetings with representatives from the Department of Public Safety?
Response: There were some meetings that I had to set up. There were some that were requested from Secretary Price and others with the Highway Patrol. There were some meetings that were with a team of prosecutors put together to assist with all of the evidence that was coming in. Some of them were group meetings. Some of them were with me and either one or some of the reconstructionists, highway patrolmen, to simply keep us up to speed as the investigation progressed.

Question: Can you go through from a legal standpoint as a state's attorney, what you felt after you received all of the information, give us an outline of what the options were that you are looking at to try to determine how to proceed?
Response: Once you have all those reports in, you lay out the potential crimes that may be at issue and you start looking at the elements of those crimes and you start applying the facts that you have before you.

Question: Can you give us a bit of an idea of the totality of the amount of information that you received from all the different investigators and law enforcement that you had to go through?
Response: I had hard drives. I had boxes. It was one of the largest, most voluminous investigations I have seen. We as a group of prosecutors had the opportunity to sit down with the accident reconstructionists to assess the scene to look at the videos to look at the reports. We had the opportunity to sit down with the investigators from North Dakota to walk through all of the interviews to do a play-by-play essentially from the beginning of what happened the day prior to the accident involving the Attorney General until the final input of the last piece of evidence. We then looked at all of the potentials including everything from vehicular homicide through the potential manslaughters to the misdemeanors that were ultimately charged. Determined if the facts fit the crimes.

Question: As it relates to vehicular homicide, why did you feel that was not applicable?
Response by Moore: Vehicular homicide in this case was not applicable because it requires the driver or the defendant to be under the influence of alcohol or drugs or something like that. It also requires negligent driving. In this case, the investigation indicated to us that the Attorney General was not under the influence of alcohol or any drugs at the time of the accident. There was no drug test because of what happened at the at the crime scene. They did a timeline about where the Attorney General was that night, who he was with. They did numerous interviews to talk to people. They were able to trace him from where he was at in Redfield all the way to the time of the impact. There was video of his vehicle; so they knew that he hadn't stopped anywhere from Redfield to where he hit Mr. Boever.

Question: What about manslaughter in the second degree?
Response from Moore: Manslaughter in the second degree requires recklessness. You have to prove that there was a death caused and that the person causing a death acted recklessly so we basically went through that and there's case law on that in the State of South Dakota. I think everybody's been provided with what the Supreme Court has said about that, but basically, you're looking for a person that knows of the risks and disregards it. In this case, that's what we were looking for. The facts that we were able to determine indicate what happened when the impact happened and we had the facts that indicated that he was outside the lane of travel, but we weren't able to determine why he was outside the lane of travel, how long he'd been outside the lane of travel. They were able to determine his speed, which was I think two miles an hour above the speed limit at the time of the impact. They weren't able to determine why he was outside of the lane of travel. In trying to establish that he knew of the risk, and he disregarded it, without knowing that, I don't believe it amounted to a reckless act and that's why manslaughter was not charged.

Question: What information would you need to overcome that hurdle?
Response: I've prosecuted two cases of this type in my career, and I've declined prosecution on probably three or four. The ones that I did prosecute, it was a person that went through a stop sign at highway speed, that person was texting at the time, we were able to, through the Highway Patrol and the accident reconstruction, find that that

person missed three indications that there was a stop sign ahead, and that they were on their phone at the time and they went right through the stop sign and struck a vehicle and killed the driver of the vehicle., And we prosecuted that person for manslaughter. The other case was a semi-truck that was being operated with one working break, that seemed reckless in of itself. The problem in that case, we had to establish that the person knew that there was only one working brake on the vehicle. So, the investigation entailed going back and trying to determine if they had the vehicle checked, how would a person know that the brakes aren't working, and did the operator know the brakes weren't working. In that case, we were able to determine that there was evidence of that from witnesses' testimony, and we proceeded with the prosecution. In this case, there wasn't anything like that. The only fact that we had at the time was that the Attorney General was outside of the lane of travel. He wasn't on his phone at the time, and we thought that he may've been on his phone. He was on his phone previous to the accident, but I think it was about a minute and fifteen seconds his phone was locked before the impact. So, at the time of the impact, he was not on his phone. In the interviews with him, he doesn't really give a good explanation of why he's outside of the lane. He indicates that he didn't know he was outside the lane. I believe that without being able to establish that beyond a reasonable doubt at trial, we could not gain a conviction for manslaughter.

Question: There's been some questions as to why this matter wasn't brought before a grand jury to decide?
Response from Sovell: Grand juries are bodies that are brought together to establish whether or not there's probable cause to proceed with your investigation and your charges. We had hard drives of evidence. We had everything we needed to assess the case as a whole. I typically use grand juries if it's earlier on where we don't have everything in. We have someone in custody, and there are some timetables that are running, and we need to have that probable cause established to continue proceeding with the case. I know other prosecutors treat them differently, but in this case, this wasn't a question of just probable cause, it was time to make the charging decision as to what can be proven beyond a reasonable doubt. That's what are requirement is.

Response from Moore: This was a legal determination that was made in passing that buck off to ten individuals from the community that have no legal background to ask them to interpret the law and determine what the law is, and that's why we went to law school. That's why we passed the bar exam. That's why we're the lawyers. We were tasked with making those decisions; so, it wasn't a factual issue. Everybody agreed what the facts were. It was a legal determination that it didn't amount to manslaughter; so, you don't need to present that type of case to a grand jury.

Question regarding history of negligent homicide?
Response from Moore: There is no negligent homicide in South Dakota. Justice Henderson wrote an opinion regarding a manslaughter case on a traffic accident. He mentioned that there is a big gap in South Dakota between carelessness and recklessness. There's no negligent homicide, and he cautioned the Legislature in filling that hole and whether you really want to do that. The Legislature in 2006 was presented a negligent homicide bill, and the Legislature declined to enact as law. If you read that bill in 2006, it specifically excluded traffic accidents as a grounds to charge negligent homicide.

Question: In your opinion, there wasn't any other options as far as bringing charges based upon the facts that you had in front of you?
Response from Moore: No, not as it relates to the death of Mr. Boever. There were criminal charges that we brought on driving infractions, but to get to the amount where you're criminally responsible for the death of another person, you have to establish that it's manslaughter murder, and we didn't have that.

Question: You indicated that you had these groups that you were consulting, like the Department of Public Safety. How did that work?
Response from Sovell: A lot of meetings, they varied, but sometimes it was me calling in Trooper Berndt doing a play-by-play of the accident scene to show me trend lines, to show me the drone footage, to walk me through the

accident scene. We had a full group meeting at least one time with a team of prosecutors and a number of members from North Dakota and from the South Dakota Highway Patrol, to review the evidence and discuss potential options.

Question: You must have been under a lot of pressure with this case?
Response from Sovell: There was a lot of pressure in this case.

Question: Was there at a period of time you felt that you were getting unduly influenced or pressure put on you to make decisions prematurely?
Response from Sovell: I will assure this committee that I excluded any person or any party that was trying to unduly influence my decision with respect to this case.

Question: You always hear we can't talk about this ongoing investigation, and could you tell me why people say that?
Response from Sovell: Our laws and our system are set up to protect the integrity of the investigation. We need a safe process for investigators for law enforcement for prosecutors to assess what happened without interference from a lot of that outside noise or concern or obstruction. Agree that the purpose of doing that is to provide due process to a person who may be at the heart of the investigation. It makes it extraordinarily difficult to find a jury that hasn't been influenced to ensure that the process for both sides is fairly played out. It is to protect society as well as the individual on their constitutional rights. In this instance, that was not done. It was a very different investigation for me. I understand that there was public interest because of the fact that it involved the Attorney General, but I still deemed it extraordinarily important to preserve the integrity of the investigation; so we can do our job.

Question: Did you have conversations or communication with the Department of Public Safety where you gave them permission to release videos or any type of any other information prior to filing charges against the Attorney General?
Response from Sovell: There were many inquiries to release things early on and I resisted. I think there was finally a point where the requests from media and from the Department of Public Safety had been numerous enough that I authorized, I believe, the 911 audio as well as maybe the preliminary crash report. I would have to go back and look, but I did give my blessing at least on a couple of those preliminary things.

Question: What about the interviews that were released?
Response from Sovell: Absolutely not.

Question: Did you send a message or communicate to the Department of Public Safety asking them not to release that information?
Response from Sovell: I did. The day prior I had learned that there was a planned press release with discussion about the release of those, and I sent an email to Secretary Price and to the investigators involved stating my concern and requesting that they not be released.

Question: Why would you not want that to be released?
Response from Sovell: Because these are investigative records; the case was still ongoing. We had not had an arraignment. It was certainly not within the norm of any case I had been involved with, and it's something that our Supreme Court has helped us to prevent this from coming out. It makes it harder for you to do your job when information like that is released without your permission.

Question to Mr. Moore: Have you had any situations like that before considering the number of years that you've been a prosecutor?
Response: No, I've never been involved in any case where the interview of the defendant has been released to the press, especially while the case is pending. It is an ethical violation for me as a prosecutor, even though it was done

by another party; that's my case and I could be disciplined for that happening, and the evidence could be suppressed. There's all kinds of ramifications that could happen if evidence like that is released to the public prior to the case being resolved because it could negatively impact the ability to prosecute the case. That has never happened to me in my career as a prosecutor that an interview of the defendant has been released prior to the case being resolved.

Question: Can either one of you think of any benefit that would help you as prosecutors or for someone who's been accused to have that information released prematurely?
Responses: No.

Question: Was the Attorney General's case handled any differently than you would have anybody else's?
Response from Sovell: I assess the facts and the law the same way I would any case, it was certainly different in the voluminous materials and the public interest in it.
Response from Moore: I handled it like any other case, and it was obviously a high-profile case. I have had high-profile cases, and I have had meetings with law enforcement during those cases. We talk about the investigation. This case was no different in that manner.

Question: Have you ever had a case similar to this where there was that much investigation done?
Response from Moore: I wish I could say I had, but I've done homicide cases and they haven't been investigated as thoroughly as this case. I was impressed with the investigation. I thought North Dakota did an excellent job, did a thorough reconstruction by the highway patrol. I was very impressed by their investigation, and I would take that investigation in any of my cases, second to none.
Response from Sovell: Agreed. That was extraordinarily thorough. The work, the man hours, the time, the energy from the North Dakota agents as well as the gentleman that were out doing that accident reconstruction. Incredible.

Question: Was there any information that you felt that you needed that they didn't provide you?
Response from Sovell: No.
Response from Moore: We were probably asking for additional things that were probably not needed, but you just wanted to cover all your bases in a case like this. So they did an excellent job, and I don't think there was anything that we left unturned.

Questions from Representative Cwach. We previously met with two of the investigators, and it was their opinion that the Attorney General was lying to them about whether or not he knew he hit a person at the time, did they ever express that opinion to you during the course of the investigation?
Response from Sovell: Yes. There were a number of interviews that were conducted. All of those we watched and assessed and analyzed. I understood their concerns. I could hear and see some of the areas that they were expressing concern about, but the reality is the areas where they were expressing concern didn't validate or justify an additional criminal charge of any sort. There was nothing where the elements of a crime fit.

Question: They said there was the lie about him being on the side of the road and then whether or not he had hit a person at the time. That could be a failure to report?
Response: I'm not sure what additional steps they could have taken to prove that. In the interview the individual said what he said, and outside of interviewing again and again, which they did, there is no way to prove that.

Question: Being under oath could prove?
Response: Potentially.

Question: There were multiple other prosecutors involved besides you two, who else was involved?

Response from Sovell: The original team that came together was Crystal Johnson out of Minnehaha County, Mark Vargo of Pennington County, Michael Moore, and myself. All of the prosecutors remained active until the January prior when Crystal Johnson was needed for some additional demands in her office, and she was no longer able to assist. Mr. Vargo was there through the charging decisions.

Question: Did Mr. Vargo agree with the charging decision?
Response: I don't know. I don't know if he asked.

Question: Did he tell you?
Response: We did a lot of devil's advocacy.

Questions from Representative Hansen: Earlier you indicated that you felt like you were unduly influenced during the course of your investigation, by who and what the nature of the undue influence was?
Response: I'm not sure that I said I was unduly influenced, and if I did, I will correct. I took careful effort to make sure that nobody was going to influence me. I felt that if there was any political nature or anything of concern coming in, I took the steps to keep it out. I did not allow anyone to pressure me into a particular decision outside of the evidence and the laws that I was assessing.

Question: Were their attempts to pressure you?
Response from Sovell: I don't know what their intent was. There was a lot of inquiry and requests to release evidence, and I did not succumb to that.
Response from Moore: In a case like this you always feel there's always pressure whether it's undue influence or whatever. It was clear to us what the Highway Patrol's opinion was, what they wanted him charged with. Secretary Price wrote that in his letter; so we knew that going in, but I wouldn't consider that an undue influence or anything. Law enforcement and prosecutors disagree on things. We thought we had productive conversations. I had a personal conversation with Mr. Price about why I felt the way I felt and why I made the decision that I made in this case, that ultimately Emily made. We know what the Governor wanted us to do. But it's not any different than in a murder case, the victims, they want me to charge somebody. They want someone held responsible, and I've been doing that for twenty plus years. In this case, it's not any different for me I think the pressure is the same, but that doesn't influence the decision because ultimately we have to make a decision based on what the law is.

Question: Was there anybody associated with the Attorney General that tried to influence your decision one way or the other?
Response: No, I never had any conversations about this case with anybody from the Attorney General's office.

Question: Where do you believe the Attorney General was on the road at the time of impact?
Response from Sovell: The reconstruction reports and the information that was presented to us was the point of impact was outside of the lane of travel, north side of the highway.
Response from Moore: I agree with that. How far outside of the lane of travel would have been out for debate. I would say outside of the lane to travel, but as for the distance, I was not confident that he was nine feet, but I was confident he was outside of lane of travel. I would just say, based on my experience and again there's a margin of error, there was the fragments that could've placed him closer to in the lane of travel. So, again our determination wasn't definitive on whether he was outside of the lane of travel, and we have to know why because that gives us recklessness. It was really immaterial to me, how far outside the lane of travel he was unless we knew why; and so experts are supposed to be confident in their opinions. I've done this enough to know that when you go to trial, I have to know what I think I can prove beyond reasonable doubt. In this case, I think I could prove beyond a reasonable doubt he was outside of the lane of travel, and I would've left it at that.

Question: We also heard from some investigators that because of where the AG was positioned on the road that he was obviously distracted?

Response from Moore: I guess I don't agree with the fact that he was obviously distracted. People drive outside a lane for a variety of different reasons, and it doesn't mean they're distracted. If you look to the right and you go outside the lane, you hit the rumble strips, and he was going ninety-eight or ninety-seven feet a second. When you think you're going outside of the lane and you hit that rumble strip, you come right back. You've traveled a great distance in that time. I don't think it's a fair assessment because we just don't know, you could look away, you could've dropped something, and he could have been looking at something else. Without knowing that the lane merges prior to that where it happened, maybe he didn't move back over to the left. These are things that I would've had to combat if he wanted to go to trial because there would've been a million reasons. He could've been outside of the lane of travel that wouldn't have indicated that he was distracted. If I can't prove that this is not reckless and you have to be able to establish that he knew the risk, how many people drive outside of lane of travel and get a ticket for reckless driving? I've been prosecuting twenty-five, thirty years and I've never seen that, so just outside of the lane of travel itself isn't enough. Those are the kind of the things that went through my mind. People go outside of the lane of travel all the time.

Questions from Representative Haugaard: Did part of the decisions focus around the fact that this accident scene was not protected for ten or eleven hours?
Response from Sovell: There were discussions about the potential changes about wind and traffic patterns. The reconstruction opinion was that it was not a significant change to the trend lines and the evidence that was on the roadway.

Question: In the press it always indicated that North Dakota handled this whole investigation but when it came time for us to look through some of the evidence and hear some of the people testify, it sounds as though South Dakota had a fairly significantly involvement in this?
Response: North Dakota did the primary investigative work with respect to the interviews and the processing of all of the materials and compiling them for release to my office. South Dakota Highway Patrol was in charge of the accident reconstruction portion of it. I spoke a lot with Agents Rummel and Arenz out of the North Dakota office. When it came to accident reconstruction questions, I had a number of discussions with the Aberdeen office of the South Dakota Highway Patrol, primarily Trooper Berndt.

Question: When you were starting to feel undue pressure, you excluded those individuals from your communications. Who was excluded?
Response: Secretary Price. His desire for the release of evidence was going to make this transparent because of the involvement of the Attorney General. I know that was part of Governor Noem's press release. At least early on Secretary Price said that there's a difference between transparency and actually trying a case. I did discuss those concerns with him. There was a very strong desire to have the evidence out to the public because of the need for transparency, and I disagreed with that.

Question: Were there any lawmakers that ever contacted you about this case about charging or anything related to the case?
Response from Sovell: No lawmakers contacted me with respect to charging or encouraging charges one way or the other.
Response from Mr. Moore: No, not regarding any of the facts or any charging decisions or what was happening. I did talk to a senator about timing about when we are going to do the press release, but that was the only conversation I ever had.

Question: The pressure for releasing information, how far into this did it go?
Response from Sovell: There was some early on, and it persisted for a period of time. I would have to go back and look. There was no discussion with defense attorneys until after the charging decisions were made, and they had motioned the court themselves. I believe in that motion they cited the fact that I had requested that the investigative materials not be released by the Department of Public Safety. There came a point after the evidence

was being processed, I had said that I wasn't going to include Secretary Price in some of the conversations because I didn't want there to be any appearance of any political pressures or anything from the outside to make a decision in this case. I believe there was an email, most of my communications with him were by phone.

Question to Mr. Moore: Did you communicate anything to the Governor's Office?
Response: I never had any contact with the Governor's Office.

Question from Representative Jensen: There is a turning lane as you come out of Highmore; you mentioned merging traffic merging back in on the lane. How far from where that ends to the point of impact?
Response from Moore: I don't want you to hold me to anything, but I would say it was probably looking at about a quarter of a mile or so, so maybe 2,000 feet or something from that merge lane. That is one of the things that we also did. The surface remained pretty similar, pretty constant. There was a white line there. So, if you were driving you would've seen a white line on your left, so there was a painted white line there. Those are things that we talked about. If you would keep driving straight when the lane merges to the left, you would be to the right of the rumble strip.

Question: At the point where they merged, is the rumble strip there? Would it be possible to get on the shoulder without driving over rumble strip?
Response: It is possible.

Question from Representative Barthel: He was actually charged with two misdemeanors and the one was the use of the electronic device while driving. Was that based on his activity with the phone prior to the impact because we knew the phone was locked at the time of impact?
Response from Sovell: Yes, there was actually three charges originally, and the one with respect to the electronic device was for the phone activity east of Highmore. The other charge was for deviating or traveling outside of this lane, and so he was outside of his lane at the time of impact.

Question: It was mentioned we don't have negligent homicide law with the vehicle in our state. If we had, do you think it would have fit for that charge?
Response from Sovell: It would depend on how that statute was drafted but potentially if it encompasses the activity that occurred.
Response from Moore: If the version was passed in 2006, it would not because it specifically excluded traffic violations as a grounds to reach negligence, but if it was drafted similar to other states, it could fit as negligence.

Questions from Representative Haugaard: The Attorney General entered no contest on the electronic device charge?
Response from Sovell: That is correct and so that's not an admission of guilt that just simply not contesting the charge. The court treats it essentially as a guilty plea with respect to how the conviction goes in the record, but the plea is no contest. The electronic device charge was completely unrelated to the actual impact.

Question: Some senator contacted you, who was that?
Response from Moore: It was Senator Wheeler. He's from my district, and he's an attorney in my district. He heard that there was going to be a press release or press conference. He just asked when it was and where it was going to be, but we didn't discuss the case at all.
Response from Sovell: I had an inquiry on timing from Senator Schoenbeck before the press release, on when the charging decisions will be made.

Testimony concluded at 6:45 p.m.

Representative Stevens moved, seconded by Representative Hansen, that all individuals previously subpoenaed by this committee be released. The motion prevailed on a roll call vote with 8 voting AYE and 1 NOT VOTING. Voting AYE: Barthel, Cwach, Hansen, Haugaard, Jensen, Peterson, Smith, and Stevens. NOT VOTING: Gosch.

Representative Stevens moved, seconded by Representative Haugaard, that the House Select Committee on Investigation go into executive session. The motion prevailed on a voice vote.

The Committee went into executive session at 6:47 p.m.

Representative Stevens moved, seconded by Representative Hansen, that the House Select Committee on Investigation come out of executive session. The motion prevailed on a voice vote.

The Committee came out of executive session at 7:15 p.m.

The next meeting of the House Select Committee on Investigation is scheduled for March 10, 2022.

Adjournment

Representative Peterson moved, seconded by Representative Hansen, that the House Select Committee on Investigation be adjourned. The motion prevailed on a voice vote.

The Committee adjourned at 7:17 p.m.

Majority Report of House Committee 3/28/22

Majority Report of the House Select Committee on Investigation

2021 Second Special Session

March 28, 2022

SOUTH DAKOTA
LEGISLATURE
LEGISLATIVE RESEARCH COUNCIL

SOUTH DAKOTA HOUSE OF REPRESENTATIVES

IN THE MATTER OF THE INVESTIGATION OF THE CONDUCT OF Jason Ravnsborg, Attorney General of the State of South Dakota	)))))	**HOUSE SELECT COMMITTEE'S MAJORITY REPORT AND RECOMMENDATIONS**

BACKGROUND

House Resolution 7001 established a select committee to investigate whether articles of impeachment should issue against Jason Ravnsborg, Attorney General of the State of South Dakota. The Attorney General of the State of South Dakota is a state officer subject to impeachment pursuant to S.D. Const. Art. XVI, § 3. The power of impeachment is exercisable only on certain grounds enumerated in S.D. Const. Art. XVI, § 3. The House of Representatives has the sole power of impeachment pursuant to S.D. Const. Art. XVI § 1. The Senate has the sole power to try an impeachment pursuant to S.D. Const. Art. XVI § 2. House Resolution 7001 requires the House of Representatives of the Legislature of the State of South Dakota to convene for the Special Session on the Impeachment of Jason Ravnsborg, Attorney General of the State of South Dakota, surrounding the death of Joe Boever, and to investigate impeachable offenses pursuant to S.D. Const. Art. XVI § 3.

In accordance with House Resolution 7001, the Select Committee has the authority to administer oaths, examine all records, summon witnesses by issuing subpoenas, and thoroughly examine all relevant and material facts associated with the events and conduct of Jason Ravnsborg, Attorney General of the State of South Dakota, surrounding the death of Joe Boever. House Resolution 7001 (2021 Second Special Session). The Select Committee is further empowered to do all other things necessary to accomplish the purpose of its hearings and deliberations. *Id.*

The Select Committee provides this written committee report and recommendation to the House of Representatives pursuant to House Resolution 7001 on whether articles of impeachment should issue.

FINDINGS OF FACT

The Select Committee issued subpoenas as follows:

1. Subpoena Duces Tecum to North Dakota Bureau of Criminal Investigation to produce documents or other materials to the Select Committee on Investigation on or before January 12, 2022, dated January 4, 2022. Received documents January 12, 2022.

2. Subpoena Duces Tecum to John Daily, Jackson Hole Scientific Investigations, Inc. to produce documents or other materials to the Select Committee on Investigation on or before January 12, 2022, dated January 4, 2022. Received response to subpoena via email correspondence from Attorney Paul Bachand dated January 5, 2022, attaching Mr. Daily's contract with the State of South Dakota.

3. Subpoena Duces Tecum to Hyde County States Attorney to produce documents or other materials to the Select Committee on Investigation on or before January 12, 2022, dated January 4, 2022. Received documents January 13, 2022.

4. Subpoena Duces Tecum to Craig Price, Secretary of South Dakota Department of Public Safety, to produce documents or other materials to the Select Committee on Investigation on or before January 12, 2022, dated January 4, 2022. Received documents January 12, 2022.

Attached as Exhibit A is the Index of the Investigative File and List of Redacted Content. The Index reflects information received via the subpoenas noted above and other information gathered or received.

The Select Committee issued the following subpoenas for live testimony:

1. Subpoena to Appear and Testify at Hearing on January 18, 2022, to Craig Price, Secretary of South Dakota Department of Public Safety, dated January 4, 2022;

2. Subpoena to Appear and Testify at Hearing on January 18, 2022, to Trooper John Berndt, South Dakota Highway Patrol, dated January 4, 2022;

3. Subpoena to Appear and Testify at Hearing on January 18, 2022, to Jeramie Quam, North Dakota Bureau of Criminal Investigation, dated January 4, 2002;

4. Subpoena to Appear and Testify at Hearing on January 19, 2022, to John Daily, Jackson Hole Scientific Investigation, Inc., dated January 4, 2022;

5. Subpoena to Appear and Testify at Hearing on January 19, 2022, to Joe Arenz, North Dakota Bureau of Criminal Investigation, dated January 4, 2022;

6. Subpoena to Appear and Testify at Hearing on February 24, 2022, to Emily Sovell, Hyde County State's Attorney, dated February 10, 2022;

7. Subpoena to Appear and Testify at Hearing on February 24, 2022, to Timothy Bormann, South Dakota Attorney General's Office, dated February 10, 2022;

8. Subpoena to Appear and Testify at Hearing on February 24, 2022, to David Natvig, Division of Criminal Investigation, dated February 10, 2022;

9. Subpoena to Appear and Testify at Hearing on February 24, 2022, to Michael Moore, Beadle County State's Attorney, dated February 10, 2022.

The Select Committee also received or gathered the following documents, reflected in Exhibit A:

1. Documents published on the South Dakota Department of Public Safety Website (Exhibit A, No. 67);

2. Attorney General Jason Ravnsborg letter regarding September 12, 2020 accident (Exhibit A, No. 68);

3. Letter from attorney Ross Garber submitted on behalf of Attorney General Ravnsborg, dated January 27, 2022 (Exhibit A, No. 71);

4. Press Release from Department of Public Safety Secretary Craig Price Urging Committee to Consider Facts in Impeachment Investigation, dated March 9, 2022 (Exhibit A, No. 73);

5. Secretary Craig Price letter to Speaker Gosch, dated March 9, 2022 (Exhibit A, No. 73);

6. AG Crash Supplemental (Quadrants Described) from Trooper John Berndt, dated March 9, 2022 (Exhibit A, No. 73).

The Select Committee submitted numerous requests, both formal and informal, to Attorney General Ravnsborg and his legal team seeking his participation in the impeachment process. The Committee offered the Attorney General an opportunity to testify and/or to submit any factual or legal argument. The only information provided was a letter penned by Attorney Ross Garber on Attorney General Ravnsborg's behalf. (Exhibit A, No. 71).

Additionally, the Select Committee gave Attorney General Ravnsborg and his legal counsel notice that it intended to release a redacted version of the investigative file. The Attorney General and his team had months to review the redacted file and provide any feedback. Unlike in the criminal case where Ravnsborg's counsel objected to the release of the initial investigation report, the Select Committee received no objection to the release of the redacted full investigative file.

The Select Committee held three days of evidentiary hearings on January 18, January 19, and February 24, 2022. The witnesses were each sworn under oath by the Chair prior to their testimony. Each was asked if the Attorney General or anyone on his behalf in any way contacted them to influence the investigation. All answered no.

The testimony and other documents and information relevant to potentially impeachable offenses reflect the following.

Attorney General Jason Ravnsborg attended a Lincoln Day Dinner in Redfield, South Dakota, on September 12, 2020. He attended this political function in his personal capacity as a candidate and not as a duty of his office. He consumed no alcohol that day. While he drove back to Pierre that evening, he spent approximately 69% of his time on his cell phone. His phone was locked prior to entering the town of Highmore, and he did not use his phone again until he called 911 after the accident on the west side of Highmore. A forensic study of his two cell phones confirmed that Attorney General Ravnsborg was not on a cell phone at the time or approximately 90 seconds preceding the accident. In response to questions regarding whether Attorney General Ravnsborg was obviously distracted, prosecutor Michael Moore said, "I guess I don't agree with the fact that he was obviously distracted. People drive outside a lane for a variety of different reasons and it doesn't mean they're distracted."

Approximately a mile west of Highmore, South Dakota, Attorney General Ravnsborg stated he began to accelerate in speed and looked down to set the cruise control. It appears that his vehicle may have left his lane of travel and drifted to the right onto the shoulder where he struck and killed Joe Boever. The South Dakota Highway Patrol concluded that all four tires of the vehicle were on the shoulder of the road, to the right of the fog line, and the point of impact was a foot from the ditch. This conclusion was disputed by Attorney General Ravnsborg's statements and appeared to have been called into doubt by Mr. Boever's bone scrape located to the north of the fog line, but close to the lane of traffic. No sufficient explanation has been provided to the Select Committee explaining how Mr. Boever's bone fragments were left so close to the lane of travel, but the Highway Patrol concluded Mr. Boever was struck nearly on the grass line. No evidence indicated Mr. Boever's body traveled under the vehicle, and no evidence supported that his body was vaulted over the top of the vehicle. Rather, all evidence suggests Mr. Boever's face went through the windshield; and the body slid off the right side of the car, taking the passenger side-view mirror nearly off the vehicle. Some testimony regarding the vehicle's paint chips and other

fragments of the vehicle stated the vehicle was fully within the shoulder at the point of impact. However, the prosecutors involved believed the evidence was disputed as to how far into the shoulder the vehicle was at the time of impact. Tire marks previously associated with this accident by the media were determined not to be associated with this accident by law enforcement.

After the impact, Attorney General Ravnsborg pulled his car over and called 911. (Exhibit A, No. 58, p. 35 of SD Highway Patrol Report.) Hyde County Sheriff Michael Volek responded to the call, and both Sheriff Volek and Attorney General Ravnsborg looked in the surrounding ditches to see what had been hit. Both indicated they did not see Mr. Boever's body, which was in the grass a short distance from the road. Sheriff Volek allowed Attorney General Ravnsborg to take his personal vehicle home to Pierre, and called a tow truck to transport Attorney General Ravnsborg's vehicle to Highmore.

The next morning, September 13, 2020, Attorney General Ravnsborg and his Chief of Staff, Tim Bormann, returned to the accident scene before returning Sheriff Volek's vehicle. Each began to search the area, and Attorney General Ravnsborg found Mr. Boever's dead body. He alerted Chief of Staff Tim Bormann to come over to the location of the body. They then drove to Sheriff Volek's house and reported the body. Sheriff Volek thereafter reported the body to the South Dakota Division of Criminal Investigation (DCI). DCI reports directly to the South Dakota Attorney General. The South Dakota Highway Patrol requested the North Dakota Bureau of Criminal Investigation (BCI) assist with the investigation due to the conflict of having DCI involved. The South Dakota Highway Patrol reconstructed the crash, while the North Dakota BCI collected the evidence and primarily interviewed the witnesses.

North Dakota BCI Special Agent Joe Arenz and North Dakota BCI Supervisory Special Agent Arnie Rummel interviewed Attorney General Ravnsborg on September 14, 2020 and September 30, 2020.[1] (Exhibit A, No. 44). During the first interview, Attorney General Ravnsborg stated, "I never saw anything until the impact." Some have alleged that this statement suggests that Attorney General Ravnsborg saw he hit a person at the time of impact. During the second interview, Attorney General Ravnsborg stated, "You know I'm walking and looking to try and see that sign to make sure that's the, and then I turn around and I'm looking into the ditch so I don't know exactly where I turn around and saw him. I-I didn't see him. I did not see him." Some have alleged that this statement suggests Attorney General Ravnsborg saw the body in the ditch as he walked to view the Highmore sign. Attorney General Ravnsborg also may have simply misspoke, as he corrected his statement later in the interviews.

On September 15, 2020, Attorney General Ravnsborg spoke to DCI Special Agent Brent Gromer in Pierre at the DCI Headquarters. (Exhibit A, No. 29). Attorney General Ravnsborg asked Special Agent Gromer about digital forensics and what information the North Dakota BCI may be able to obtain from his cell phones. These questions made Special Agent Gromer uncomfortable and caused him to type a statement about the interaction.

Attorney General Ravnsborg issued a public statement regarding the accident on his official Attorney General letterhead. (Exhibit A, No. 68).

At Attorney General Ravnsborg's second interview on September 30, 2020, he was questioned regarding his phone use the evening of the accident. (Exhibit A, No. 44).

[1] There is a transcription error on Exhibit A, No. 44, which lists the date of the second interview as October 30, 2020.

Attorney General Ravnsborg was charged with three class two misdemeanors, pleading no contest to two of them as discussed below. Prosecutors determined there was insufficient evidence to charge any more serious offenses. The Select Committee considered all other possible charges. Attorney General Ravnsborg was not charged with any crime related to obstructing or lying to law enforcement.

Chief of Staff Tim Bormann testified that there has been no disruption in the Attorney General's Office due to the accident. No evidence indicated Attorney General Ravnsborg abused his power of office.

LEGAL ANALYSIS

I. South Dakota Constitution

The impeachment and removal provisions found in the South Dakota Constitution state as follows:

> Article XVI
>
> § 3. Officers subject to impeachment—Grounds—Removal from office—Criminal prosecution.
>
> The Governor and other state and judicial officers, except county judges, justices of the peace and police magistrates, shall be liable to impeachment for drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under the state. The person accused whether convicted or acquitted shall nevertheless be liable to indictment, trial, judgment and punishment according to the law.
>
> § 4. Removals of officers not subject to impeachment.
>
> All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance or crime or misdemeanor in office, or for drunkenness or gross incompetency, in such manner as may be provided by law.

Section 3 applies to state officials who are named in the South Dakota Constitution, such as the Attorney General. *State ex rel. Ayers v. Kipp*, 74 N.W. 440, 442 (S.D. 1898) (In § 3, the framers "were . . . providing for the tenure of the state officers they have created and named in the constitution, and that they did not include or intend to include officers created by the legislature."). While § 4 does not apply here, South Dakota Supreme Court case law provides insight as to the framers' intent and the meaning of language used in both §§ 3 and 4.

State officers not subject to impeachment may only be removed from office for the reasons provided in the constitution. "By expressly enumerating the causes for which such an officer may be removed, the constitution not only limits the causes, but limits removals to cases where such causes exist. We must not be understood as saying or meaning that such cause must first be judicially declared to exist before any power of removal can be exercised, but we do mean to say that the constitution plainly and unmistakably does forbid the removal of such an officer at the pleasure of anybody, whether governor, legislature, or court." *State ex rel. Holmes v. Shannon*, 64 N.W. 175, 179 (S.D. 1895).

II. Standard of Proof – Clear and Convincing

In *State ex rel. Steffen v. Peterson*, 607 N.W.2d 262, 268 (S.D. 2000) the South Dakota Supreme Court analyzed SDCL § 3-17-6, the statute that permits removal of local government officers for misconduct.

Quoting the Iowa Supreme Court, the South Dakota Supreme Court held that "[e]vidence in a removal action must be 'clear, satisfactory and convincing.'" *Id.* (citing *State v. Bartz*, 224 N.W.2d 632, 638 (Iowa 1974)). The South Dakota Supreme Court has previously defined "clear and convincing evidence" as "evidence that is so clear, direct, weighty, and convincing as to allow the trier of fact to reach clear conviction of precise facts at issue, without hesitancy as to their truth." *Matter of S.W.*, 428 N.W.2d 521, 523–24 (S.D. 1988). The clear and convincing standard "must be more than a mere preponderance but not beyond a reasonable doubt." *Sedlacek's Estate v. Mount Marty Hospital Ass'n*, 218 N.W.2d 875, 879 (S.D. 1974).

The Select Committee on Investigation hereby adopts the clear and convincing standard of proof for determining if articles of impeachment should issue.

1. Misconduct defined

Of the terms listed in § 4, two terms -- misconduct in office and malfeasance in office -- have been expressly defined by the South Dakota Supreme Court in the context of removal from office under § 4. The term "misconduct . . . in office", a basis for removal of officers not subject to impeachment, has been defined as "simply the doing of something which the officer ought not to do, or the failure to do something which he ought to do, in the conduct of his office." *Craig v. Jensen*, 278 N.W. 545, 549 (S.D. 1938). The South Dakota Supreme Court noted that "[e]ach case must rest upon its own facts." *Id.*

2. Malfeasance defined

In 2000, the South Dakota Supreme Court adopted the Minnesota Supreme Court's definition of malfeasance, explaining that it "is not susceptible of an exact definition but it has reference to evil conduct or an illegal deed, the doing of that which one ought not to do, the performance of an act by an officer in his official capacity that is wholly illegal and wrongful." *State ex rel. Steffen v. Peterson*, 607 N.W.2d 262, 268–69 (S.D. 2000) (internal citations omitted). In 1914, the South Dakota Supreme Court explained that "[f]or an officer to be mistaken in his construction of a law comes far from corruption or malfeasance in office. If [the complainant] had charged that [the officer] insisted on the 33 ½ per cent. [above cost for the sale of school books] when he knew that the law provided for only 10 per cent. there would have been a charge of malfeasance in office." *Howe v. Thompson*, 150 N.W. 301, 303 (S.D. 1914).[2]

III. Impeachment likely limited to criminal conduct

The South Dakota Supreme Court has provided a potential distinction between conduct that may be the basis for an impeachment under § 3 and conduct that may subject a non-constitutional state officer to removal under § 4. Non-constitutional state officers may be removed for non-criminal conduct including "incompetency, and perhaps other causes not constituting criminal offenses." *State ex rel. Hitchcock v. Hewitt*, 52 N.W. 875, 879 (S.D. 1892). For constitutional state officers, the South Dakota Supreme Court explained that "[i]n nearly every state constitution, as in the federal constitution, the causes for which a public officer may be impeached are criminal offenses only. This may be as far as it is prudent to go in the case of the heads of distinct departments of the government . . ." *State ex rel. Hitchcock v. Hewitt*, 52 N.W. 875, 879 (S.D. 1892). This statement from the South Dakota Supreme Court is a summary of many state constitutions and the federal Constitution, but it is not clear whether the Court was also referencing the South Dakota Constitution. Regardless, the quote demonstrates that in 1892, the South Dakota Supreme

[2] In the same case, the Court found statements alleging "neglect of official duties, with incompetency in office, and with malfeasance in office" when the statements "were made maliciously and with knowledge of their falsity" is libelous per se. *Howe v. Thompson*, 150 NW. 301, 304 (S.D. 1914).

Court at least generally believed that impeachment was for criminal conduct. This interpretation aligns with the constitutional bases for removal under impeachment -- "drunkenness,"[3] "crimes," "corrupt conduct," "malfeasance" and "misdemeanor" – all terms that likely refer to criminal conduct.

IV. Other state statutes regarding removal of local officials

Some guidance can be gleaned from statutes governing the removal of other elected or appointed officials. Under SDCL § 3-17-6 pertaining to local governmental officials, "Any officer of any local unit of government may be charged, tried, and removed from office for misconduct, malfeasance, nonfeasance, crimes in office, drunkenness, gross incompetency, corruption, theft, oppression, or gross partiality." In discussing removal of local officials under this statute, the South Dakota Supreme Court explained that "[r]emoval of public officers from office is a drastic remedy . . . and statutory provisions prescribing the grounds for removal are strictly construed." *State ex rel. Steffen v. Peterson*, 607 N.W.2d 262, 268 (S.D. 2000) (quoting *Kemp v. Boyd*, 275 S.E. 2d 297, 301 (W. Va. 1981)). "The remedy provided by removal statutes is heroic in nature and relatively drastic where the usual method of removing officeholders is by resort to the ballot." *Id.* (citing *State v. Bartz*, 224 N.W.2d 632, 638 (Iowa 1974)). Evidence prompting removal "must be 'clear, satisfactory and convincing.'" *Id.* (citing *Bartz*, 224 N.W.2d at 637).

V. Statutory Interpretation

"It is also a cardinal principle of statutory construction that, to ascertain the meaning of a doubtful phrase or provision, other parts of the same law may and should be considered, and that words and phrases repeatedly used in the same statute will bear the same meaning throughout, unless a different intention clearly appears." *State ex rel. Holmes v. Shannon*, 64 N.W. 175, 176 (S.D. 1895) (case discussing impeachment).

The South Dakota Supreme Court has held that "[w]here the meaning of a constitutional provision is unclear, it is appropriate to look at the intent of the drafting bodies[.]" *Doe v. Nelson*, 680 N.W.2d 302, 305–06 (S.D. 2004) (citing *Pitts v. Larson,* 638 N.W.2d 254, 260 (S.D. 2001) (Gilbertson, C.J., dissenting); *Poppen,* 520 N.W.2d 238, 242 (S.D. 1994); *Cummings v. Mickelson,* 495 N.W.2d 493, 499 (S.D.1993)). "The 'historical context' of a constitutional provision is a guide to its interpretation. *Id.* (citing *Cleveland v. BDL Enterprises, Inc.,* 663 N.W.2d 212, 223 (S.D. 2003)).

It is clear that malfeasance or misdemeanors committed by the constitutional state officer in office are impeachable offenses. Art. XVI, § 3 ("state and judicial officers . . . shall be liable to impeachment for . . . malfeasance or misdemeanor in office"). The question is whether drunkenness, crimes, or corrupt conduct

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[3] While drunkenness itself was not a crime at the time the constitution was adopted, the question of prohibition was intensely debated during the constitutional debates and the constitution was amended to include prohibition the same day the constitution itself was ratified. Garry, Patrick, *History of the 1889 South Dakota Constitution*, 59 S.D. L.R. 14, 28 (2014) ("Prohibition and women's suffrage were perhaps the most troublesome issues arising during the 1885 convention. But as in the 1883 convention, statehood leaders consistently worked to avoid including a prohibition provision in the constitution and, insisting that statehood must come first, called on temperance advocates to save their energy for a legislative battle once statehood was achieved."). In 1889, when the constitution was submitted to the voters after South Dakota was granted statehood, residents voted to ratify the constitution and separately voted to amend the constitution to include prohibition. *Id.* at 32.

must be committed *in office* to be impeachable offenses. There are two ways to analyze this provision, which leads to two separate perspectives.

The first perspective compares how § 3 and § 4 are written. Section 3 subjects officials to impeachment "for drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office", while § 4 subjects officials to impeachment "for misconduct or malfeasance or crime or misdemeanor in office, or for drunkenness or gross incompetency." In § 4, the terms "drunkenness" and "gross incompetency" come after the term "in office", demonstrating that an individual may be removed from office for drunkenness or gross incompetency outside their official role, but only for "misconduct or malfeasance or crime or misdemeanor" if in office, that is, in their capacity as a state official. Applying the statutory construction principle from *Holmes v. Shannon*, the drafters of the constitution could have written the provisions of § 3 to clearly indicate that out-of-office conduct subjects an individual to impeachment. But they did not. All conduct in § 3 is listed prior to the term "in office." Therefore, a state constitutional officer must have committed drunkenness, crimes, corrupt conduct, malfeasance or misdemeanor *in office*.

The second way to read this phrase focuses on the use of commas and the double use of the word "or." Section 3 provides removal "for drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office." There is a final comma after the term "corrupt conduct" making "malfeasance or misdemeanor in office" its own independent phrase and making "drunkenness", "crime", and "corrupt conduct" impeachable regardless of whether they occurred in office. When analyzing an ambiguous trailing modifier, the "typical" canons applicable are the Last Antecedent Canon or the Series-Qualifier Canon. *Argus Leader Media v. Hogstad*, 902 N.W.2d 778, 781 (S.D. 2017). The Last Antecedent Canon states the modifier (here, the phrase "in office") only modifies the final words "malfeasance or misdemeanor." The Series-Qualifier Canon would modify all preceding terms -- here, "drunkenness," "crimes," "corrupt conduct" and "malfeasance or misdemeanor." The Series-Qualifier Canon is "highly sensitive to context." *Id.* Unfortunately, context alone is insufficient to determine if the Last Antecedent Canon or Series-Qualifier Canon would apply because both would result in a reasonable reading of the language. Therefore, these two canons are not particularly useful to the analysis.

Regardless of the importance of punctuation, the South Dakota Supreme Court has held that "[g]rammatical rules can be overcome by other textual indications of meaning [because] [g]rammatical usage is one of the means (though not the exclusive means) by which the sense of a statute is conveyed." *Id.* at 782 (internal citation omitted). Contextual canons, specifically the whole-text canon, require that "the intent must be determined from the statute as a whole, as well as enactments relating to the same subject. In construing statutes together it is presumed that the legislature did not intend an absurd or unreasonable result." *Id.* (internal citations omitted). It is reasonable to argue that the drafters of the constitution intentionally placed the commas and the double use of the word "or" resulting in a reading of the text so that "in office" only applies to malfeasance or misdemeanor. This reading ensures the first "or" is not surplusage. If the drafters intended the term "in office" to apply to all of the previous terms, they could have replaced the first "or" with a comma to read "drunkenness, crimes, corrupt conduct, malfeasance, or misdemeanor in office" rather than what they did write -- "drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office." Lending credence to this reading of the phrase, Black's Law Dictionary notes that the term "abuse of public office" in 1911 was also known as "malfeasance in office." Abuse of Public Office, Black's Law Dictionary (11th edition). "Official misconduct" in 1830 was also known as "misconduct in office" or "misdemeanor in office." Misconduct, Black's Law Dictionary (11th edition). While this reading creates a question about the difference between the terms "misconduct in office" versus "misdemeanor in office" because both terms are in § 4, it lends credence to the possibility that the term "in office" only modifies "misdemeanor" and "malfeasance".

There is a paucity of legal authority defining the term "misdemeanor in office." The Florida Supreme Court defined the term "misdemeanor in office" as "any act involving moral turpitude which is contrary to justice, honesty, principles, or good morals, if performed by virtue or authority of office." *In re Investigation of Cir. Judge of Eleventh Jud. Cir. of Fla.*, 93 So. 2d 601, 605–06 (Fla. 1957). Even though the definition may hold little weight in South Dakota because the Florida Supreme Court found that "misdemeanor in office is synonymous with misconduct in office,"[4] at least one court has recognized that the phrase "misdemeanor in office" is a term of art such that "in office" is not a trailing modifier for an entire phrase. *Id.*

VI. Other State Constitutions

The South Dakota Constitution, first drafted in 1883 and later re-drafted in 1885 and then again in 1889 when it was ratified as the state (and not territorial) constitution, "borrowed heavily from existing state constitutions of the more eastern states." Garry, Patrick, The South Dakota State Constitution 18 (2014). The drafting committee "declared that the document had 'no claims to originality' and was 'a compilation of the best sections of all constitutions of the several states.'" *Id.* at 18, 21; Gilbertson, J. David and Barari, David, *Indexing the South Dakota Constitutional Conventions: A 21st Century Solution to a 125 Year Old Problem*, 53 S.D. L. Rev. 260, 263 (2008). Law Professor Patrick Garry, author of a book discussing the history of the South Dakota Constitution, explained that state constitutions "most often cited or used as examples" were Illinois, Pennsylvania, New York, Wisconsin, Minnesota, and California. Garry, at 27. Despite this, North Dakota's impeachment language is closest to South Dakota's language. North Dakota's constitution requires that state officials "shall be liable to impeachment for habitual drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of trust or profit under the state." N.D. Constitution, Art. 11, § 10. Unfortunately, there is no case law interpreting the language of North Dakota's constitution.

While an analysis of the categories of behavior that subject a constitutional state official to impeachment provides an important framework, it is the function of the Legislature to determine if an official's conduct should result in impeachment. The Arizona Supreme Court has held that "[w]hat constitutes 'high crimes, misdemeanors or malfeasance' is not to be determined by our inquiry, for the impeachment process is designed as a legislative 'inquest into the conduct of public men.'" *Mecham v. Arizona House of Representatives*, 782 P.2d 1160, 1161 (1989) (quoting The Federalist No. 65).

VII. Impeachment History in South Dakota

While South Dakota has seen no impeachment inquiries for state-wide officials, a South Dakota judge was the subject of an impeachment inquiry in January of 1917. At that time, F.M. Lockhart submitted an affidavit and exhibits to the South Dakota House of Representatives and asked the House of Representatives to impeach Circuit Court Judge Levi McGee for the subornation of perjury. House Journal, p. 225–230. Essentially, F.M. Lockhart alleged that Judge McGee falsely informed Williard Richards, an employee of The Dakota Power Company, that he had purchased the water rights belonging to the Rapid River Light, Power and Transit Company. At Judge McGee's direction, Williard Richards copied a survey of land rights owned by the Rapid River Light, Power and Transit Company, but omitted the company's name

[4] In South Dakota, the term "misconduct in office" is used in § 4 but not § 3. Also, § 4 lists "misconduct" and "misdemeanor" in office as separate terms. In order to avoid surplusage, the South Dakota Supreme Court might disagree with the Florida Supreme Court and find that the terms misconduct and misdemeanor in office are two separate standards.

because Judge McGee stated he now owned the rights to the land. Richards signed his name to the document, testifying to its veracity. The alleged subornation of perjury occurred in May 1908.

The petition was referred to the "Committee on Judiciary for their action and recommendation." *Id.* Thereafter, the Judiciary Committee subpoenaed witnesses and documents and received testimony under oath as part of its investigation. Then, the Committee sent two reports to the full House. The Majority Report recommended against impeachment and the Minority Report recommended the House, as a whole, take additional testimony. (House Journal, p. 323–25).

The Majority Report determined that the evidence demonstrated that Judge McGee did not have any rights to the land and that Richards did prepare a blueprint from the Rapid River Power, Light and Transit Company map without including their name on the map. However, there was also uncertainty as to the true ownership of the water rights and significant time had passed since the incident occurred. As such, the majority stated, "[T]here is not sufficient evidence before this committee to warrant it in concluding that the accused, directly or indirectly, procured the said Richards to so make such certificate, or to swear to the same." *Id.* Concluding there is insufficient evidence "tending to show any irregularity or corrupt conduct upon which any impeachment charges could be predicate," the majority recommended that articles of impeachment not be preferred against the accused.

The Minority Report concluded there was insufficient information to reach a decision and recommended considering additional evidence with the full House. *Id.*

On January 29, 1917, the House voted on both the Majority and Minority Reports. The Minority Report was rejected 23-75. (House Journal, p. 342–43). The committee's Majority Report was adopted and no record vote was taken. *Id.*

Between January and March, 1917, the House and Senate passed HB 407. The bill authorized the State Auditor to pay $64.30 to two witnesses (James Hartgering and Willard Richards) and a third party (C.M. Cessna) for the costs of impeachment. (Session Laws, p. 85–86).

The House Journal does not state whether the Judiciary Committee's investigation meetings were public or held in closed session. However, none of the newspapers that reported on the impeachment included details of the committee hearings, supporting the conclusion that the committee meetings were not public. Further, the Minority Report recommended "that the House sit *in closed session* for the purpose of considering the evidence already produced, and any other evidence that may be produced, before taking final action upon said charges." (House Journal, p. 325 (emphasis added)).

VII. Findings of the Select Committee

The Select Committee was tasked with determining which constitutional standard, if any, may apply to a potential impeachment in this matter. Those constitutional standards are drunkenness, crimes, corrupt conduct or malfeasance or misdemeanor in office. Next, the Select Committee determined whether any of Attorney General Ravnsborg's actions or omissions surrounding the death of Joe Boever support any such constitutional standard for impeachment. The Select Committee on Investigation analyzed the following under the clear and convincing standard of proof as stated above for determining if articles of impeachment should issue:

A. Drunkenness: The toxicology report and other evidence indicate Attorney General Ravnsborg was not intoxicated at the time of the accident.

B. Crimes: To impeach for "crimes", the House may consider whether the official was convicted of a crime or whether the official committed a crime but his behavior did not result in a criminal charge and

conviction due to the official's influence. *See State ex rel. De Concini v. Sullivan*, 188 P.2d 592, 595–96 (Ariz. 1948) ("the object of prosecutions of impeachment in England and the United States is to reach high and potent offenders, such as might be presumed to escape punishment in the ordinary tribunals, either from their own extraordinary influence, or from the imperfect organization and powers of those tribunals").

Here, the "crimes" that could potentially serve as the basis for impeachment are 1) using a cellphone while driving, a Class 2 misdemeanor (SDCL § 32-26-47.1); 2) lane violation, a Class 2 misdemeanor (SDCL § 32-26-6); and 3) the never-brought charge of second degree manslaughter, a Class 4 felony (SDCL § 22-16-20).

1. Using a cellphone while driving, a Class 2 misdemeanor (SDCL § 32-26-47.1)

As noted above, it is clear that Attorney General Ravnsborg was not using a cell phone at the time of the accident. House Resolution 7001 constrains the Select Committee's inquiry into the "events surrounding the death of Joe Boever". The Select Committee finds that Attorney General Ravnsborg's use of his cell phone earlier that evening is not an event surrounding the death of Mr. Boever and was not conducted in office or by virtue of his office. Even if it were, the Select Committee finds that the Class 2 misdemeanor of using a cell phone while driving is not an impeachable offense under the law indicated above. Such conduct, while dangerous, should not serve as a basis for removing an official from office under Art. XVI, § 3.

2. Lane violation, a Class 2 misdemeanor (SDCL § 32-26-6)

Attorney General Ravnsborg's lane change violation is a matter surrounding the death of Mr. Boever's death, but was not committed in office or by virtue of his office. Such a Class 2 misdemeanor is a commonplace occurrence and is not an impeachable offense under the law indicated above. Such a traffic violation should not serve as a basis for removing an official from office under Art. XVI, § 3.

3. Second degree manslaughter, a Class 4 felony (SDCL § 22-16-20)

The Select Committee considered whether the Attorney General should have been charged and convicted of second degree manslaughter. In South Dakota, second degree manslaughter is "[a]ny reckless killing of one human being . . . by the act or procurement of another . . ." SDCL § 22-16-20. "The words, 'reckless' . . . import a conscious and unjustifiable disregard of a substantial risk that the offender's conduct may cause a certain result or may be of a certain nature. A person is reckless with respect to circumstances if that person consciously and unjustifiably disregards a substantial risk that such circumstances may exist." SDCL § 22-1-2(1)(d).

In *State v. William Janklow*, 693 N.W.2d 685 (S.D. 2005), Janklow was charged with failure to stop at a stop sign, reckless driving, and second degree manslaughter. *Id.* at 691. A question on appeal included whether Janklow's conduct was "reckless" as required for a second degree manslaughter conviction. The South Dakota Supreme Court began its analysis reviewing SDCL § 22-16-20, which as noted above, uses the term "reckless killing". The Court stated that "reckless" is defined in SDCL § 22-1-2(1)(d), as cited above. The Court noted previous case law elaborating on the definition of "reckless" in this context.

> "[F]or someone's conduct to be deemed reckless, they must consciously disregard a substantial risk." *State v. Olsen*, 462 N.W.2d 474, 476 (S.D.1990). "Recklessness requires more than ordinary negligent conduct." *Id.* "The difference between reckless behavior and negligent behavior is primarily measured by the state of mind of the individual." *Id.*

> "The difference between the terms 'recklessly' and 'negligently,' as usually defined, is one of kind, rather than degree. Each actor creates a risk of harm. The reckless actor is aware of the risk and disregards it; the negligent actor is not aware of the risk but should have been aware of it." *State v. Larson*, 1998 SD 80, ¶ 14, 582 N.W.2d 15, 18 (*quoting Olsen*, 462 N.W.2d at 476–77 (other citations omitted) (emphasis in original)).
>
> . . . . "However, the operation of a motor vehicle in violation of the law is not in and of itself sufficient to constitute reckless conduct, even if a person is killed as a result thereof." *Olsen,* 462 N.W.2d at 477. "Criminal responsibility for death resulting from the operation of a motor vehicle in violation of the law will result only if the violation is done in such a manner as to evidence a reckless disregard for the safety of others." *Id.* "Mere carelessness or inadvertence or thoughtless omission is insufficient." *Id.* (citation omitted).
>
> The State argues that the risk that Janklow disregarded was the potential harm arising out of his speeding through a blind intersection without stopping. "Although it is not always possible for the State to directly establish that a defendant was aware of a risk, it can be done indirectly through the defendant's conduct." *Olsen*, 462 N.W.2d at 477. "Awareness can be established if the defendant acts in a manner that indicates a reckless disregard for the safety of others." *Id.* The State maintains that Janklow's disregard for the safety of others and his indifference to the consequences of his actions were demonstrated by his conduct of speeding through a stop sign at a blind intersection of two highways without stopping or looking for oncoming traffic.
>
> As in *Larson*, this Court cannot say as a matter of law that Janklow's conduct did not constitute recklessness. Reasonable minds could differ as to this issue. . . . There was sufficient evidence from which the jury could conclude that Janklow was aware of, yet disregarded, the risk of an accident occurring as a result of his conduct.

State v. William Janklow, 693 N.W.2d 685, 693–95 (S.D. 2005).

In its analysis, the Court cited previous cases, including *State v. Olsen*, 462 N.W.2d 474 (S.D. 1990). In *Olsen*, Olsen was slowly driving a farm tractor on a highway when he turned left toward a gravel road. *Id.* at 475. An oncoming vehicle struck Olsen as he turned into the oncoming lane. *Id.* The oncoming driver died on impact. Olsen exclaimed "I didn't see it" immediately thereafter to a witness. *Id.* Olsen stated he looked both behind and forward but simply did not see the oncoming vehicle. *Id.* Olsen was charged with second degree manslaughter, and moved to dismiss the charge at his preliminary hearing. *Id.* 475. The magistrate dismissed the charge.

On appeal, the South Dakota Supreme Court reviewed the second degree manslaughter statute and definition of reckless cited above and affirmed the dismissal. *Id.* The Court also cited with approval Treiman, *Recklessness and the Model Penal Code*, 9 Am.J.Crim.L. 281, 351 (1981):

> It is the concept of conscious disregard that distinguishes recklessness from negligence. The negligent actor fails to perceive a risk that he ought to perceive. The reckless actor perceives or is conscious of the risk, but disregards it.

"Consequently, outwardly identical actions by two people may be reckless behavior for one, but only negligent behavior for the other." *Olsen* at 477. The Supreme Court held that the State failed to introduce evidence of Olsen's conduct that would prove anything more than negligence. *Id.* at 477. "Nothing in the evidence of Olsen's behavior suggests that he was in any way aware of the risk he was creating when he

turned his tractor towards the gravel road." *Id.* The Court held that failure to yield the right-of-way is not sufficient evidence of culpability to support an involuntary manslaughter charge. *Id.*

A third case before the South Dakota Supreme Court utilized the same law. In *State v. Wall*, 481 N.W.2d 259 (S.D. 1992), Wall was driving a motorhome and struck the rear end of a pickup truck camper while attempting to pass it. *Id.* at 261. Witnesses established Wall had been ducking in and out and passing vehicles at a high rate of speed. *Id.* The Court cited much of the law cited above in analyzing whether a second degree manslaughter charge was properly supported. The Court found the evidence supported the verdict convicting Wall of second degree manslaughter. *Id.* at 263. The Court stated that recklessness was proven considering how narrow the highway was, how wide the RV was, and Wall's numerous erratic attempts to pass vehicles and multiple cars in one lengthy pass, including shortly after passing an accident scene where the traffic had slowed. *Id.*

The prosecutors who testified in this matter indicated they did not have evidence sufficient to bring a charge of second degree manslaughter against Attorney General Ravnsborg. As stated by a prosecutor, and corroborated by the evidence, how far Attorney General Ravnsborg was onto the shoulder of the road was disputed. It is also unclear how long he had one or more tires over the fog line and why. Without such evidence, a second degree manslaughter charge would have been inappropriate, as it would have been difficult to prove that Attorney General Ravnsborg knew he was over the fog line, recklessly disregarded that knowledge, and chose to continue driving on the shoulder regardless. The Select Committee finds that the evidence does not prove in a clear and convincing manner that Attorney General Ravnsborg committed second degree manslaughter.

4. Corrupt Conduct

There is no case law in South Dakota defining "corrupt conduct". Merriam-Webster's dictionary, however, defines "corrupt" as "morally degenerate and perverted" and "characterized by improper conduct (such as bribery or the selling of favors)." *Corrupt*, Merriam-Webster, https://www.merriam-webster.com/dictionary/corrupt (last visited Jan. 26, 2022). As indicated above, any corrupt conduct may have had to occur in office in order to serve as a basis for impeachment.

The Select Committee finds no evidence of "corrupt conduct" committed by Attorney General Ravnsborg surrounding the death of Mr. Boever. The Select Committee has considered whether potentially misrepresenting cell phone usage to the North Dakota investigators occurred under a clear and convincing standard, and if so, whether such conduct rose to "corrupt conduct." The Select Committee has similarly considered whether Attorney General Ravnsborg's account to law enforcement as to the positioning of his vehicle was inaccurate or a misrepresentation of facts. The Select Committee has also considered whether the Attorney General's dissemination of a press release regarding the accident on official Attorney General letterhead (Exhibit A, No. 68) was corrupt action. Finally, the Select Committee has considered whether asking South Dakota DCI Agent Gromer, who was not involved in the investigation, what North Dakota investigators would find on his phones was corrupt conduct. The Select Committee finds by a clear and convincing standard of proof that such alleged conduct was not "corrupt" in nature as defined above, whether such conduct had to have occurred "in office" or not.

5. Malfeasance in Office

The South Dakota Supreme Court has explained the term "malfeasance" "is not susceptible of an exact definition but it has reference to evil conduct or an illegal deed, the doing of that which one ought not to do, the performance of an act by an officer in his official capacity that is wholly illegal and wrongful." *State ex rel. Steffen v. Peterson*, 607 N.W.2d 262, 268–69 (S.D. 2000). In order to qualify as malfeasance, an act

"must have been done [1] knowingly, [2] willfully [3] and with an evil or corrupt motive and purpose." *Id.* at 269.

The South Dakota Supreme Court has cautioned that a mistake, poor judgment, or incompetence alone does not rise to the level of malfeasance. "There is no man in official position so letter perfect in the law that he does not at some point by act or omission or misconstruction of the law, though with perfect integrity of motive, fall short of the strict statutory measure of his official duties." *State ex rel. Steffen v. Peterson*, 607 N.W.2d 262, 269 (S.D. 2009). The Court indicated that if an officer knowingly charged a 33.5% premium for school books when the law only permitted charging a 10% premium, the officer would have committed malfeasance in office. *Howe v. Thompson*, 150 N.W. 301, 303 (S.D. 1914).

A majority of the Select Committee finds that Attorney General Ravnsborg did not commit malfeasance in office under a clear and convincing standard. In his second interview with North Dakota investigators, Attorney General Ravnsborg at best underplayed or omitted, and at worst, misrepresented whether he was on his phone during the drive from Redfield to Highmore. (Exhibit A, No. 44). The majority of the Select Committee finds that such answers were not given "in office", that is, by virtue of his office or in his capacity as Attorney General. In other words, giving such statements was not "the performance of an act by an officer in his official capacity that is wholly illegal and wrongful." *See State ex rel. Steffen v. Peterson*, 607 N.W.2d 262, 268–69 (S.D. 2000). Even if any misrepresentations were made "in office", a majority of the Select Committee finds that such answers, under a clear and convincing standard, do not rise to the level of "evil conduct or an illegal deed" committed with "an evil or corrupt motive and purpose" as required by South Dakota case law. *See id.*

For the same reasons, a majority of the Select Committee finds that disseminating a press release regarding the accident on official Attorney General letterhead and asking DCI Agent Gromer what North Dakota investigators would find on his phones do not constitute malfeasance in office.

6. Misdemeanor in Office

There are no South Dakota cases regarding or defining the term "misdemeanor in office". Black's Law Dictionary notes that in 1911 the term "abuse of public office" was defined as "[a] public servant's tortious or criminal use of governmental position for private gain." Synonyms include "malfeasance in office; official misconduct; abuse of the public trust; abuse of official trust; abuse of power." Abuse of Public Office, Black's Law Dictionary (11th edition). The term "official misconduct" in 1830 was defined as "a public officer's corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance. Also termed misconduct in office; misbehavior in office; malconduct in office; misdemeanor in office; corruption in office; official corruption; political corruption; abuse of office." Misconduct, Black's Law Dictionary (11th edition).

The Florida Supreme Court defined the term "misdemeanor in office" as "any act involving moral turpitude which is contrary to justice, honesty, principles, or good morals, if performed by virtue or authority of office." *In re Investigation of Cir. Judge of Eleventh Jud. Cir. of Fla.*, 93 So. 2d 601, 605–06 (Fla. 1957). The court also found that "misdemeanor in office is synonymous with misconduct in office." *Id.* To avoid surplusage, the South Dakota Supreme Court may find a means to distinguish between the two terms, as both are listed as impeachable offenses. Regardless, both terms refer to conduct related to being in office.

The term "misdemeanor" historically was "adopted to apply to all offenses other than treason or felony. The term included a wide variety of wrongs and misprisions. Many of the substantive legal principles and

procedures applicable to felonies were not applied in the case of misdemeanors." Misdemeanor, Black's Law Dictionary (11th edition) (quoting Rollin M. Perkins & Ronald N. Boyce, Criminal Law 15 (3d ed. 1982)).

The Select Committee finds under a clear and convincing standard that Attorney General Ravnsborg did not commit misdemeanor in office, as he committed no crime or other wrongful act involving moral turpitude by virtue or authority of office.

CONCLUSIONS AND RECOMMENDATIONS

After careful and comprehensive investigation and consideration of the facts and applicable law, a majority of the Select Committee hereby concludes Attorney General Ravnsborg did not commit an impeachable offense in his conduct surrounding the death of Joe Boever. The Select Committee recommends that articles of impeachment do not issue.

ADDENDUM

The Select Committee includes the following addendum to address the Executive Branch's interference in the criminal proceedings and the impeachment process.

The Executive Branch made promises that the criminal investigation would be transparent and released to the public. The Highway Patrol thereafter asked Supervisory BCI Agent Arnie Rummel for permission to disseminate the initial crash report. Secretary Price testified to the Select Committee he was not aware of another case in which the Department of Public Safety released death investigation information before a state's attorney filed charges. The Highway Patrol, however, informed Supervisory BCI Agent Arnie Rummel that such reports were routinely disseminated to the public in seeking permission to disclose this case's initial crash report. Supervisory BCI Agent Rummel did not want the initial crash report disclosed, but in being told they routinely released such reports, asked the Highway Patrol to make the report accurate before its disclosure. Specifically, Supervisory BCI Agent Arnie Rummel asked that the report not state Attorney General Ravnsborg was distracted by his cell phone, since the data was not yet extracted from his cell phones to make that determination.

Secretary Price, in consultation with legal counsel and the Governor, authorized the posting of the initial crash report on the South Dakota Public Safety website. At the time the crash report was posted, he considered a portion of the investigation complete although additional work still needed to be completed. The video recording of the interrogation of Attorney General Ravnsborg was released after the Hyde County State's Attorney decided to move forward with misdemeanors charges but before the arraignment. State's Attorney Emily Sovell objected to the release of the video interviews and other investigative information. State's Attorney Sovell was also not in favor of the Governor holding press conferences or any other public dissemination of the investigation. Upon learning of a planned press conference and planned dissemination of confidential investigative material, State's Attorney Sovell emailed Secretary Price and the investigators stating her concerns and requested such materials not be released. State's Attorney Sovell also emailed Secretary Price indicating that due to undue pressure Secretary Price was attempting to place on her, she would not be including Secretary Price in further discussions of the case. State's Attorney Sovell did not want any perception that political pressures or anything else from the outside was affecting her decisions in the case.

While the Department of Public Safety released the initial crash report, containing incomplete information, the Department did not later release the more comprehensive crash report or its supplements after they were completed.

The Highway Patrol also asked Supervisory BCI Agent Rummel for permission to make Attorney General Ravnsborg's vehicle open for public inspection. Supervisory BCI Agent Rummel objected to this request. The Highway Patrol also asked the BCI's information be released to the Highway Patrol. Supervisory BCI Agent Rummel denied that request and sent BCI's information to the State's Attorney, as is normal protocol.

After the misdemeanor charges were filed, Secretary Price had discussions with the prosecutors indicating his displeasure and disagreement as to what was charged. Secretary Price indicated that he disagreed with State's Attorney Sovell not charging second degree manslaughter.

Secretary Price was advised by counsel not to disclose to the Select Committee the content of his discussions with the Governor and whether the release of the investigatory information was at the Governor's direction. Secretary Price testified that he had been advised by legal counsel not to talk about specific privileged conversations that he had with the Governor.

Attorney General Ravnsborg's criminal defense counsel argued that Governor Noem made an unprecedented, unusual, and early release of information regarding the criminal investigation. *See* Exhibit A, No. 69, Motion for Order Precluding Release of Criminal Investigation Information to Protect Defendant's Due Process Rights dated February 25, 2021. On February 23, 2021, Governor Noem informed she was going to hold a press conference regarding Attorney General Jason Ravnsborg and release information created during the criminal investigation process. *Id.* The Department of Public Safety released links on its website which contained the two video interviews with Attorney General Ravnsborg by the North Dakota BCI. *Id.* On February 25, 2021, Governor Noem held a press conference promising release of additional information on either February 25 or 26, 2021. *Id.*

On February 25, 2021, the Honorable John Brown issued an Order Precluding Disclosure of Criminal Investigation Information. *See* Exhibit A, No. 69. The Court ordered that the Department of Public Safety, law enforcement, or any member of state government, including Governor Kristi Noem, is precluded from producing any further criminal reports, interviews, test results, digital media, photographs, videos, statements, or anything whatsoever related to the matter to the public. The court further ordered that the links to the law enforcement video interviews should be removed by the South Dakota Department of Public Safety and any and all other State agencies having such links in order to prevent the public from having access to information which would constitute hearsay at a trial of the matter. A criminal defendant's right to a fair trial is one of the bedrocks of the American judicial system. *See e.g.*, *State v. Weatherford*, 416 N.W.2d 47, 50–51 (S.D. 1987) ("The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment."). The Executive Branch's efforts to share confidential information with the public and infringe upon this foundational right must be condemned.

Unfortunately, the Governor's inappropriate involvement did not end at the conclusion of the criminal case. The following were published on the South Dakota Department of Public Safety website during this impeachment investigation (listed in Exhibit A under No. 67):

- September 1, 2021, letter to Speaker of the House from Craig Price, Secretary of South Dakota Department of Public Safety. Secretary Price states that Ravnsborg should have been charged with second-degree manslaughter.
- Audio of 911 call placed by Jason Ravnsborg
- Transcript of 911 call placed by Jason Ravnsborg
- Accident report
- Order Precluding Disclosure of Criminal Investigation Information
- Toxicology Carboxyhemoglobin Analytical Report
- Toxicology Drug Analytical Report
- Toxicology Alcohol Volatiles Analytical Report
- Photo of Ravnsborg's vehicle

On January 19, 2022, Governor Noem told the Associated Press that the South Dakota House Investigative Committee is "attacking the integrity of our law enforcement officers," adding that it was an "inappropriate" and "tragic" use of the Committee's attention.

On January 21 to 23, 2022, the Select Committee members were subjected to hundreds of telemarketing calls to their cell phones from the Ohio-based entity Grand Solutions, Inc. Angel Kane owns the entity and spokesperson Jonathon Petrea speaks on its behalf. It is apparent that these calls were meant to pressure members of the Select Committee to impeach the Attorney General. The telemarketing firm did not indicate who paid for these efforts during the call or at any point thereafter. A voicemail from the telemarketing company was received which suggests the Governor may be involved with those who funded the telemarketing campaign. The Governor's Office has denied any such involvement.

On January 24, 2022, a press release from Governor Noem was released attempting to pressure House lawmakers weighing impeachment charges against the Attorney General and to release the investigative file on the 2020 fatal car crash.

On March 9, 2022, a press release from the Secretary of Public Safety Craig Price was released urging the Committee to consider the facts in the impeachment investigation and "to consider the indisputable conclusions by the crash reconstruction experts". Exhibit A, No. 73.

On March 9, 2022, Secretary Price released to the press a three-page letter to Speaker Gosch detailing why he believes Ravnsborg is "unfit to hold the position as the chief law enforcement officer for the state of South Dakota." Secretary Price also released to the press Trooper John Berndt's supplemental report (Quadrants Described) dated March 9, 2022.

On March 9, 2022, Governor Noem sent a series of tweets questioning why Ravnsborg received a closed-door hearing with members of the Legislature's Joint Committee on Appropriations, telling readers "REMINDER: the House is still in the middle of impeachment proceedings." "Let me get this straight. . . ," Noem wrote, "they don't have time to conclude their impeachment process, but they have time for secret closed-door meetings to give Ravnsborg $1.5 million with no accountability?"

On March 12, 2022, Dakota Institute for Legislative Solutions, an organization touting itself as a non-profit organized to carry forward the Governor's agenda, began running billboard advertisements targeting four members of the House Select Committee on Investigation. The ads named the following Committee Members: Representatives Steven Haugaard, Jamie Smith, Jon Hansen and Spencer Gosch, the Speaker of the House serving as chairman of the committee. The signs accuse the Committee Members of obstructing the impeachment process: "What is [Committee Member] trying to hide??? Impeach the Attorney General Now!!!" Two of the Committee Members, Representatives Haugaard and Smith, are challenging Governor Noem in her re-election campaign.

On March 14, 2022, a fifth lawmaker, Representative Scott Odenbach, was added to the list of legislators being specifically named in the billboards. Representative Odenbach responded that he believes the Governor is eager to appoint another Attorney General before she must face the Government Accountability Board, referring to an investigatory panel of retired judges who have pending investigations open into abuse of power complaints levied against Governor Noem. The Governor's Office denies being behind the billboard ads or Dakota Institute.

During March of 2022, Governor Noem and Secretary Price made public statements that Ravnsborg is unfit to be the Attorney General.

On March 17, 2022, the House Select Committee on Impeachment issued a cease and desist letter to Governor Noem and the South Dakota Executive Branch. The Committee letter stated that the South Dakota Constitution places the sole power of impeachment with the House of Representatives and requires the Senate to try an impeachment. The Committee letter further stated that the Executive Branch is attempting to taint the Senator jury pool with irrelevant and confidential information. The letter stated that these efforts have been continuous and aimed at bringing irrelevant information to the public and undue pressure on the Select Committee Members. The letter further stated these efforts are both harmful and unwelcome and subject the outcome to judicial scrutiny. As previous requests to refrain from such conduct have gone unheeded, the Select Committee requested the Executive Branch cease and desist all further disclosures of the investigative file to the public and all further attempts to pressure and influence the Select Committee Members and the House of Representatives. *See* Exhibit A, No. 74.

The South Dakota Constitution clearly provides that an impeachment of a state official is purely a legislative proceeding. Article XVI of the South Dakota Constitution empowers the Legislature with the authority to impeach and try state officers. Section 1 places "the sole power of impeachment" with the House of Representatives. Section 2 requires the Senate to try an impeachment, with the Senators sitting as the jury under oath "to do justice according to law and evidence." The Constitution does not include a role for the Executive Branch in impeachment proceedings. Despite the Constitution's clear authority granted to the Legislature, the Executive Branch has continued to inappropriately attempt to influence legislators throughout the impeachment process.

Criminal prosecutors are granted prosecutorial discretion when making charging decisions. In order to protect this discretion and prevent intimidation and harassment, prosecutors are granted absolute immunity for charging decisions. *Burns v. Reed*, 500 U.S. 478, 492–94 (1991). Members of the House of Representatives should similarly be free from harassment and intimidation during the impeachment process. The Representatives are sitting in the role of prosecutors – choosing to decide whether a state official should be impeached and then tried by the Senate. *See Burns v. Reed*, 500 U.S. 478, 492–94 (1991). Instead of making her perspective known and then allowing the House of Representatives to investigate, Governor Noem and the Executive Branch have continued to insert themselves into the impeachment process. From tweets regarding specific legislators[5], to press conferences calling for the Attorney General's impeachment, to the Governor's failure to condemn the phone calls and billboards improperly seeking to influence members of the Select Committee, Governor Noem has continued to improperly influence the impeachment process. Most recently, Secretary Price released a letter summarizing and citing text messages from the investigative file – the same investigative file he previously had warned legislators was confidential. These tactics by the Executive Branch ultimately resulted in a cease and desist letter delivered to the Governor.

The Select Committee on Impeachment unequivocally condemns Governor Noem's attempts to influence this Committee.

The Select Committee also notes that the question of impeachment is now in front of the entire House of Representatives. It cautions Governor Noem and the Executive Branch from seeking to improperly influence members of the House of Representatives.

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[5] For example, on March 11, Governor Noem tweeted from her official account, "Why is Speaker Gosch protecting the AG? And why is the @argusleader helping him?"

Minority Report of the House Select Committee on Investigation

2021 Second Special Session

March 28, 2022

SOUTH DAKOTA
LEGISLATURE
LEGISLATIVE RESEARCH COUNCIL

SOUTH DAKOTA HOUSE OF REPRESENTATIVES

IN THE MATTER OF	)	
THE INVESTIGATION	)	**HOUSE SELECT COMMITTEE'S**
OF THE CONDUCT OF	)	**MINORITY REPORT**
Jason Ravnsborg, Attorney General	)	**AND RECOMMENDATIONS**
of the State of South Dakota	)	

House Resolution 7001 established a select committee to investigate whether articles of impeachment should issue against Jason Ravnsborg, Attorney General of the State of South Dakota. Nine members of the House of Representatives were chosen to serve on the Select Committee on Investigation. A minority of the Select Committee on Investigation hereby recommend articles of impeachment should issue.

Article XVI, § 3 of the South Dakota Constitution provides that state officers shall be liable to impeachment for "malfeasance or misdemeanor in office". In *State ex rel. Steffen v. Peterson,* the South Dakota Supreme Court adopted the Minnesota Supreme Court's definition of malfeasance, explaining that it "is not susceptible of an exact definition but it has reference to evil conduct or an illegal deed, the doing of that which one ought not to do, the performance of an act by an officer in his official capacity that is wholly illegal and wrongful." *State ex rel. Steffen v. Peterson*, 607 N.W.2d 262, 268–69 (S.D. 2000).

A minority of the Select Committee finds that Attorney General Ravnsborg was, at a minimum, not forthcoming to law enforcement officers during the investigation. We find that the South Dakota Highway Patrol's report and accident reconstruction was thorough, appropriate, and conducted within the bounds of accepted scientific practice. It was not contradicted. We adopt the Highway Patrol's report as our own for this minority report. We further find that the Attorney General answered questions during his second interrogation on September 30, 2020, in a manner that misrepresented his cell phone usage prior to the accident. All law enforcement who interrogated the Attorney General concluded that his statements were false or misleading and too inconsistent with other facts as to be believable. Law enforcement officers testified before the Select Committee their opinion and belief that the Attorney General was not being truthful. We find that the law enforcement's opinions are reliable, sincere, and credible based upon their experience and expertise as law enforcement officers. We further find that the Attorney General abused his power of office. The Attorney General used the resources of the office to understand how investigators would learn facts about his case. This is inappropriate and beyond the grasp of other individuals under criminal investigation. The people of this State have entrusted its law enforcement to the Attorney General, the highest law enforcement officer in the State. We expected the Attorney General to be fully truthful in his cooperation with law enforcement, as the people have entrusted him with the very responsibility of honest and effective law enforcement. We find that elected officers of the State are always "in office" as evidenced by his use of his official letterhead to issue his statement on September 14, 2020, and the Attorney General committed malfeasance when answering questions by law enforcement.

Accordingly, this minority report recommends articles of impeachment issue for malfeasance.

Respectfully submitted,
Representative Ryan Cwach
Representative Jamie Smith, Minority Leader

Report of
Sheriff Mike Volek

COPY

HYDE COUNTY SHERIFF'S OFFICE
*PO Box 521 * 412 Commercial Ave. SE * Highmore, SD 57345*
Phone: (605) 852-2513 Fax: (605) 852-3178
Sheriff Mike Volek

Date:
September 12, 2020

Suspect Information:
Jason Ravnsborg

Location:
Highway 14 – apx ¼ mi west Highmore SD

Witnesses:
Jason Ravnsborg
Tim Bormann
Victor Nemec
Nathen Brady
Hyde County Volunteer Fire Dept.
Jim Stephenson – SD DOT
(Agency Assist -South Dakota Highway Patrol / DCI)

On September 12th at approximately 10:30 pm, I received a call of an accident on Highway 14 west of Highmore, SD. When I arrived, there was a red 2011 ford Taurus license plate no.G00027 that had damage to the front right corner of the car and the windshield was broke out. I observed the driver and recognized him as Attorney General Jason Ravnsborg. Ravnsborg told me that he hit something and he walked along the road but didn't see anything in the ditch. Then we walked along the road together looking for a deer or something in the ditch and didn't see anything. It was very dark and it was difficult to see.

Ravnsborg then got into the sheriff vehicle with me and I called dispatch to get a tow truck. I requested his insurance and registration. Ravnsborg and I visited in the vehicle for about ten minutes. Ravnsborg said he was heading back to Pierre from a fundraiser in Redfield, SD. During our walk on the road and conversation I observed no sign of impairment and did not smell any alcohol on him.

I then drove with Ravnsborg to my house about half a mile from the scene. I knew it might take more than an hour for the tow truck to come. I let him take my car home to Pierre instead of him waiting for a tow truck. Ravnsborg left my place in my personal Ford Edge and I followed him west on Hwy 14. I realized he had his car keys that the tow truck driver needed and turned on my red lights to stop him about a half mile west of his car. Ravnsborg pulled over my car and I took Ravnsborg's keys from him.

After getting the keys I saw a white Ford F150 in the north ditch facing west. I checked the pickup and saw that the front grill guard was pushed up into the grill of the truck and I checked the area around it but no one was there. The accident was never reported. The registration came back to Harlan Reed of Highmore, SD. I called Reed and he told me he had sold the pickup but could not think of the buyer's name. I left the white pickup and returned to Ravnsborg's car. I waited at Ravnsborg's vehicle until the tow truck arrived.

While waiting for the tow truck I saw something glowing in the grass about 50 yards east of Ravnsborg's car. I walked the highway and ditch with a flashlight. The glow was something that looked like a light that had come off of Ravnsborg's car still lit. I didn't see anything related to the accident except the light. Then I returned to my car. The tow truck arrived about an hour later and I left the scene.

The next day at approximately 8:00 am Tim Bormann and Ravnsborg came to my home to bring back my car. I asked Ravnsborg how it was going, and said," not very good." Ravnsborg told me that what he hit last night was a person. He had just come from the scene. I could tell was very emotionally upset. Bormann and Ravnsborg led me back to the accident took place. Then he showed me where the body was in the road ditch in the grass. I told Ravnsborg to write a statement. I told Bormann to stay with him. I told Bormann and Ravnsborg that I was going to call DCI and Highway Patrol and they left the scene. I called dispatch to request assistance from Highway Patrol and DCI. DCI agent Hank Prim contacted me and told me to block the area of the accident until Highway Patrol and DCI arrived to take over.

I called SD DOT worker Jim Stephenson of Highmore for road cones. I called in the assistance of Hyde County Deputy Sheriff Nathen Brady to stop traffic in the south lane of Hwy 14 near the body. After securing the scene I received a call from Victor Nemec asking if the coned off area had anything to do with his cousin Joe. I ask for the full name of his cousin and he said "Joe Boever." Victor told me that Boever had hit a bale last night and that he had called him to take him home. Victor said he picked him up at approximately 8:30 pm and stayed with him for approximately a half an hour. Victor also stated that he didn't smell any alcohol on Boever and he didn't seem like himself as if his medication wasn't right. I told him the investigation would be taken over by a different agency. I waited for the arrival of Highway Patrol and DCI to take over.

Hyde County Sheriff
Mike Volek
Mike Volek