

APRIL 28, 2023
CHET ELLSWORTH
3910 DORAL DR
RAPID CITY, SD 57702
321-652-6967

Docs 188-22 out of 22
ATTACHED.

KelJy Mikkelsen
Inform. Systems Audit Manager
427 S. Chapelle
c/o 500 E. Capitol
Pierre, SD 57501

Re: 5/2/23 GOAC Meeting Item 4.

Chet Ellsworth-Request GOAC- SDCL 2-6-4 investigation of public and private electronic audit trails relevant to the January, 2023 expulsion process and associated bits, rules and committees. Includes, without limitation, LRC, UJS, Code Commission and Thomson Reuters.

Documents submitted:

- #1: Order In Pending Case: 592 U.S. Texas v. Pennsylvania. December 11, 2020 submitted here as misplace authority weaponizing rules, code and conduct on expulsion of Ravensborg and Frye Mueller.
- #2: Presidential Executive Order 13985 of January 20, 2021- Fed Reg 86. Undetermined SDCL 2-16-6 (2) (g) submitted here as misplace authority weaponizing rules, code and conduct on expulsion of Ravensborg and Frye Mueller.
- #3: State v. Ravensborg, filed 2-18-21. 34MAG21-1, submitted here under SDCL 2-16-6 (2)(h) as misplace authority weaponizing rules, code and conduct on expulsion of Ravensborg and Frye Mueller.
- #4: Covid 19 Federal Fund (Analysis) FYE 6-30-22, SD Single Audit Report 5-2-23 p.38 here submitted as undetermined SDCL 2-16-6(2) (h) as misplace authority weaponizing rules, code and conduct on expulsion of Ravensborg and Frye Mueller.
- #5: Incident/Investigation Report Copy)- Mooresville Police Dept. dated November 2, 2021 submitted here affirming probable reinstatement of Ravensborg and Frye Mueller.
- #6: House Select Committee on Investigation (Impeachment), Minutes for Nov. 10, 2021 submitted here to state proceedings are initiated under S.D. Const., Art. XVI by Justin Goetz.
- #7: House Select Committee on Investigation (Impeachment), Minute, tbr Dec. 28, 2021 submitted here to state ~~that~~ present was Justin Oetz and Sara Frankenlein, and that virtually

the whole session (8 hrs) was in secret with no authority cited.

- #8: House Select Committee on Investigation (Impeachment), Minutes for Dec. 29, 2021 submitted here to state staff present was Justin Goetz and Sara Frankenstein, and that virtually the whole session (7 hrs) was in secret with no authority cited.
- #9: House Select Committee on Investigation (Impeachment), Minutes for Jan. 17, 2022 submitted here to state staff present was Justin Goetz, Reed Holwegner and Sara Frankenstein, and that virtually the whole session (3 hrs) was in secret with no authority cited.
- #10: House Select Committee on Investigation (Impeachment), Minutes for Jan. 18 & 19, 2022 submitted here to state staff present was Justin Goetz, Reed Holwegner and Sara Frankenstein, and that no testimony was called from the Sheriff.
- #11: House Select Committee on Investigation (Impeachment), Minutes for Jan. 31, 2022 submitted here to state staff present was Justin Goetz, Reed Holwegner and Sara Frankenstein, and that virtually the whole session (2 hrs) was in secret with no authority cited.
- #12: Justice Alito Opinion Feb. 10, 2022 Dobbs etal v Jackson Women's Health, here submitted as leaked document until released June 24, 2022. Here submitted as misplace authority weaponizing rules, code and conduct on expulsion ofRavnsborg and Frye Mueller.
- #13: House Select Committee on Investigation (Impeachment), Minutes for Feb. 24, 2022 submitted here to state staff present was Justin Goetz, Reed Holwegner and Sara Frankenstein, and that no testimony was called from the Sheriff.
- #14: Presidential Executive Order 14067 of March 9, 2022- Fed. Reg. 87 Undetermined SD CL 2-16-6 (2)(g) submitted here as misplace authority weaponizing rules, code and conduct on expulsion ofRavnsborg and Frye Mueller.
- # 15: House Select Committee on Investigation (Impeachment), Minutes for Mar. 10, 2022 submitted here to state staff present was Justin Goetz, Reed Holwegner and Sara Frankenstein, and that ND Report #38 (Sheriff Mike Volek 2nd Interview with attachment: Audio recording of Sheriff Mike Volek Interview (20:59 in length) was listed by Sara Frankenstein.
- #16: House Select Committee on Investigation (Impeachment), Minutes for Mar. 28, 2022 submitted here to state staff present was Justin Goetz, Reed Holwegner and Sara Frankenstein, and that virtually the whole session (4 hrs) was in secret with no authority cited.
- #17: Press Release- www.ThomsonReuters.com May 9, 2022 submitted here as A I source of misplace authority weaponizing rules, code and conduct on expulsion ofRavnsborg and Frye Mueller.
- #18: In Re: Impeachment Of Attorney General Jason Ravnsborg- Transcript Of Proceedings June 21, 2022 submitted here as an admission of weaponization of rules, code and conduct on expulsion ofRavnsborg and Frye Mueller.
- #19: Honorable John Pekas-Order Requiring Preservation ofRecords" Lincoln Count)\ SD

41 CIV22-000463- September 1, 2022 submitted here as UJS source of authority affirming appropriate conduct of both Ravensborg and Frye Mueller.

#20: Complaint NDN COLLECTIVE v RETSEL CORP Etal 5:22-cv-5027 filed 3/23/22 submitted here for notice 2-16-23 weaponization of a judicial proceeding affecting Frye Mueller.

#21: Argus Leader article- Minnesota Attorney General Opens Investigation Into Sanford. Fairview Health Merger, dated Nov. 18, 2022 submitted here as press source affirming appropriate conduct of both Ravensborg and Frye Mueller.

#22: Presidential Executive Order 14091 of February 16, 2023- Fed. Reg. 88 Undetermined SDCL 2-16-6 (2)(g) submitted here as misplace authority weaponizing rules, code and conduct on expulsion of Frye Mueller.

GOAC 5/2
ELLSWORTH Item 4
DOC #1

(ORDER LIST: 592 U.S.)

FRIDAY, DECEMBER 11, 2020

ORDER IN PENDING CASE

155, ORIG. TEXAS V. PENNSYLVANIA, ET AL.

The State of Texas's motion for leave to file a bill of complaint is denied for lack of standing under Article III of the Constitution. Texas has not demonstrated a judicially cognizable interest in the manner in which another State conducts its elections. All other pending motions are dismissed as moot.

Statement of Justice Alito, with whom Justice Thomas joins: In my view, we do not have discretion to deny the filing of a bill of complaint in a case that falls within our original jurisdiction. See *Arizona v. California*, 589 U. S. ____ (Feb. 24, 2020) (Thomas, J., dissenting). I would therefore grant the motion to file the bill of complaint but would not grant other relief, and I express no view on any other issue.

CERTIORARI GRANTED

20-222 GOLDMAN SACHS GROUP, ET AL. V. AR TEACHER RETIREMENT, ET AL.

The petition for a writ of certiorari is granted.

Presidential Documents

Executive Order 13985 of January 20, 2021

Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. Policy. Equal opportunity is the bedrock of American democracy, and our diversity is one of our country's greatest strengths. But for too many, the American Dream remains out of reach. Entrenched disparities in our laws and public policies, and in our public and private institutions, have often denied that equal opportunity to individuals and communities. Our country faces converging economic, health, and climate crises that have exposed and exacerbated inequities, while a historic movement for justice has highlighted the unbearable human costs of systemic racism. Our Nation deserves an ambitious whole-of-government equity agenda that matches the scale of the opportunities and challenges that we face.

It is therefore the policy of my Administration that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government. Because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies (agencies) must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.

By advancing equity across the Federal Government, we can create opportunities for the improvement of communities that have been historically underserved, which benefits everyone. For example, an analysis shows that closing racial gaps in wages, housing credit, lending opportunities, and access to higher education would amount to an additional \$5 trillion in gross domestic product in the American economy over the next 5 years. The Federal Government's goal in advancing equity is to provide everyone with the opportunity to reach their full potential. Consistent with these aims, each agency must assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups. Such assessments will better equip agencies to develop policies and programs that deliver resources and benefits equitably to all.

Sec. 2. Definitions. For purposes of this order: (a) The term "equity" means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

(b) The term "underserved communities" refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of "equity."

Sec. 3. *Role of the Domestic Policy Council.* The role of the White House Domestic Policy Council (DPC) is to coordinate the formulation and implementation of my Administration's domestic policy objectives. Consistent with this role, the DPC will coordinate efforts to embed equity principles, policies, and approaches across the Federal Government. This will include efforts to remove systemic barriers to and provide equal access to opportunities and benefits, identify communities the Federal Government has underserved, and develop policies designed to advance equity for those communities. The DPC-led interagency process will ensure that these efforts are made in coordination with the directors of the National Security Council and the National Economic Council.

Sec. 4. *Identifying Methods to Assess Equity.* (a) The Director of the Office of Management and Budget (OMB) shall, in partnership with the heads of agencies, study methods for assessing whether agency policies and actions create or exacerbate barriers to full and equal participation by all eligible individuals. The study should aim to identify the best methods, consistent with applicable law, to assist agencies in assessing equity with respect to race, ethnicity, religion, income, geography, gender identity, sexual orientation, and disability.

(b) As part of this study, the Director of OMB shall consider whether to recommend that agencies employ pilot programs to test model assessment tools and assist agencies in doing so.

(c) Within 6 months of the date of this order, the Director of OMB shall deliver a report to the President describing the best practices identified by the study and, as appropriate, recommending approaches to expand use of those methods across the Federal Government.

Sec. 5. *Conducting an Equity Assessment in Federal Agencies.* The head of each agency, or designee, shall, in consultation with the Director of OMB, select certain of the agency's programs and policies for a review that will assess whether underserved communities and their members face systemic barriers in accessing benefits and opportunities available pursuant to those policies and programs. The head of each agency, or designee, shall conduct such review and within 200 days of the date of this order provide a report to the Assistant to the President for Domestic Policy (APDP) reflecting findings on the following:

(a) Potential barriers that underserved communities and individuals may face to enrollment in and access to benefits and services in Federal programs;

(b) Potential barriers that underserved communities and individuals may face in taking advantage of agency procurement and contracting opportunities;

(c) Whether new policies, regulations, or guidance documents may be necessary to advance equity in agency actions and programs; and

(d) The operational status and level of institutional resources available to offices or divisions within the agency that are responsible for advancing civil rights or whose mandates specifically include serving underrepresented or disadvantaged communities.

Sec. 6. *Allocating Federal Resources to Advance Fairness and Opportunity.* The Federal Government should, consistent with applicable law, allocate resources to address the historic failure to invest sufficiently, justly, and equally in underserved communities, as well as individuals from those communities. To this end:

(a) The Director of OMB shall identify opportunities to promote equity in the budget that the President submits to the Congress.

(b) The Director of OMB shall, in coordination with the heads of agencies, study strategies, consistent with applicable law, for allocating Federal resources in a manner that increases investment in underserved communities, ~~as well as individuals from those communities~~. The Director of OMB shall report the findings of this study to the President.

Sec. 7. Promoting Equitable Delivery of Government Benefits and Equitable Opportunities. Government programs are designed to serve all eligible individuals. And Government contracting and procurement opportunities should be available on an equal basis to all eligible providers of goods and services. To meet these objectives and to enhance compliance with existing civil rights laws:

(a) Within 1 year of the date of this order, the head of each agency shall consult with the APDP and the Director of OMB to produce a plan for addressing:

(i) any barriers to full and equal participation in programs identified pursuant to section 5(a) of this order; and

(ii) any barriers to full and equal participation in agency procurement and contracting opportunities identified pursuant to section 5(b) of this order.

(b) The Administrator of the U.S. Digital Service, the United States Chief Technology Officer, the Chief Information Officer of the United States, and the heads of other agencies, or their designees, shall take necessary actions, consistent with applicable law, to support agencies in developing such plans.

Sec. 8. Engagement with Members of Underserved Communities. In carrying out this order, agencies shall consult with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs. The head of each agency shall evaluate opportunities, consistent with applicable law, to increase coordination, communication, and engagement with community-based organizations and civil rights organizations.

Sec. 9. Establishing an Equitable Data Working Group. Many Federal datasets are not disaggregated by race, ethnicity, gender, disability, income, veteran status, or other key demographic variables. This lack of data has cascading effects and impedes efforts to measure and advance equity. A first step to promoting equity in Government action is to gather the data necessary to inform that effort.

(a) *Establishment.* There is hereby established an Interagency Working Group on Equitable Data (Data Working Group).

(b) *Membership.*

(i) The Chief Statistician of the United States and the United States Chief Technology Officer shall serve as Co-Chairs of the Data Working Group and coordinate its work. The Data Working Group shall include representatives of agencies as determined by the Co-Chairs to be necessary to complete the work of the Data Working Group, but at a minimum shall include the following officials, or their designees:

(A) the Director of OMB;

(B) the Secretary of Commerce, through the Director of the U.S. Census Bureau;

(C) the Chair of the Council of Economic Advisers;

(D) the Chief Information Officer of the United States;

(E) the Secretary of the Treasury, through the Assistant Secretary of the Treasury for Tax Policy;

(F) the Chief Data Scientist of the United States; and

(G) the Administrator of the U.S. Digital Service.

(ii) The DPC shall work closely with the Co-Chairs of the Data Working Group and assist in the Data Working Group's interagency coordination functions.

(iii) The Data Working Group shall consult with agencies to facilitate the sharing of information and best practices, consistent with applicable law.

(c) *Functions.* The Data Working Group shall:

(i) through consultation with agencies, study and provide recommendations to the APDP identifying inadequacies in existing Federal data collection programs, policies, and infrastructure across agencies, and strategies for addressing any deficiencies identified; and

(ii) support agencies in implementing actions, consistent with applicable law and privacy interests, that expand and refine the data available to the Federal Government to measure equity and capture the diversity of the American people.

(d) OMB shall provide administrative support for the Data Working Group, consistent with applicable law.

Sec. 10. Revocation. (a) Executive Order 13950 of September 22, 2020 (Combating Race and Sex Stereotyping), is hereby revoked.

(b) The heads of agencies covered by Executive Order 13950 shall review and identify proposed and existing agency actions related to or arising from Executive Order 13950. The head of each agency shall, within 60 days of the date of this order, consider suspending, revising, or rescinding any such actions, including all agency actions to terminate or restrict contracts or grants pursuant to Executive Order 13950, as appropriate and consistent with applicable law.

(c) Executive Order 13958 of November 2, 2020 (Establishing the President's Advisory 1776 Commission), is hereby revoked.

Sec. 11. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

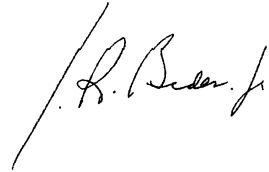
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Independent agencies are strongly encouraged to comply with the provisions of this order.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to read "J. R. Biden, Jr.", written in a cursive style.

THE WHITE HOUSE,
January 20, 2021.

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
Register of Actions

DOCKET: 34MAG21-000001

CASE STATUS: TERMINATED 09/02/2021

STATE OF SOUTH DAKOTA
 vs.
 JASON R RAVNSBORG

ATTORNEY: EMILY SOVELL
 ATTORNEY: TIMOTHY RENSCH

File Date	Document Description	Description, Continued
02/18/2021	CASE FILED	
02/18/2021	COMPLAINT	
02/18/2021	ORDER	ASSIGNING JUDGE WITH ATTACHMENT
02/18/2021	MERGE-SAVIN	
02/23/2021	NOTICE OF APPEARANCE AND CERTIFICATE OF SERVICE	
02/25/2021	MOTION	FOR ORDER PRECLUDING RELEASE OF CRIMINAL INVESTIGATION INFORMATION TO PROTECT DEFENDANT'S DUE PROCESS RIGHTS
02/25/2021	ORDER	PRECLUDING DISCLOSURE OF CRIMINAL INVESTIGATION INFORMATION
02/25/2021	NOTICE OF ENTRY	OF ORDER PRECLUDING DISCLOSURE OF CRIMINAL INVESTIGATION INFORMATION
02/26/2021	AMENDED ORDER	ASSIGNING JUDGE
03/04/2021	SUMMONS	
03/04/2021	ADMISSION OF SERVICE	
03/08/2021	OBJECTION	TO EXPANDED MEDIA COVERAGE
03/15/2021	STATEMENT OF RIGHTS	"ADVISEMENT OF RIGHTS STATEMENT"
06/01/2021	PRETRIAL ORDER	FOR COURT TRIAL
06/03/2021	OBJECTION	SECOND OBJECTION TO EXPANDED MEDIA COVERAGE
07/09/2021	MOTION	FOR PSYCHIATRIC AND/OR PSYCHOLOGICAL RECORDS
07/16/2021	AMENDED	PRETRIAL ORDER FOR COURT TRIAL
07/16/2021	ORDER	GRANTING MOTION FOR PSYCHIATRIC AND/OR PSYCHOLOGICAL RECORDS (AVERA MEDICAL GROUP PSYCHIATRY ABERDEEN)
07/16/2021	ORDER	GRANTING MOTION FOR PSYCHIATRIC AND/OR PSYCHOLOGICAL RECORDS (AVERA MEDICAL GROUP)
07/16/2021	ORDER	GRANTING MOTION FOR PSYCHIATRIC AND/OR PSYCHOLOGICAL RECORDS (AVERA ST. LUKE'S HOSPITAL)
07/16/2021	ORDER	GRANTING MOTION FOR PSYCHIATRIC AND/OR PSYCHOLOGICAL RECORDS (AVERA ST. MARY'S HOSPITAL)
07/16/2021	ORDER	GRANTING MOTION FOR PSYCHIATRIC AND/OR PSYCHOLOGICAL RECORDS (SOUTH DAKOTA HUMAN SERVICES CENTER)
07/20/2021	LETTER	TO HUMAN SERVICES CENTER
07/20/2021	LETTER	TO AVERA ST. MARY'S HOSPITAL

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
Register of Actions

File Date	Document Description	Description, Continued
07/20/2021	LETTER	TO AVERA ST. LUKE'S HOPITAL
07/20/2021	LETTER	TO AVERA MEDICAL GROUP
07/20/2021	LETTER TO COUNSEL FROM STATE'S ATTORNEY	TO AVERA MEDICAL GROUP PSYCHIATRY
07/28/2021	ORDER	GRANTING MOTION FOR PSYCHIATRIC AND/OR PSYCHOLOGICAL RECORDS (AVERA ST. LUKE'S HOSPITAL) REVISED
08/05/2021	CORRESPONDENCE	FROM JUDGE ON MEDIA COVERAGE
08/10/2021	LETTER	
08/26/2021	ORDER	
08/26/2021	POWER OF ATTORNEY	
09/02/2021	JUDGMENT OF CONVICTION AND SENTENCE	
09/03/2021	DISMISSAL	OF COMPLAINT

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HYDE)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
Plaintiff

FILE NO.: MAG 21-1

vs

COMPLAINT FOR:

JASON R. RAVNSBORG,
Defendant

DOB: 04/12/1976

COUNT 1: OPERATING A MOTOR
VEHICLE WHILE USING A MOBILE
ELECTRONIC DEVICE,
SDCL 32-26-47.1 (Class 2 Misd.)

COUNT 2: IMPROPER LANE DRIVING
SDCL 32-26-6 (Class 2 Misd.)

COUNT 3: CARELESS DRIVING,
SDCL 32-24-8 (Class 2 Misd.)

The undersigned, on behalf of the State of South Dakota, being duly sworn upon oath charges:

That on or about the 12th day of September, 2020, in the County of Hyde, State of South Dakota, that JASON R. RAVNSBORG did commit the public offense(s) of:

COUNT 1:

OPERATING A MOTOR VEHICLE WHILE USING A MOBILE ELECTRONIC DEVICE, SDCL 32-26-47.1 (Class 2 Misd.): Defendant did operate a motor vehicle east of Highmore City limits while using a mobile electronic device;

COUNT 2:

LANE DRIVING SDCL 32-26-6 (Class 2 Misd): Defendant did, while driving a motor vehicle on a roadway divided into lanes, fail to drive said vehicle as nearly as practicable entirely within a single lane and did move from such lane without first ascertaining that such movement could be made with safety;

COUNT 3:

CARELESS DRIVING SDCL 32-24-8 (Class 2 Misd.): Defendant did drive a vehicle upon a highway without due caution, at a speed or in a manner so as to endanger any person or property, not amounting to reckless driving as defined in § 32-24-1;

all contrary to statute in such case made and provided against the peace and dignity of the State of South Dakota.


Dated this 17th day of February, 2021.



Complainant - Hyde County Deputy State's Attorney

Subscribed and sworn to before me, on this 17th day of February, 2021.

(SEAL)



Notary Public
My commission expires: 11/18/2024

rvaaborg.complain

STATE OF SOUTH DAKOTA)
)
COUNTY OF HYDE)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA *
PLAINTIFF, * 34MAG21-1
v. * ORDER ASSIGNING JUDGE
JASON RAVNSBORG, *
DEFENDANT. *

Pursuant to SDCL 16-2-21 and the attached Order of previous South Dakota Chief Justice David Gilbertson, the Honorable John L. Brown, Retired Circuit Judge, is assigned to this case.

Dated this 18th day of February, 2021.

BY THE COURT:

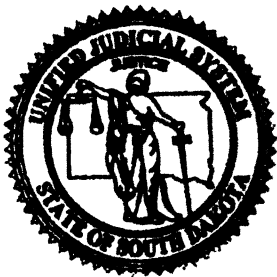
Bobbi J Rank
Bobbi J. Rank
Presiding Circuit Judge

ATTEST:

Marilyn Hanson
Clerk of Courts

By: *Stephani Marshall*
Deputy

(SEAL)



STATE OF SOUTH DAKOTA
In the Supreme Court
I, Shirley A. Johnson-Forgal, Clerk of the Supreme Court of
South Dakota, hereby certify that the within instrument is a true
and correct copy of the original thereof as the same appears
on record in my office. In witness whereof, I have hereunto set
my hand and placed the seal of said court at Pierre, South Dakota
this 10th day of June, 2020.

Shirley A. Johnson-Forgal
Clerk

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JUN 10 2020

Shirley A. Johnson-Forgal
Clerk

* * * *

IN THE MATTER OF THE AUTHORIZATION) ORDER
OF RETIRED JUDGE JOHN L. BROWN)
TO ACT AS A JUDGE OF THE SIXTH)
JUDICIAL CIRCUIT COURT)

The Honorable John L. Brown, retired Circuit Judge, having consented to act as a judge of the Sixth Judicial Circuit Court pursuant to the provisions of SDCL 16-6-32, it is

ORDERED that he be and he is hereby appointed to act as a Judge of the Sixth Judicial Circuit, provided, however, that he perform only such acts and hear and determine such cases as are assigned to him by the Presiding Judge of the circuit, or in her absence by the Acting Presiding Judge thereof as designated by the Presiding Judge and such other causes as this Court may direct, and

IT IS FURTHER ORDERED that upon approval of the Presiding Judge of the Sixth Judicial Circuit Court he be reimbursed his necessary expenses as such judge in the same manner and to the same extent as other Circuit Judges, and

IT IS FURTHER ORDERED that a certified copy of this order be filed in the office of the clerk of courts of each county within said circuit. This order is effective July 1, 2020, and shall expire June 30, 2021.

DATED at Pierre, South Dakota this 10th day of June, 2020.

BY THE COURT:

David Gilbertson
David Gilbertson, Chief Justice

ATTEST:
[Signature]
Clerk of the Supreme Court
(SEAL)

STATE OF SOUTH DAKOTA)
)
COUNTY OF HYDE)

IN MAGISTRATE COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
)
Plaintiff,)
)
vs.)
)
JASON RAVNSBORG,)
)
Defendant.)

FILE NO. 34MAG21-1

NOTICE OF APPEARANCE

COMES NOW the undersigned attorney and hereby notifies the parties above-named that he has been engaged to appear for and represent Jason Ravensborg, the Defendant above-named, and requests that copies of all further pleadings in the above-entitled matter be served upon him. This is further notice that any attorney employed by Rensch Law is authorized to make an appearance on this case.

Dated this 23rd day of February, 2021.

RENSCH LAW OFFICE
A Professional Law Corporation

/s/ Timothy J. Rensch
Timothy J. Rensch
832 St. Joseph Street
Rapid City, SD 57701
(605) 341-1210
(605) 341-0040 (fax)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of Notice of Appearance upon the persons herein next designated all on the date shown by electronic filing through Odyssey File and Serve to said addressees, to-wit:

Emily Sovell
Hyde County Deputy State's Attorney
P.O. Box 125
Highmore, SD 57345
jsovell@venturecomm.net

which addresses are the last known addresses of the addressees known to the subscriber.

Dated this 23rd day of February, 2021.

RENSCH LAW OFFICE
A Professional Law Corporation

/s/Timothy J. Rensch
Timothy J. Rensch
Attorney for Defendant

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HYDE CO.

FILED

FEB 25 2021

STATE OF SOUTH DAKOTA)
By Marilyn Hanson, Clerk/Deputy)
COUNTY OF HYDE)

MAGISTRATE COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
)
Plaintiff,)
)
vs.)
)
JASON RAVNSBORG,)
)
Defendant.)

FILE NO. 34MAG21-00001

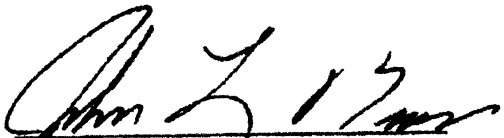
**ORDER PRECLUDING DISCLOSURE OF
CRIMINAL INVESTIGATION
INFORMATION**

Comes now the Honorable John Brown, Circuit Judge, upon good and legal motion of the Defendant to preclude release of criminal investigation information and hereby

ORDERS 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 the above-captioned matter to the public; and further

ORDERS that the links to the law enforcement video interviews of Jason Ravensborg to information having already been made public should be removed by the South Dakota Department of Public Safety and any and all other State agencies having such links to prevent the public from having access to information which would be hearsay at a trial of this matter.

BY THE COURT:


The Honorable John Brown
Circuit Court Judge

Attest:
Hanson, Marilyn
Clerk/Deputy



**STATE OF SOUTH DAKOTA
CIRCUIT COURT, HYDE CO.**

FILED

FEB 25 2021

STATE OF SOUTH DAKOTA *Carilyn Hanson, Clerk* IN MAGISTRATE COURT
By)
COUNTY OF HYDE)

STATE OF SOUTH DAKOTA,) FILE NO. 34MAG21-00001
))
Plaintiff,)
))
MOTION FOR ORDER PRECLUDING
RELEASE OF CRIMINAL INVESTIGATION
INFORMATION TO PROTECT
DEFENDANT'S DUE PROCESS RIGHTS
vs.)
JASON RAVNSBORG,)
))
Defendant.)

COMES NOW the Defendant above named by and through his undersigned attorney of record and hereby moves this Court for an order precluding the Department of Public Safety, law enforcement, or any member of state government, including Governor Kristi Noem, from producing any further criminal reports, interviews, test results, digital media, photographs, videos, statements, or anything whatsoever related the above-captioned matter to the public. This motion is made upon the grounds and for the reasons that

- 1. The Governor has, in this case, made the extremely unprecedented, and unusual early release of information regarding a criminal investigation.
- 2. On Tuesday, February 23rd, 2021, the undersigned was informed that Governor Kristi Noem was going to have a press conference regarding Attorney General Jason Ravnsborg and release information created during the criminal investigation process.
- 3. The undersigned sent an email to the prosecutor and to the Court requesting immediate relief due to the emergent nature of the situation.
- 4. At that time there was not sufficient information to file a formal motion, and the undersigned is out-of-state and was not able to coordinate such with his staff.
- 5. The undersigned learned that the prosecutor had sent an email to Governor Kristi

Noem citing legal points and authority as to why not to release anything in public relating to the Ravensborg criminal investigation.

6. Despite this the Department of Public Safety released links on its website which contain both video interviews with Attorney General Ravensborg by the North Dakota Bureau of Criminal Investigation. These links are attached hereto as Exhibit A, and are included herein as if set forth in full.
7. This is highly unprecedented, and release of this type of information to the public before it has even been released to defense counsel creates great unfairness and prejudice.
8. It is now understood that the Governor intends to release more of the criminal file directly to the public.
9. On February 25th, 2021, Governor Kristi Noem held a press conference promising release of additional information on either February 25th or 26th, 2021.
10. Release of nonpublic criminal investigative information violates the Defendant's fair trial rights and all of the rights that subjects of a criminal inquiry hold in this state. See State v. Mercer, 2015 SD 31, 864 N.W.2d 299 and the need to preserve the Defendant's right to a fair trial.
11. In Mercer, the South Dakota Supreme Court held, "It is evident that when enacting the South Dakota Public Records Act in 2009, the Legislature had the opportunity to include investigative records within the category of documents presumed to be public, and elected not to do so." Id. at ¶24.

12. That although the information contained on Exhibit A has already been released to the public, the above-noted links should be removed by the South Dakota Department of Public Safety and all other State agencies to prevent potential jurors from having access to information which would be hearsay at a trial of this matter.
13. Although some law enforcement reports have already been released, the importance of protecting the Defendant's right to a fair trial prohibits the further release of information to the public and supports the issuance of a gag order in this case. See Rapid City Journal v. Delaney, 2011 SD 55, ¶ 31, 804 N.W.2d 388 "Gag orders in criminal cases are usually designed to protect a defendant's right to a fair trial by an impartial jury." See also Sioux Falls Argus Leader v. Miller, 2000 SD 63, ¶32, 610 N.W.2d 76: "Courts are duty bound to ensure that a defendant receives a fair trial by an impartial jury; United States v. Noriega, 917 F.2d 1543, 1549 (11th Cir 1990), cert. denied sub nom; Cable News Network, Inc. v. Noriega, 498 U.S. 976, 111 S. Ct. 451, 112 L.Ed.2d 432; United States v. Columbia Broadcasting System, Inc., 497 F.2d 102, 104 (5th Cir. 1974)).
14. The State has no objection to the Court entering an Order Precluding Disclosure of Criminal Investigation Information pending a full hearing on this Motion.
15. Both sides stipulate and agree an order adopting this motion can be presented to the Court via email and without further notice or hearing and can be executed and filed without the presence of the parties.
16. If such order is not granted the selective and unprecedented release of this nonpublic

information will cause irreparable harm to the Defendant herein.

WHEREFORE Defendant requests that the Court issue an order prohibiting release of information as set forth herein. Time is of the essence.

Dated this 25th day of February, 2021.

RENSCH LAW OFFICE
A Professional Law Corporation

/s/ Timothy J. Rensch

Timothy J. Rensch
Attorney for Defendant
832 St. Joseph Street
Rapid City, SD 57701
(605) 341-1210
(605) 341-0040 (fax)
tim@renschlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served upon the persons or offices next designated, on the date shown, by electronic service through Odyssey:

Emily J. Sovell
Attorney at Law
P.O. Box 505
Onida, SD 57564
isovel@venturecomm.net

Dated this 25th day of February, 2021.

RENSCH LAW OFFICE
A Professional Law Corporation

/s/ Timothy J. Rensch
Timothy J. Rensch
Attorney for Defendant

STATE OF SOUTH DAKOTA)
)
COUNTY OF HYDE)

STATE OF SOUTH DAKOTA,)
)
Plaintiff,)
)
vs.)
)
JASON RAVNSBORG,)
)
)
Defendant.)

IN MAGISTRATE COURT

SIXTH JUDICIAL CIRCUIT

FILE NO. 34MAG21-00001

**NOTICE OF ENTRY OF
ORDER PRECLUDING DISCLOSURE OF
CRIMINAL INVESTIGATION
INFORMATION**

NOTICE IS HEREBY GIVEN that the Order Precluding Disclosure of Criminal Investigation Information was signed by the Honorable John Brown, Sixth Judicial Circuit Court Judge, on February 25, 2021, and that said Order will be attested and filed at the office of the Clerk of Courts for Hyde County thereafter; and further

NOTICE IS GIVEN that this Notice is intended as Notice of Entry of Order, that a copy of the above-entitled Order is served herewith.

Dated this 25th day of February, 2021.

RENSCH LAW OFFICE
A Professional Law Corporation

/s/ Timothy J. Rensch
Timothy J. Rensch
832 St. Joseph Street
Rapid City, SD 57701
(605) 341-1210

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of Notice of Entry of Orders upon the person herein next designated all on the date shown by electronic service through Odyssey File and Serve to said addressee; to-wit:

Emily J. Sovell
Attorney at Law
P.O. Box 505
Onida, SD 57564
jsovel@venturecomm.net
HydeCoSA@venturecomm.net

which address is the last known address of the addressee known to the subscriber.

Dated this 25th day of February, 2021.

RENSCH LAW OFFICE
A Professional Law Corporation

/s/ Timothy J. Rensch
Timothy J. Rensch
Attorney for Defendant

STATE OF SOUTH DAKOTA)
)
COUNTY OF HYDE)
)
)
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)
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)
)
)
)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
)
Plaintiff)
vs.)
)
JASON R. RAVNSBORG.)
)
Defendant)
)
DOB: 04/12/1976)


34MAG21-000001

ADMISSION OF SERVICE

Personal service of the enclosed Summons and Complaint is hereby admitted by

receipt of copies thereof at Rapid City, South Dakota.

this 4th day of March, 2021.


Signature TIMOTHY J. RENSCH

Attorney
Relationship to Entity/ Authority to
Receive Service of Process

3-4-21
Date of Signature

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HYDE CO.

FILED

FEB 26 2021

STATE OF SOUTH DAKOTA *Railyn Hanson, Clerk* CIRCUIT COURT
By _____ :SS Deputy
COUNTY OF HYDE) SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)	
)	
Plaintiff,)	34MAG21-1
)	
-vs-)	AMENDED ORDER
)	ASSIGNING JUDGE
JASON RAVNSBORG)	
)	
Defendant.)	

Pursuant to SDCL 16-2-21 and the attached Order of previous South Dakota Chief Justice David Gilbertson, the Honorable John L. Brown, Retired Circuit Judge, is assigned to this case as a Circuit Court Judge with full authority to issue final Circuit Court orders.

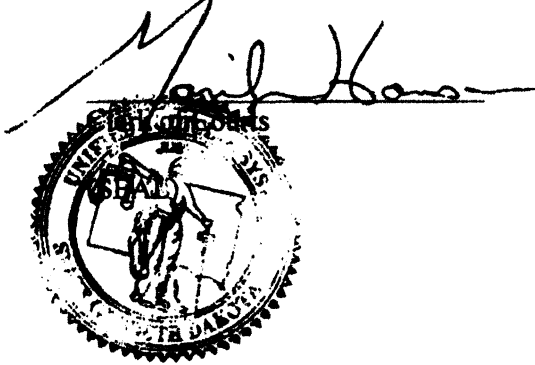
Dated this 25th day of February, 2021.

BY THE COURT:

Bobbi J. Rank

Bobbi J. Rank
Presiding Circuit Judge

ATTEST:



STATE OF SOUTH DAKOTA
CIRCUIT COURT, HYDE CO

FILED

MAR 04 2021

STATE OF SOUTH DAKOTA)
By Marilyn Hanson, Clerk)

By SS Deputy

COUNTY OF HYDE) SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,) 34MAG21-000001
Plaintiff)

vs.) SUMMONS
)

JASON R. RAVNSBORG,)
Defendant)

DOB: 04/12/1976)

To: Jason R. Ravensborg, Defendant, and Timothy J. Rensch, of Rensch Law Office,
PC, 832 St. Joseph Street, Rapid City, SD 57701

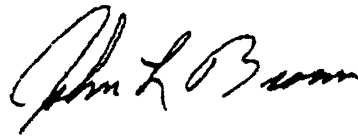
Complaint upon oath having been this date laid before me that the crimes of

OPERATING A MOTOR VEHICLE WHILE USING A MOBILE ELECTRONIC
DEVICE, a violation of SDCL 32-26-47.1 (Class 2 Misd);

LANE DRIVING REQUIRED, a violation of SDCL 32-26-6 (Class 2 Misd); and,

CARELESS DRIVING, a violation of SDCL 32-24-8 (Class 2 Misd).

have been committed and accusing JASON R. RAVNSBORG thereof, you are hereby
summoned to appear before me at the Hughes County Courtroom for Circuit Court in the
City of Pierre, State of South Dakota, on the 12th day of March 2021, at 4:00 p.m., to
answer the Complaint that has been filed against you.



Hon. Judge John Brown
Circuit Court Judge (ret'd)

Attest:
Hanson, Marilyn
Clerk/Deputy



STATE OF SOUTH DAKOTA)
)
COUNTY OF HYDE)

IN MAGISTRATE COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
)
Plaintiff,)
)
vs.)
)
JASON RAVNSBORG,)
)
Defendant.)

FILE NO. 34MAG21-00001

**OBJECTION TO EXPANDED
MEDIA COVERAGE**

COMES NOW Defendant above named, by and through his undersigned attorney of record and objects to cameras and/or audio in the courtroom.

Dated this 8th day of March, 2021.

RENSCH LAW
A Professional Law Corporation

/s/ Timothy J. Rensch
Timothy J. Rensch
Attorney for Defendant
832 St. Joseph Street
Rapid City, SD 57701
(605) 341-1210
(605) 341-0040 (fax)
tim@renschlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served upon the persons or offices next designated, on the date shown, by electronic service through Odyssey:

Emily J. Sovell
Attorney at Law
P.O. Box 505
Onida, SD 57564
jsovell@venturecomm.net

Dated this 8th day of March, 2021.

RENSCH LAW OFFICE
A Professional Law Corporation

/s/ Timothy J. Rensch
Timothy J. Rensch
Attorney for Defendant

STATE OF SOUTH DAKOTA)
 HYDE)
COUNTY OF PENNINGTON)

IN MAGISTRATE COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA)
))
 Plaintiff,)

COURT FILE NO. ~~51CR21-00~~
 34MAG21-01

vs.)

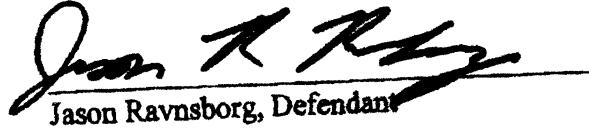
ADVISEMENT OF RIGHTS STATEMENT

JASON RAVNSBORG,)
))
 Defendant.)

I am the Defendant above-named. I understand all of my rights fully and have no questions about them whatsoever, and understanding as follows:

1. I have been charged with Operating a Motor Vehicle While Using a Mobile Electronic Device, Lane Driving Required, and Careless Driving, all Class 2 Misdemeanors.
2. The maximum penalty I face on each of these charges is thirty days imprisonment in a county jail, five hundred dollars fine, or both, if convicted at jury trial.
3. I have the right to be represented by an attorney at every stage of the proceedings, and if necessary, one would have been appointed to represent me.
4. I have the right not to be compelled in any criminal case to be a witness against myself.
5. I have the right to a speedy and public trial by an impartial jury.
6. I have the right to confront and cross-examine witness.
7. I have the right to compel witnesses to appear by subpoena on my behalf.
8. I am presumed to be innocent of the charges and the burden is on the State to prove the elements of the charges beyond a reasonable doubt.
9. I have the right to know the nature and cause of the accusation against me.
10. I understand all pleas available to me. I hereby plead not guilty.

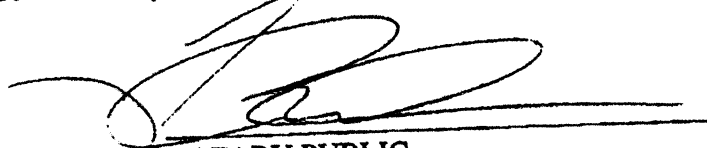
Dated this 12th day of March, 2021.


Jason Ravensborg, Defendant

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

On the 12 day of March, 2021 before me the undersigned Notary Public, personally appeared Jason Ravensborg known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


NOTARY PUBLIC
My commission expires 6-24

(SEAL)

STATE OF SOUTH DAKOTA)
)
COUNTY OF HYDE)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
)
)
Plaintiff,)
)
vs.)
)
JASON RAVNSBORG,)
)
)
Defendant.)

34MAG21-000001

PRETRIAL ORDER
FOR COURT TRIAL

IT IS HEREBY ORDERED that this matter is scheduled for a court trial on **August 26 and 27, 2021, at 9:00 a.m.** at the **Hyde County Courthouse, Highmore, South Dakota.** Counsel and the Defendant shall be present in the Court's chambers at **8:30 a.m.**

UNLESS OTHERWISE ORDERED the following deadlines apply:

1. All discovery shall be completed by **June 14, 2021.**
2. Motions will be heard, or further hearing scheduled at the hearing scheduled for **3:30 p.m. July 12, 2021.** Motion filing deadline, including briefs, shall be **June 28, 2021,** responsive briefs are due **July 5, 2021.**
3. The State's Attorney and Defense Counsel shall provide to opposing counsel and the Court by **August 13, 2021:**
 - a. A list of the proposed witnesses to be called in each side's case in chief.
 - b. An Exhibit List which includes a description of each exhibit and columns to keep track of whether the exhibits have been offered and admitted. Said exhibits or true copies thereof shall be pre-marked and made available or provided to opposing counsel for examination. **Plaintiff's exhibits should be marked with numbers and Defendant's with letters.**

- c. If either party intends to offer an audio or videotape, it shall be edited prior to trial (if necessary), and counsel proffering said evidence shall provide a written transcript of the tape to the Court and copies to opposing counsel.

Dated this 26th day of May, 2021.

BY THE COURT



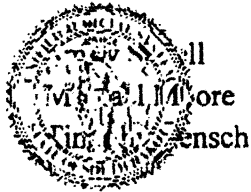
JOHN L. BROWN
Retired Sixth Circuit Judge

~~ATTEST:~~
Attest:

Hanson, Marilyn

~~Clerk of Court~~
Clerk/Deputy

cc:



STATE OF SOUTH DAKOTA)
)
COUNTY OF HYDE)

IN MAGISTRATE COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
)
Plaintiff,)
)
vs.)
)
JASON RAVNSBORG,)
)
Defendant.)

FILE NO. 34MAG21-00001

**SECOND OBJECTION TO
EXPANDED MEDIA COVERAGE**

COMES NOW Defendant above named, by and through his undersigned attorney of record and objects to cameras and/or audio in the courtroom for the August 26-27, 2021 trial in the above-captioned matter.

Dated this 3rd day of June, 2021.

RENSCH LAW
A Professional Law Corporation

/s/ Timothy J. Rensch
Timothy J. Rensch
Attorney for Defendant
832 St. Joseph Street
Rapid City, SD 57701
(605) 341-1210
(605) 341-0040 (fax)
tim@renschlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served upon the persons or offices next designated, on the date shown, by electronic service through Odyssey:

Emily J. Sovell Hyde County State's Attorney P.O. Box 125 Highmore, SD 57345 jsovel@venturecomm.net	Michael Moore Beadle County State's Attorney 450 3rd St SW #108 Huron, SD 57350 mmoore@bcsa.us
---	--

Dated this 3rd day of June, 2021.

RENSCH LAW OFFICE
A Professional Law Corporation

/s/ Timothy J. Rensch

Timothy J. Rensch
Attorney for Defendant

STATE OF SOUTH DAKOTA)
)
COUNTY OF HYDE)

IN MAGISTRATE COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
)
Plaintiff,)
)
vs.)
)
JASON RAVNSBORG,)
)
Defendant.)

FILE NO. 34MAG21-00001

**MOTION FOR PSYCHIATRIC
AND/OR PSYCHOLOGICAL RECORDS**

COMES NOW the Defendant, Jason Ravensborg, by and through his attorney of record, Timothy J. Rensch, and hereby moves this Court for an order requiring health care providers of Mr. Joseph Boever to release psychiatric and/or psychological records for an in camera review by Court and/or counsel, for exculpatory information concerning his suicidal ideation, in keeping with the requirements of Due Process, Fair Trial Rights, and the ability to present a meaningful and complete defense. This motion is made upon the following grounds and reasons:

1. A cousin of Mr. Boever, Mr. Barnabas Nemeč, told law enforcement, “I believe with a very high degree of confidence Joe committed suicide by throwing himself into the path of a speeding car.” He further stated the Mr. Boever, “was an admitted alcoholic with a brooding depressive streak unparalleled by anyone else I have ever known.” Mr. Barnabas Nemeč further explained that in December, 2019, Mr. Joseph Boever “...told me his preferred method of suicide would be to throw himself in front of a car.”

2. Prior to his death Mr. Boever had been seeing mental health providers and some of those providers have asserted claims in his estate, to wit: Avera St. Luke’s Hospital, \$3,522.48; Avera St. Mary’s Hospital, \$197.02; AMG Pierre, \$23.77; Aberdeen Psychiatric, \$337.49.

3. A prescription bottle of Lorazepam was found in Mr. Boever's truck which had been involved in a collision in the hours before his death. The prescription bottle had been filled with 90 pills on 9/11/20 and only 12 remained in the bottle on 9/12/20, a day later. The prescription called for "one tablet by mouth three times daily as needed." Law enforcement stated there should have been "many more" pills in the bottle. Lorazepam can cause suicidal ideation. *See, e.g., www.drugs.com/lorazepam.* In fact Mr. Boever's autopsy noted much more Lorazepam (190 ng/ml) in his system than a therapeutic dose. To use 78 pills of Lorazepam in less than 36 hours is clear abuse, and is consistent with suicidal ideation.

4. In the weeks prior to his death Mr. Boever had apparently been committed, possibly at Yankton, was in the midst of a divorce, was severely depressed, and was spiraling out of control.

5. Other witnesses on the evening in question describe Mr. Boever acting erratically and intoxicated.

6. There is a dispute as to the point of impact and whether or not it was on the roadway or on the shoulder. The evidence on the roadway and shoulder as examined by law enforcement the day after the death of Mr. Boever was different than it was the night before as there was wind, continued vehicle travel, and movement of the Ravensborg vehicle by law enforcement in the interim. Nonetheless a bolt remained on the roadway, while paint chips were blown to the grass on the edge of the shoulder. This is consistent with impact between the Ravensborg vehicle and Mr. Boever on the roadway rather than the shoulder.

7. In *State v. Karlen*, 1999 SD 12, 589 NW2d 594, Due Process required giving defense

indirect access via an *in camera* review of privileged information to discover exculpatory evidence. While *Karlen* dealt with credibility, this case deals with actual evidence which, circumstantially, can tie the suicide statements, drug use, increased likelihood of suicidal ideation, depression, and a preferred method of suicide, as it all relates to the physical facts of the case to assert the defense theory, that the traffic violations asserted by the State contains reasonable doubt.

...“it is not too much to ask that he be allowed access to relevant information with which to argue to society he is not guilty of that charge.” *Black v. Class*, 1997 SD 22, ¶ 24, 560 N.W.2d 544, 550.

Karlen at ¶34, 602.

The Court defined material evidence:

[E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome. [*Pennsylvania v. Ritchie*, 480 U.S. 39, 51, 107 S.Ct. 989, 998, 94 L.Ed.2d 40, 53 (1987)]

Karlen at ¶41, 603. “There are methods used to strike a balance in the tension that exists between rights of the accused and the confidences of the patient.” *Karlen* at ¶45, 605.

8. A review of the records of Mr. Boever for this exculpatory information is vital for the protection of the Defendant’s Due Process and Fair Trial rights, and is necessary for the Defendant to present a complete and meaningful defense to the claim he crossed into the shoulder, that his conduct was careless, and that he was distracted. If Mr. Boever voiced his desire for suicide by car or suicidal ideation such is relevant and in all probability could make less likely the point of impact was on the shoulder.

This Court has the authority and discretion to order the health care providers to disclose to the Defendant and his attorney, the prosecution, and/or to the Court, all of the above information which is material to the preparation of the defense, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution and Article VI, Sec. 2 of the South Dakota Constitution, as well as *State v. Karlen*, 589 N.W. 2d 594, and authority cited therein. Alternatively this Court could order the production of all records to the Court for an *in camera* review by the Court and/or counsel to review, and require counsel to request which portion of the information is needed to secure the important rights cited herein so that exculpatory and/or relevant information is not hidden.

WHEREFORE, the Defendant prays that this Court grant his Motion for Psychiatric and/or Psychological Records and require the named entities as well as the Human Services Center in Yankton produce records concerning Mr. Boever.

Dated this 9th day of July, 2021.

RENSCH LAW OFFICE
A Professional Law Corporation

/s/ Timothy J. Rensch
Timothy J. Rensch
Attorney for Defendant
832 St. Joseph Street
Rapid City, SD 57701
(605) 341-1111
(605) 341-0040 (fax)
tim@renschlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served upon the persons or offices next designated, on the date shown, by electronic service through Odyssey:

Emily J. Sovell
Attorney at Law
P.O. Box 505
Onida, SD 57564
isovell@venturecomm.net

Michael R. Moore
Beadle County State's Attorney
450 3rd Street SW, Suite 108
Huron, SD 57350
mmoore@bcsa.us

Dated this 9th day of July, 2021.

RENSCH LAW OFFICE
A Professional Law Corporation

/s/ Timothy J. Rensch

Timothy J. Rensch
Attorney for Defendant

STATE OF SOUTH DAKOTA)
)
COUNTY OF HYDE)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
) 34MAG21-000001
) AMENDED
Plaintiff,) PRETRIAL ORDER
) FOR COURT TRIAL
vs.)
)
JASON RAVNSBORG,)
)
Defendant.)

IT IS HEREBY ORDERED that this matter is scheduled for a court trial on **August 26 and 27, 2021, at 9:00 a.m.** at the **STANLEY County Courthouse, FORT PIERRE, South Dakota**. Counsel and the Defendant shall be present in the Court's chambers at **8:30 a.m.**

UNLESS OTHERWISE ORDERED the following deadlines apply:

1. All discovery shall be completed by **June 14, 2021**.
2. Motions will be heard, or further hearing scheduled at the hearing scheduled for **3:30 p.m. July 12, 2021**. Motion filing deadline, including briefs, shall be **June 28, 2021**, responsive briefs are due **July 5, 2021**.
3. The State's Attorney and Defense Counsel shall provide to opposing counsel and the Court by **August 13, 2021**:
 - a. A list of the proposed witnesses to be called in each side's case in chief.
 - b. An Exhibit List which includes a description of each exhibit and columns to keep track of whether the exhibits have been offered and admitted. Said exhibits or true copies thereof shall be pre-marked and made available or provided to opposing counsel for examination. **Plaintiff's exhibits should be marked with numbers and Defendant's with letters.**


- c. If either party intends to offer an audio or videotape, it shall be edited prior to trial (if necessary), and counsel proffering said evidence shall provide a written transcript of the tape to the Court and copies to opposing counsel.

Dated this 15th day of July, 2021.

BY THE COURT



JOHN L. BROWN
Retired Sixth Circuit Judge



Clerk of Courts

cc: Emily Sovell
Michael Moore
Timothy Rensch

STATE OF SOUTH DAKOTA)
)
COUNTY OF HYDE)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
)
Plaintiff,)
)
vs.)
)
JASON RAVNSBORG,)
)
Defendant.)

FILE NO. 34MAG21-00001

**ORDER GRANTING MOTION
FOR PSYCHIATRIC AND/OR
PSYCHOLOGICAL RECORDS
[AVERA MEDICAL GROUP
PSYCHIATRY ABERDEEN]**

Comes now the Honorable John Brown, Circuit Judge, upon good and legal motion of the Defendant above-named after hearing and considering the submission, arguments, and authorities of the parties and hereby

ORDERS that the Avera Medical Group Psychiatry Aberdeen, 201 S. Lloyd Street, Physicians Plaza, Suite E201, Aberdeen, SD 57401, immediately produce any and all mental health, psychiatric, prescriptions, and/or psychological records and/or notes of Joseph Paul Boever, date of birth October 1, 1964, for contact, treatment, counseling, intake, commitment, consultation, diagnosis, care, and/or presence, between September 1, 2019, and September 12, 2020; and further

ORDERS that such shall be immediately sent to the Honorable John L. Brown, Circuit Judge at the following address: P.O. Box 230, Rapid City, SD 57709; and further

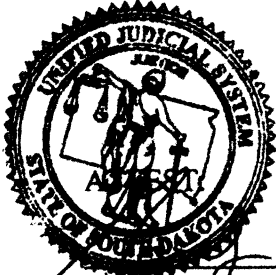
ORDERS that the reasonable cost of copies of such records shall be borne by the Defendant.


Dated this 15th day of July, 2021.

BY THE COURT:



The Honorable John L. Brown
Retired Sixth Circuit Court Judge




Marilyn Hanson, Clerk of Courts

Deputy

(SEAL)

STATE OF SOUTH DAKOTA)
)
COUNTY OF HYDE)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
)
Plaintiff,)

FILE NO. 34MAG21-00001

vs.)

**ORDER GRANTING MOTION
FOR PSYCHIATRIC AND/OR
PSYCHOLOGICAL RECORDS
[AVERA MEDICAL GROUP]**

JASON RAVNSBORG,)
)
Defendant.)

Comes now the Honorable John Brown, Circuit Judge, upon good and legal motion of the Defendant above-named after hearing and considering the submission, arguments, and authorities of the parties and hereby

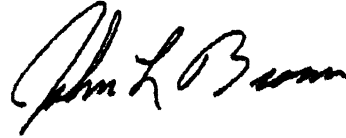
ORDERS that the Avera Medical Group, 100 Mac Lane, Pierre, SD 57501, immediately produce any and all mental health, psychiatric, prescriptions, and/or psychological records and/or notes of Joseph Paul Boever, date of birth October 1, 1964, for contact, treatment, counseling, intake, commitment, consultation, diagnosis, care, and/or presence, between September 1, 2019, and September 12, 2020; and further

ORDERS that such shall be immediately sent to the Honorable John L. Brown, Circuit Judge at the following address: P.O. Box 230, Rapid City, SD 57709; and further


ORDERS that the reasonable cost of copies of such records shall be borne by the Defendant.

Dated this 15th day of July, 2021.

BY THE COURT:



The Honorable John L. Brown
Retired Sixth Circuit Court Judge



Marilyn Hanson, Clerk of Courts

Deputy

(SEAL)

STATE OF SOUTH DAKOTA)
)
COUNTY OF HYDE)

STATE OF SOUTH DAKOTA,)
)
Plaintiff,)
)
vs.)
)
JASON RAVNSBORG,)
)
Defendant.)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

FILE NO. 34MAG21-00001

**ORDER GRANTING MOTION
FOR PSYCHIATRIC AND/OR
PSYCHOLOGICAL RECORDS
[AVERA ST. LUKE'S HOSPITAL]**

Comes now the Honorable John Brown, Circuit Judge, upon good and legal motion of the Defendant above-named after hearing and considering the submission, arguments, and authorities of the parties and hereby

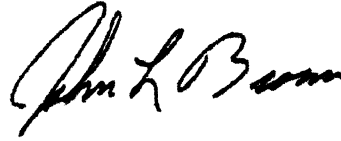
ORDERS that Avera St. Luke's Hospital, 815 1st Avenue S.E., Aberdeen, SD 57401, immediately produce any and all mental health, psychiatric, prescriptions, and/or psychological records and/or notes of Joseph Paul Boever, date of birth October 1, 1964, for contact, treatment, counseling, intake, commitment, consultation, diagnosis, care, and/or presence, between September 1, 2019, and September 12, 2020; and further

ORDERS that such shall be immediately sent to the Honorable John L. Brown, Circuit Judge at the following address: P.O. Box 230, Rapid City, SD 57709; and further


ORDERS that the reasonable cost of copies of such records shall be borne by the Defendant.

Dated this 15th day of July, 2021.

BY THE COURT:



The Honorable John L. Brown
Retired Sixth Circuit Court Judge



Marilyn Hanson, Clerk of Courts

Deputy

(SEAL)

STATE OF SOUTH DAKOTA)
)
COUNTY OF HYDE)

STATE OF SOUTH DAKOTA,)
)
Plaintiff,)
)
vs.)
)
JASON RAVNSBORG,)
)
Defendant.)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

FILE NO. 34MAG21-00001

**ORDER GRANTING MOTION
FOR PSYCHIATRIC AND/OR
PSYCHOLOGICAL RECORDS
[AVERA ST. MARY'S HOSPITAL]**

Comes now the Honorable John Brown, Circuit Judge, upon good and legal motion of the Defendant above-named after hearing and considering the submission, arguments, and authorities of the parties and hereby

ORDERS that Avera St. Mary's Hospital, 801 E. Sioux, Pierre, SD 57501, immediately produce any and all mental health, psychiatric, prescriptions, and/or psychological records and/or notes of Joseph Paul Boever, date of birth October 1, 1964, for contact, treatment, counseling, intake, commitment, consultation, diagnosis, care, and/or presence, between September 1, 2019, and September 12, 2020; and further

ORDERS that such shall be immediately sent to the Honorable John L. Brown, Circuit Judge at the following address: P.O. Box 230, Rapid City, SD 57709; and further

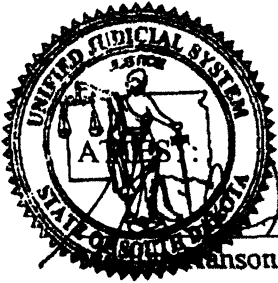
ORDERS that the reasonable cost of copies of such records shall be borne by the Defendant.

Dated this 15th day of July, 2021.

BY THE COURT:



The Honorable John L. Brown
Retired Sixth Circuit Court Judge





Clerk of Courts

Deputy

(SEAL)

STATE OF SOUTH DAKOTA)
)
COUNTY OF HYDE)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)

FILE NO. 34MAG21-00001

Plaintiff,)

vs.)

JASON RAVNSBORG,)

Defendant.)

**ORDER GRANTING MOTION
FOR PSYCHIATRIC AND/OR
PSYCHOLOGICAL RECORDS
[SOUTH DAKOTA
HUMAN SERVICES CENTER]**

Comes now the Honorable John Brown, Circuit Judge, upon good and legal motion of the Defendant above-named after hearing and considering the submission, arguments, and authorities of the parties and hereby

ORDERS that the South Dakota Human Services Center, 3515 Broadway Avenue, Yankton, SD 57078, immediately produce any and all mental health, psychiatric, prescriptions, and/or psychological records and/or notes of Joseph Paul Boever, date of birth October 1, 1964, for contact, treatment, counseling, intake, commitment, consultation, diagnosis, care, and/or presence, between September 1, 2019, and September 12, 2020; and further

ORDERS that such shall be immediately sent to the Honorable John L. Brown, Circuit Judge at the following address: P.O. Box 230, Rapid City, SD 57709; and further


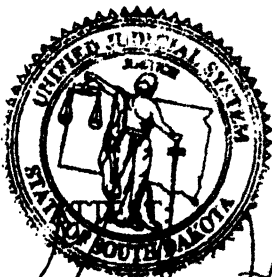
ORDERS that the reasonable cost of copies of such records shall be borne by the Defendant.

Dated this 15th day of July, 2021.

BY THE COURT:



The Honorable John L. Brown
Retired Sixth Circuit Court Judge



Marilyn Hanson, Clerk of Courts

Deputy

(SEAL)

**CIRCUIT COURT OF SOUTH DAKOTA
SIXTH JUDICIAL CIRCUIT**



P.O. BOX 1238
104 E. Capitol Ave
Pierre, SD 57501-1238

JOHN L. BROWN
CIRCUIT JUDGE (Ret.)

MONA WEIGER
COURT REPORTER
Telephone: 605-773-3971
mona.weiger@ujs.state.sd.us

July 19, 2021

Human Services Center
Records Department
3515 Broadway Avenue
Yankton, SD 57078

Re: Joseph Paul Boever, d/o/b 10-1-1964

Dear Human Services Center:

Enclosed is this Court's Order Granting Motion for Psychiatric and/or Psychological Records. Please send Mr. Boever's records to me at the following address: John L. Brown, Circuit Judge, PO Box 230, Rapid City, SD 57709. Your prompt attention to this matter is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "John L. Brown".

John L. Brown
Circuit Court Judge

By: Mona Weiger —

cc: Clerk of Courts
Emily Sovell
Tim Rensch

JLB/mw

**CIRCUIT COURT OF SOUTH DAKOTA
SIXTH JUDICIAL CIRCUIT**



P.O. BOX 1238
104 E. Capitol Ave
Pierre, SD 57501-1238

JOHN L. BROWN
CIRCUIT JUDGE (Ret.)

MONA WEIGER
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Telephone: 605-773-3971
mona.weiger@ujs.state.sd.us

July 19, 2021

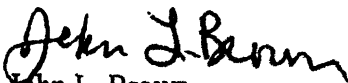
Avera St. Mary's Hospital
Records Department
801 E. Sioux
Pierre, SD 57501

Re: Joseph Paul Boever, d/o/b 10-1-1964

Dear Avera St. Mary's Hospital:

Enclosed is this Court's Order Granting Motion for Psychiatric and/or Psychological Records. Please send Mr. Boever's records to me at the following address: John L. Brown, Circuit Judge, PO Box 230, Rapid City, SD 57709. Your prompt attention to this matter is greatly appreciated.

Sincerely,


John L. Brown
Circuit Court Judge
By: Mona Weiger

cc: Clerk of Courts
Emily Sovell
Tim Rensch

JLB/mw

**CIRCUIT COURT OF SOUTH DAKOTA
SIXTH JUDICIAL CIRCUIT**

P.O. BOX 1238
104 E. Capitol Ave
Pierre, SD 57501-1238



**JOHN L. BROWN
CIRCUIT JUDGE (Ret.)**

**MONA WEIGER
COURT REPORTER**
Telephone: 605-773-3971
mona.weiger@jcs.state.sd.us

July 19, 2021

Avera St. Luke's Hospital
Records Department
815 1st Avenue S.E.
Aberdeen, SD 57401

Re: Joseph Paul Boever, d/o/b 10-1-1964

Dear Avera St. Luke's Hospital:

Enclosed is this Court's Order Granting Motion for Psychiatric and/or Psychological Records. Please send Mr. Boever's records to me at the following address: John L. Brown, Circuit Judge, PO Box 230, Rapid City, SD 57709. Your prompt attention to this matter is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "John L. Brown".

John L. Brown
Circuit Court Judge
By: Mona Weiger

cc: Clerk of Courts
Emily Sovell
Tim Rensch

JLB/mw

**CIRCUIT COURT OF SOUTH DAKOTA
SIXTH JUDICIAL CIRCUIT**



P.O. BOX 1238
104 E. Capitol Ave
Pierre, SD 57501-1238

**JOHN L. BROWN
CIRCUIT JUDGE (Ret.)**

**MONA WEIGER
COURT REPORTER**
Telephone: 605-773-3971
mona.weiger@jcs.state.sd.us

July 19, 2021

Avera Medical Group
Records Department
100 Mac Lane
Pierre, SD 57501

Re: Joseph Paul Boever, d/o/b 10-1-1964

Dear Avera Medical Group:

Enclosed is this Court's Order Granting Motion for Psychiatric and/or Psychological Records. Please send Mr. Boever's records to me at the following address: John L. Brown, Circuit Judge, PO Box 230, Rapid City, SD 57709. Your prompt attention to this matter is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "John L. Brown".

John L. Brown
Circuit Court Judge
By: Mona Weiger

cc: Clerk of Courts
Emily Sovell
Tim Rensch

JLB/mw

**CIRCUIT COURT OF SOUTH DAKOTA
SIXTH JUDICIAL CIRCUIT**



P.O. BOX 1238
104 E. Capital Ave
Pierre, SD 57501-1238

JOHN L. BROWN
CIRCUIT JUDGE (Ret.)

MONA WEIGER
COURT REPORTER
Telephone: 605-773-3971
mona.weiger@jcs.state.sd.us

July 19, 2021

Avera Medical Group Psychiatry
Records Department
201 S. Lloyd Street
Physicians Plaza, Suite E201
Aberdeen, SD 57401

Re: Joseph Paul Boever, d/o/b 10-1-1964

Dear Avera Medical Group Psychiatry:

Enclosed is this Court's Order Granting Motion for Psychiatric and/or Psychological Records. Please send Mr. Boever's records to me at the following address: John L. Brown, Circuit Judge, PO Box 230, Rapid City, SD 57709. Your prompt attention to this matter is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "John L. Brown".

John L. Brown
Circuit Court Judge
By: Mona Weiger

cc: Clerk of Courts
Emily Sovell
Tim Rensch

JLB/mw

STATE OF SOUTH DAKOTA)
)

IN CIRCUIT COURT

COUNTY OF HYDE)

SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)

FILE NO. 34MAG21-00001

Plaintiff,)

**ORDER GRANTING MOTION
FOR PSYCHIATRIC AND/OR
PSYCHOLOGICAL RECORDS
[AVERA ST. LUKE'S HOSPITAL]**

vs.)

JASON RAVNSBORG,)

Defendant.)

Comes now the Honorable John Brown, Circuit Judge, upon the finding of good cause as required by 42 CFR Part 2, because disclosure of the medical records described herein are necessary to investigate the occurrence of a serious bodily injury and the disclosure described in this Order is limited to the information essential to fulfill the purpose of this Order and is restricted to the persons who need the information, and is ordered pursuant to a legal motion of the Defendant above-named after hearing and considering the submission, arguments, and authorities of the parties and hereby,

ORDERS that Avera St. Luke's Hospital, 815 1st Avenue S.E., Aberdeen, SD 57401, immediately produce any and all mental health, psychiatric, prescriptions, and/or psychological records and/or notes of Joseph Paul Boever, date of birth October 1, 1964, for contact, treatment, counseling, intake, commitment, consultation, diagnosis, care, and/or presence, between September 1, 2019, and September 12, 2020; and further

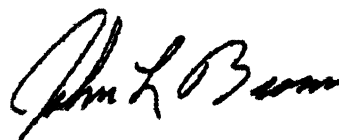
ORDERS that such shall be immediately sent to the Honorable John L. Brown, Circuit Judge at the following address: P.O. Box 230, Rapid City, SD 57709; and further

ORDERS that the reasonable cost of copies of such records shall be borne by the Defendant.

State v. Ravensborg/File No. 34MAG21-1/Order Granting Motion for Psychiatric and/or Psychological Records [Avera St. Luke's Hospital]

Dated this 27th day of July, 2021.

BY THE COURT:



The Honorable John L. Brown
Retired Sixth Circuit Court Judge

Attest:
Hanson, Marilyn
Clerk/Deputy



Hanson, Marilyn (UJS)

From: Covey, Heather (UJS)
Sent: Wednesday, August 04, 2021 2:04 PM
To: Hanson, Marilyn (UJS)
Subject: FW: [EXT] Media request in SD v. Ravnsborg

Hi, Marilyn. I didn't realize that you weren't on this email. I think this email from Judge Brown should probably be filed?

From: John Brown <jlb6th@gmail.com>
Sent: Friday, July 30, 2021 8:35 AM
To: Covey, Heather (UJS) <Heather.Covey@ujs.state.sd.us>
Cc: Emily Sovell <jsovell@venturecomm.net>; tim@renschlaw.com
Subject: Re: [EXT] Media request in SD v. Ravnsborg

Given Mr Ravnsborg's previous objections video will not be allowed. Audio will be through pooling with the prior request.

Thanks
JLB

Sent from my iPhone

On Jul 29, 2021, at 3:59 PM, Covey, Heather (UJS) <Heather.Covey@ujs.state.sd.us> wrote:

Jordan Chacon with Law&Crime has requested extended media coverage for the above-referenced trial scheduled to take place on August 26 and 27. His full request is below. I have clarified with him that the trial is to the court and no jurors will be summoned.

Heather Covey
Sixth Circuit Administrator
773-3712

From: Jordan Chacon <jordan@lawnewz.com>
Sent: Thursday, July 29, 2021 11:32 AM
To: Covey, Heather (UJS) <Heather.Covey@ujs.state.sd.us>
Subject: Re: [EXT] SD v. Jason Ravnsborg hearing request

Hello Heather,

Attached is Law&Crime's official request for extended media coverage in the case of SD v. Jason Ravnsborg. The trial is scheduled to begin on 8/26 and slated to last two days — just wondering if you were able to confirm that. Would jury selection also begin on 8/26?

Let me know if there is anything else needed on my end!

Thank you,

Jordan Chacon (she/her)
*Trial Coordinator // **Law&Crime Trial Network***
(714) 335-1512 // jordan@lawandcrime.com

SCOTT N. HEIDPRIEM
VICENT A. PURTELL
STEVEN S. SIEGEL
JOHN R. HINRICHS
MATTHEW A. TYSDAL
SHAD E. CHRISTMAN
HANNAH K. PURTELL
PETER N. HEIDPRIEM
CHET GROSECLOSE, OF COUNSEL



HEIDPRIEM | PURTELL
SIEGEL | HINRICHS

L A W Y E R S

hpslawfirm.com

101 WEST 69TH STREET

SUITE 105

SIOUX FALLS, SD 57108

TELEPHONE 605 679 4470

TOLL-FREE 844 493 0010

FACSIMILE 605 679 4379

July 19, 2021

SENT VIA EMAIL

Hon. John Brown
John.brown@ujs.state.sd.us

Re: 34MAG21-000001; Jenny Boever's privacy rights in light of the Court's *in camera* review of Joe Boever's medical records.

Your Honor,

I write on behalf of Jennifer Boever (Jenny), the widow of Joe Boever. This letter is written pursuant to Jenny's rights under Marsy's Law, and a copy has been sent to all counsel of record.

Pursuant to the Court's order of July 12, 2021, to conduct an *in camera* review of Joe's psychological or psychiatric records, I wish to first assert Jenny's right under the South Dakota Constitution to "prevent the disclosure to the public, or the defendant or anyone acting on behalf of the defendant in the criminal case, of information or records . . . which could disclose confidential or privileged information about" Jenny. S.D. Const. art. VI, § 29(5). The records sought by the Attorney General have a high likelihood of disclosing sensitive details about Jenny. Those are privileged details for which she is afforded constitutional protection against disclosure, and she wants to fully avail herself of that right.

Second, and with an appreciation of the Court's careful *in camera* review of the records in question, I wish to emphasize Jenny's desire that Joe's records receive the utmost protection against disclosure that should be afforded to any patient's records. As the Special Administrator of Joe's estate, Jenny has the right to claim the psychotherapist-patient privilege over Joe's records. See SDCL § 19-19-503(c). She emphatically does so. In addition to the statutorily-conferred privilege these records are to receive under South Dakota law, Joe's medical records are subject to constitutional protections against disclosure. See, e.g., *Kurtenbach v. Jackley*, No. CV 16-5021-JLV, 2018 WL 1542499, at *8 (D.S.D. Mar. 29, 2018) ("While the United States Court of Appeals for the Eighth Circuit never specifically addressed the issue, the court is confident the Eighth Circuit would give constitutional protection to those records.").

In short, Jenny is entitled to substantial privacy rights pursuant to the South Dakota constitution, and is entitled to claim privilege and protect the disclosure of psychological records on Joe's behalf under statutory law and notions of substantive due process. Jenny appreciates this Court's delicate task of balancing the rights of various parties in its *in camera* review of Joe's records. While the Attorney General is certainly afforded due process rights as a criminal defendant, the South Dakota constitution guarantees that Jenny's "rights and interests are protected in a manner no less vigorous than the protections afforded to" him. Jenny simply wants this Court to be fully informed of her desire to avail herself of the maximum protections she is entitled to for herself and on Joe's behalf as the Court engages in its review.

Your Honor, in consideration of these unique circumstances, we would certainly be willing to participate in a conference involving counsel and this Court relative to remaining discovery issues.

Sincerely,
HEIDEPRIEM, PURTELL,
SIEGEL & HINRICHS, LLP



SCOTT N. HEIDEPRIEM
For the firm

SNH/arh

cc:

Emily Sovell (jsovell@venturecomm.net)
Michael Moore (mmoore@bcsa.us)
Timothy Rensch (tim@renschlaw.com)

STATE OF SOUTH DAKOTA)
) :SS
COUNTY OF HYDE)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
 Plaintiff)
)
VS)
)
JASON RAVNSBORG,)
 Defendant)
)
DOB: 04/12/1976)
)

FILE NO. 34MAG21-00001


ORDER

WHEREAS, Orders of this Court were filed on July 16, 2021 directing Avera Medical Group Psychiatry; Avera St. Lukes Hospital; Avera Medical Group; Avera St. Mary's Hospital; and, South Dakota Human Services Center to present records to the Honorable John L. Brown for in camera inspection by the Court;

WHEREAS, said records were received and reviewed;

THEREFORE, be it Ordered that none of the records obtained and reviewed by this Court shall be released to the State of South Dakota, the Defendant above named or the public filings based upon lack of relevance to the above-captioned case.

Dated this 26 day of August, 2021.


The Honorable John L. Brown
Retired Sixth Circuit Judge




Clerk of Courts

Filed on: 8/26/21

Hyde

County, South Dakota 34MAG21-00001

STATE OF SOUTH DAKOTA)
)
COUNTY OF HYDE)

IN MAGISTRATE COURT
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
)
Plaintiff,)
)
vs.)
)
JASON RAVNSBORG,)
)
Defendant.)

FILE NO. 34MAG21-1

POWER OF ATTORNEY

COMES NOW the Defendant above named, and hereby makes, appoints, and designates Timothy J. Rensch to be his lawful attorney-in-fact for the purposes of entering a no contest plea to the charge of *Operating a Motor Vehicle While Using a Mobile Electronic Device* and the charge of *Lane Driving Required*, or some other or lesser charge, appearing on his behalf at all proceedings, waiving personal appearance, waiving any sentencing delay, accepting a sentence on his behalf, said sentence to be binding upon him, in absentia, so that only his lawfully appointed attorney-in-fact need appear at the plea/sentencing in the above-captioned matter.

I acknowledge that permission to enter a no contest plea by way of this Power of Attorney is given by me freely, voluntarily, and without coercion and is not the result of any threat or promise other than what is stated in the plea agreement. I understand that pleading no contest waives my right to confront and cross-examine witnesses, right to a jury trial, right to have the State prove its case beyond a reasonable doubt, right to remain silent, right to subpoena witnesses on my behalf, and right to the assistance of an attorney at jury trial.

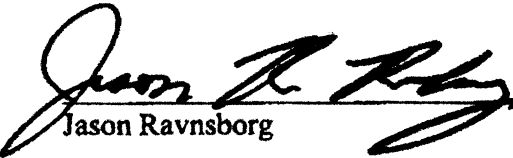
I further designate and define the powers of my lawful attorney-in-fact to include the allowance of payment of fines through bonds and making payment arrangements.

No promises nor threats have been made to me to induce me to sign this Power of Attorney and to plead to the charge here made against me. I am entering this plea voluntarily and of my own free will. I further state that I understand the following:

1. I am presumed to be innocent of the charges alleged against me until the State has proven each and every element of the charges beyond a reasonable doubt.
2. The individual elements of the charges alleged against me that the State must prove beyond a reasonable doubt. These charges are described in the information/complaint attached to, and forming part of this affidavit.
3. The maximum sentence for the offense for which I am pleading no contest is 30 days in the county jail a \$500 fine, or both such fine and jailing, although the Court herein scheduled a court trial rather than a jury trial by withdrawing jail time from the sentence, in lieu of a jury.
4. With respect to sentencing, the Court is not bound by any plea agreement that I may have entered into with the State unless the plea includes a term which is binding on the Court. A plea agreement only contains sentencing recommendations for the Court to consider. For sentencing, the Court is only limited by the statutory maximum sentence described in #3 above, no jail as stated by the Court in deprivation of a jury trial, unless there is an agreed upon binding sentence which the Court accepts.
5. I have had enough time to discuss my case with my attorney. My attorney has answered all my questions satisfactorily and I am fully satisfied with the legal services provided by my attorney.
6. I have the right to plead "not guilty" and persist in that plea, even if I know I am guilty.
7. By pleading no contest I waive my rights to:

- a. a court trial,
 - b. confront and cross examine witnesses the State may call to give evidence against me,
 - c. call witnesses into court to testify on my behalf and issue subpoenas compelling their appearance, and
 - d. remain silent.
8. There have been no threats or promises made to get me to plead no contest.
 9. My plea is voluntary and of my own free will.
 10. I am not, at this time, under the influence of alcohol or any mind altering substances.
 11. I am mentally competent.

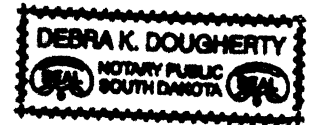
Dated this 25th day of August, 2021.

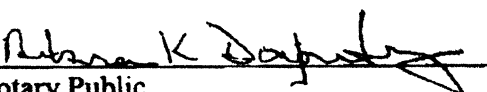

 Jason Ravensborg

STATE OF SOUTH DAKOTA)
)ss
 COUNTY OF HUGHES)

On this the 25 day of August, 2021, before me, the undersigned notary public, personally appeared Jason Ravensborg, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.




 Notary Public
 My Commission Expires: September 12, 2023

State v. Ravensborg/File No. 34MAG21-1//Power of Attorney

(SEAL)

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HYDE)

IN CIRCUIT COURT
SIXTH CIRCUIT COURT

STATE OF SOUTH DAKOTA,)
Plaintiff,) 34MAG21-000001
)
vs.) JUDGMENT OF CONVICTION
) AND SENTENCE
JASON R. RAVNSBORG.)
DOB: 04/12/1976)
Defendant.)

A Complaint was filed in this Court on the 18th day of February, 2021, charging the Defendant with the crimes of **COUNT 1: OPERATING A MOTOR VEHICLE WHILE USING A MOBILE ELECTRONIC DEVICE**, (SDCL 32-26-47.1), a Class 2 Misd.; **COUNT 2: IMPROPER LANE DRIVING**, (SDCL 32-26-6), a Class 2 Misd.; **COUNT 3: CARELESS DRIVING**, (SDCL 32-24-8), a Class 2 Misd. Defendant was arraigned on said charges and pled not guilty.

A hearing was held at the Stanley County Courthouse in Ft. Pierre, South Dakota, and the Defendant was re-arraigned on said charges on August 26, 2021, Defendant's counsel Timothy Rensch, Attorney at Law, appearing for his client via Power of Attorney; Prosecuting Attorneys Emily J. Sovell and Michael Moore appearing for the State. The Defendant was advised of his constitutional and statutory rights pertaining to the charges against him, including possible penalties.

Defendant, through counsel by Power of Attorney, pled nolo contendere to the charges of **COUNT 1: OPERATING A MOTOR VEHICLE WHILE USING A MOBILE ELECTRONIC DEVICE**, (SDCL 32-26-47.1), a Class 2 Misd. and **COUNT 2: IMPROPER LANE DRIVING**, (SDCL 32-26-6), a Class 2 Misd.. **COUNT 3: CARELESS DRIVING**, (SDCL 32-24-8) was dismissed by the State of South Dakota.

It is the determination of this Court that the Defendant has been regularly held to answer for said offenses; that his plea was voluntary, knowing and intelligent; that he was represented by competent counsel.

It is therefore the Judgment of the Court that the Defendant, Jason R, Ravensborg, is guilty of **COUNT 1: OPERATING A MOTOR VEHICLE WHILE USING A MOBILE ELECTRONIC DEVICE**, (SDCL 32-26-47.1), a Class 2 Misd. and **COUNT 2: IMPROPER LANE DRIVING**, (SDCL 32-26-6), a Class 2 Misd.

And, on the 26th day of August, 2021, a sentencing hearing was held. Defendant's counsel Timothy Rensch, Attorney at Law, appearing for his client via Power of Attorney; Prosecuting

Attorneys Emily J. Sovell and Michael Moore appearing for the State; and the Court having inquired if any legal cause existed why judgment and sentence should not be pronounced, and no just cause being asserted or shown:

IT IS ORDERED AND ADJUDGED, that you JASON R. RAVNSBORG, the above- named Defendant be, and you are hereby sentenced as follows:

As to COUNT 1: OPERATING A MOTOR VEHICLE WHILE USING A MOBILE ELECTRONIC DEVICE:

1. The Defendant shall pay:
 - a) Fine in the amount of \$500.00, and,
 - b) Court costs in the amount of \$78.50.

As to COUNT 2: IMPROPER LANE DRIVING:

1. The Defendant shall pay:
 - a) Fine in the amount of \$500.00, and,
 - b) Court costs in the amount of \$78.50.

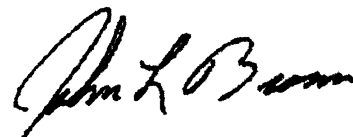
IT IS FURTHER ORDERED that Defendant shall pay costs to Hyde County in the amount of \$3,742.38.

IT IS FURTHER ORDERED that Defendant shall pay said fines and costs for a total of \$4,899.38 within thirty (30) days.

IT IS FURTHER ORDERED that Defendant's cellular phones and the vehicle currently held as evidence shall be returned to Defendant.

IT IS FURTHER ORDERED that you, JASON R. RAVNSBORG, are hereby notified that you have a right to appeal as provided by SDCL 23A-32-15, which you must exercise by filing within thirty (30) days from the date that this Judgment and Sentence is signed, attested and filed, written Notice of Appeal with the Hyde County Clerk of Courts, together with proof of service that copies of such Notice of Appeal have been served upon the Attorney General of the State of South Dakota, and the Hyde County State's Attorney.

BY THE COURT:



John L. Brown
Retired Circuit Court Judge

ATTEST:



STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF HYDE)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

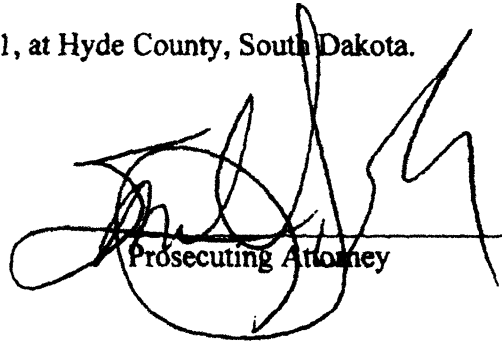
STATE OF SOUTH DAKOTA,)
 Plaintiff)
VS.)
)
JASON R. RAVNSBORG,)
 Defendant)
Dob: 04/12/1976)
)

FILE # 34MAG21-00001

DISMISSAL OF COMPLAINT
SDCL 23A-44-22

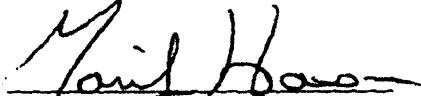
Pursuant to SDCL 23A-44-2, Emily Sovell as prosecuting attorney, dismisses with prejudice, Count 3, CARELESS DRIVING, in violation of SDCL 32-24-8, of the Complaint that has been filed in this case.

Dated this 26th day of August, 2021, at Hyde County, South Dakota.



Prosecuting Attorney

ATTEST:



Clerk of Court



MANAGEMENT'S DISCUSSION AND ANALYSIS**June 30, 2022**

Total program revenue of \$797.3 million increased by \$104.5 million, or 15.1% and expenditures of \$802.9 million increased by \$110.3 million, or 15.9% from the prior fiscal year. These increases are predominantly attributed to growth in the utilization of the Medicaid program and small increase in the Federal Medical Assistance Percentage (FMAP) rate.

COVID-19 Federal (\$1.0 million). The COVID-19 Federal fund is a major special revenue fund created in fiscal year 2020 to account for all federal grants received for the COVID-19 pandemic. A large majority of the activity in this fund is South Dakota's allocation of the Coronavirus Relief Fund (CRF) as created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the State Fiscal Recovery Fund (SFRF) as created by the American Rescue Plan Act (ARPA). Other COVID-19 related activity in this fund includes the enhanced FMAP and enhanced Supplemental Nutrition Assistance program (SNAP) from the Families First Coronavirus Response Act, Elementary and Secondary School Emergency Relief (ESSER) funds, and other federal funding sources for pandemic related programs.

In April of 2020, the State received two cash payments totaling \$1.25 billion of CRF from the U.S. Department of Treasury in accordance with the CARES Act. At the time of cash receipt, limited federal guidance was available and CRF related expenditures to the fund were slow to materialize. During fiscal year 2021, the U.S. Department of Treasury began to issue federal guidance for CRF and the State began spending the CRF grant. That spending continued into fiscal year 2022. Additionally, during fiscal year 2022, the State received two cash payments totaling \$975.3 million of SFRF. The State spent only \$3.2 million of the SFRF in fiscal year 2022.

As of June 30, 2022, the COVID-19 Federal fund reported total expenditures of \$591.3 million. Of that, \$103.8 million, or 17.6% were CRF expenditures. Other major expenditures included \$95.6 million (or 16.2%) of enhanced FMAP expenditures, \$64.6 million (or 10.9%) of enhanced SNAP expenditures, and \$57.4 million (or 9.7%) of ESSER expenditures. The remaining \$269.9 million of COVID-19 Federal Fund expenditures included over 75 different federal funding sources.

At the close of the fiscal year, the COVID-19 Federal fund had a fund balance of \$1.0 million. There is \$971.2 million consisting of unearned federal grant revenue. Most of the unearned revenue is for SFRF receipts not yet spent.

Dakota Cement Trust Fund (\$358.7 million). As created in Article XIII, Sections 20 and 21 of the Constitution of the State of South Dakota, this fund consists of the proceeds from the sale of the State Cement Plant and all investment earnings. "Four percent of the lesser of the average market value of the trust fund determined by adding the market value of the trust fund at the end of the sixteen most recent calendar quarters as of December thirty-first of that year and dividing that sum by sixteen, or the market value of the trust fund at the end of that calendar year" shall be transferred to the General Fund in support of education. The Dakota Cement Trust Fund transferred \$14.0 million to the General Fund in fiscal year 2022 and \$13.4 million in fiscal year 2021.

The fund balance in the Dakota Cement Trust Fund at June 30, 2022, was \$358.7 million and is restricted for education. This is a decrease of \$19.9 million from the previous fiscal year. The decrease resulted primarily from net investment losses of \$4.7 million and statutory required transfer to the General Fund of \$14.0 million.

Education Enhancement Trust Fund (\$676.4 million). This fund consists of monies received from the Tobacco Settlement Agreement, monies transferred from the Tobacco Securitization Fund, and General Fund appropriations for scholarship purposes. The fund is authorized by state law to make an annual distribution equal to 4.0% of its market value (less the investment expenses) into the General Fund for educational enhancement programs. Article XII, Section 6 of the Constitution of the State of South Dakota also states that, "the Education Enhancement Trust Fund may not be diverted for other purposes, nor may the principal be invaded unless appropriated by a three-fourths vote of all the members-elect of each house of the legislature." The Education Enhancement Trust Fund transferred \$25.3 million to the General Fund in fiscal year 2022 and \$23.7 million in fiscal year 2021.

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GOAL 5/2 item 4
 ELLSWORTH Doc 5

INCIDENT/INVESTIGATION REPORT

I N C I D E N T D A T A	Agency Name Mooreville Police Department			Case# 2021-006217			
	ORI NC 0490100			Date / Time Reported 11/01/2021 17:29 Mon			
	Location of Incident 500 S MAIN ST, Mooreville NC 28115			Gang/Relat NO	Vehicle Type Parking/drop	Last Known Secure 11/01/2021 17:20 Mon	
				Zone/Zones 4E		At Found 11/01/2021 17:21 Mon	
M O	#1	Crime Incident(s) (Com) Deceased Person Investigation (non-homicide) - DECESPERSON		Weapon / Tools		Activity	
	#2	Crime Incident ()		Weapon / Tools		Activity	
	#3	Crime Incident ()		Weapon / Tools		Activity	

V I C T I M	# of Victims 1		Type: PERSON/INDIVIDUAL (NOT A LE)				Injury:				Domestic: N		
	V1		Victim/Business Name (Last, First, Middle) VOLEK, MICHAEL RAY				Victim of Crime #	DOB	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status
							1	69	W	M		Non-Resident	
			Home Address 205 EXPERIMENT FARM RD, Highmore, SD 57345-				Email			Home Phone			
			Employer Name/Address				Business Phone			Mobile Phone			

O T H E R S	CODES: V- Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim)												
	Type: PERSON/INDIVIDUAL (NOT A LE OFFICER)		Injury:										
	IO		Name (Last, First, Middle) VOLEK, DLXIE LEA				Victim of Crime #	DOB	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status
							1	55	W	F		Non-Resident	
			Home Address 205 EXPERIMENT FARM RD HIGHMORE, SD 57345				Email			Home Phone			

I N V O L V E D	Type:												
	Code		Name (Last, First, Middle)				Victim of Crime #	DOB	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status
			Home Address				Email			Home Phone			
			Employer Name/Address				Business Phone			Mobile Phone			

P R O P E R T Y	1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown ("OJ" = Recovered for Other Jurisdiction)											
	VI #	Code	Status Pm/Tc	Value	OJ	QTY	Property Description	Make/Model	Serial Number			

Officer/ID#	GONZALEZ, G. L. (PATL, PTL) (1406)		
Invest ID#	GONZALEZ, G. L. (PATL, PTL) (1406)		
Supervisor	DINGLER, J. H. (PAIR, PTL) (2879)		

Status	Complainant Signature	Case Status <i>Closed / Leads Exhausted</i>	11/02/2021	Case Disposition:	Page 1
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GOAC 5/2 item 4
 ELLSWORTH Doc 5

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			Entry	Exit	Security	
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			Entry	Exit	Security	

V I C T I M	# of Victims / Type: PERSON/INDIVIDUAL (NOT A LE)		Injury:		Domestic: N	
	V1	Victim/Business Name (Last, First, Middle) VOLEK, MICHAEL RAY		Victim of Crime # 1	DOB Age 69	Race Sex W M
	Home Address 205 EXPERIMENT FARM RD, Highmore, SD 57345-		Email		Resident Status Non-Resident	
	Employer Name/Address		Business Phone		Military Branch/Status	
	VYR	Make	Model	Style	Color	Lic/Lis

O T H E R S	CODES: V - Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim)					
	Type: PERSON/INDIVIDUAL (NOT A LE OFFICER)		Injury:			
	IO	Name (Last, First, Middle) VOLEK, DIXIE LEA		Victim of Crime # 1	DOB Age 55	Race Sex W F
	Home Address 205 EXPERIMENT FARM RD HIGHMORE, SD 57345		Email		Resident Status Non-Resident	
	Employer Name/Address		Business Phone		Military Branch/Status	

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Status	Complainant Signature		Case Disposition:	Page 1	

Committee: House Select Committee on Investigation Wednesday, November 10, 2021 2:00 PM

Roll Call

Present: Rep. Gosch, Rep. Kevin Jensen, Rep. Stevens, and Rep. Jamie Smith
Present (Remote): Rep. Barthel and Rep. Haugaard
Excused: Rep. Hansen, Rep. Cwach, and Rep. Kent Peterson

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Representative Gosch

Presentation by LRC staff on impeachment fundamentals

Justin Goetz - Chief Research and Legal Analyst

Scope of Committee Work: S.D. Const., Art. III, § 31, petition of request for special session

Legal Authorities: S.D. Const., Art. XVI

Duties of Committee: HR 7001, subpoena authority, contempt, special counsel, resources, work product, information handling

MOTION: To direct LRC staff to work with the special counsel to propose rules of process for the select committee's business.

Moved by: Stevens
Second by: Jamie Smith
Action: Prevailed by roll call vote (6-0-3-0)

Voting Yes: Gosch, Barthel, Kevin Jensen, Haugaard, Stevens, and Jamie Smith

Excused: Hansen, Cwach, and Kent Peterson

MOTION: ADJOURN

Moved by: Jamie Smith
Second by: Stevens
Action: Prevailed by voice vote

, Committee Secretary

/s/ SPENCER GOSCH
Spencer Gosch, Chair

GOAC 5/2 Item 4
ELLSWORTH Doc 7

MINUTES

House Select Committee on Investigation

Representative Spencer Gosch, Chair
Representative Mike Stevens, Vice Chair



Second Meeting, 2021 Second Special Session
Tuesday, December 28, 2021

Room 362 – State Capitol
Pierre, South Dakota

The second meeting of the House Select Committee on Investigation was called to order by Representative Spencer Gosch at 10:00 a.m. (CST) in Room 362 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; 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.

Oath

Ms. Patricia Miller, Chief Clerk of the House of Representatives, gave the committee members their oath, which was subscribed to and placed on file in the office of the Secretary of State.

Executive Session

Representative Stevens moved, seconded by Representative Barthel, 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 10:12 a.m.

Representative Hansen moved, seconded by Representative Jensen, 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 5:50 p.m.

Adjournment

Representative Haugaard 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 5:54 p.m.

GOAC S/2 17024
ELLSUOWTD Doc 8

MINUTES

House Select Committee on Investigation

Representative Spencer Gosch, Chair
Representative Mike Stevens, Vice Chair



Second Meeting, 2021 Second Special Session
Wednesday, December 29, 2021

Room 362 – State Capitol
Pierre, South Dakota

The House Select Committee on Investigation was called to order by Representative Spencer Gosch at 9:00 a.m. (CST) in Room 362 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; 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 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 9:12 a.m.

Representative Cwach moved, seconded by Representative Stevens, 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 4:35 p.m.

Committee Action

Representative Smith moved, seconded by Representative Barthel, to establish the process that the House Select Committee on Investigation, by a majority vote of its members, authorize the special counsel to engage in discovery within the scope of HR 7001. 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 Peterson moved, seconded by Representative Jensen, to authorize the special counsel to issue requests for admission, requests for documents, interrogatories, requests to testify, and informal means of discovery within the scope of HR 7001, and to provide copies of these requests to counsel for Attorney General Ravensborg. 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 Barthel, to subpoena, under the authority and the scope of relevance provided in HR 7001, the following persons to testify in open session of the Select Committee, as specified, and to provide copies of the subpoenas to counsel for Attorney General Ravnsborg:

- **Craig Price, Secretary of the Department of Public Safety, to testify on January 18 or 19, 2022;**
- **Jeramie Quam, North Dakota Bureau of Criminal Investigation, to testify on January 18 or 19, 2022;**
- **John G. Daily, Jackson Hole Scientific Investigations, to testify on January 18 or 19, 2022;**
- **Joe Arenz, North Dakota Bureau of Criminal Investigation, to testify on January 18 or 19, 2022;**
- **Trooper John Berndt, South Dakota Highway Patrol, to testify on January 18 or 19, 2022.**

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 Haugaard moved, seconded by Representative Jensen, to subpoena to produce documents to the Select Committee under the authority and the scope of relevance provided in HR 7001, from the following entities, as specified, and to provide copies of the subpoenas to counsel for Attorney General Ravnsborg:

- **South Dakota Department of Public Safety;**
- **North Dakota Bureau of Criminal Investigation;**
- **Jackson Hole Scientific Investigations;**
- **Hyde County States Attorney's Office.**

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.

Adjournment

Representative Barthel 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 4:43 p.m.

MINUTES

House Select Committee on Investigation

Representative Spencer Gosch, Chair
Representative Mike Stevens, Vice Chair



Third Meeting, 2021 Second Special Session
Monday, January 17, 2022

Room 362 – State Capitol
Pierre, South Dakota

The third meeting of the House Select Committee on Investigation was called to order by Representative Spencer Gosch at 4:40 p.m. (CST) in Room 362 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, Kevin Jensen, Kent Peterson, Jamie Smith, and Mike Stevens (Vice Chair). Representative Steven Haugaard was excused.

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 Stevens moved, seconded by Representative Peterson, 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 4:41 p.m.

Representative Smith moved, seconded by Representative Peterson, 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 8:01 p.m.

Committee Action

Representative Smith moved, seconded by Representative Peterson, to approve the redactions of Special Counsel to the materials obtained by the Committee, for purposes of public testimony to be received by the Committee. The motion prevailed on a roll call vote with 7 voting AYE, 1 EXCUSED, and 1 NOT VOTING. Voting AYE: Barthel, Cwach, Hansen, Jensen, Peterson, Smith, and Stevens. EXCUSED: Haugaard. NOT VOTING: Gosch.

Adjournment

Representative Stevens 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 8:06 p.m.

MINUTES

House Select Committee on Investigation

Representative Spencer Gosch, Chair
Representative Mike Stevens, Vice Chair



Fourth Meeting, 2021 Second Special Session
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 Ravensborg, 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. Ravensborg'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 Ravensborg 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. Ravensborg 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. Ravensborg 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 swabbed 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 Ravensborg, Jason Ravensborg'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 Ravensborg. 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. Ravensborg'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. Ravensborg's vehicle. When you think of that type of glass, there was a large hole in Mr. Ravensborg'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 Ravensborg 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. Ravensborg'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 Ravensborg 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 Ravensborg 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 Ravensborg'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 Ravensborg'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 Ravensborg'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 Ravensborg, 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 Ravensborg 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 Ravensborg 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. Ravensborg 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 Ravensborg'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. Ravensborg?

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. Ravensborg 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, Ravensborg 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 Ravensborg 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 Ravensborg?

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 Ravensborg?

Response: I don't recall anything with the sheriff being deceptive that stood out to me. With AG Ravensborg, 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 Nemeč'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 Ravensborg'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 Nemecek, 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 Ravensborg.

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 Ravensborg. He was contacted by Ravensborg after the accident. Ravensborg 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 Ravensborg 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 Ravensborg 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 Ravensborg 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 Nemeč.

Response: Victor Nemeč is Joe Boever's cousin, and the night that Joe Boever had drove his pickup into the ditch, Joe Boever contacted Victor Nemeč. 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 Nemeč.

Response: The interview we did with Barnabas Nemeč 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 Nemeč 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.

MINUTES

House Select Committee on Investigation

Representative Spencer Gosch, Chair
Representative Mike Stevens, Vice Chair



Fifth Meeting, 2021 Second Special Session
Monday, January 31, 2022

Room 362 – State Capitol
Pierre, South Dakota

The fifth meeting of the House Select Committee on Investigation was called to order by Representative Spencer Gosch at 3:30 p.m. (CST) via teleconference and in Room 362 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 (via Teams), and Jamie Smith. Representative Mike Stevens was excused.

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 Smith 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 3:45 p.m.

Representative Hansen moved, seconded by Representative Smith, 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 5:54 p.m.

Committee Action

Representative Hansen moved, seconded by Representative Barthel, to publicly disclose an updated table of contents of the committee's record produced by the special counsel. The motion prevailed on a roll call vote with 7 voting AYE, 1 EXCUSED, and 1 NOT VOTING. Voting AYE: Barthel, Cwach, Hansen, Haugaard, Jensen, Peterson, and Smith. EXCUSED: Stevens. NOT VOTING: Gosch.

Representative Jensen moved, seconded by Representative Hansen, to disclose the unredacted record compiled by this committee to members of the House, and to update the disclosure within a reasonable period should the committee gather additional records after this date, with these records available in a secure location within the office suite of the Legislative Research Council. The motion prevailed on a roll call vote with 7 voting AYE, 1 EXCUSED, and 1 NOT VOTING. Voting AYE: Barthel, Cwach, Hansen, Haugaard, Jensen, Peterson, and Smith. EXCUSED: Stevens. NOT VOTING: Gosch.

Representative Cwach moved, seconded by Representative Hansen, that the special counsel request federal and/or out-of-state law enforcement agencies to investigate the occurrence of phone calls attempting to influence members of this committee regarding the impeachment of Attorney General Ravnsborg, and request that Attorney General Ravnsborg recuse himself from any such investigation. The motion prevailed on a roll call vote with 7 voting AYE, 1 EXCUSED, and 1 NOT VOTING. Voting AYE: Barthel, Cwach, Hansen, Haugaard, Jensen, Peterson, and Smith. EXCUSED: Stevens. NOT VOTING: Gosch.

Representative Smith moved, seconded by Representative Hansen, to subpoena, under the authority and the scope of relevance provided in HR 7001, the following persons to testify in open session of the Select Committee on February 24, 2022, and to provide copies of the subpoenas to counsel for Attorney General Ravnsborg:

- ***Tim Bormann***
- ***David Natvig***
- ***Emily Sovell***
- ***Michael Moore***

The motion prevailed on a roll call vote with 7 voting AYE, 1 EXCUSED, and 1 NOT VOTING. Voting AYE: Barthel, Cwach, Hansen, Haugaard, Jensen, Peterson, and Smith. EXCUSED: Stevens. NOT VOTING: Gosch.

Adjournment

Representative Smith 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 5:59 p.m.

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To: The Chief Justice
Justice Thomas
Justice Breyer
Justice Sotomayor
Justice Kagan
Justice Gorsuch
Justice Kavanaugh
Justice Barrett

From:

Justice Alito

Circulated: February 10, 2022

Recirculated: _____

1st Draft

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 19-1392

THOMAS E. DOBBS, STATE HEALTH OFFICER OF
THE MISSISSIPPI DEPARTMENT OF HEALTH,
ET AL., PETITIONERS v. JACKSON WOMEN'S
HEALTH ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

[February ____, 2022]

JUSTICE ALITO delivered the opinion of the Court.

Abortion presents a profound moral issue on which Americans hold sharply conflicting views. Some believe fervently that a human person comes into being at conception and that abortion ends an innocent life. Others feel just as strongly that any regulation of abortion invades a woman's right to control her own body and prevents women from achieving full equality. Still others in a third group think that abortion should be allowed under some but not all circumstances, and those within this group hold a variety of views about the particular restrictions that should be imposed.

For the first 185 years after the adoption of the Constitution, each State was permitted to address this issue in accordance with the views of its citizens. Then, in 1973, this Court decided *Roe v. Wade*, 410 U. S. 113. Even though the Constitution makes no mention of abortion, the Court held that it confers a broad right to obtain one. It did not claim that American law or the common law had ever recognized

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For the first 185 years after the adoption of the Constitution, each State was permitted to address this issue in accordance with the views of its citizens. Then, in 1973, this Court decided *Roe v. Wade*, 410 U. S. 113. Even though the Constitution makes no mention of abortion, the Court held that it confers a broad right to obtain one. It did not claim that American law or the common law had ever recognized

Opinion of the Court

such a right, and its survey of history ranged from the constitutionally irrelevant (*e.g.*, its discussion of abortion in antiquity) to the plainly incorrect (*e.g.*, its assertion that abortion was probably never a crime under the common law). After cataloguing a wealth of other information having no bearing on the meaning of the Constitution, the opinion concluded with a numbered set of rules much like those that might be found in a statute enacted by a legislature.

Under this scheme, each trimester of pregnancy was regulated differently, but the most critical line was drawn at roughly the end of the second trimester, which, at the time, corresponded to the point at which a fetus was thought to achieve "viability," *i.e.*, the ability to survive outside the womb. Although the Court acknowledged that States had a legitimate interest in protecting "potential life,"¹ it found that this interest could not justify any restriction on pre-viability abortions. The Court did not explain the basis for this line, and even abortion supporters have found it hard to defend *Roe's* reasoning. One prominent constitutional scholar wrote that he "would vote for a statute very much like the one the Court end[ed] up drafting" if he were "a legislator," but his assessment of *Roe* was memorable and brutal: *Roe* was "not constitutional law" at all and gave almost no sense of an obligation to try to be."²

At the time of *Roe*, 30 States still prohibited abortion at all stages. In the years prior to that decision, about a third of the States had liberalized their laws, but *Roe* abruptly ended that political process. It imposed the same highly restrictive regime on the entire Nation, and it effectively struck down the abortion laws of every single State.³ As Justice Byron White aptly put it in his dissent, the decision

¹ *Roe*, 410 U. S., at 163.

² J. Ely, *The Wages of Crying Wolf: A Comment on Roe v. Wade*, 82 *Yale L. J.* 920, 926, 947 (1973) (Ely).

³ L. Tribe, *Foreword: Toward A Model of Roles in the Due Process of Life and Law*, 87 *Harv. L. Rev.* 1, 2 (1973) (Tribe).

Opinion of the Court

represented the “exercise of raw judicial power,” 410 U. S., at 222, and it sparked a national controversy that has embittered our political culture for a half-century.⁴

Eventually, in *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833 (1992), the Court revisited *Roe*, but the members of the Court split three ways. Two Justices expressed no desire to change *Roe* in any way.⁵ Four others wanted to overrule the decision in its entirety.⁶ And the three remaining Justices, who jointly signed the controlling opinion, took a third position.⁷ Their opinion did not endorse *Roe*’s reasoning, and it even hinted that one or more of its authors might have “reservations” about whether the Constitution protects a right to abortion.⁸ But the opinion concluded that *stare decisis*, which calls for prior decisions to be followed in most instances, required adherence to what it called *Roe*’s “central holding”—that a State may not constitutionally protect fetal life before “viability”—even if that holding was wrong.⁹ Anything less, the opinion claimed, would undermine respect for this Court and the rule of law.

Paradoxically, the judgment in *Casey* did a fair amount of overruling. Several important abortion decisions were

⁴ See R. Ginsburg, *Speaking in a Judicial Voice*, 67 N. Y. U. L. Rev. 1185, 1208 (1992) (“*Roe* . . . halted a political process that was moving in a reform direction and thereby, I believed, prolonged divisiveness and deferred stable settlement of the issue.”).

⁵ See 505 U. S., at 911 (Stevens, J., concurring in part and dissenting in part); *id.*, at 922 (Blackmun, J., concurring in part, concurring in the judgment in part, and dissenting in part).

⁶ See 505 U. S., at 944 (Rehnquist, C. J., concurring in the judgment in part and dissenting in part); *id.*, at 979 (Scalia, J., concurring in the judgment in part and dissenting in part).

⁷ See 505 U. S., at 843 (plurality opinion of O’Connor, Kennedy, and Souter, JJ.).

⁸ 505 U. S., at 853.

⁹ 505 U. S., at 860 (plurality opinion).

Opinion of the Court

overruled *in toto*, and *Roe* itself was overruled in part.¹⁰ *Casey* threw out *Roe*'s trimester scheme and substituted a new rule of uncertain origin under which States were forbidden to adopt any regulation that imposed an "undue burden" on a woman's right to have an abortion.¹¹ The decision provided no clear guidance about the difference between a "due" and an "undue" burden. But the three Justices who authored the controlling opinion "call[ed] the contending sides of a national controversy to end their national division" by treating the Court's decision as the final settlement of the question of the constitutional right to abortion.¹²

As has become increasingly apparent in the intervening years, *Casey* did not achieve that goal. Americans continue to hold passionate and widely divergent views on abortion, and state legislatures have acted accordingly. Some have recently enacted laws allowing abortion, with few restrictions, at all stages of pregnancy. Others have tightly restricted abortion beginning well before viability. And in this case, 26 States have expressly asked this Court to overrule *Roe* and *Casey* and allow the States to regulate or prohibit pre-viability abortions.

Before us now is one such state law. The State of Mississippi asks us to uphold the constitutionality of a law that generally prohibits an abortion after the fifteenth week of pregnancy—several weeks before the point at which a fetus is now regarded as "viable" outside the womb. In defending this law, the State's primary argument is that we should reconsider and overrule *Roe* and *Casey* and once again allow each State to regulate abortion as its citizens wish. On the other side, respondents and the Solicitor General ask us to

¹⁰ 505 U. S., at 861, 870, 873 (overruling *Akron v. Akron Center for Reproductive Health, Inc.*, 462 U. S. 416 (1983), and *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U. S. 747 (1986)).

¹¹ 505 U. S., at 874 (plurality opinion).

¹² *Casey*, 505 U. S., at 567.

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reaffirm *Roe* and *Casey*, and they contend that the Mississippi law cannot stand if we do so. Allowing Mississippi to prohibit abortions after 15 weeks of pregnancy, they argue, “would be no different than overruling *Casey* and *Roe* entirely.” Brief for Respondents 43. They contend that “no half-measures” are available and that we must either reaffirm or overrule *Roe* and *Casey*. *Id.*, at 50.

We hold that *Roe* and *Casey* must be overruled. The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of *Roe* and *Casey* now chiefly rely—the Due Process Clause of the Fourteenth Amendment. That provision has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U. S. 702, 721 (1997) (internal quotation marks omitted).

The right to abortion does not fall within this category. Until the latter part of the 20th century, such a right was entirely unknown in American law. Indeed, when the Fourteenth Amendment was adopted, three quarters of the States made abortion a crime at all stages of pregnancy. The abortion right is also critically different from any other right that this Court has held to fall within the Fourteenth Amendment’s protection of “liberty.” *Roe*’s defenders characterize the abortion right as similar to the rights recognized in past decisions involving matters such as intimate sexual relations, contraception, and marriage, but abortion is fundamentally different, as both *Roe* and *Casey* acknowledged, because it destroys what those decisions called “fetal life” and what the law now before us describes as an “unborn human being.”¹³

Stare decisis, the doctrine on which *Casey*’s controlling

¹³ Miss. Code Ann. §41-41-191(4)(b).

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opinion was based, does not compel unending adherence to *Roe*'s abuse of judicial authority. *Roe* was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences. And far from bringing about a national settlement of the abortion issue, *Roe* and *Casey* have enflamed debate and deepened division.

It is time to heed the Constitution and return the issue of abortion to the people's elected representatives. "The permissibility of abortion, and the limitations, upon it, are to be resolved like most important questions in our democracy: by citizens trying to persuade one another and then voting." *Casey*, 505 U. S., at 979 (Scalia, J., concurring in the judgment in part and dissenting in part). That is what the Constitution and the rule of law demand.

I

The law at issue in this case, Mississippi's Gestational Age Act, see Miss. Code Ann. §41-41-191, contains this central provision: "Except in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly perform or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks." §4(b).¹⁴

To support this Act, the legislature made a series of factual findings. It began by noting that, at the time of enactment, only six countries besides the United States "permit[ted] nontherapeutic or elective abortion-on-demand after the twentieth week of gestation."¹⁵ §2(a). The legislature then found that at five or six weeks' gestational age an

¹⁴ The Act defines "gestational age" to be "the age of an unborn human being as calculated from the first day of the last menstrual period of the pregnant woman." §3(f).

¹⁵ Those other six countries were Canada, China, the Netherlands, North Korea, Singapore, and Vietnam. See A. Baglini, Charlotte Lozier

Opinion of the Court

“unborn human being’s heart begins beating;” at eight weeks the “unborn human being begins to move in the womb;” at nine weeks “all basic physiological functions are present;” at ten weeks “vital organs begin to function,” and “[h]air, fingernails, and toenails begin to form;” at eleven weeks “an unborn human being’s diaphragm is developing,” and he or she “may move about freely in the womb;” and at twelve weeks the “unborn human being” has “taken on the human form in all relevant respects.” §2(b)(i) (quoting *Gonzales v. Carhart*, 550 U. S. 124, 160 (2007)). It found that most abortions after fifteen weeks employ “dilation and evacuation procedures which involve the use of surgical instruments to crush and tear the unborn child,” and it concluded that the “intentional commitment of such acts for nontherapeutic or elective reasons is a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession.” §2(b)(ii).

Respondents are an abortion clinic, Jackson Women’s Health Organization, and one of its doctors. On the day the Gestational Age Act was enacted, respondents filed suit in federal district court against various Mississippi officials, alleging that the Act violated this Court’s precedents establishing a constitutional right to abortion. The District Court granted summary judgment in favor of respondents and permanently enjoined enforcement of the Act, reasoning that “viability marks the earliest point at which the State’s interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions” and

Institute, *Gestational Limits on Abortion in the United States Compared to International Norms*, 6-7 (2014); *Is the United States one of seven countries that ‘allow elective abortions after 20 weeks of pregnancy?’*, Wash. Post (Oct. 8, 2017) (stating that the claim made by the Mississippi Legislature and the Charlotte Lozier Institute was “backed by data”). A more recent compilation from the Center for Reproductive Rights indicates that Iceland and Guinea-Bissau are now also similarly permissive. See *The World’s Abortion Laws*, Center for Reproductive Rights (Feb. 23, 2021) (last accessed Jan. 16, 2022).

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that fifteen weeks' gestational age is "prior to viability." 349 F. Supp. 3d 536, 539-540 (SD Miss 2019) (internal quotation marks and citation omitted). The Fifth Circuit affirmed. 945 F. 3d 265 (CA5 2019).

We granted certiorari to resolve the question whether "all pre-viability prohibitions on elective abortions are unconstitutional." Pet. for Cert. at i. Petitioners' primary defense of the Mississippi Gestational Age Act is that *Roe* and *Casey* were wrongly decided and that "the Act is constitutional because it satisfies rational-basis review." Brief for Petitioners 49. Respondents answer that allowing Mississippi to ban pre-viability abortions "would be no different than overruling *Casey* and *Roe* entirely." Brief for Respondents 43. They tell us that "no half-measures" are available: we must either reaffirm or overrule *Roe* and *Casey*. *Id.*, at 50.

II

We begin by considering the critical question whether the Constitution, properly understood, confers a right to obtain an abortion. Skipping over that question, the controlling opinion in *Casey* reaffirmed *Roe*'s "central holding" based solely on the doctrine of *stare decisis*, but as we will explain, proper application of *stare decisis* required an assessment of the strength of the grounds on which *Roe* was based. See *infra*, at ____.

We therefore turn to the question that the *Casey* plurality did not consider, and we address that question in three steps. First, we explain the standard that our cases have used in determining whether the Fourteenth Amendment's reference to "liberty" protects a particular right. Second, we examine whether the right at issue in this case is rooted in our Nation's history and tradition and whether it is an essential component of what we have described as "ordered liberty." Finally, we consider whether a right to obtain an abortion is supported by other precedents.

Opinion of the Court

A

I

Constitutional analysis must begin with “the language of the instrument,” *Gibbons v. Ogden*, 9 Wheat. 1, 186–189 (1824), which offers a “fixed standard” for ascertaining what our founding document means, J. Story, *Commentaries on the Constitution* §399 (1833). The Constitution makes no express reference to a right to obtain an abortion, and therefore those who claim that it protects such a right must show that the right is somehow implicit in the constitutional text.

Roe, however, was remarkably loose in its treatment of the constitutional text. It held that the abortion right, which is not mentioned in the Constitution, is part of a right to privacy, which is also not mentioned. See 410 U. S., at 152–153. And that privacy right, *Roe* observed, had been found to spring from no fewer than five different constitutional provisions—the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. *Id.*, at 152.

The Court’s discussion left open at least three ways in which some combination of these provisions could protect the abortion right. One possibility was that the right was “founded . . . in the Ninth Amendment’s reservation of rights to the people.” *Id.*, at 153. Another was that the right was rooted in the First, Fourth, or Fifth Amendment, or in some combination of those provisions, and that this right had been “incorporated” into the Due Process Clause of the Fourteenth Amendment just as many other Bill of Rights provisions had by then been incorporated. *Ibid*; see also *McDonald v. Chicago*, 561 U.S. 742, 763–766 (2010) (plurality opinion) (discussing incorporation). And a third path was that the First, Fourth, and Fifth Amendments played no role and that the right was simply a component of the “liberty” protected by the Fourteenth Amendment’s Due Process Clause. 410 U.S., at 153. *Roe* expressed the

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“feel[ing]” that the Fourteenth Amendment was the provision that did the work, but its message seemed to be that the abortion right could be found *somewhere* in the Constitution and that specifying its exact location was not of paramount importance.¹⁶ The *Casey* Court did not defend this unfocused analysis and instead grounded its decision solely on the theory that the right to obtain an abortion is part of the “liberty” protected by the Fourteenth Amendment’s Due Process Clause.

We discuss this theory in depth below, but before doing so, we briefly address one additional constitutional provision that some of respondents’ amici have now offered as yet another potential home for the abortion right: the Fourteenth Amendment’s Equal Protection Clause. See Brief for the United States as *Amicus Curiae* 24; see also Brief of Equal Protection Constitutional Law Scholars as *Amici Curiae*. Neither *Roe* nor *Casey* saw fit to invoke this theory, and it is squarely foreclosed by our precedents, which establish that a State’s regulation of abortion is not a sex-based classification and is thus not subject to the “heightened scrutiny” that applies to such classifications.¹⁷ The regulation of a medical procedure that only one sex can undergo does not trigger heightened constitutional scrutiny unless the regulation is a “mere pretext[] designed to effect an invidious discrimination against members of one sex or the other.” *Geduldig v. Aiello*, 417 U. S. 484, 496 n. 20 (1974). And, as the Court has stated, the “goal of preventing abortion” does not constitute “invidiously discriminatory animus against women.” *Bray v. Alexandria Women’s*

¹⁶ The Court’s words were as follows: “This right of privacy, whether it be founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment’s reservation of rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” 410 U. S., at 153.

¹⁷ See, e.g., *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1689 (2017).

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Health Clinic, 506 U. S. 263, 273–274 (1993) (internal quotation marks omitted). Accordingly, laws regulating or prohibiting abortion are not subject to heightened scrutiny. Rather, they are governed by the same standard of review as other health and safety measures.¹⁸

With this new theory addressed, we turn to *Casey*'s bold assertion that the abortion right is an aspect of the "liberty" protected by the Due Process Clause of the Fourteenth Amendment, 505 U. S., at 846; Brief for Respondents 17; Brief for United States as *Amicus Curiae* 21–22.

2

The underlying theory on which this argument rests—that the Fourteenth Amendment's Due Process Clause provides substantive, as well as procedural, protection for "liberty"—has long been controversial. But our decisions have held that the Due Process Clause protects two categories of substantive rights.

The first consists of rights guaranteed by the first eight amendments. Those amendments originally applied only to the federal government, *Barron ex rel. Tiernan v. Mayor of Baltimore*, 7 Pet. 243, 247–251 (1833) (opinion of Marshall, C. J.), but this Court has held that the Due Process Clause of the Fourteenth Amendment "incorporates" the great majority of those rights and thus makes them equally applicable to the States. See *McDonald*, 561 U. S., at 763–767 & nn. 12–13. The second category—which is the one in question here—comprises a select list of fundamental rights that are not mentioned anywhere in the Constitution.

In deciding whether a right falls into either of these categories, the Court has long asked whether the right is "deeply rooted in [our] history and tradition" and whether it is essential to our Nation's "scheme of ordered liberty."

¹⁸ We discuss this standard in Part V of this opinion.

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Timbs v. Indiana, 586 U. S. ____ (2019) (slip op. at 3) (internal quotation marks omitted); *McDonald*, 561 U. S., at 764; *Glucksberg*, 521 U. S., at 721 (1997).¹⁹ And in conducting this inquiry, we have engaged in a careful analysis of the history of the right at issue.

Justice Ginsburg's opinion for the Court in *Timbs v. Indiana*, *supra*, is a recent example. In concluding that the Eighth Amendment's protection against excessive fines is "fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition," 568 U. S., at ____ (slip op., at 7) (citation omitted), her opinion traced the right back to Magna Carta, Blackstone's *Commentaries*, and 35 of the 37 state constitutions in effect at the ratification of the Fourteenth Amendment. *Id.*, at ____ (slip op., at 3-7).

A similar inquiry was undertaken in *McDonald*, *supra*, which held that the Fourteenth Amendment protects the right to keep and bear arms. The lead opinion surveyed the origins of the Second Amendment, the debates in Congress about the adoption of the Fourteenth Amendment, the state constitutions in effect when that Amendment was ratified (at least 22 of the 37 States protected the right to keep and bear arms), federal laws enacted during the same period, and other relevant historical evidence. 561 U. S., at 767-777. Only then did the opinion conclude that "the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty." 561

¹⁹ See also, e.g., *Duncan v. Louisiana*, 391 U.S. 145, 148 (1968) (asking whether "a right is among those fundamental principles of liberty and justice which lie at the base of our civil and political institutions"); *Palko v. Connecticut*, 302 U.S. 319, 327 (1937) (requiring "a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental" (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934))).

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U. S., at 778; see also *id.*, at 822–850 (THOMAS, J., concurring in part and concurring in the judgment) (surveying history and reaching the same result under Fourteenth Amendment's Privileges or Immunities Clause).

Timbs and *McDonald* concerned the question whether the Fourteenth Amendment protects rights that are expressly set out in the Bill of Rights, and it would be anomalous if similar historical support were not required when a putative right is not mentioned anywhere in the Constitution. Thus, in *Glucksberg*, which held that the Due Process Clause does not confer a right to assisted suicide, the Court surveyed more than 700 years of “Anglo-American common law tradition,” 521 U. S., at 710, and made clear that a fundamental right must be “objectively, deeply rooted in this Nation’s history and tradition,” *id.*, at 720–721.

Historical inquiries of this nature are essential whenever we are asked to recognize a new component of the “liberty” protected by the Due Process Clause because the term “liberty” alone provides little guidance. “Liberty” is a capacious term. As Lincoln once said: “We all declare for Liberty; but in using the same word we do not all mean the same thing.”²⁰ In a well-known essay, Isaiah Berlin reported that “[h]istorians of ideas” had catalogued more than 200 different senses in which the terms had been used.²¹

In interpreting what is meant by the Fourteenth Amendment’s reference to “liberty,” we must guard against the natural human tendency to confuse what that Amendment protects with our own ardent views about the liberty that Americans should enjoy. That is why the Court has long been “reluctant” to recognize rights that are not mentioned in the Constitution. *Collins v. Harker Heights*, 503 U. S. 115, 125 (1992). “Substantive due process has at times been

²⁰ 7 The Collected Works of Abraham Lincoln, Address at a Sanitary Fair, at 301 (April 18, 1864).

²¹ I. Berlin, *Four Essays on Liberty* 121 (1969).

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a treacherous field for this Court," *Moore v. East Cleveland*, 431 U. S. 494, 503 (1977) (plurality opinion), and it has sometimes led the Court to usurp authority that the Constitution entrusts to the people's elected representatives. See *Regents of Univ. of Mich. v. Ewing*, 474 U. S. 214, 225–226 (1985). As the Court cautioned in *Glucksberg*, "[w]e must . . . exercise the utmost care whenever we are asked to break new ground in this field, lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court." 521 U. S., at 720 (internal citation and quotation marks omitted).

On occasion, when the Court has ignored the "[a]ppropriate limits" imposed by "respect for the teachings of history," *Moore*, 431 U.S., at 503, it has fallen into the freewheeling judicial policymaking that characterized discredited decisions such as *Lochner v. New York*, 198 U. S. 45, 25 (1905). The Court must not fall prey to such an unprincipled approach. Instead, guided by the history and tradition that map the essential components of our Nation's concept of ordered liberty, we must ask what the *Fourteenth Amendment* means by the term "liberty." When we engage in that inquiry in the present case, the clear answer is that the *Fourteenth Amendment* does not protect the right to an abortion.²²

²² That is true regardless of whether we look to the Amendment's Due Process Clause or its Privileges or Immunities Clause. Some scholars and Justices have maintained that the Privileges or Immunities Clause is the provision of the *Fourteenth Amendment* that guarantees substantive rights. See, e.g., *McDonald v. Chicago*, 561 U. S. 742, 813–850 (2010) (THOMAS, J., concurring); *Duncan v. Louisiana*, 391 U. S. 145, 165–166 (1968) (BLACK, J., concurring); A. Amar, *Bill of Rights: Creation and Reconstruction* 163–180 (1998) (Amar); J. Ely, *Democracy and Distrust* 22–30 (1980); 2 W. Crosskey, *Politics and the Constitution in the History of the United States 1059–1095* (1953). But even on that view, such a right would need to be rooted in the Nation's history and tradition. See *Corfield v. Coryell*, 6 F. Cas. 546, 551–552 (No. 3,230) (CC ED Pa. 1825) (describing unenumerated rights under the Privileges and Immunities

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B

1

Until the latter part of the 20th century, there was no support in American law for a constitutional right to obtain an abortion. Zero. None. No state constitutional provision had recognized such a right. Until a few years before *Roe* was handed down, no federal or state court had recognized such a right. Nor had any scholarly treatise of which we are aware. And although law review articles are not reticent about advocating new rights, the earliest article proposing a constitutional right to abortion that has come to our attention was published only a few years before *Roe*.²³

Not only was there no support for such a constitutional right until shortly before *Roe*, but abortion had long been a *crime* in every single State. At common law, abortion was criminal in at least some stages of pregnancy and was regarded as unlawful and could have very serious consequences at all stages. American law followed the common law until a wave of statutory restrictions in the 1800s expanded criminal liability for abortions. By the time of the adoption of the Fourteenth Amendment, three-quarters of the States had made abortion a crime at any stage of pregnancy, and the remaining States would soon follow.

Clause, U. S. Const. Art. IV, §2, as those “fundamental” rights “which have, at all time, been enjoyed by the citizens of the several states”); Amar 176 (relying on *Corfield* to interpret the Privileges or Immunities Clause); cf. *McDonald, supra*, at 819–820, 832, 854 (THOMAS, J., concurring in part and concurring in the judgment) (reserving the question whether the Privileges or Immunities Clause protects “any rights besides those enumerated in the Constitution”).

²³ See R. Lucas, *Federal Constitutional Limitations on the Enforcement and Administration of State Abortion Statutes*, 46 N. C. L. Rev. 730 (1968); see also D. Garrow, *Liberty and Sexuality* 334–335 (1994) (stating that Mr. Lucas was “undeniably the first person to fully articulate on paper” the argument that “a woman’s right to choose abortion was a fundamental individual freedom protected by the U. S. Constitution’s guarantee of personal liberty”).

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Roe either ignored or misstated this history, and *Casey* declined to reconsider *Roe*'s faulty historical analysis. It is therefore important to set the record straight.

2

i

We begin with the common law, under which abortion was a crime at least after “quickening”—*i.e.*, the first felt movement of the fetus in the womb, which usually occurs between the 16th and 18th week of pregnancy.²⁴

The “eminent common-law authorities (Blackstone, Coke, Hale, and the like),” *Kahler v. Kansas*, 589 U. S. ___, ___ (2020) (slip op., at 7), *all* describe abortion after quickening as criminal. Henry de Bracton’s 13th-century treatise explained that if a person has “struck a pregnant woman, or has given her poison, whereby he has caused an abortion, if the foetus be already formed and animated, and particularly if it be animated, he commits homicide.” H. Bracton, *De Legibus et Consuetudinibus Angliae* 279 (T. Twiss ed. 1879); see also 1 Fleta ch. 20, reprinted in 53 *Selden Soc’y* 60–61 (H.G. Richardson & G.O Sayles eds. 1953)

²⁴ The exact meaning of “quickening” is subject to some debate. Compare Brief for *Amici Curiae* Scholars of Jurisprudence John M. Finnis and Robert P. George in Support of Petitioners 12–14 & n.32. (“a quick child” meant simply a “live” child, and under the era’s outdated knowledge of embryology, a fetus was thought to become “quick” at around the sixth week of pregnancy), with Brief for *Amici Curiae* American Historical Association and Organization of American Historians Br. 6 n. 2 (“quick” and “quickening” consistently meant “the woman’s perception of fetal movement”). We need not wade into this debate. First, it suffices for present purposes to show that abortion was criminal by *at least* the 16th or 18th week of pregnancy. Second, as we will show, during the relevant period—*i.e.*, the period surrounding the enactment of the Fourteenth Amendment—the quickening distinction was abandoned as States criminalized abortion at all stages of pregnancy. See *infra*, at

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(13th century treatise).²⁵

Sir Edward Coke's 17th-century treatise likewise asserted that abortion of a quick child was "murder" if the "childe be born alive" and a "great misprision" if the "childe dieth in her body." 3 *Institutes of the Laws of England* 50–51 (1644). ("Misprision" referred to "some heynous offence under the degree of felony." *Id.*, at 139.) Two treatises by Sir Matthew Hale likewise described abortion of a quick child who died in the womb as a "great crime" and a "great misprision." See M. Hale, *Pleas of the Crown: Or, A Methodical Summary of the Principal Matters Relating to that Subject* 53 (1673) (P. R. Glazebrook, ed., 1973); 1 M. Hale, *History of Pleas of the Crown* 433 (1736) (Hale). And writing near the time of the adoption of our Constitution, Blackstone explained that abortion of a "quick" child was "by the ancient law homicide or manslaughter" (citing Bracton), and at least "a very heinous misdemeanor" (citing Coke)." 1 Blackstone, *Commentaries on the Laws of England* *129–*130 (7th ed. 1775) (Blackstone).

English cases dating all the way back to the 13th century corroborate the treatises' statements that abortion was a crime. See generally J. Dellapenna, *Dispelling the Myths of Abortion History* 126 & n. 16, 134–142, 188–194 & nn.84–86 (2005) (Dellapenna); J. Keown, *Abortion, Doctors, and the Law* 3–12 (1988) (Keown). In 1732, for example, Eleanor Beare was convicted of "destroying the Foetus in the Womb" of another woman and "there-by causing her to miscarry."²⁶ For that crime and another "misdemeanor," Beare was sentenced to two days in the pillory and three years' imprisonment.²⁷

²⁵ Even before Bracton's time, English law imposed punishment for the killing of a fetus. See *Leges Henrici Primi* 222–223 (L. J. Downer ed., 1972) (imposing penalty for any abortion and treating a woman who aborted a "quick" child "as if she were a murderess").

²⁶ 2 *Gentleman's Magazine* 931 (Aug. 1732).

²⁷ *Id.*, at 932.

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Although a pre-quickening abortion was not itself considered homicide, it does not follow that abortion was *permissible* at common law—much less that abortion was a legal right. Cf. *Washington v. Glucksberg*, 521 U. S. 702, 713 (1997) (removal of “common law’s harsh sanctions did not represent an acceptance” of suicide). Quite to the contrary, in the 1732 case mentioned above, the judge said of the charge of abortion (with no mention of quickening) that he had “never met with a case so barbarous and unnatural.”²⁸ Similarly, an indictment from 1602, which did not distinguish between a pre-quickening and post-quickening abortion, described abortion as “pernicious” and “against the peace of our Lady the Queen, her crown and dignity.” Keown 7 (discussing *R. v. Webb*, Calendar of Assize Records, Surrey Indictments 512 (1980)).

That the common law did not condone even pre-quickening abortions is confirmed by what one might call a proto-felony-murder rule. Hale and Blackstone explained a way in which a pre-quickening abortion could rise to the level of a homicide. Hale wrote that if a physician gave a woman “with child” a “potion” to cause an abortion, and the woman died, it was “murder” because the potion was given “*unlawfully* to destroy her child within her.” 1 Hale 429–430 (emphasis added). As Blackstone explained, to be “murder” a killing had to be done with “malice aforethought, either express or implied.” 4 Blackstone 198, 199. In the case of an abortionist, Blackstone wrote, “the law will imply [malice]” for the same reason that it would imply malice if a person who intended to kill one person accidentally killed a different person:

“[I]f one shoots at A and misses *him*, but kills B, this is murder; because of the previous felonious intent, which the law transfers from one to the other. The same is the case, where one lays poison for A; and B, against

²⁸ 2 Gentleman's Magazine 932

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whom the prisoner had no malicious intent, takes it, and it kills him; this is likewise murder. *So also*, if one gives a woman with child a medicine to procure abortion, and it operates so violently as to kill the woman, *this is murder* in the person who gave it.” 4 Blackstone 200 (emphasis added).²⁹

Notably, Blackstone, like Hale, did not state that this proto-felony-murder rule required that the woman be “with quick child”—only that she be “with child.” *Ibid.* And it is revealing that Hale and Blackstone treated abortionists differently from *other* physicians or surgeons who caused the death of a patient “without any intent of doing [the patient] any bodily hurt.” Hale 429; see 4 Blackstone 197. These other physicians—even if “unlicensed”—would not be “guilty of murder or manslaughter.” Hale 429. But a physician performing an abortion would, precisely because his aim was an “unlawful” one.

In sum, although common law authorities differed on the severity of punishment for abortions committed at different points in pregnancy, none endorsed the practice. Moreover, we are aware of no common law case or authority, and the parties have not pointed to any, that remotely suggests a positive *right* to procure an abortion at any stage of pregnancy.

ii

In this country, the historical record is similar. The “most important early American edition of Blackstone’s Commentaries,” *District of Columbia v. Heller*, 554 U. S. 570, 594 (2008), reported Blackstone’s statement that abortion of a

²⁹ Other treatises restated the same rule. See 1 W. Russell, *A Treatise on Crimes and Misdemeanors* 539 (5th ed. 1845) (“So where a person gave medicine to a woman to procure an abortion, and where a person put skewers into the woman for the same purpose, by which in both cases the women were killed, these acts were clearly held to be murder.”); 1 E. H. East, *A Treatise of the Pleas of the Crown* 230 (1803) (similar).

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quick child was at least “a heinous misdemeanor,” 1 St. George Tucker, *Blackstone's Commentaries* 129-130 (1803) (Tucker's *Blackstone*), and that edition also included Blackstone's discussion of the proto-felony-murder rule, 4 Tucker's *Blackstone* 200-201. Manuals for justices of the peace printed in colonies in the 18th century typically restated the common law rule on abortion, and some manuals repeated Hale's and Blackstone's statements that anyone who prescribed medication “unlawfully to destroy the child” would be guilty of murder if the woman died. See, e.g., J. Parker, *Conductor Generalis: Or the Office, Duty and Authority of Justices of the Peace* 220 (1788); 2 R. Burn, *Justice of the Peace, and Parish Officer* 221-222 (7th ed. 1762) (English manual stating the same).³⁰

The few cases available from the early colonial period corroborate that abortion was a crime. See generally Delapenna 215-228 (collecting cases). In Maryland in 1652,

³⁰ For manuals restating one or both rules, see J. Davis, *A Treatise on Criminal Law with an Exposition of the Office and Authority of Justices of the Peace in Virginia* 96, 102-103, 339 (1838); *Conductor Generalis: Or, the Office, Duty and Authority of Justices of the Peace* 194-195 (1801) (printed in Philadelphia); *Conductor Generalis: Or, the Office, Duty and Authority of Justices of the Peace* 194-195 (1794) (printed in Albany); *Conductor Generalis: Or, the Office, Duty and Authority of Justices of the Peace* 220 (1788) (printed in New York); J. Parker, *Conductor Generalis: Or, the Office, Duty and Authority of Justices of the Peace* 198 (1749) (printed in New York); G. Webb, *Office and Authority of a Justice of a Peace* 232 (1736) (printed in Williamsburg); *Conductor Generalis: Or, the Office, Duty and Authority of Justices of the Peace* 161 (1722); (printed in Philadelphia see also J.A. Conley, *Doing it by the Book: Justice of the Peace Manuals and English Law in Eighteenth Century America*, 6 *J. Legal Hist.* 257, 265, 267 (1985) (noting that these manuals were the justices' “primary source of legal reference” and of “practical value for a wider audience than the justices”). For cases stating the proto-felony-murder rule, see, e.g., *Commonwealth v. Parker*, 50 Mass. (9 Met.) 263, 265 (1845); *People v. Sessions*, 58 Mich. 594, 595-596 (1886); *State v. Moore*, 25 Iowa 128, 131-132 (1868); *Smith v. State*, 33 Me. 48, 54-55 (1851).

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for example, an indictment charged that a man “Murderously endeavoured to destroy or Murder the Child by him begotten in the Womb.” *Proprietary v. Mitchell*, 10 Md. Archives 183 (W.H. Browne, ed., 1891). And by the 19th century, courts frequently explained that the common law made abortion of a quick child a crime. See, e.g., *Smith v. Gaffard*, 31 Ala. 45, 51 (1857); *Smith v. State*, 33 Me. 48, 55 (1851); *State v. Cooper*, N. J. L. 52, 52–55 (1849); *Commonwealth v. Parker*, 50 Mass. 263, 264–268 (1845).

iii

The original ground for drawing a distinction between pre- and post-quickening abortions is not entirely clear, but some have attributed the rule to the difficulty of proving that a pre-quickening fetus was alive. At that time, there were no scientific methods for detecting pregnancy in its early stages,³¹ and thus, as one court put it in 1872: “[U]ntil the period of quickening there is no *evidence* of life; and whatever may be said of the fetus, the law has fixed upon this period of gestation as the time when the child is endowed with life” because “foetal movements are the first clearly marked and well defined *evidences of life*.” *Evans v. People*, 49 N. Y. 86, 90 (1872) (emphasis added); *State v. Cooper*, 22 N. J. L. 52, 56 (1849) (“In contemplation of law life commences at the moment of quickening, at the moment when the embryo gives *the first physical proof of life*, no matter when it first received it.” (emphasis added)).

The Solicitor General offers a different explanation of the basis for the quickening rule, namely, that before quickening the common law did not regard a fetus “as having a ‘separate and independent existence.’” Brief for United States

³¹ See E. Rigby, *A System of Midwifery* 73 (“Under all circumstances, the diagnosis of pregnancy must ever be difficult and obscure during the early months.”); see also *id.*, at 74–80 (discussing rudimentary techniques for detecting early pregnancy); A.S. Taylor, *A Manual of Medical Jurisprudence* 418–421 (6th American ed., 1866) (same).

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as *Amicus Curiae* 26 (quoting *Commonwealth v. Parker*, 50 Mass. 263, 266 (1848)). But the case on which the Solicitor General relies for this proposition also suggested that the criminal law's quickening rule was out of step with the treatment of prenatal life in other areas of law, noting that "to many purposes, in reference to civil rights, an infant *in ventre sa mere* is regarded as a person in being." *Parker*, 50 Mass., at 266 (citing 1 Blackstone 129); see also *Evans v. People*, 49 N. Y. 86, 89 (N. Y. 1872); *Mills v. Commonwealth*, 13 Pa. 631, 633 (1850); *Morrow v. Scott*, 7 Ga. 535, 537 (1849); *Hall v. Hancock*, 32 Mass. 255, 258 (1834); *Thellusson v. Woodford*, 31 Eng. Rep. 117, 163 (1789).

At any rate, the original ground for the quickening rule is of little importance for present purposes because the rule was abandoned in the 19th century. During that period, treatise writers and commentators criticized the quickening distinction as "neither in accordance with the result of medical experience, nor with the principles of the common law." 1 F. Wharton, *The Criminal Law of the United States* §1220, at 606 (4th rev. ed. 1857); see also J. B. Beck, *Researches in Medicine and Medical Jurisprudence* 26-28 (2d ed. 1835) (describing the quickening distinction as "absurd" and "injurious").³² In 1803, the British Parliament made

³² See *Mitchell v. Commonwealth*, 78 Ky. 204, 209-210 (1879) (acknowledging the common-law rule but arguing that "the law should punish abortions and miscarriages, willfully produced, at any time during the period of gestation"); *Mills v. Commonwealth*, 13 Pa. 631, 633 (1850) (the quickening rule "never ought to have been the law anywhere"); 1 J.P. Bishop, *Commentaries on the Law of Statutory Crimes* §744 (1873) ("If we look at the reason of the law, we shall prefer" a rule that "discard[s] this doctrine of the necessity of a quickening"); 5 *Transactions of the Maine Medical Association* 37-39 (1866); 12 *Transactions of the American Medical Association* 75-77 (1859); W. Guy, *Principles of Medical Forensics* 133-134 (1st American ed. 1845); 1 J. Chitty, *A Practical Treatise on Medical Jurisprudence* 438 (2d American ed., 1836); T.R. Beck & J.B. Beck, *Elements of Medical Jurisprudence* 293 (1823); T. Percival, *The Works, Literary, Moral and Medical* 430 (1807); see also Keown 38-39 (collecting English authorities).

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abortion a crime at all stages of pregnancy and authorized the imposition of severe punishment. See Lord Ellenborough's Act, 43 Geo. 3 c. 58. One scholar has suggested that Parliament's decision "may partly have been attributable to the medical man's concern that fetal life should be protected by the law at all stages of gestation." Keown 22.

In this country during the 19th century, the vast majority of the States enacted statutes criminalizing abortion at all stages of pregnancy. See Appendix A (listing state statutory provisions in chronological order).³³ By 1868, when the Fourteenth Amendment was ratified, three-quarters of the States, 28 out of 37, had enacted statutes making abortion a crime even if it was performed before quickening.³⁴ See Appendix A. Of the nine States that had not yet criminalized abortion at all stages, all but one did so by 1910. *Ibid.*

The trend in the territories that would become the last 13 States was similar: all of them criminalized abortion at all stages of pregnancy between 1850 (the Kingdom of Hawaii) and 1919 (New Mexico). See Appendix B; see also *Casey*, 505 U. S., at 952 (Rehnquist, C. J., dissenting); Dellapenna 317-319. By the end of the 1950s, according to the *Roe*

³³ See generally Dellapenna 315-319 (cataloging the development of the law in the States); E. Quay, *Justifiable Abortion—Medical and Legal Foundations*, 49 *Geo. L. J.* 395, 435-437, 447-520 (1961) (Quay) (same); J. Witherspoon, *Reexamining Roe: Nineteenth-Century Abortion Statutes and The Fourteenth Amendment*, 17 *St. Mary's Law J.* 29, 34-36 (1985) (Witherspoon) (same).

³⁴ Some scholars assert that only 27 States prohibited abortion at all stages. See, e.g., Dellapenna 315; Witherspoon 34-35 & n. 15. Those scholars appear to have overlooked Rhode Island, which criminalized abortion at all stages in 1861. See Act of Mar. 15, 1861, ch. 371, §1, Acts & Resolves R. I. 133 (criminalizing the attempt to "procure the miscarriage" of "any pregnant woman" or "any woman supposed by such person to be pregnant," without mention of quickening). The *amicus* brief for the American Historical Association asserts that only 26 States prohibited abortion at all stages, but that brief incorrectly excludes West Virginia and Nebraska from its count. Compare Br. 27-28 (citing Quay, *supra*), with Appendix A.

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Court's own count, statutes in all but four States and the District of Columbia prohibited abortion "however and whenever performed, unless done to save or preserve the life of the mother." 410 U. S., at 139.³⁵

This overwhelming consensus endured until the day *Roe* was decided. At that time, also by the *Roe* Court's own count, a substantial majority—30 States—still prohibited abortion at all stages except to save the life of the mother. See *Roe*, 410 U. S., at 118 & n. 2 (listing States). And though *Roe* discerned a "trend toward liberalization" in about "one-third of the States," those States still criminalized some abortions and regulated them more stringently than *Roe* would allow. See *Roe*, 410 U. S., at 140 & n.37; Tribe 2. In short, the "Court's opinion in *Roe* itself convincingly refutes the notion that the abortion liberty is deeply rooted in the history or tradition of our people." *Thornburgh*, 476 U. S., at 793 (White, J., dissenting).

iv

The inescapable conclusion is that a right to abortion is not deeply rooted in the Nation's history and traditions. On the contrary, an unbroken tradition of prohibiting abortion on pain of criminal punishment persisted from the earliest

³⁵ The statutes of three States (Massachusetts, New Jersey, and Pennsylvania) prohibited abortions performed "unlawfully" or "without lawful justification." *Roe*, 410 U. S., at 139. In *Massachusetts*, case law held that abortion was allowed when, according to the judgment of physicians in the relevant community, the procedure was necessary to preserve the woman's life or her physical or emotional health. *Commonwealth v. Wheeler*, 53 N.E. 2d 4, 5 (Sup. J. Ct. 1944). In the other two States, however, there is no clear support in case law for the proposition that abortion was lawful where the mother's life was not at risk. See *State v. Brandenburg*, 58 A.2d 709 (N.J. 1948); *Commonwealth v. Trombetta*, 200 A. 107 (Pa. Super. Ct. 1938).

Statutes in the two remaining jurisdictions (the District of Columbia and Alabama) permitted "abortion to preserve the mother's health." *Roe*, 410 U. S., at 139. Case law in those jurisdictions does not clarify the breadth of these exceptions.

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days of the common law until 1973. The Court in *Roe* could have said of abortion exactly what *Glucksberg* said of assisted suicide: “Attitudes toward [abortion] have changed since Bracton, but our laws have consistently condemned, and continue to prohibit, [that practice].” *Glucksberg*, 521 U. S., at 719.

3

Respondents and their *amici* have no persuasive answer to this historical evidence.

Neither respondents nor the Solicitor General disputes the fact that by 1868 the vast majority of States criminalized abortion at all stages of pregnancy. See Brief for the Petitioners 12–13; see also Brief for American Historical Association and Organization of American Historians as *Amicus Curiae* 27–28 & nn. 14–15 (conceding that 26 out of 37 States prohibited abortion before quickening); Oral Arg. Tr. 74–75 (respondents’ counsel conceding the same). Instead, respondents are forced to argue that it “does [not] matter that some States prohibited abortion at the time *Roe* was decided or when the Fourteenth Amendment was adopted.” Brief for Respondents 21. But that argument flies in the face of the standard we have applied in determining whether an asserted right that is nowhere mentioned in the Constitution is nevertheless protected by the Fourteenth Amendment.

Not only are respondents and their *amici* unable to show that a constitutional right to abortion was established when the Fourteenth Amendment was adopted, but they have found no support for the existence of an abortion right that predates the latter part of the 20th century—no state constitutional provision, no statute, no judicial decision, no learned treatise. The earliest sources called to our attention are a few district court and state court decisions decided shortly before *Roe* and a small number of law review

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articles from the same time period.³⁶

A few of respondents' *amici* muster historical arguments, but they are very weak. The Solicitor General repeats *Roe's* claim that it is "doubtful abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus." Brief for United States as *Amicus Curiae* 26 (quoting *Roe*, 410 U.S., at 136). But as we have seen, great common-law authorities like Bracton, Coke, Hale, and Blackstone all wrote that a post-quickening abortion was a crime—and a serious one at that. Moreover, Hale and Blackstone (and many other authorities following them) asserted that even a pre-quickening abortion was "unlawful" and that, as a result, an abortionist was guilty of murder if the woman died from the attempt.

Instead of following these authorities, *Roe* relied largely on two articles by a pro-abortion advocate who claimed that Coke had intentionally misstated the common law because of his strong anti-abortion views.³⁷ These articles have been discredited,³⁸ and it has come to light that even members of Jane Roe's legal team did not regard them as serious

³⁶ See *Roe*, 410 U. S., at 154-155 (collecting cases decided between 1970 and 1973); C. Means, Jr., *The Phoenix of Abortional Freedom: Is a Penumbral or Ninth-Amendment Right About to Arise from the Nineteenth-Century Legislative Ashes of a Fourteenth-Century Common-Law Liberty?*, 17 N.Y.L.F. 335, 337-339 (1971) (Means II); C. Means, Jr., *The Law of New York Concerning Abortion and the Status of the Foetus, 1664-1968: A Case of Cessation of Constitutionality*, 14 N.Y.L.F. 411 (1968) (Means I); R. Lucas, *Federal Constitutional Limitations on the Enforcement and Administration of State Abortion Statutes*, 46 N. C. L. Rev. 730 (1968).

³⁷ See *Roe*, 410 U. S., at 136 n. 6 (citing Means II, *supra*); *id.*, at 132-133 n. 21 (citing Means I, *supra*).

³⁸ For critiques of Means's work, see, e.g., Dellapenna 143-152, 325-331; Keown 3-12; J. Finnis, "Shameless Acts" in Colorado: Abuse of Scholarship in Constitutional Cases, 7 *Academic Q.* 10, 11-12 (1994); Destro, *Abortion and the Constitution: The Need for a Life-Protective Amendment*, 63 *Calif. L. Rev.* 1250, 1267-1282 (1975); Byrn, *An American Tragedy: The Supreme Court on Abortion*, 41 *Fordham L. Rev.* 807,

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scholarship. An internal memorandum characterized this author's work as donning "the guise of impartial scholarship while advancing the proper ideological goals."³⁹ Continued reliance on such scholarship is unsupportable.

The Solicitor General next suggests that history supports an abortion right because the common law's failure to criminalize abortion before quickening means that "at the Founding and for decades thereafter, women generally could terminate a pregnancy, at least in its early stages."⁴⁰ *Id.*, at 26–27; see also Brief for Respondents 21. But the insistence on quickening was not universal, see *Mills*, 13 Pa., at 633; *State v. Slagle*, 83 N. C. 630, 632 (N. C. 1880), and, regardless, the fact that many States in the late 18th and early 19th century did not criminalize pre-quickening abortions does not mean that anyone thought the States lacked the authority to do so. When legislatures began to exercise that authority as the century wore on, no one, as far as we are aware, argued that the laws they enacted violated a fundamental right. That is not surprising since

814–829 (1973).

³⁹ Garrow 500–501 & n. 41.

⁴⁰ In any event, *Roe*, *Casey*, and other related abortion decisions imposed substantial restrictions on a State's capacity to regulate abortions performed after quickening. See, e.g., *June Medical Services L. L. C. v. Russo*, 591 U. S. ____ (2020) (holding a law requiring doctors performing abortions to secure admitting privileges to be unconstitutional); *Whole Woman's Health v. Hellerstedt*, 579 U. S. 582 (2016) (similar); *Casey*, 505 U. S., at 846 (declaring that prohibitions on "abortion before viability" are unconstitutional); *id.*, at 887–899 (holding that a spousal notification provision was unconstitutional). In addition, *Doe v. Bolton*, 410 U.S. 179 (1973), has been interpreted by some to protect a broad right to obtain an abortion at any stage of pregnancy provided that a physician is willing to certify that it is needed due to a woman's "emotional" needs or "familial" concerns. *Id.*, at 192. See, e.g., *Women's Medical Professional Corp. v. Voinovich*, 130 F. 3d 187, 209 (CA6 1997), cert. den., 523 U. S. 1036 (1998); but see *id.*, at 1339 (THOMAS, J., dissenting from denial of certiorari).

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common-law authorities had repeatedly condemned abortion and described it as an “unlawful” act without regard to whether it occurred before or after quickening. See *supra*, at ____.

Another *amicus* brief relied upon by the respondents (see Brief for Respondents 21) tries to dismiss the significance of the state criminal statutes that were in effect when the Fourteenth Amendment was adopted by suggesting that they were enacted for illegitimate reasons. According to this account, which is based almost entirely on statements made by one prominent proponent, important motives for the laws were the fear that Catholic immigrants were having more babies than Protestants and that the availability of abortion was leading white Protestant women to “shirk[] their maternal duties.” Brief for *Amici Curiae* American Historical Association and Organization of American Historians 20.

Resort to this argument is a testament to the lack of any real historical support for the right that *Roe* and *Casey* recognized. This Court has long disfavored arguments based on alleged legislative motives. See, e.g., *City of Erie v. Pap's A.M.*, 529 U. S. 277, 292 (2000) (plurality); *Turner Broadcasting System, Inc. v. F.C.C.*, 512 U. S. 622, 652 (1994); *United States v. O'Brien*, 391 U. S. 367, 383 (1968); *Arizona v. California*, 283 U.S. 423, 455 (1931) (collecting cases). The Court has recognized that inquiries into legislative motives “are a hazardous matter.” *O'Brien*, 391 U. S., at 383. Even when an argument about legislative motive is backed by statements made by legislators who voted for a law, we have been reluctant to attribute those motives to the legislative body as a whole. “What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it.” *Ibid.*

Here, the argument about legislative motive is not even based on statements by legislators, but on statements made by a few supporters of the new 19th century abortion laws,

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and it is quite a leap to attribute these motives to all the legislators whose votes were responsible for the enactment of those laws. Recall that at the time of the adoption of the Fourteenth Amendment, over three quarters of the States had adopted statutes criminalizing abortion (usually at all stages of pregnancy), and that from the early 20th century until the day *Roe* was handed down, every single State had such a law on its books. Are we to believe that the hundreds of lawmakers whose votes were needed to enact these laws were motivated by hostility to Catholics and women?

There is ample evidence that the passage of these laws was instead spurred by a sincere belief that abortion kills a human being. Many judicial decisions from the late 19th and early 20th centuries made that point. See, e.g., *Nash v. Meyer*, 54 Idaho 283, 301 (1934); *State v. Aupsplund*, 86 Ore. 121, 131-132 (1917); *Trent v. State*, 15 Ala. App. 485, 488 (1916); *State v. Miller*, 90 Kan. 230, 233 (1913); *State v. Tippie*, 89 Ohio St. 35, 39-40 (1913); *State v. Gedicke*, 43 N. J. L. 86, 90 (N. J. Sup. Ct. 1881); *Dougherty v. People*, 1 Colo. 514, 522-523 (1873); *State v. Moore*, 25 Iowa 128, 131-132 (1868); *Smith v. State*, 33 Me. 48, 57 (1851); see also *Memphis Center for Reproductive Health*, 14 F.4th, at 446 & n. 11 (Thapar, J., concurring in the judgment in part and dissenting in part) (citing cases).

One may disagree with this belief (and our decision is not based on any view about when a State should regard prenatal life as having rights or legally cognizable interests), but even *Roe* and *Casey* did not question the good faith of abortion opponents. See, e.g., *Casey*, 505 U. S., at 850 (“Men and women of good conscience can disagree . . . about the profound moral and spiritual implications of terminating a pregnancy even in its earliest stage.”). And we see no reason to discount the significance of the state laws in question based on these amici’s suggestions about legislative

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motive.⁴¹

C

1

Instead of seriously pressing the argument that the abortion right itself has deep roots, supporters of *Roe* and *Casey* contend that the abortion right is an integral part of a broader entrenched right. *Roe* termed this a right to privacy, 410 U. S., at 154, and *Casey* described it as the freedom to make “intimate and personal choices” that are “central to personal dignity and autonomy,” 505 U.S., at 851. *Casey* elaborated: “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.” *Id.*, at 851.

The Court did not claim that this broadly framed right is absolute, and no such claim would be plausible. While individuals are certainly free to *think* and to *say* what they wish about “existence,” “meaning,” the “universe,” and “the mystery of human life,” they are not always free to *act* in accordance with those thoughts. License to act on the basis of such beliefs may correspond to one of the many understandings of “liberty,” but it is certainly not “ordered liberty.”

⁴¹ Other amicus briefs present arguments about the motives of proponents of liberal access to abortion. They note that some such supporters have been motivated by a desire to suppress the size of the African American population. See Brief for Amici Curiae African-American, Hispanic, Roman Catholic and Protestant Religious and Civil Rights Organization and Leaders Supporting Petitioners 14–21; see also *Box v. Planned Parenthood of Indiana and Kentucky*, 139 S. Ct. 1780, 1783–84 (2019) (THOMAS, J., dissenting from the denial of certiorari). And it is beyond dispute that *Roe* has had that demographic effect. A highly disproportionate percentage of aborted fetuses are black. See, e.g., Center for Disease Control, *Abortion Surveillance—United States, 2019*, 70 *Surveillance Summaries*, at 20, tbl. 6 (Nov. 26, 2021). For our part, we do not question the motives of either those who have supported and those who have opposed laws restricting abortions.

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Ordered liberty sets limits and defines the boundary between competing interests. *Roe* and *Casey* each struck a particular balance between the interests of a woman who wants an abortion and the interests of what they termed “potential life.” *Roe*, 410 U. S., at 150; *Casey*, 505 U. S., at 852. But the people of the various States may evaluate those interests differently. In some States, voters may believe that the abortion right should be more even more extensive than the right that *Roe* and *Casey* recognized. Voters in other States may wish to impose tight restrictions based on their belief that abortion destroys an “unborn human being.” Miss. Code Ann. §41-41-191(4)(b). Our Nation’s historical understanding of ordered liberty does not prevent the people’s elected representatives from deciding how abortion should be regulated.

Nor does the right to obtain an abortion have a sound basis in precedent. *Casey* relied on cases involving the right to marry a person of a different race, *Loving v. Virginia*, 388 U. S. 1 (1967); the right to marry while in prison, *Turner v. Safley*, 482 U. S. 78 (1987); the right to obtain contraceptives, *Griswold v. Connecticut*, 381 U. S. 479 (1965), *Eisenstadt v. Baird*, 405 U. S. 438 (1972), *Carey v. Population Services International*, 431 U. S. 678 (1977); the right to reside with relatives, *Moore v. East Cleveland*, 431 U. S. 494 (1977); the right to make decisions about the education of one’s children, *Pierce v. Society of Sisters*, 268 U. S. 510 (1925), *Meyer v. Nebraska*, 262 U. S. 390 (1923); the right not to be sterilized without consent, *Skinner v. Oklahoma ex rel. Williamson*, 316 U. S. 535 (1942); and the right in certain circumstances not to undergo involuntary surgery, forced administration of drugs, or other substantially similar procedures, *Winston v. Lee*, 470 U. S. 753 (1985), *Washington v. Harper*, 494 U. S. 210 (1990), *Rochin v. California*, 342 U. S. 165 (1952). Respondents and the Solicitor General also rely on post-*Casey* decisions like *Lawrence v.*

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Texas, 539 U. S. 558 (2003) (right to engage in private, consensual sexual acts), and *Obergefell v. Hodges*, 576 U. S. 644 (2015) (right to marry a person of the same sex). See Brief for Respondents 18; Brief for United States as *Amicus Curiae* 23–24.

These attempts to justify abortion through appeals to a broader right to autonomy and to define one's "concept of existence" prove too much. *Casey*, 505 U. S., at 851. Those criteria, at a high level of generality, could license fundamental rights to illicit drug use, prostitution, and the like. See *Compassion in Dying v. Washington*, 85 F. 3d 1440, 1444 (CA9 1996) (O'Scannlain, J., dissenting from denial of rehearing *en banc*). None of these rights has any claim to being deeply rooted in history. *Id.*, at 1440, 1445.

What sharply distinguishes the abortion right from the rights recognized in the cases on which *Roe* and *Casey* rely is something that both those decisions acknowledged: Abortion destroys what those decisions call "potential life" and what the law at issue in this case regards as the life of an "unborn human being." See *Roe*, 410 U. S., at 159 (abortion is "inherently different"); *Casey*, 505 U. S., at 852 (abortion is "a unique act"). None of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion. They are therefore inapposite. They do not support the right to obtain an abortion, and by the same token, our conclusion that the Constitution does not confer such a right does not undermine them in any way.

2

In drawing this critical distinction between the abortion right and other rights, it is not necessary to dispute *Casey*'s claim (which we accept for the sake of argument) that "the specific practices of States at the time of the adoption of the Fourteenth Amendment" do not "mark[] the outer limits of the substantive sphere of liberty which the Fourteenth

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Amendment protects.” 505 U. S., at 848. Abortion is nothing new. It has been addressed by lawmakers for centuries, and the fundamental moral question that it poses is ageless.

Defenders of *Roe* and *Casey* do not claim that any new scientific learning calls for a different answer to the underlying moral question, but they do contend that changes in society require the recognition of a constitutional right to obtain an abortion. Without the availability of abortion, they maintain, people will be inhibited from exercising their freedom to choose the types of relationships they desire, and women will be unable to compete with men in the workplace and in other endeavors.

Americans who believe that abortion should be restricted press countervailing arguments about modern developments. They note that attitudes about the pregnancy of unmarried women have changed drastically; that federal and state laws ban discrimination on the basis of pregnancy,⁴² that leave for pregnancy and childbirth are now guaranteed by law in many cases,⁴³ that the costs of medical care associated with pregnancy are covered by insurance or government assistance,⁴⁴ that States have increasingly adopted

⁴² See, e.g., Pregnancy Discrimination Act (1978) (codified at 42 U.S.C. §2000e(k) (federal law prohibiting pregnancy discrimination in employment); U.S. Dep’t of Labor, Women’s Bureau, Employment Protections for Workers Who Are Pregnant or Nursing, <https://www.dol.gov/agencies/wb/pregnant-nursing-employment-protections> (showing that 46 States and the District of Columbia have employment protections against pregnancy discrimination).

⁴³ See, e.g., Family and Medical Leave Act of 1993 (codified at 29 U.S.C. §2612) (federal law guaranteeing employment leave for pregnancy and birth); U.S. Bureau of Labor Statistics, Access to paid and unpaid family leave in 2018, <https://www.bls.gov/opub/ted/2019/access-to-paid-and-unpaid-family-leave-in-2018.htm> (showing that 89 percent of civilian workers had access to unpaid family leave in 2018).

⁴⁴ The Affordable Care Act requires non-grandfathered health plans in the individual and small group markets to cover certain essential health benefits, which includes maternity and newborn care. See 42 U.S.C.

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“safe haven” laws, which generally allow women to drop off babies anonymously;⁴⁵ and that a woman who puts her newborn up for adoption today has little reason to fear that the baby will not find a suitable home.⁴⁶ They also claim that many people now have a new appreciation of fetal life and that when prospective parents who want to have a child view a sonogram, they typically have no doubt that what they see is their daughter or son.

Both sides make important policy arguments, but supporters of *Roe* and *Casey* must show that this Court has the authority to weigh those arguments and decide how abortion may be regulated in the States. They have failed to make that showing, and we thus return the power to weigh

§18022(b)(1)(D). The ACA also prohibits annual limits, see 42 U.S.C. §300gg-11, and limits annual cost-sharing obligations on such benefits, *id.* §18022(c). State Medicaid plans must provide coverage for pregnancy-related services—including, but not limited to, prenatal care, delivery, and postpartum care—as well as services for other conditions that might complicate the pregnancy. 42 C.F.R. §440.210(a)(2)(i)-(ii). State Medicaid plans are also prohibited from imposing deductions, cost-sharing, or similar charges for pregnancy-related services for pregnant women. 42 U.S.C. §§1396o(a)(2)(B), 1396o(b)(2)(B).

⁴⁵ Since *Casey*, all 50 States and the District of Columbia have enacted such laws. Children’s Bureau, HHS, Infant Safe Haven Laws 1-2 (2016), <https://www.childwelfare.gov/pubPDFs/safehaven.pdf> (noting that safe haven laws began in Texas in 1999).

⁴⁶ See, e.g., Centers for Disease Control, Adoption Experiences of Women and Men and Demand for Children to Adopt by Women 18-44 Years of Age in the United States 16 (Aug. 2008) (“[N]early 1 million women were seeking to adopt children in 2002 (i.e., they were in demand for a child), whereas the domestic supply of infants relinquished at birth or within the first month of life and available to be adopted had become virtually nonexistent.”); Centers for Disease Control, National Center for Health Statistics, Adoption and nonbiological parenting, https://www.cdc.gov/nchs/nsfg/key_statistics/a-keystate.htm#adoption (showing that approximately 3.1 million women between the ages of 18-49 had ever “[t]aken steps to adopt a child” based on data collected from 2015-2019).

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those arguments to the people and their elected representatives.

III

We next consider whether the doctrine of *stare decisis* counsels continued acceptance of *Roe* and *Casey*. *Stare decisis* plays an important role in our case law, and we have explained that it serves many valuable ends. It protects the interests of those who have taken action in reliance on a past decision. See *Casey*, 505 U. S., at 856 (plurality opinion); see also *Payne v. Tennessee*, 501 U. S. 808, 828 (1991). It “reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation.” *Kimble v. Marvel Entertainment, LLC*, 576 U. S. 446, 455 (2015). It fosters “evenhanded” decision making by requiring that like cases be decided in a like manner. *Payne v. Tennessee*, 501 U. S. 808, 827 (1991). It “contributes to the actual and perceived integrity of the judicial process.” *Ibid.* And it restrains judicial hubris and reminds us to respect the judgment of those who grappled with important questions in the past. “Precedent is a way of accumulating and passing down the learning of past generations, a font of established wisdom richer than what can be found in any single judge or panel of judges.” N. Gorsuch, *A Republic If You Can Keep It* 217 (2019).

We have long recognized, however, that *stare decisis* is “not an inexorable command,” *Pearson v. Callahan*, 555 U.S. 223, 233 (2009) (internal quotation marks and citation omitted), and it “is at its weakest when we interpret the Constitution,” *Agostini v. Felton*, 521 U.S. 203, 235 (1997). It has been said that it is sometimes more important that an issue “be settled than that it be settled right.” *Kimble*, 576 U. S., at 455 (emphasis added) (quoting *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting)). But when it comes to the interpretation of the Constitution—the “great charter of our liberties,” which

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was meant “to endure through a long lapse of ages,” *Martin v. Hunter’s Lessee*, 1 Wheat. 304, 326 (1816) (opinion of Story, J.)—we place a high value on having the matter “settled right.” In addition, when one of our constitutional decisions goes astray, the country is usually stuck with the bad decision unless we correct our own mistake. An erroneous constitutional decision can be fixed by amending the Constitution, but our Constitution is notoriously hard to amend. See U. S. Const., art. V; *Kimble*, 576 U. S., at 456. Therefore, in appropriate circumstances we must be willing to reconsider and if necessary overrule constitutional decisions.

Some of our most important constitutional decisions have overruled prior precedents. We mention three. In *Brown v. Board of Education*, the Court repudiated the “separate but equal” doctrine, which had allowed States to maintain racially segregated schools and other facilities. 347 U. S. 483, 488 (1954). In so doing, the Court overruled the infamous decision in *Plessy v. Ferguson*, 163 U. S. 537 (1896), along with six other Supreme Court precedents that had applied the separate-but-equal rule. See *Brown*, 347 U. S., at 491.

In *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937), the Court overruled *Adkins v. Children’s Hospital of D. C.*, 261 U. S. 525 (1923), which had held that a law setting minimum wages for women violated the “liberty” protected by the Fifth Amendment’s Due Process Clause. *Id.*, at 545. *West Coast Hotel* signaled the demise of an entire line of important precedents that had protected an individual liberty right against state and federal health and welfare legislation. See *Lochner v. New York*, 198 U.S. 45 (1905) (holding invalid a law setting maximum working hours); *Coppage v. Kansas*, 236 U.S. 1 (1915) (holding invalid a law banning contracts forbidding employees to join union); *Jay Burns Baking Co. v. Bryan*, 264 U.S. 504 (1924) (holding invalid laws fixing the weight of loaves of bread).

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Finally, in *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943), after the lapse of only three years, the Court overruled *Minersville School Dist. v. Gobitis*, 310 U. S. 586 (1940), and held that public school students could not be compelled to salute the flag in violation of their sincere beliefs. *Barnette* stands out because nothing had changed during the intervening period other than the Court's belated recognition that its earlier decision had been seriously wrong.

On many other occasions, this Court has overruled important constitutional decisions. (We include a partial list in the footnote that follows.⁴⁷) Without these decisions,

⁴⁷ See, e.g., *Obergefell v. Hodges*, supra (right to same-sex marriage) (overruling *Baker v. Nelson*, 409 U.S. 810 (1972)); *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010) (right to engage in campaign-related speech) (overruling *Austin v. Michigan Chamber of Commerce*, 494 U. S. 652 (1990), and partially overruling *McConnell v. Federal Election Comm'n*, 540 U. S. 93 (2003)); *Montejo v. Louisiana*, 556 U.S. 778 (2009) (Sixth Amendment right to counsel) (overruling *Michigan v. Jackson*, 475 U. S. 625 (1986)); *Crawford v. Washington*, 541 U.S. 36 (2004) (Sixth Amendment right to confront witnesses) (overruling *Ohio v. Roberts*, 448 U. S. 56 (1980)); *Lawrence v. Texas*, 539 U.S. 558 (2003) (right to engage in consensual, same-sex intimacy one's home) (overruling *Bowers v. Hardwick*, 478 U. S. 186 (1986)); *Ring v. Arizona*, 536 U.S. 584 (2002) (Sixth Amendment right to a jury trial in capital prosecutions) (overruling *Walton v. Arizona*, 497 U. S. 639 (1990)); *Agostini v. Felton*, 521 U.S. 203 (1997) (evaluating whether government aid violates the Establishment Clause) (overruling *Aguilar v. Felton*, 473 U. S. 402 (1985)); and *School Dist. of City of Grand Rapids v. Ball*, 473 U. S. 373 (1985)); *Seminole Tribe of Fla. v. Florida*, 517 U.S. 442 (1996) (lack of congressional power under the Indian Commerce Clause to abrogate states' Eleventh Amendment immunity) (overruling *Pennsylvania v. Union Gas Co.*, 491 U. S. 1 (1989)); *Payne v. Tennessee*, 501 U.S. 808 (1991) (the Eighth Amendment does not erect a per se bar to the admission of victim impact evidence during the penalty phase of a capital trial) (overruling *Booth v. Maryland*, 482 U. S. 496 (1987), and *South Carolina v. Gathers*, 490 U. S. 805 (1989)); *Batson v. Kentucky*, 476 U.S. 79 (1986) (the Equal Protection Clause guarantees the defendant that the State will not exclude members of his race from the jury venire on account of race) (overruling *Swain v. Alabama*, 380 U. S. 202 (1965)); *Garcia v. San Antonio*

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Metropolitan Transit Authority, 469 U.S. 528 (1985) (rejecting the principle that the Commerce Clause does not empower Congress to enforce requirements, such as minimum wage laws, against the States "in areas of traditional governmental functions") (overruling *National League of Cities v. Usery*, 426 U. S. 833 (1976)); *Illinois v. Gates*, 462 U.S. 213 (1983) (the Fourth Amendment requires a totality of the circumstances approach for determining whether an informant's tip establishes probable cause) (overruling *Aguilar v. Texas*, 378 U. S. 108 (1964) and *Spinelli v. United States*, 393 U. S. 410 (1969)); *United States v. Scott*, 437 U.S. 82 (1978) (the Double Jeopardy Clause does not apply to Government appeals from orders granting defense motions to terminate a trial before verdict) (overruling *United States v. Jenkins*, 420 U. S. 358 (1975)); *Craig v. Boren*, 429 U.S. 190 (1976) (gender-based classifications are subject to intermediate scrutiny under the Equal Protection Clause) (overruling *Goesaert v. Cleary*, 335 U. S. 464 (1948)); *Taylor v. Louisiana*, 419 U.S. 522 (1975) (jury system which operates to exclude women from jury service violates the defendant's Sixth and Fourteenth Amendment right to an impartial jury) (overruling *Hoyt v. Florida*, 368 U. S. 57 (1961)); *Brandenburg v. Ohio*, 395 U.S. 444 (1969) (*per curiam*) (the mere advocacy of violence is protected under the First Amendment unless it is directed to incite or produce imminent lawless action) (overruling *Whitney v. California*, 274 U. S. 357 (1927)); *Katz v. United States*, 389 U.S. 347 (1967) (Fourth Amendment "protects people, not places" and extends to what a person "seeks to preserve as private") (overruling *Olmstead v. United States*, 277 U. S. 438 (1928) and *Goldman v. United States*, 316 U. S. 129 (1942)); *Miranda v. Arizona*, 384 U.S. 436 (1966) (procedural safeguards to protect the Fifth Amendment privilege against self-incrimination) (overruling *Crooker v. California*, 357 U. S. 433 (1958), and *Cicenia v. La Gay*, 357 U. S. 504 (1958)); *Malloy v. Hogan*, 378 U.S. 1 (1964) (the Fifth Amendment privilege against self-incrimination is also protected by the Fourteenth Amendment against abridgement by the States) (overruling *Twining v. New Jersey*, 211 U. S. 78 (1908) and *Adamson v. California*, 332 U. S. 46 (1947)); *Wesberry v. Sanders*, 376 U.S. 1 (1964) (congressional districts should be apportioned so that "as nearly as practicable one man's vote in a congressional election is to be worth as much as another's") (overruling in effect *Colegrove v. Green*, 328 U. S. 549 (1946)); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (right to counsel for indigent defendant in a criminal prosecution in state court under the Sixth and Fourteenth Amendments) (overruling *Betts v. Brady*, 316 U. S. 455 (1942)); *Baker v. Carr*, 369 U.S. 186 (1962) (federal courts have jurisdiction to consider constitutional challenges to state redistricting plans) (effectively overruling in part *Colegrove v. Green*, 328 U. S. 549 (1946)); *Mapp v. Ohio*, 367 U.S. 643 (1961) (the exclusionary rule regarding the

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American constitutional law as we know it would be unrecognizable, and this would be a different country.

No Justice of this Court has ever argued that the Court should *never* overrule a constitutional decision, but overruling a precedent is a serious matter. It is not a step that should be taken lightly. Our cases have attempted to provide a framework for deciding when a precedent should be overruled, and they have identified factors that should be considered in making such a decision. *Janus v. State, County, and Municipal Employees*, 585 U. S. __, __ (2018) (slip op., at 34–35); *Ramos v. Louisiana*, 590 U. S. ___ (2020) (KAVANAUGH, J., concurring in part) (slip op., at 7–9).

In this case, five factors weigh strongly in favor of overruling *Roe* and *Casey*: the nature of their error, the quality of their reasoning, the “workability” of the rules they imposed on the country, their disruptive effect on other areas of the law, and the absence of concrete reliance.

A

The nature of the Court’s error. An erroneous interpretation of the Constitution is always important, but some are more damaging than others.

The infamous decision in *Plessy v. Ferguson*, *supra*, was one such decision. It betrayed our commitment to “equality

inadmissibility of evidence obtained in violation of the Fourth Amendment applies to the States) (overruling *Wolf v. Colorado*, 338 U. S. 25 (1949)); *Smith v. Allwright*, 321 U.S. 649 (1944) (racial restrictions on the right to vote in primary elections violates the Equal Protection Clause of the Fourteenth Amendment) (overruling *Grovey v. Townsend*, 295 U. S. 45 (1935)); *United States v. Darby*, 312 U.S. 100 (1941) (congressional power to regulate employment conditions under the Commerce Clause) (overruling *Hammer v. Dagenhart*, 247 U. S. 251 (1918)); *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938) (Congress does not have the power to declare substantive rules of common law; a federal court sitting in diversity jurisdiction must apply the substantive state law)(overruling *Swift v. Tyson*, 41 U. S. (16 Pet.) 1 (1842).

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under law.” *Id.*, at 562 (Harlan, J., dissenting). It was “egregiously wrong” on the day it was decided, see *Ramos, supra* (KAVANAUGH, J., concurring in part) (slip op., at 7), and as the Solicitor General agreed at oral argument, it should have been overruled at the earliest opportunity, see Oral Arg. Tr. 92:20–93:17.

Roe was also egregiously wrong and deeply damaging. For reasons already explained, *Roe*’s constitutional analysis was far outside the bounds of any reasonable interpretation of the various constitutional provisions to which it vaguely pointed.

Roe was on a collision course with the Constitution from the day it was decided, and *Casey* perpetuated its errors, and the errors do not concern some arcane corner of the law of little importance to the American people. Rather, wielding nothing but “raw judicial power,” *Roe*, 410 U. S., at 222 (White, J., dissenting), the Court usurped the power to address a question of profound moral and social importance that the Constitution unequivocally leaves for the people. *Casey* described itself as calling both sides of the national controversy to resolve their debate, but in doing so, *Casey* necessarily declared a winning side. Those on the losing side—those who sought to advance the state’s interest in fetal life—could no longer seek to persuade their elected representatives to adopt policies consistent with their views. The Court short-circuited the democratic process by closing it to the large number of Americans who dissented in any respect from *Roe*. “*Roe* fanned into life an issue that has inflamed our national politics in general, and has obscured with its smoke the selection of Justices to this Court in particular, ever since.” *Casey*, 505 U. S., at 995–996 (Scalia, J., concurring in part and dissenting in part). Together, *Roe* and *Casey* represent an error that cannot be allowed to stand.

As the Court’s landmark decision in *West Coast Hotel* illustrates, the Court has previously overruled decisions that

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wrongly removed an issue from the people and the democratic process. As Justice White later explained, “decisions that find in the Constitution principles or values that cannot fairly be read into that document usurp the people’s authority, for such decisions represent choices that the people have never made and that they cannot disavow through corrective legislation. For this reason, it is essential that this Court maintain the power to restore authority to its proper possessors by correcting constitutional decisions that, on reconsideration, are found to be mistaken.” *Thornburgh*, 476 U. S., at 787 (White, J., dissenting).

B

The quality of the reasoning. Under our precedents, the quality of the reasoning in a prior case has an important bearing on whether it should be reconsidered. See *Janus v. State, County, and Municipal Employees*, 585 U. S., at __ (slip op., at 38); *Ramos*, 590 U. S., at __ (KAVANAUGH, J., concurring) (slip op., at 7-8). In part II of this opinion, we explained why *Roe* was incorrectly decided, but that decision was more than just wrong. It stood on exceptionally weak grounds.

Roe found that the Constitution implicitly conferred a right to obtain an abortion, but it failed to ground its decision in text, history, or precedent. It relied on an erroneous historical narrative; it devoted great attention to and presumably relied on matters that have no bearing on the meaning of the Constitution; it disregarded the fundamental difference between the precedents on which it relied and the question before the Court; it concocted an elaborate set of rules, with different restrictions for each trimester of pregnancy, but it did not explain how this veritable code could be teased out of anything in the Constitution, the history of abortion laws, prior precedent, or any other cited source; and its most important rule (that States cannot protect fetal life prior to “viability”) was never raised by any

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party and has never been plausibly explained. *Roe's* reasoning quickly drew scathing scholarly criticism, even from supporters of broad access to abortion.

The *Casey* plurality, while reaffirming *Roe's* central holding, pointedly refrained from endorsing most of its reasoning. It revised the textual basis for the abortion right, silently abandoned *Roe's* erroneous historical narrative, and jettisoned the trimester framework. But it replaced that scheme with an arbitrary “undue burden” test and relied on an exceptional version of *stare decisis* that, as explained below, this Court had never before applied and has never invoked since.

1

i

The weaknesses in *Roe's* reasoning are well-known. Without any grounding in the constitutional text, history, or precedent, it imposed on the entire country a detailed set of rules much like those that one might expect to find in a statute or regulation. See *Roe*, 410 U. S., at 163-164. Dividing pregnancy into three trimesters, the Court imposed special rules for each. During the first trimester, the Court announced, “the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman’s attending physician.” *Id.*, at 164. After that point, a State’s interest in regulating abortion for the sake of a woman’s health became compelling, and accordingly, a State could “regulate the abortion procedure in ways that are reasonably related to maternal health.” *Ibid.* Finally, “in the stage subsequent to viability,” which in 1973 roughly coincided with the beginning of the third trimester, the State’s interest in “the potentiality of human life” became compelling, and therefore a State could “regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the

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mother.” *Ibid.*

This elaborate scheme was the Court’s own brainchild. Neither party advocated the trimester framework; nor did either party or any amicus argue that “viability” should mark the point at which the scope of the abortion right and a State’s regulatory authority should be substantially transformed. See Brief for Appellant in No. 70–18; Brief for Appellee in No. 70–18; see also C. Forsythe, *Abuse of Discretion: The Inside Story of Roe v. Wade* 127, 141 (2012).

ii

Not only did this scheme resemble the work of a legislature, but the Court made little effort to explain how these rules could be deduced from any of the sources on which constitutional decisions are usually based. We have already discussed *Roe*’s treatment of constitutional text, and the opinion failed to show that history, precedent, or any other cited source supported its scheme.

Roe featured a lengthy survey of history, but much of its discussion was irrelevant, and the Court made no effort to explain why it was included. For example, multiple paragraphs were devoted to an account of the views and practices of ancient civilizations where infanticide was widely accepted. See *Roe*, 410 U.S., at 130–132 (discussing ancient Greek and Roman practices).⁴⁸ When it came to the most important historical fact—how the States regulated abortion when the Fourteenth Amendment was adopted—the Court said almost nothing. It allowed that States had tight-

⁴⁸ See, e.g., C. Patterson, “Not Worth the Rearing”: The Causes of Infant Exposure in Ancient Greece, 115 *Transactions Am. Philosophical Ass’n* 103, 111–123 (1985); A. Cameron, *The Exposure of Children and Greek Ethics*, 46 *Classical Rev.* 105–108 (1932); H. Bennett, *The Exposure of Infants in Ancient Rome*, 18 *Classical J.* 341–351 (1923); W. V. Harris, *Child-Exposure in the Roman Empire*, 84 *J. Roman Studies* 1 (1994).

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ened their abortion laws “in the middle and late 19th century,” *id.*, at 139, but it implied that these laws might have been enacted, not to protect fetal life, but to further “a Victorian social concern” about “illicit sexual conduct,” *id.*, at 148.

Roe's failure even to note the overwhelming consensus of state laws in effect in 1868 is striking, and what it said about the common law was simply wrong. Relying on two discredited articles by an abortion advocate, the Court erroneously suggested—contrary to Bracton, Coke, Hale, Blackstone, and a wealth of other authority—that the common law had probably never really treated post-quickening abortion as a crime. See *id.*, at 136 (“[I]t now appear[s] doubtful that abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus.”). This erroneous understanding appears to have played an important part in the Court’s thinking because the opinion cited “the lenity of the common law” as one of the four factors that informed its decision. *Id.*, at 165.

After surveying history, the opinion spent many paragraphs conducting the sort of fact-finding that might be undertaken by a legislative committee. This included a lengthy account of the “position of the American Medical Association” and “[t]he position of the American Public Health Association,” as well as the vote by the American Bar Association’s House of Delegates in February 1972 on proposed abortion legislation. *Id.*, at 141, 143, 146. Also noted were a British judicial decision handed down in 1939 and a new British abortion law enacted in 1967. *Id.*, at 137–138. The Court did not explain why these sources shed light on the meaning of the Constitution, and not one of them adopted or advocated anything like the scheme that *Roe* imposed on the country.

Finally, after all this, the Court turned to precedent. Citing a broad array of cases, the Court found support for a

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constitutional "right of personal privacy," *id.*, at 152, but it conflated two very different meanings of the term: the right to shield information from disclosure and the right to make and implement important personal decisions without governmental interference. See *Whalen v. Roe*, 429 U. S. 589, 599-600 (1977). Only the cases involving this second sense of the term could have any possible relevance to the abortion issue, and some of the cases in that category involved personal decisions that were obviously very, very far afield. See *Pierce v. Society of Sisters*, 268 U. S. 510 (1925) (right to send children to religious school); *Meyer v. Nebraska*, 262 U. S. 390 (1923) (right to have children receive German language instruction).

What remained was a handful of cases having something to do with marriage, *Loving v. Virginia*, 388 U. S. 1 (1967) (right to marry a person of a different race), or procreation, *Skinner v. Oklahoma*, 316 U. S. 535 (1942) (right not to be sterilized); *Griswold v. Connecticut*, 381 U. S. 479 (1965) (right of married persons to obtain contraceptives); *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (same, for unmarried persons). But none of these decisions involved what is distinctive about abortion: its effect on what *Roe* termed "potential life."

When the Court summarized the basis for the scheme it imposed on the country, it asserted that its rules were "consistent with" the following: (1) "the relative weights of the respective interests involved," (2) "the lessons and examples of medical and legal history," (3) the lenity of the common law," and (4) "the demands of the profound problems of the present day." *Id.*, at 165. Put aside the second and third factors, which were based on the Court's flawed account of history, and what remains are precisely the sort of considerations that legislative bodies often take into account when they draw lines that accommodate competing interests. The scheme *Roe* produced looked like legislation, and the Court provided the sort of explanation that might

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be expected from a legislative body.

iii

What *Roe* did not provide was any cogent justification for the lines it drew. Why, for example, does a State have no authority to regulate first trimester abortions for the purpose of protecting a woman's health? The Court's only explanation was that mortality rates for abortion at that stage were lower than the mortality rates for childbirth. *Roe*, 410 U. S., at 163. But the Court did not explain why mortality rates were the only factor that a State could legitimately consider. Many health and safety regulations aim to avoid adverse health consequences short of death. And the Court did not explain why it departed from the normal rule that courts defer to the judgments of legislatures "in areas fraught with medical and scientific uncertainties." *Marshall v. United States*, 414 U. S. 417, 427 (1974).

An even more glaring deficiency was *Roe*'s failure to justify the critical distinction it drew between pre- and post-viability abortions. Here is the Court's entire explanation:

With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the womb. *Roe*, 410 U. S., at 163.

As Professor Laurence Tribe has written, "[c]learly, this mistakes 'a definition for a syllogism.'" Tribe 4 (quoting Ely 924). The definition of a "viable" fetus is one that is capable of surviving outside the womb, but why is this the point at which the State's interest becomes compelling? If, as *Roe* held, a State's interest in protecting prenatal life is compelling "after viability," 410 U. S., at 163, why isn't that interest "equally compelling before viability"? *Webster v. Reproductive Health Servs.*, 492 U. S. 490, 519 (1989) (plurality) (quoting *Thornburgh v. American College of Obstetricians*

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and Gynecologists, 476 U.S. 747, 795 (1986) (White, J., dissenting)). *Roe* did not say, and no explanation is apparent.

This arbitrary line has not found much support among philosophers and ethicists who have attempted to justify a right to abortion. Some have argued that a fetus should not be entitled to legal protection until it acquires the characteristics that they regard as defining what it means to be a "person." Among the characteristics that have been offered as essential attributes of "personhood" are sentience, self-awareness, the ability to reason, or some combination thereof.⁴⁹ By this logic, it would be an open question whether even born individuals, including young children or those afflicted with certain developmental or medical conditions, merit protection as "persons." But even if one takes the view that "personhood" begins when a certain attribute or combination of attributes is acquired, it is very hard to see why viability should mark the point where "personhood" begins.

⁴⁹ See, e.g., P. Singer, *Rethinking Life & Death* 218 (1994) (defining a person as "a being with awareness of her or his own existence over time, and the capacity to have wants and plans for the future"); B. Steinbock, *Life Before Birth: The Moral and Legal Status of Embryos and Fetuses* 9–13 (1992) (arguing that "the possession of interests is both necessary and sufficient for moral status" and that the "capacity for conscious awareness is a necessary condition for the possession of interests"); M. A. Warren, *On the Moral and Legal Status of Abortion*, 57 *The Monist* 5 (No. 4, 1973) (arguing that, to qualify as a person, a being must have at least one of five traits that are "central to the concept of personhood": (1) "consciousness (of objects and events external and/or internal to the being), and in particular the capacity to feel pain"; (2) "reasoning (the developed capacity to solve new and relatively complex problems); (3) "self-motivated activity (activity which is relatively independent of either genetic or direct external control)"; (4) "the capacity to communicate, by whatever means, messages of an indefinite variety of types"; and (5) "the presence of self-concepts, and self-awareness, either individual or racial, or both"); M. Tooley, *Abortion & Infanticide*, 2 *Philosophy & Public Affairs* 37, 49 (Autumn 1972) (arguing that "having a right to life presupposes that one is capable of desiring to continue existing as a subject of experiences and other mental states").

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The most obvious problem with any such argument is that viability is heavily dependent on factors that have nothing to do with the characteristics of a fetus. One is the state of neonatal care at a particular point in time. Due to the development of new equipment and improved practices, the viability line has changed over the years. In the 19th century, a fetus may not have been viable until 32 or 33 weeks after conception or even later.⁵⁰ When *Roe* was decided, viability was gauged at roughly 28 weeks. See *Roe*, 410 U. S., at 160. Today, respondents draw the line at 23 or 24 weeks. Brief of Respondents at 8. So, according to *Roe*'s logic, States now have a compelling interest in protecting a fetus with a gestational age of, say, 26 weeks, but in 1973 States did not have an interest in protecting an identical fetus. How can that be?

Viability also depends on the "quality of the available medical facilities," *Colautti v. Franklin*, 439 U. S. 379, 396 (1979). Thus, a 24-week-old fetus may be viable if a woman gives birth in a city with hospitals that provide advanced care for very premature babies, but if the woman travels to a remote area far from any such hospital, the fetus may no longer be viable. On what ground could the constitutional status of a fetus depend on the pregnant woman's location?

⁵⁰ See W. T. Lusk, *Science and the Art of Midwifery* 74-75 (1882) (explaining that "[w]ith care, the life of a child born within [the eighth month] of pregnancy may be preserved"); *id.* 396 ("Where the choice lies with the physician, the provocation of labor is usually deferred until the thirty-third or thirty-fourth week"); J. Beck, *Researches in Medicine and Medical Jurisprudence* 68 (2d ed., 1835) ("Although children born before the completion of the seventh month have occasionally survived, and been reared, yet in the medico-legal point of view, no child ought to be considered as capable of sustaining an independent existence until the seventh month has been fully completed."); see also J. P. Baker, *The Incubator and the Medical Discovery of the Premature Infant*, *J. Perinatology* 322 (2000) (explaining that, in the 19th century, infants born at 7 to 8 months' gestation were unlikely to survive beyond "the first days of life").

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And if viability is meant to mark a line having universal moral significance, can it be that a fetus that is viable in a big city in the United States has a privileged moral status not enjoyed by an identical fetus in a remote area of a poor country?

In addition, as the Court once explained, viability is not really a hard-and-fast line. *Colautti*, 439 U. S., at 396. A physician determining a particular fetus's odds of surviving outside the womb must consider "a number of variables," including "gestational age," "fetal weight," a woman's "general health and nutrition," the "quality of the available medical facilities," and other factors. *Id.*, at 395–396. It is thus "only with difficulty" that a physician can estimate the "probability" of a particular fetus's survival. *Id.*, at 396. And even if each fetus's probability of survival could be ascertained with certainty, settling on a "probabilit[y] of survival" that should count as "viability" is another matter. *Id.*, at 396. Is a fetus viable with a 10 percent chance of survival? 25 percent? 50 percent? Can such a judgment be made by a State? And can a State specify a gestational age limit that applies in all cases? Or must these difficult questions be left entirely to the individual "attending physician on the particular facts of the case before him"? *Id.*, at 388.

The viability line, which *Casey* termed *Roe's* central rule, makes no sense, and it is telling that other countries almost uniformly eschew such a line.⁵¹ The Court thus asserted raw judicial power to impose, as a matter of constitutional law, a uniform viability rule that allowed the States less freedom to regulate abortion than the majority of western democracies enjoy.

⁵¹ According to the Center for Reproductive Rights, only the United States and the Netherlands use viability as a gestational limit on the availability of abortion on-request. See *The World's Abortion Laws*, Center for Reproductive Rights (Feb. 23, 2021) (last accessed Jan. 21, 2022).

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All in all, *Roe's* reasoning was exceedingly weak, and academic commentators, including those who agreed with the decision as a matter of policy, were unsparing in their criticism. John Hart Ely famously wrote that *Roe* was "not constitutional law and g[ave] almost no sense of an obligation to try to be." Ely 947. Archibald Cox, who served as Solicitor General under President Kennedy, commented that *Roe* "read[s] like a set of hospital rules and regulations" that "[n]either historian, layman, nor lawyer will be persuaded . . . are part of . . . the Constitution." Archibald Cox, *The Role of the Supreme Court in American Government* 113–114 (1976). Laurence Tribe wrote that "even if there is a need to divide pregnancy into several segments with lines that clearly identify the limits of governmental power, 'interest-balancing' of the form the Court pursues fails to justify any of the lines actually drawn." Tribe 5. Mark Tushnet termed *Roe* a "totally unreasoned judicial opinion." M. Tushnet, *Red, White, and Blue: A Critical Analysis of Constitutional Law* 54 (1988). See also P. Bobbitt, *Constitutional Fate* 157 (1982); A. Amar, *Foreword: The Document and the Doctrine*, 114 *Harv. L. Rev.* 26, 110 (2000).

Despite *Roe's* weaknesses, its reach was steadily extended in the years that followed. The Court struck down laws requiring that second-trimester abortions be performed only in hospitals, *Akron v. Akron Center for Reproductive Health, Inc.*, 462 U. S. 416, 433–439 (1983); that minors obtain parental consent, *Planned Parenthood of Central Mo. v. Danforth*, 428 U. S. 52, 74 (1976); that women give written consent after being informed of the status of the developing prenatal life and the risks of abortion, *Akron*, 462 U. S., at 442–445; that women wait twenty-four hours for an abortion, *id.*, at 449–451; that a physician determine viability in a particular manner, *Colautti*, 439 U. S., at 390–397; that a physician performing a post-viability abortion use the technique most likely to preserve the life of the fetus, *id.*, at 397–401; and that fetal remains be

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treated in a humane and sanitary manner, *Akron*, 462 U. S., at 451-452.

Justice White complained that the Court was engaging in “unrestrained imposition of its own extraconstitutional value preferences.” *Thornburgh*, 476 U. S., at 794 (White, J., dissenting). And the United States as *amicus curiae* asked the Court to overrule *Roe* five times in the decade before *Planned Parenthood v. Casey*, see 505 U. S., at 844 (plurality opinion), and then asked the Court to overrule it once more in *Casey* itself.

2

When *Casey* revisited *Roe* almost 20 years later, very little of *Roe*’s reasoning was defended or preserved. The Court abandoned any reliance on a privacy right and instead grounded the abortion right entirely on the Fourteenth Amendment’s Due Process Clause. 505 U.S., at 846. The Court did not reaffirm *Roe*’s erroneous account of abortion history. In fact, none of the Justices in the majority said anything about the history of the abortion right. And as for precedent, the Court relied on essentially the same body of cases that *Roe* had cited. Thus, with respect to the standard grounds for constitutional decisionmaking—text, history, and precedent—*Casey* did not attempt to bolster *Roe*’s reasoning.

The Court also made no real effort to remedy one of the greatest weaknesses in *Roe*’s analysis—its much-criticized discussion of viability. The Court retained what it called *Roe*’s “central holding”—that a State may not regulate pre-viability abortions for the purpose of protecting fetal life—but it provided no principled defense of the viability line. *Id.*, at 860, 870–871. Instead, it merely rephrased what *Roe* had said, stating that viability marked the point at which “the independent existence of a second life can in reason and fairness be the object of state protection that now overrides the rights of the woman.” *Id.*, at 870. Why “reason

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and fairness" demanded that the line be drawn at viability the Court did not explain. And the Justices who authored the controlling opinion conspicuously failed to say that they agreed with the viability rule; instead, they candidly acknowledged "the reservations [some] of us may have in reaffirming [that] holding of *Roe*." *Id.*, at 853.

The controlling opinion criticized and rejected *Roe*'s trimester scheme, *id.*, at 872, and substituted a new "undue burden" test, but the basis for this test was obscure. And as we will explain, the test is full of ambiguities and is difficult to apply.

Casey, in short, either refused to reaffirm or rejected important aspects of *Roe*'s analysis, failed to remedy glaring deficiencies in *Roe*'s reasoning, endorsed what it termed *Roe*'s central holding while suggesting that a majority might not have thought it was correct, provided no new support for the abortion right other than *Roe*'s status as precedent, and imposed a new and problematic test with no firm grounding in constitutional text, history, or precedent.

As discussed below, *Casey* also deployed a novel version of the doctrine of *stare decisis*. See Part III–E, *infra*. This new doctrine did not account for the profound wrongness of the decision in *Roe*, and placed great weight on an intangible form of reliance with little if any basis in prior case law. *Stare decisis* does not command the preservation of such a decision.

C

Workability. Our precedents counsel that another important consideration in deciding whether a precedent should be overruled is whether the rule it imposes is workable—that is, whether it can be understood and applied in a consistent and predictable manner. *Montejo v. Louisiana*, 556 U. S. 778, 792 (2009); *Patterson v. McLean Credit Union*, 491 U. S. 164, 173 (1989); *Gulfstream Aerospace Corp.*

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v. *Mayacamas Corp.*, 485 U. S. 271, 283–284 (1988). *Casey*'s “undue burden” test has scored poorly on the workability scale.

1

Problems begin with the very concept of an “undue burden.” As Justice Scalia noted in his *Casey* dissent, determining whether a burden is “due” or “undue” is “inherently standardless.” 505 U. S., at 992 (Scalia, J., dissenting); see also *June Medical Services, LLC*, 591 U. S., at ____ (GORSUCH, J., dissenting) (slip op., at 17) (“[W]hether a burden is deemed undue depends heavily on which factors the judge considers and how much weight he accords them.” (internal quotation marks and alterations omitted)).

The *Casey* plurality tried to put meaning into the “undue burden” test by setting out three subsidiary rules, but these rules created their own problems. The first rule is that “a provision of law is invalid, if its purpose or effect is to place a *substantial obstacle* in the path of a woman seeking an abortion before the fetus attains viability.” 505 U. S., at 878 (emphasis added); see also *id.*, at 877. But whether a particular obstacle qualifies as “substantial” is often open to reasonable debate. In the sense relevant here, “substantial” means “of ample or considerable amount, quantity, or size.” Random House Webster’s Unabridged Dictionary 1897 (2d ed. 2001). Huge burdens are plainly “substantial,” and trivial ones are not, but in between these extremes, there is a wide gray area.

This ambiguity is a problem, and the second rule, which applies at all stages of a pregnancy, muddies things further. It states that measures designed “to ensure that the woman’s choice is informed” are constitutional so long as they do not impose “an undue burden on the right.” *Casey*, 505 U. S., at 878. To the extent that this rule applies to pre-viability abortions, it overlaps with the first rule and appears to impose a different standard. Consider a law that imposes an insubstantial obstacle but serves little purpose.

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As applied to a pre-viability abortion, would such a regulation be constitutional on the ground that it does not impose a “substantial obstacle”? Or would it be unconstitutional on the ground that it creates an “undue burden” because the burden it imposes, though slight, outweighs its negligible benefits? *Casey* does not say, and this ambiguity would lead to confusion down the line. Compare *June Medical*, 591 U. S., at ___ (slip op., 1-2), with *id.*, at __ (ROBERTS, C. J., concurring) (slip op., at 5-6).

The third rule complicates the picture even more. Under that rule, “[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right.” 505 U.S., at 878 (emphasis added). This rule contains no fewer than three vague terms. It includes the two already discussed—“undue burden” and “substantial obstacle”—even though they are inconsistent. And it adds a third ambiguous term when it refers to “unnecessary health regulations.” The term “necessary” has a range of meanings—from “essential” to merely “useful.” See Black’s Law Dictionary 928 (5th ed. 1979); American Heritage Dictionary of the English Language 877 (1975). *Casey* did not explain the sense in which the term is used in this rule.

In addition to these problems, one more applies to all three rules. They all call on courts to examine a law’s effect on women, but a regulation may have a very different impact on different women for a variety of reasons, including their places of residence, financial resources, family situations, work and personal obligations, knowledge about fetal development and abortion, psychological and emotional disposition and condition, and the firmness of their desire to obtain abortions. In order to determine whether a regulation presents a substantial obstacle to women, a court needs to know which set of women it should have in mind and how many of the women in this set must find that an obstacle is “substantial.”

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Casey provided no clear answer to these questions. It said that a regulation is unconstitutional if it imposes a substantial obstacle “in a large fraction of cases in which [it] is relevant,” 505 U. S., at 895, but there is obviously no clear line between a fraction that is “large” and one that is not. Nor is it clear what the Court meant by “cases in which” a regulation is “relevant.” These ambiguities have caused confusion and disagreement. Compare *Whole Woman’s Health v. Hellerstedt*, 579 U. S. 582, __ (2016) (slip op., at 39), with *id.*, at __ (ALITO, J., dissenting) (slip op., 24–25 & n. 11).

2

The difficulty of applying *Casey*’s new rules surfaced in that very case. The controlling opinion found that Pennsylvania’s 24-hour waiting period requirement and its informed-consent provision did not impose “undue burden[s],” *Casey*, 550 U. S., at 881–888 (plurality opinion), but Justice Stevens, applying the same test, reached the opposite result. *Id.*, at 920–922 (Stevens, J., concurring in part and dissenting in part). That did not bode well, and then-Chief Justice Rehnquist aptly observed that “the undue burden standard presents nothing more workable than the trimester framework.” *Id.*, at 964–966 (Rehnquist, C. J., dissenting)

The ambiguity of the “undue burden” test also produced disagreement in later cases. In *Whole Woman’s Health v. Hellerstedt*, the Court adopted the cost-benefit interpretation of the test, stating that that “[t]he rule announced in *Casey* . . . requires that courts consider the burdens a law imposes on abortion access *together with the benefits those laws confer*.” 579 U. S. __, __ (2016) (slip op., at 19–20) (emphasis added). But five years later, a majority of the Justices rejected that interpretation. See *June Medical*, 591 U. S. __ (2020). Four Justices reaffirmed *Whole Woman’s Health*’s instruction to “weigh” a law’s “benefits” against

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“the burdens it imposes on abortion access.” *Id.*, at __ (opinion of BREYER, J.) (slip op., at 2) (internal quotation marks omitted). But the Chief Justice—who cast the deciding vote—argued that “[n]othing about *Casey* suggested that a weighing of costs and benefits of an abortion regulation was a job for the courts.” *Id.*, at __ (ROBERTS, C. J., concurring) (slip op., at 6). And the four Justices in dissent rejected the lead opinion’s interpretation of *Casey*. See *id.*, at __ (ALITO, J., dissenting, joined in relevant part by THOMAS, GORSUCH, and KAVANAUGH, JJ.) (slip op., at 4); *id.*, at __ (GORSUCH, J., dissenting) (slip op., at 15–18; (KAVANAUGH, J., dissenting) (slip op., at 1–2) (“five Members of the Court reject the *Whole Woman’s Health* cost-benefit standard”).

This Court’s experience applying *Casey* has confirmed Chief Justice Rehnquist’s prescient diagnosis that the undue-burden standard was “not built to last.” *Casey*, 505 U. S., at 965 (Rehnquist, C. J., dissenting in part).

3

The experience of the Courts of Appeals provides further evidence that *Casey*’s “line between” permissible and unconstitutional restrictions “has proved to be impossible to draw with precision.” *Janus*, 585 U. S., at __ (slip op., at 38).

Casey has generated a long list of circuit conflicts. Most recently, the Courts of Appeals have disagreed about whether the balancing test from *Whole Woman’s Health* correctly states the undue-burden framework.⁵² They have disagreed on the legality of parental notification rules.⁵³

⁵² Compare *Whole Woman’s Health v. Paxton*, 10 F. 4th 430, 440 (CA5 2021), *EMW Women’s Surgical Ctr., P.S.C. v. Friedlander*, 978 F. 3d 418, 437 (CA6 2020), and *Hopkins v. Jegley*, 968 F. 3d 912, 915 (CA8 2020), with *Planned Parenthood of Ind. & Ky., Inc., v. Box*, 991 F. 3d 740, 751–752 (CA7 2021).

⁵³ Compare *Planned Parenthood v. Camblos*, 155 F. 3d 352, 367 (CA4 1998), with *Planned Parenthood of Ind. & Ky., Inc., v. Adams*, 937 F. 3d

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They have disagreed about bans on certain dilation and extraction procedures.⁵⁴ They have disagreed about when an increase in the time needed to reach a clinic constitutes an undue burden.⁵⁵ And they have disagreed on whether a state may regulate abortions performed because of the fetus's race, sex, or disability.⁵⁶

The Courts of Appeals have experienced particular difficulty in applying the large-fraction-of-relevant-cases test. They have criticized the assignment while reaching unpredictable results.⁵⁷ And they have candidly outlined *Casey's* many other problems.⁵⁸

973, 985–990 (CA7 2019), certiorari granted, judgment vacated, 591 U. S. ___ (2020), and *Planned Parenthood v. Miller*, 63 F. 3d 1452, 1460 (CA8 1995).

⁵⁴ Compare *Whole Woman's Health v. Paxton*, 10 F.4th, at 435–436, with *W. Ala. Women's Ctr. v. Williamson*, 900 F. 3d 1310, 1319, 1327 (CA11 2018), and *EMW Women's Surgical Ctr., P.S.C. v. Friedlander*, 960 F. 3d 785, 806–808 (CA6 2020).

⁵⁵ Compare *Tucson Woman's Clinic v. Eden*, 379 F. 3d 531, 541 (CA9 2004), with *Women's Med. Prof'l Corp. v. Baird*, 438 F. 3d 595, 605 (CA6 2006) and *Greenville Women's Clinic v. Bryant*, 222 F. 3d 157, 171–172 (CA4 2000).

⁵⁶ Compare *Preterm-Cleveland*, 994 F. 3d 512, 520–535 (CA6 2021), with *Little Rock Family Planning Servs. v. Rutledge*, 984 F. 3d 682, 688–690 (CA8 2021).

⁵⁷ See, e.g., *Bristol Reg'l Women's Center, P.C. v. Slatery*, 7 F. 4th 478, 485 (CA6 2021); *Reproductive Health Servs. v. Strange*, 3 F. 4th 1240, 1269; *June Medical Servs., LLC v. Gee*, 905 F. 3d 787, 814 (CA5 2020), reversed, 591 U. S. ___; *Preterm-Cleveland*, 994 F. 3d, at 534; *Planned Parenthood of Ark. & E. Okla. v. Jegley*, 864 F. 3d 953, 958–960 (CA8 2017); *McCormack v. Hertzog*, 788 F. 3d 1017, 1029–1030 (CA9 2015); compare *Newman*, 305 F. 3d, at 699 (Coffey, J., concurring), with *id.*, at 708 (Wood, J., dissenting).

⁵⁸ See, e.g., *Memphis Ctr. for Reproductive Health v. Slatery*, 14 F. 4th 409, 451 (CA6 2021) (Thapar, J., concurring in judgment in part and dissenting in part); *Preterm-Cleveland*, 994 F. 3d, at 524 (CA6 2021); *Planned Parenthood of Ind. & Ky.*, 888 F. 3d, at 313 (Manion, J., concurring in the judgment in part and dissenting in part); *Planned Parenthood of Ind. & Ky., Inc., v. Box*, 949 F. 3d 997, 999 (CA7 2019) (Easterbrook,

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Casey's "undue burden" test has proven to be unworkable. "[P]lucked from nowhere," 505 U. S., at 965 (Rehnquist, C. J., dissenting in part), it "seems calculated to perpetuate give-it-a-try litigation" before judges assigned an unwieldy and inappropriate task. *Lehnert v. Ferris Faculty Assn.*, 500 U. S. 507, 551 (1991) (Scalia, J., concurring in the judgment in part and dissenting in part). Continued adherence to that standard would undermine, not advance, the "even-handed, predictable, and consistent development of legal principles." *Payne*, 501 U. S., at 827.

D

Effect on other areas of law. *Roe* and *Casey* have led to the distortion of many important but unrelated legal doctrines, and that effect provides further support for overruling those decisions. See *Ramos*, 590 U. S., at ___ (KAVANAUGH, J., concurring) (slip op., at 8); *Janus*, 585 U. S., at ___ (slip op., at 34).

Members of this Court have repeatedly lamented that "no legal rule or doctrine is safe from ad hoc nullification by the Court when an occasion for its application arises in a case involving state regulation of abortion." *Thornburgh*, 476 U. S., at 814 (O'Connor, J., dissenting); see *Madsen v. Women's Health Center, Inc.*, 512 U. S. 753, 785 (1994) (Scalia, J., concurring in the judgment in part and dissenting in part); *Whole Woman's Health*, 579 U. S., at ___ (THOMAS, J., dissenting) (slip op., at 1); *id.*, at ___ (ALITO, J., dissenting) (slip op., at 4–24, 37–43); *June Medical*, 591

J., concurring in denial of rehearing en banc) ("How much burden is 'undue' is a matter of judgment, which depends on what the burden is . . . and whether that burden is excessive (a matter of weighing costs and benefits, which one judge is apt to do differently from another, and which judges as a group are apt to do differently from state legislators)"); *Nat'l Abortion Fed'n v. Gonzales*, 437 F. 3d 278, 290–296 (CA2 2006) (Walker, C. J., concurring); *Planned Parenthood of Rocky Mountains Servs. Corp. v. Owens*, 287 F. 3d 910, 931 (CA10 2002) (Baldock, J., dissenting).

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U. S., at ____ (GORSUCH, J., dissenting) (slip op., at 1–15).

The Court's abortion cases have diluted the strict standard for facial constitutional challenges.⁵⁹ They have ignored the Court's third-party standing doctrine.⁶⁰ They have disregarded standard *res judicata* principles.⁶¹ They have flouted the ordinary rules on the severability of unconstitutional provisions,⁶² as well as the rule that statutes should be read where possible to avoid unconstitutionality.⁶³ And they have distorted First Amendment doctrines.⁶⁴

When vindicating a doctrinal innovation requires courts to engineer exceptions to longstanding background rules, the doctrine “has failed to deliver the ‘principled and intelligible’ development of the law that *stare decisis* purports to secure.” *June Medical*, 591 U. S., at ____ (THOMAS, J., dissenting) (slip op., at 19) (quoting *Vasquez v. Hillery*, 474 U. S. 254, 265 (1986)).

E

Reliance interests. We last consider whether overruling *Roe* and *Casey* will upend substantial reliance interests. See *Ramos*, 590 U.S., at ____ (KAVANAUGH, J., concurring)

⁵⁹ Compare *United States v. Salerno*, 481 U. S. 739, 745 (1987), with *Casey*, 505 U. S., at 895; see also *supra*, at ____.

⁶⁰ Compare *Warth v. Seldin*, 422 U. S. 490, 499 (1975), and *Elk Grove Unified School Dist. v. Newdow*, 542 U. S. 1, 15, 17–18 (2004), with *June Medical*, 591 U. S., at ____ (ALITO, J., dissenting) (slip op., at 28), *id.*, at ____ (GORSUCH, J., dissenting) (slip op. at 6–7) (collecting cases), and *Whole Woman's Health*, 579 U. S., at ____ n. 1 (THOMAS, J., dissenting) (slip op., at 4–5).

⁶¹ Compare *Whole Woman's Health*, 579 U. S., at ____ (slip op., at 12), with *id.*, at ____ (ALITO, J., dissenting) (slip op., at 10).

⁶² Compare *Whole Woman's Health*, at (slip op., at 36–38), with *id.*, at ____ (ALITO, J., dissenting) (slip op., at 2).

⁶³ See *Sternberg v. Carhart*, 530 U. S. 914, 977–978 (2000) (Kennedy, J., dissenting); *id.*, at 996–997 (THOMAS, J., dissenting).

⁶⁴ See *Hill v. Colorado*, 530 U.S. 703, 741–742 (Scalia, J., dissenting); *id.*, at 765 (Kennedy, J., dissenting).

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(slip op. at 15); *Janus*, 585 U. S., at ___ (slip op., at 34–35).

1

Traditional reliance interests arise “when advance planning of great precision is most obviously a necessity.” *Casey*, 505 U. S., at 856 (plurality opinion); see also *Payne*, 501 U. S., at 828. In *Casey*, the controlling opinion conceded that those traditional reliance interests were not implicated because getting an abortion is generally “unplanned activity,” and “reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions.” 505 U. S., at 956. For these reasons, we agree with the *Casey* plurality that conventional, concrete reliance interests are not present here.

2

Unable to find reliance in the conventional sense, the controlling opinion in *Casey* perceived a more intangible form of reliance. It wrote that “people [had] organized intimate relationships and made choices that define their views of themselves and their places in society[] in reliance on the availability of abortion in the event that contraception should fail” and that “[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.” *Ibid.* But this Court is ill-equipped to assess “generalized assertions about the national psyche.” *Id.*, at 957 (Rehnquist, C. J., concurring in part and dissenting in part). *Casey*’s notion of reliance thus finds little support in our cases, which instead emphasize very concrete reliance interests, like those that develop in “cases involving property and contract rights.” *Payne*, 501 U. S., at 829.

When a concrete reliance interest is asserted, courts are equipped to evaluate the claim, but assessing the novel and intangible form of reliance endorsed by the *Casey* plurality

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is another matter. That form of reliance depends on an empirical question that is hard for anyone—and in particular, for a court—to assess, namely, the effect of the abortion right on society and in particular on the lives of women. The contending sides in this case make impassioned and conflicting arguments about the effects of the abortion right on the lives of women. Compare Brief for Petitioners 34–36; Brief for *Amici Curiae* Women Scholars & Professionals, et al. 13–20, 29–41, with Brief for Respondents 36–41; Brief for Nat'l Women's Law Center et al. as *Amici Curiae* 15–32. The contending sides also make conflicting arguments about the status of the fetus. This Court has neither the authority nor the expertise to adjudicate those disputes, and the *Casey* plurality's speculations and weighing of the relative importance of the fetus and mother represent a departure from the "original constitutional proposition" that "courts do not substitute their social and economic beliefs for the judgment of legislative bodies." *Ferguson v. Shrupa*, 372 U. S. 726, 729–739 (1963).

Our decision returns the issue of abortion to those legislative bodies, and it allows women on both sides of the abortion issue to seek to affect the legislative process by influencing public opinion, lobbying legislators, voting, and running for office. Women are not without electoral or political power. It is noteworthy that the percentage of women who register to vote and cast ballots is consistently higher than the percentage of men who do so.⁶⁵ In the last election in November 2020, women, who make up around 51.5% of the population of Mississippi,⁶⁶ constituted 55.5%

⁶⁵ See Dep't of Commerce, U. S. Census Bureau, *An Analysis of the 2018 Congressional Election* 6, tbl. 5 (Dec. 2021) (showing that women made up over 50% of the voting population in every congressional election between 1978 and 2018).

⁶⁶ Dep't of Commerce, U. S. Census Bureau, *QuickFacts, Mississippi*, <https://www.census.gov/quickfacts/MS> (July 1, 2021).

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of the voters who cast ballots.⁶⁷

3

Unable to show concrete reliance on *Roe* and *Casey* themselves, the Solicitor General suggests that overruling those decisions would “threaten the Court’s precedents holding that the Due Process Clause protects other rights.” Brief for United States as *Amicus Curiae* 26 (citing *Obergefell v. Hodges*, 576 U. S. 644 (2015); *Lawrence v. Texas*, 539 U. S. 558 (2003); *Griswold v. Connecticut*, 381 U. S. 479 (1965)). That is not correct for reasons we have already discussed. As even the *Casey* plurality recognized, “[a]bortion is a unique act” because it terminates “life or potential life.” 505 U. S., at 852; see also *Roe*, 410 U. S., at 159 (abortion is “inherently different from marital intimacy,” “marriage,” or “procreation”). And to ensure that our decision is not misunderstood or mischaracterized, we emphasize that our decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion.

IV

Having shown that traditional *stare decisis* factors do not weigh in favor of retaining *Roe* or *Casey*, we must address one final argument that featured prominently in the *Casey* plurality opinion.

The argument was cast in different terms, but stated simply, it was essentially as follows. The American people’s belief in the rule of law would be shaken if they lost respect for this Court as an institution that decides important cases based on principle, not “social and political pressures.” *Casey*, 505 U. S., at 865. There is a special danger that the

⁶⁷ Dep’t of Commerce, U. S. Census Bureau, Voting and Registration in the Election of November 2020, Table 4b, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States: November 2020, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>.

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public will perceive a decision as having been made for unprincipled reasons when the Court overrules a controversial “watershed” decision, such as *Roe. Id.*, at 866–867. A decision overruling *Roe* would be perceived as having been made “under fire” and as a “surrender to political pressure,” *id.*, at 867, and therefore the preservation of public approval of the Court weighs heavily in favor of retaining *Roe*, see *id.*, at 869.

This analysis starts out on the right foot but ultimately veers off course. The *Casey* plurality was certainly right that it is important for the public to perceive that our decisions are based on principle, and we should make every effort to achieve that objective by issuing opinions that carefully show how a proper understanding of the law leads to the results we reach. But we cannot exceed the scope of our authority under the Constitution, and we cannot allow our decisions to be affected by any extraneous influences such as concern about the public’s reaction to our work. Cf. *Texas v. Johnson*, 491 U. S. 397 (1989); *Brown v. Board of Education*, 347 U.S. 483 (1954). That is true both when we initially decide a constitutional issue *and* when we consider whether to overrule a prior decision. As Chief Justice Rehnquist explained, “The Judicial Branch derives its legitimacy, not from following public opinion, but from deciding by its best lights whether legislative enactments of the popular branches of Government comport with the Constitution. The doctrine of *stare decisis* is an adjunct of this duty and should be no more subject to the vagaries of public opinion than is the basic judicial task.” *Casey*, 505 U. S., at 963 (Rehnquist, C. J.). In suggesting otherwise, the *Casey* plurality went beyond this Court’s role in our constitutional system.

The *Casey* plurality “call[ed] the contending sides of a national controversy to end their national division,” and claimed the authority to impose a permanent settlement of the issue of a constitutional abortion right simply by saying

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that the matter was closed. *Id.*, at 867. That unprecedented claim exceeded the power vested in us by the Constitution. As Hamilton famously put it, the Constitution gives the judiciary “neither Force nor Will.” The Federalist No. 78, p. 523 (J. Cooke ed. 1961). Our sole authority is to exercise “judgment”—which is to say, the authority to judge what the law means and how it should apply to the case at hand. *Ibid.* The Court has no authority to decree that an erroneous precedent is *permanently* exempt from evaluation under traditional *stare decisis* principles. A precedent of this Court is subject to the usual principles of *stare decisis* under which adherence to precedent is the norm but not an inexorable command. If the rule were otherwise, erroneous decisions like *Plessy* and *Lochner* would still be the law. That is not how *stare decisis* operates.

The *Casey* plurality also misjudged the practical limits of this Court’s influence. *Roe* certainly did not succeed in ending division on the issue of abortion. On the contrary, *Roe* “inflamed” a national issue that has remained bitterly divisive for the past half-century. See *Casey*, 505 U. S., at 995 (Scalia, J., dissenting); see also R. B. Ginsburg, Speaking in a Judicial Voice, 67 N.Y.U. L. Rev. 1185, 1208 (1992) (*Roe* may have “halted a political process,” “prolonged divisiveness,” and “deferred stable settlement of the issue.”). And for the past 30 years, *Casey* has done the same.

Neither decision has ended debate over the issue of a constitutional right to obtain an abortion. Indeed, in this case, 26 States expressly ask us to overrule *Roe* and *Casey* and to return the issue of abortion to the people and their elected representatives. This Court’s inability to end debate on the issue should not have been surprising. This Court cannot bring about the permanent resolution of a rancorous national controversy simply by dictating a settlement and telling the people to move on. Whatever influence the Court may have on public attitudes must stem from the strength of our opinions, not an attempt to exercise “raw

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judicial power.” *Roe*, 410 U. S., at 222 (White, J., dissenting).

We do not pretend to know how our political system or society will respond to today’s decision overruling *Roe* and *Casey*. And even if we could foresee what will happen, we would have no authority to let that knowledge influence our decision. We can only do our job, which is to interpret the law, apply longstanding principles of *stare decisis*, and decide this case accordingly.

We therefore hold that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives.

V

We must now decide what standard will govern if state abortion regulations undergo constitutional challenge and whether the law before us satisfies the appropriate standard.

A

Under our precedents, rational-basis review is the appropriate standard for such challenges. As we have explained, procuring an abortion is not a fundamental constitutional right because such a right has no basis in the Constitution’s text or in our Nation’s history. See *supra*, at ____.

It follows that the States may regulate abortion for legitimate reasons, and when such regulations are challenged under the Constitution, courts cannot “substitute their social and economic beliefs for the judgment of legislative bodies.” *Ferguson*, 372 U. S. at 729–739; see also *Dandridge v. Williams*, 397 U. S. 471, 484–486 (1970); *United States v. Carolene Products Co.*, 304 U. S. 144, 152 (1938). That respect for a legislature’s judgment applies even when the laws at issue concern matters of great social significance and moral substance. See, e.g., *Board of Trustees of Univ.*

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of *Ala. v. Garrett*, 531 U. S. 356, 365–368 (2001) (“treatment of the disabled”); *Glucksberg*, 521 U. S. at 728 (“assisted suicide”); *San Antonio Independent School Dist. v. Rodriguez*, 411 U. S. 1, 32–35, 55 (1973) (“financing public education”).

A law regulating abortion, like other health and welfare laws, is entitled to a “strong presumption of validity.” *Heller*, 509 U. S., at 319. It must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests. *Id.*, at 320; *FCC v. Beach Communications, Inc.*, 508 U. S. 307, 313 (1993); *New Orleans*, 427 U. S., at 303; *Williamson v. Lee Optical of Okla., Inc.*, 348 U. S. 483, 491 (1955). These legitimate interests include respect for and preservation of prenatal life at all stages of development, *Gonzales*, 550 U. S., at 157–158; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability. See *id.*, at 156–157; *Roe*, 410 U. S., at 150; cf. *Glucksberg*, 521 U. S., at 728–731 (identifying similar interests).

B

These legitimate interests justify Mississippi’s Gestational Age Act. Except “in a medical emergency or in the case of a severe fetal abnormality,” the statute prohibits abortion “if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks.” Miss. Code Ann. §41–41–191(4)(b). The Mississippi Legislature’s findings recount the stages of “human prenatal development” and assert the State’s interest in “protecting the life of the unborn.” *Id.* §2(b)(i)(2). The legislature also found that abortions performed after fifteen weeks typically use the dilation and evacuation procedure, and the legislature found the use of this procedure “for non-therapeutic or elective reasons [to be] a barbaric practice,

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dangerous for the maternal patient, and demeaning to the medical profession.” *Id.* §2(b)(i)(8); see also *Gonzales*, 550 U. S., at 135–143 (describing such procedures). These legitimate interests provide a rational basis for the Gestational Age Act, and it follows that respondents’ constitutional challenge must fail.

VI

We end this opinion where we began. Abortion presents a profound moral question. The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives.

The judgment of the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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APPENDIX A

This appendix contains statutes criminalizing abortion at all stages of pregnancy in the States existing in 1868. The statutes appear in chronological order.

1. Missouri (1825):

That every person who shall wilfully and maliciously administer or cause to be administered to or taken by any person, any poison, or other noxious, poisonous or destructive substance or liquid, with an intention to harm him or her thereby to murder, or thereby *to cause or procure the miscarriage of any woman then being with child*, and shall thereof be duly convicted, shall suffer imprisonment not exceeding seven years, and be fined not exceeding three thousand dollars.⁶⁸

2. Illinois (1827):

Every person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison, or other noxious or destructive substance or liquid, with an intention to cause the death of such person, *or to procure the miscarriage of any woman, then being with child*, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years, and be fined in a sum not exceeding one thousand dollars.⁶⁹

⁶⁸ Act of July 4, 1925, ch. 1, §12, 1 Mo. Laws 281, 283 (1825); see also Act of Mar. 20, 1835, Mo. Rev. Stat. art. I, §§ 10, 36 (extending liability to abortions performed by instrument and establishing differential penalties for pre- and post-quickening abortion). 1835) (emphasis added).

⁶⁹ Ill. Rev. Code § 46 (1827) (emphasis added); see also Ill. Rev. Code § 46 (1833) (same); Ill. Pub. Laws § 1 (1867) (extending liability to abortions "by means of any instruments" and raising penalties to imprisonment "not less than two nor more than ten years").

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3. New York (1828):

Sec. 9. Every person who shall administer *to any woman pregnant with a quick child*, any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree.

Sec. 21. Every person who shall willfully administer *to any pregnant woman*, any medicine, drug, substance or thing whatever, or shall use or employ any instrument of other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose; shall, upon conviction, be punished by imprisonment in a county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.⁷⁰

4. Ohio (1834):

Sec. 1. Be it enacted by the General Assembly of State of Ohio, That any physician, or other person, who shall wilfully administer *to any pregnant woman* any medicine, drug, substance, or thing whatever, or shall use any instrument or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve

⁷⁰ N. Y. Rev. Stat. pt. IV, ch. I, tit. II, §9; *id.*, at tit. VI, §21 (1828-1835); Act of Dec. 10, 1828 (codifying these provisions in the revised statutes).

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the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Sec. 2. That any physician, or other person, who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case of the death of child or mother in consequence thereof, be deemed guilty of high misdemeanor, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than seven years, nor less than one year.⁷¹

5. Indiana (1835):

That every person who shall wilfully administer to any pregnant woman, any medicine, drug, substance or thing whatever, or shall use or employ any instrument or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, shall upon conviction be punished by imprisonment in the county jail any term of time not exceeding twelve months and be fined any sum not exceeding five hundred dollars.⁷²

⁷¹ Act of Feb. 27, 1834, §§ 1, 2, 1834 Ohio Laws 20-21 (emphasis added).

⁷² Act of Feb. 7, 1835, ch. 47, § 3, 1835 Ind. Gen. Laws 66 (emphasis added).

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6. Maine (1840):

Sec. 13. Every person, who shall administer *to any woman pregnant with child, whether such child be quick or not*, any medicine, drug or substance whatever, or shall use or employ any instrument or other means whatever, with intent to destroy such child, and shall thereby destroy such child before its birth, unless the same shall have been done as necessary to preserve the life of the mother, shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year.

Sec. 14. Every person, who shall administer *to any woman, pregnant with child, whether such child shall be quick or not*, any medicine, drug or substance whatever, or shall use or employ any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same shall have been done, as necessary to preserve her life, shall be punished by imprisonment in the county jail, not more than one year, or by fine, not exceeding one thousand dollars.⁷³

7. Alabama (1841):

Sec. 2. Every person who shall wilfully administer *to any pregnant woman* any medicines, drugs, substance or thing whatever, or shall use and employ any instrument or means whatever with intent thereby to procure the miscarriage of such woman, unless the same shall be necessary to preserve her life, or shall have been advised by a respectable physician to be necessary for that purpose, shall upon conviction, be punished by fine

⁷³ Me. Rev. Stat. ch. 160, §§ 13-14 (1840) (emphasis added).

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not exceeding five hundred dollars, and by imprisonment in the county jail, not less than three, and not exceeding six months.⁷⁴

8. Massachusetts (1845):

Whoever, maliciously or without lawful justification, with intent to cause and procure the miscarriage *of a woman then pregnant with child*, shall administer to her, prescribe for her, or advise or direct her to take or swallow, any poison, drug, medicine or noxious thing, or shall cause or procure her with like intent, to take or swallow any poison, drug, medicine or noxious thing; and whoever maliciously and without lawful justification, shall use any instrument or means whatever with the like intent, and every person, with the like intent, knowingly aiding and assisting such offender or offenders, shall be deemed guilty of felony, if the woman die in consequence thereof, and shall be imprisoned not more than twenty years, nor less than five years in the State Prison; and if the woman doth not die in consequence thereof, such offender shall be guilty of a misdemeanor, and shall be punished by imprisonment not exceeding seven years, nor less than one year, in the state prison or house of correction, or common jail, and by fine not exceeding two thousand dollars.⁷⁵

9. Michigan (1846):

Sec. 33. Every person who shall administer *to any woman pregnant with a quick child*, any medicine, drug or substance whatever, or shall use or employ any, instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have

⁷⁴ Act of Jan. 9, 1841, ch. 6, § 2, 1841 Ala. Acts 143 (emphasis added).

⁷⁵ Act of Jan. 31, 1845, ch. 27, 1845 Mass. Acts 406 (emphasis added).

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been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter.

Sec. 34. Every person who shall wilfully administer to *any pregnant woman* any medicine, drug, substance or thing whatever, or shall employ any instrument or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in a county jail not more than one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.⁷⁶

10. Vermont (1846):

Whoever maliciously, or without lawful justification with intent to cause and procure the miscarriage of a woman, *then pregnant with child*, shall administer to her, prescribe for her, or advise or direct her to take or swallow any poison, drug, medicine or noxious thing, or shall cause or procure her, with like intent, to take or swallow any poison, drug, medicine or noxious thing, and whoever maliciously and without lawful justification, shall use any instrument or means whatever, with the like intent, and every person, with the like intent, knowingly aiding and assisting such offenders, shall be deemed guilty of felony, if the woman die in consequence thereof, and shall be imprisoned in the state prison, not more than ten years, nor less than five years; and if the woman does not die in consequence thereof, such offenders shall be deemed guilty of a misdemeanor; and shall be punished by imprisonment in

⁷⁶ Mich. Rev. Stat. ch. 153, §§ 33-34 (1846) (emphasis added)

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the state prison not exceeding three years, nor less than one year, and pay a fine not exceeding two hundred dollars.⁷⁷

11. Virginia (1848):

Any free person who shall administer *to any pregnant woman*, any medicine, drug or substance whatever, or use or employ any instrument or other means with intent thereby to destroy the child with which such woman may be pregnant, or to produce abortion or miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, unless the same shall have been done to preserve the life of such woman, shall be punished, if the death of a quick child be thereby produced, by confinement in the penitentiary, for not less than one nor more than five years, or if the death of a child, not quick, be thereby produced, by confinement in the jail for not less than one nor more than twelve months.⁷⁸

12. New Hampshire (1849):

Sec. 1. That every person, who shall wilfully administer *to any pregnant woman*, any medicine, drug, substance or thing whatever, or shall use or employ any instrument or means whatever with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in the county jail not more than one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment at

⁷⁷ Act of Oct. 30, 1846, No. 33, 1846 Vt. Acts 34-35 (emphasis added)

⁷⁸ Act of Mar. 14, 1848, tit. 1, ch. 3, § 9, 1848 Va. Acts 96 (emphasis added).

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the discretion of the Court.

Sec. 2. Every person who shall administer *to any woman pregnant with a quick child*, any medicine, drug or substance whatever, or shall use or employ any instrument or means whatever, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for such purpose, shall, upon conviction, be punished by fine not exceeding one thousand dollars, and by confinement to hard labor not less than one year, nor more than ten years.⁷⁹

13. New Jersey (1849):

That if any person or persons, maliciously or without lawful justification, with intent to cause and procure the miscarriage *of a woman then pregnant with child*, shall administer to her, prescribe for her, or advise or direct her to take or swallow any poison, drug, medicine, or noxious thing; and if any poison or persons maliciously, and without lawful justification, shall use any instrument or means whatever, with the like intent; and every person, with the like intent, knowingly aiding and assisting such offender or offenders, shall, on conviction thereof, be adjudged guilty of a high misdemeanor; and if the woman die in consequence thereof, shall be punished by fine, not exceeding one thousand dollars, or imprisonment at hard labour for any term not exceeding fifteen years, or both; and if the woman doth not die in consequence thereof, such offender shall, on conviction thereof, be adjudged guilty of a misdemeanor, and be punished by fine, not exceeding five hundred dollars, or imprisonment at hard labour, for

⁷⁹ Act of Jan. 4, 1849, N.H. Laws ch. 743, §§ 1-2 (1848) (emphasis added).

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any term not exceeding seven years, or both.⁸⁰

14. California (1850):

And every person who shall administer or cause to be administered or taken, any medical substances, or shall use or cause to be used any instruments whatever, with the intention *to procure the miscarriage of any woman then being with child*, and shall be thereof duly convicted, shall be punished by imprisonment in the State Prison for a term not less than two years, nor more than five years: Provided, that no physician shall be affected by the last clause of this section, who, in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.⁸¹

15. Texas (1854):

If any person, with the intent to procure the miscarriage of any woman being with child, unlawfully and maliciously shall administer to her or cause to be taken by her any poison or other noxious thing, or shall use any instrument or any means whatever, with like intent, every such offender, and every person counseling or aiding or abetting such offender, shall be punished by confinement to hard labor in the Penitentiary not exceeding ten years.⁸²

16. Louisiana (1856):

Whoever shall feloniously administer or cause to be administered any drug, potion, or any other thing to any woman, for the purpose of procuring a premature de-

⁸⁰ Act of Mar. 1, 1849, 1849 N.J. Laws 266-267 (emphasis added)

⁸¹ Cal. Sess. Stats. ch. 99, § 45 (1849-1850) (emphasis added).

⁸² Act of Feb. 9, 1854, § 1, 1854 Tex. Gen. Laws 58 (emphasis added).

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livery, and whoever shall administer or cause to be administered *to any woman pregnant with child*, any drug, potion, or any other thing, for the purpose of procuring abortion, or a premature delivery, shall be imprisoned at hard labor, for not less than one, nor more than ten years.⁸³

17. Iowa (1858):

That every person who shall willfully administer *to any pregnant woman*, any medicine, drug, substance or thing whatever, or shall use or employ any instrument or other means whatever, with the intent thereby to procure the miscarriage of any such woman, unless the same shall be necessary to preserve the life of such woman, shall upon conviction thereof, be punished by imprisonment in the county jail for a term of not exceeding one year, and be fined in a sum not exceeding one thousand dollars.⁸⁴

18. Wisconsin (1858):

Sec. 11. Every person who shall administer *to any woman pregnant with a child* any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree.⁸⁵

Sect. 58. Every person who shall administer *to any*

⁸³ La. Rev. Stat. § 24 (1856) (emphasis added).

⁸⁴ Act of Mar. 15, 1858, § 1 (codified in Iowa Rev. Laws, tit. 23, ch. 165, art. 2, §4221) (emphasis added).

⁸⁵ Wis. Rev. Stat. ch. 164, § 11, ch. 169, § 58 (1858) (emphasis added).

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pregnant woman, or prescribe for any such woman, or advise or procure any such woman to take, any medicine, drug, or substance or thing whatever, or shall use or employ any instrument or other means whatever, or advise or procure the same to be used, with intent thereby to procure the miscarriage of any such woman, shall upon conviction be punished by imprisonment in a county jail, not more than one year nor less than three months, or by fine, not exceeding five hundred dollars, or by both fine and imprisonment, at the discretion of the court.

19. Kansas (1859):

Sec. 10. Every person who shall administer *to any woman, pregnant with a quick child*, any medicine, drug or substance whatsoever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by a physician to be necessary for that purpose, shall be deemed guilty of manslaughter in the second degree.

Sec. 37. Every physician or other person who shall wilfully administer *to any pregnant woman* any medicine, drug or substance whatsoever, or shall use or employ any instrument or means whatsoever, with intent thereby to procure abortion or the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by a physician to be necessary for that purpose, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and

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imprisonment.⁸⁶

20. Connecticut (1860):

That any person with intent *to procure the miscarriage or abortion of any woman*, shall give or administer to her, prescribe for her, or advise, or direct, or cause or procure her to take, any medicine, drug or substance whatever, or use or advise the use of any instrument, or other means whatever, with the like intent, unless the same shall have been necessary to preserve the life of such woman, or of her unborn child, shall be deemed guilty of felony, and upon due conviction thereof shall be punished by imprisonment in the Connecticut state prison, not more than five years or less than one year, or by a fine of one thousand dollars, or both, at the discretion of the court.⁸⁷

21. Pennsylvania (1860):

Sec. 87. If any person shall unlawfully administer *to any woman, pregnant or quick with child, or supposed and believed to be pregnant and quick with child*, any drug, poison, or other substance whatsoever, or shall unlawfully use any instrument or other means whatsoever, with the intent to procure the miscarriage of such woman, and such woman, or any child with which she may be quick, shall die in consequence of either of said unlawful acts, the person so offending shall be guilty of felony, and shall be sentenced to pay a fine not exceeding five hundred dollars, and to undergo an imprisonment, by separate or solitary confinement at labor, not exceeding seven years.

⁸⁶ Act of Feb. 3, 1859, ch. 28, §§ 10, 37, 1859 Kan. Laws 232-233, 237 (emphasis added).

⁸⁷ Conn. Pub. Acts ch. LXXI, §§ 1-2 (1860) (emphasis added).

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Sec. 88. If any person, with intent *to procure the miscarriage of any woman*, shall unlawfully administer to her any poison, drug or substance whatsoever, with the like intent, such person shall be guilty of felony, and being thereof convicted, shall be sentenced to pay a fine not exceeding five hundred dollars, and undergo an imprisonment, by separate or solitary confinement at labor, not exceeding three years.⁸⁸

22. Rhode Island (1861):

Every person who shall be convicted of wilfully administering *to any pregnant woman, or to any woman supposed by such person to be pregnant*, anything whatever, or shall employ any means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall be imprisoned not exceeding one year, or fined not exceeding one thousand dollars.⁸⁹

23. Nevada (1861):

[E]very person who shall administer, or cause to be administered or taken, any medicinal substance, or shall use, or cause to be used, any instruments whatever, with the intention *to procure the miscarriage of any woman then being with child*, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison, for a term not less than two years, nor more than five years; provided, that no physician shall be affected by the last clause of this section, who, in the discharge of his professional duties, deems it nec-

⁸⁸ Act of Mar. 31, 1860, No. 374, tit. 6, §§ 87-88, 1860 Pa. Laws 404-405 (emphasis added).

⁸⁹ Acts of Mar. 15, 1861, ch. 371, § 1, Acts 7 Resolves R. I. 133 (emphasis added).

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essary to produce the miscarriage of any woman in order to save her life.⁹⁰

24. West Virginia (1863):

West Virginia's Constitution adopted the laws of Virginia when it became its own State:

Such parts of the common law and of the laws of the State of Virginia as are in force within the boundaries of West Virginia when this Constitution Goes into operation, and are not repugnant thereto, shall be and continue the law of this State until altered or repealed by the Legislature.⁹¹

The Virginia law in force in 1863 stated:

Any free person who shall administer to, or cause to be taken, *by a woman*, any drug or other thing, or use any means, with intent to destroy her unborn child, or to produce abortion or miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, shall be confined in the penitentiary not less than one, nor more than five years. No person, by reason of any act mentioned in this section, shall be punishable where such act is done in good faith, with the intention of saving the life of such woman or child.⁹²

25. Oregon (1864):

If any person shall administer *to any woman pregnant with child*, any medicine, drug or substance whatever, or shall use or employ any instrument or other means,

⁹⁰ Act of Nov. 26, 1861, ch. 28, div. 4, § 42, 1861 Nev. Laws 63 (emphasis added).

⁹¹ W.V. Const, Art. XI, §8 (1862).

⁹² Va. Code tit. 54, ch. 191, § 8 (1849) (emphasis added); see also W. Va. Code, ch. 144, §8 (1870) (similar).

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with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of such mother, such person shall, in case the death of such child or mother be thereby produced, be deemed guilty of manslaughter.⁹³

26. Nebraska (1866):

Every person who shall willfully and maliciously administer or cause to be administered to or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year and not more than seven years. And every person who shall administer or cause to be administered or taken, any such poison, substance or liquid, with the intention *to procure the miscarriage of any woman then being with child*, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years in the penitentiary, and fined in a sum not exceeding one thousand dollars.⁹⁴

27. Maryland (1868):

And be it enacted, That any person who shall knowingly advertise, print, publish, distribute or circulate, or knowingly cause to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper notice, advertisement or reference containing words or language, giving or conveying any notice, hint or reference to any person, or to the

⁹³ Act of Oct. 19, 1864, Ore. Gen. Laws, Crim. Code, ch. 43, § 509 (1845-1864)

⁹⁴ Act of Feb. 12, 1866, Neb. Rev. Stat. tit. 4, ch. 4, § 42 (1866) (emphasis added); see also Neb. Gen. Stat. ch. 58, §§ 6, 39 (1873) (expanding criminal liability for abortions by other means, including instruments).

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name of any person real or fictitious, from whom; or to any place, house, shop or office, when any poison, drug, mixture, preparation, medicine or noxious thing, or any instrument or means whatever; for the purpose of producing abortion, or who shall knowingly sell, or cause to be sold any such poison, drug, mixture, preparation, medicine or noxious thing or instrument of any kind whatever; or where any advice, direction, information or knowledge may be obtained *for the purpose of causing the miscarriage or abortion of any woman pregnant with child, at any period of her pregnancy*, or shall knowingly sell or cause to be sold any medicine, or who shall knowingly use or cause to be used any means whatsoever for that purpose, shall be punished by imprisonment in the penitentiary for not less than three years, or by a fine of not less than five hundred nor more than one thousand dollars, or by both, in the discretion of the Court; and in case of fine being imposed, one thereof shall be paid to the State of Maryland, and one-half to the School Fund of the city or county where the offence was committed; provided, however, that nothing herein contained shall be construed so as to prohibit the supervision and management by a regular practitioner of medicine of all cases of abortion occurring spontaneously, either as the result of accident, constitutional debility, or any other natural cause, or the production of abortion by a regular practitioner of medicine who, after consulting with one or more respectable physicians, he shall be satisfied that the foetus is dead, or that no other method will secure the safety of the mother.⁹⁵

⁹⁵ Act of Mar. 28, 1868, ch. 179, 1868 Md. Laws 314-316 (emphasis added).

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28. Florida (1868):

Ch. 1, Sec. 11. Every person who shall administer *to any woman pregnant with a quick child* any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree.

Ch. VII, Sec. 9. Whoever, with intent *to procure miscarriage of any woman*, unlawfully administers to her, or advises, or prescribes for her, or causes to be taken by her, any poison, drug, medicine, or other noxious thing, or unlawfully uses any instrument or other means whatever with the like intent, or with like intent aids or assists therein, shall, if the woman does not die in consequence thereof, be punished by imprisonment in the State penitentiary not exceeding seven years, nor less than one year, or by fine not exceeding one thousand dollars.⁹⁶

29. Minnesota (1873):

Sec. 1. That any person who shall administer *to any woman with child*, or prescribe for any such woman, or suggest to, or advise, or procure her to take any medicine, drug, substance or thing whatever, or who shall use or employ, or advise or suggest the use or employment of any instrument or other means or force what-

⁹⁶ Act of Aug. 6, 1868, ch. 1637, no. 13, ch. 3, § 11, ch. 8, § 9, 1868 Fla. Laws 64, 97 (emphasis added).

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ever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, unless the same shall have been necessary to preserve her life, or the life of such child, shall, in case the death of such child or of such woman results in whole or in part therefrom, be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for a term not more than ten (10) years nor less than three (3) years.

Sec. 2. Any person who shall administer *to any woman with child*, or prescribe, or procure, or provide for any such woman, or suggest to, or advise, or procure any such woman to take any medicine, drug, substance or thing whatever, or shall use or employ, or suggest, or advise the use or employment of any instrument or other means or force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, shall upon conviction thereof be punished by imprisonment in the state prison for a term not more than two years nor less than one year, or by fine not more than five thousand dollars nor less than five hundred dollars, or by such fine and imprisonment both, at the discretion of the court.⁹⁷

30. Arkansas (1875):

That it shall be unlawful for any one to administer or prescribe any medicine or drugs *to any woman with child*, with intent to produce an abortion, or premature delivery of any foetus before the period of quickening, or to produce or attempt to produce such abortion by any other means; and any person offending against the provision of this section, shall be fined in any sum not

⁹⁷ Act of Mar. 10, 1873, ch. 9, §§1-2 1873 Minn. Gen. Laws 117-119 (emphasis added).

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exceeding one thousand (\$1000) dollars, and imprisoned in the penitentiary not less than one (1) nor more than five (5) years; provided, that this section shall not apply to any abortion produced by any regular practicing physician, for the purpose of saving the mother's life.⁹⁸

31. Georgia (1876):

Sec. 2. That every person who shall administer *to any woman pregnant with a child*, any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or mother be thereby produced, be declared guilty of an assault with intent to murder.

Sec. 3. That any person who shall wilfully administer *to any pregnant woman* any medicine, drug or substance, or anything whatever, or shall employ any instrument or means whatever, with intent thereby to procure the miscarriage or abortion of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished as prescribed in section 4310 of the Revised Code of Georgia.⁹⁹

32. North Carolina (1881):

Sec. 1. That every person who shall wilfully administer *to any woman either pregnant or quick with child*, or

⁹⁸ Act of Nov. 8, 1875, no. 4, § 1, 1875 Ark. Acts 5-6 (emphasis added).

⁹⁹ Act of Feb. 25, 1876, ch. 130, 1876 Ga. Laws 113 (emphasis added).

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prescribe for any such woman, or advise or procure any such woman to take any medicine, drug or substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy said child, unless the same shall have been necessary to preserve the life of such mother, shall be guilty of a felony, and shall be imprisoned in the state penitentiary for not less than one year nor more than ten years, and be fined at the discretion of the court.

Sec. 2. That every person who shall administer to any pregnant woman, or prescribe for any such woman, or advise and procure such woman to take any medicine, drug or any thing whatsoever, with intent thereby to procure the miscarriage of any such woman, or to injure or destroy such woman, or shall use any instrument or application for any of the above purposes, shall be guilty of a misdemeanor, and, on conviction, shall be imprisoned in the jail or state penitentiary for not less than one year or more than five years, and fined at the discretion of the court.¹⁰⁰

33. Delaware (1883):

Every person who, with the intent to procure the miscarriage of any pregnant woman or women supposed by such person to be pregnant, unless the same be necessary to preserve her life, shall administer to her, advise, or prescribe for her, or cause to be taken by her any poison, drug, medicine, or other noxious thing, or shall use any instrument or other means whatsoever, or shall aid, assist, or counsel any person so intending to procure a miscarriage, whether said miscarriage be accomplished or not, shall be guilty of a felony, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars

¹⁰⁰ N.C. Sess. Laws ch. 351, §§1-2 (1881) (emphasis added).

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and be imprisoned for a term not exceeding five years nor less than one year.¹⁰¹

34. Tennessee (1883):

Sec. 1. That every person who shall administer *to any woman pregnant with child, whether such child be quick or not*, any medicine, drug or substance whatever, or shall use or employ any instrument, or other means whatever with intent to destroy such child, and shall thereby destroy such child before its birth, unless the same shall have been done with a view to preserve the life of the mother, shall be punished by imprisonment in the penitentiary not less than one nor more than five years.

Sec. 2. Every person who shall administer any substance with the intention *to procure the miscarriage of a woman then being with child*, or shall use or employ any instrument or other means with such intent, unless the same shall have been done with a view to preserve the life of such mother, shall be punished by imprisonment in the penitentiary not less than one nor more than three years.¹⁰²

35. South Carolina (1883):

Sec. 1. That any person who shall administer *to any woman with child*, or prescribe for any such woman, or suggest to or advise or procure her to take, any medicine, substance, drug or thing whatever, or who shall use or employ, or advise the use or employment of, any instrument or other means of force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, unless

¹⁰¹ Del. Laws ch. 226, §2 (1883) (emphasis added).

¹⁰² Act of Mar. 26, 1883, ch. 140, §§ 1-2, 1883 Tenn. Acts 188-189 (emphasis added).

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the same shall have been necessary to preserve her life, or the life of such child, shall, in case the death of such child or of such woman results in whole or in part therefrom, be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the Penitentiary for a term not more than twenty years nor less than five years.

Sec. 2. That any person who shall administer *to any woman with child*, or prescribe or procure or provide for any such woman, or advise or procure any such woman to take, any medicine, drug, substance or thing whatever, or shall use or employ or advise the use or employment of, any instrument or other means of force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, shall, upon conviction thereof, be punished by imprisonment in the Penitentiary for a term not more than five years, or by fine not more than five thousand dollars, or by such fine and imprisonment both, at the discretion of the Court; but no conviction shall be had under the provisions of Section 1 or 2 of this Act upon the uncorroborated evidence of such woman.¹⁰³

36. Kentucky (1910):

Sec. 1. It shall be unlawful for any person to prescribe or administer *to any pregnant woman, or to any woman whom he has reason to believe pregnant, at any time during the period of gestation*, any drug, medicine or substance, whatsoever, with the intent thereby to procure the miscarriage of such woman, or with like intent, to use any instrument or means whatsoever, unless such miscarriage is necessary to preserve her life; and any person so offending, shall be punished by a fine

¹⁰³ Act of Dec. 24, 1883, no. 254, 1883 S.C. Acts 547-548 (emphasis added).

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of not less than five hundred nor more than one thousand dollars, and imprisoned in the State prison for not less than one nor more than ten years.

Sec. 2. If by reason of any of the acts described in Section 1 hereof, the miscarriage of such woman is procured, and she does miscarry, causing the death of the unborn child, whether before or after quickening time, the person so offending shall be guilty of a felony, and confined in the penitentiary for not less than two, nor more than twenty-one years.

Sec. 3. If, by reason of the commission of any of the acts described in Section 1 hereof, the woman to whom such drug or substance has been administered, or upon whom such instrument has been used, shall die, the person offending shall be punished as now prescribed by law, for the offense of murder or manslaughter, as the facts may justify.

Sec. 4. The consent of the woman to the performance of the operation or administering of the medicines or substances, referred to, shall be no defense, and she shall be a competent witness in any prosecution under this act, and for that purpose she shall not be considered an accomplice.¹⁰⁴

37. Mississippi (1952):

1. Whoever, by means of any instrument, medicine, drug, or other means whatever shall willfully and knowingly cause *any woman pregnant with child* to abort or miscarry, or attempts to procure or produce an abortion or miscarriage, unless the same were done as necessary for the preservation of the mother's life, shall be imprisoned in the state penitentiary no less than one (1) year, nor more than ten (10) years; or if the death of

¹⁰⁴ Ky. Acts ch. 58, §§ 1-4 (1910) (emphasis added).

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the mother results therefrom, the person procuring, causing, or attempting to procure or cause the abortion or miscarriage shall be guilty of murder.

2. No act prohibited in section 1 hereof shall be considered as necessary for the preservation of the mother's life unless upon the prior advice, in writing, of two reputable licensed physicians.

3. The license of any physician or nurse shall be automatically revoked upon conviction under the provisions of this act.¹⁰⁵

¹⁰⁵ Miss. Laws, 1952, ch. 260, §§1-3 (codified at Miss. Code Ann. §2223 (1956)) (emphasis added).

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APPENDIX B

This appendix contains statutes criminalizing abortion at all stages in each of the territories that became States and in the District of Columbia. The statutes appear in chronological order of enactment.

1. Hawaii (1850):

Sec. 1. Whoever maliciously, without lawful justification, administers, or causes or procures to be administered any poison or noxious thing *to a woman then with child*, in order to produce her miscarriage, or maliciously uses any instrument or other means with like intent, shall, if such woman be then quick with child, be punished by fine not exceeding one thousand dollars and imprisonment at hard labor not more than five years. And if she be then not quick with child, shall be punished by a fine not exceeding five hundred dollars, and imprisonment at hard labor not more than two years.

Sec. 2. Where means of causing abortion are used for the purpose of saving the life of the woman, the surgeon or other person using such means is lawfully justified.¹⁰⁶

2. Washington (1854):

Sec. 37. Every person who shall administer *to any woman pregnant with a quick child*, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, shall, in case the death of such child or of such mother be thereby

¹⁰⁶ Haw. Pen. Code §§1-2 (1850) (emphasis added). Hawaii became a State in 1959. See 73 Stat. c74-c75.

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produced, on conviction thereof, be imprisoned in the penitentiary not more than twenty years, nor less than one year.

Sec. 38. Every person who shall administer *to any pregnant woman, or to any woman who he supposes to be pregnant*, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall on conviction thereof, be imprisoned in the penitentiary not more than five years, nor less than one year, or be imprisoned in the county jail not more than twelve months, nor less than one month, and be fined in any sum not exceeding one thousand dollars.¹⁰⁷

3. Colorado (1861):

[E]very person who shall administer substance or liquid, or who shall use or cause to be used any instrument, of whatsoever kind, with the intention *to procure the miscarriage of any woman then being with child*, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years, and fined in a sum not exceeding one thousand dollars; and if any woman, by reason of such treatment, shall die, the person or persons administering, or causing to be administered, such poison, substance or liquid, or using or causing to be used, any instrument, as aforesaid, shall be deemed guilty of manslaughter, and if convicted, be punished accordingly.¹⁰⁸

¹⁰⁷ Wash. (Terr.) Stat. ch. II, §§37-38, at 81. (1854) (emphasis added). Washington became a State in 1889. See 26 Stat. 1552-1553.

¹⁰⁸ 1861 Colo. (Terr.) Laws div. 4, §42, at 296-297. Colorado became a State in 1876. See 19 Stat. 665-666.

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4. Idaho (1864):

[E]very person who shall administer or cause to be administered, or taken, any medicinal substance, or shall use or cause to be used, any instruments whatever, with the intention *to procure the miscarriage of any woman then being with child*, and shall be thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than two years, nor more than five years. *Provided*, That no physician shall be effected by the last clause of this section who in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.¹⁰⁹

5. Montana (1864):

[E]very person who shall administer, or cause to be administered, or taken, any medicinal substance, or shall use, or cause to be used, any instruments whatever, with the intention *to produce the miscarriage of any woman then being with child*, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two years nor more than five years. *Provided*, That no physician shall be affected by the last clause of this section, who in the discharge of his professional duties deems it necessary to produce the miscarriage of any woman in order to save her life. *Provided*, That no physician shall be effected by the last clause of this section who in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.¹¹⁰

¹⁰⁹ 1863-1864 Idaho (Terr.) Laws ch. IV, §42. Idaho became a State in 1890. See 26 Stat. 215-219.

¹¹⁰ 1864 Mont. (Terr.) Laws, Crim. Practice Act ch. IV, §41, at 184. Montana became a State in 1889. See 26 Stat. 1551-1552.

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6. Arizona (1865):

[E]very person who shall administer or cause to be administered or taken, any medicinal substances, or shall use or cause to be used any instruments whatever, with the intention *to produce the miscarriage of any woman then being with child*, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two years nor more than five years: Provided, that no physician shall be affected by the last clause of this section, who in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.¹¹¹

7. Wyoming (1869):

[A]ny person who shall administer, or cause to be administered, or taken, any such poison, substance or liquid, or who shall use, or cause to be used, any instrument of whatsoever kind, with the intention *to procure the miscarriage of any woman then being with child*, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years, in the penitentiary, and fined in a sum not exceeding one thousand dollars; and if any woman by reason of such treatment shall die, the person, or persons, administering, or causing to be administered such poison, substance, or liquid, or using or causing to be used, any instrument, as aforesaid, shall be deemed guilty of manslaughter, and if convicted, be punished by imprisonment for a term not less than three years in the penitentiary, and fined in a sum not exceeding one thousand dollars, unless it appear that such miscarriage was procured or

¹¹¹ Arizona-Howell (Terr.) Code, ch. 10, §45 (1865). Arizona became a State in 1912. See 37 Stat. 1728-1729.

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attempted by, or under advice of a physician or surgeon, with intent to save the life of such woman, or to prevent serious and permanent bodily injury to her.¹¹²

8. Utah (1876):

Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the penitentiary not less than two nor more than ten years.¹¹³

9. North Dakota (1877):

Every person who administers to any pregnant woman, or who prescribes for any such woman, or advises or procures any such woman to take any medicine, drug or substance, or uses or employs any instrument, or other means whatever with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year.¹¹⁴

10. South Dakota (1877): *Same as North Dakota.*

¹¹² 1869 Wyo. (Terr.) Laws ch. 3, §25, at 104 (emphasis added). Wyoming became a State in 1889. See 26 Stat. 222-226.

¹¹³ Utah Comp. Laws tit. IX, ch. III, §142 (1876) (emphasis added). Utah became a State in 1896. See 29 Stat. 876-877.

¹¹⁴ Dak. Pen. Code § 337, at 458-459 (1877) (codified at N.D. Rev. Code §7177, at 1271 (1895), and S.D. Ann. Stat. §7797 (1899). North and South Dakota became States in 1889. See 26 Stat. 1548-1551.

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11. Oklahoma (1890):

Every person who administers *to any pregnant woman*, or who prescribes for any such woman, or advises or procures any such woman to take *any medicine, drug* or substance, or uses or employs any instrument, or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the Territorial prison not exceeding three years, or in a county jail not exceeding one year.¹¹⁵

12. Alaska (1899):

That if any person shall administer *to any woman pregnant with a child* any medicine, drug, or substance whatever, or shall use any instrument or other means, with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of such mother, such person shall, in case the death of such child or mother be thereby produced, be deemed guilty of manslaughter, and shall be punished accordingly.¹¹⁶

13. New Mexico (1919):

Sec. 1. Any person who shall administer *to any pregnant woman any medicine*, drug or substance whatever, or attempt by operation or any other method or means to produce an abortion or miscarriage upon such woman, shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than two thousand (\$2,000.00) Dollars, nor less than five hundred (\$500.00) Dollars, or imprisoned in the penitentiary for a period of not less than one nor more than five years,

¹¹⁵ 1890 Okla. Stat. §2187 (emphasis added). Oklahoma became a State in 1907. See 35 Stat. 2160-2161.

¹¹⁶ 1899 Alaska Sess. Laws ch. 1, §8 (emphasis added). Alaska became a State in 1959. See 73 Stat. c16.

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or by both such fine and imprisonment in the discretion of the court trying the case.

Sec. 2. Any person committing such act or acts mentioned in section one hereof which shall culminate in the death of the woman shall be deemed guilty of murder in the second degree; *Provided*, however, an abortion may be produced when two physicians licensed to practice in the State of New Mexico, in consultation, deem it necessary to preserve the life of the woman, or to prevent serious and permanent bodily injury.

Sec. 3. For the purpose of the act, the term "pregnancy" is defined as that condition of a woman *from the date of conception to the birth of her child*.¹¹⁷

* * * * *

District of Columbia (1901):

Whoever, with intent to procure the miscarriage of any woman, prescribes or administers to her any medicine, drug, or substance whatever, or with like intent uses any instrument or means, unless when necessary to preserve her life or health and under the direction of a competent licensed practitioner of medicine, shall be imprisoned for not more than five years; or if the woman or her child dies in consequence of such act, by imprisonment for not less than three nor more than twenty years.¹¹⁸

¹¹⁷ Act of Feb. 21, 1919, Laws of N. M., ch. 4, §§1-3 (emphasis added). New Mexico had become a State in 1912. See 37 Stat. 1723-1724.

¹¹⁸ 31 Stat. 1322. §809 (1901) (emphasis added).

MINUTES

House Select Committee on Investigation

Representative Spencer Gosch, Chair
Representative Mike Stevens, Vice Chair



Sixth Meeting, 2021 Second Special Session
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 Haugeard, 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 Ravensborg, 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. Natvig 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 Ravensborg, 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 brake, 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 Hugaard: 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.

EOAC 5/2 Item 4
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Presidential Documents

Title 3—

Executive Order 14067 of March 9, 2022

The President

Ensuring Responsible Development of Digital Assets

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. Advances in digital and distributed ledger technology for financial services have led to dramatic growth in markets for digital assets, with profound implications for the protection of consumers, investors, and businesses, including data privacy and security; financial stability and systemic risk; crime; national security; the ability to exercise human rights; financial inclusion and equity; and energy demand and climate change. In November 2021, non-state issued digital assets reached a combined market capitalization of \$3 trillion, up from approximately \$14 billion in early November 2016. Monetary authorities globally are also exploring, and in some cases introducing, central bank digital currencies (CBDCs).

While many activities involving digital assets are within the scope of existing domestic laws and regulations, an area where the United States has been a global leader, growing development and adoption of digital assets and related innovations, as well as inconsistent controls to defend against certain key risks, necessitate an evolution and alignment of the United States Government approach to digital assets. The United States has an interest in responsible financial innovation, expanding access to safe and affordable financial services, and reducing the cost of domestic and cross-border funds transfers and payments, including through the continued modernization of public payment systems. We must take strong steps to reduce the risks that digital assets could pose to consumers, investors, and business protections; financial stability and financial system integrity; combating and preventing crime and illicit finance; national security; the ability to exercise human rights; financial inclusion and equity; and climate change and pollution.

Sec. 2. Objectives. The principal policy objectives of the United States with respect to digital assets are as follows:

(a) We must protect consumers, investors, and businesses in the United States. The unique and varied features of digital assets can pose significant financial risks to consumers, investors, and businesses if appropriate protections are not in place. In the absence of sufficient oversight and standards, firms providing digital asset services may provide inadequate protections for sensitive financial data, custodial and other arrangements relating to customer assets and funds, or disclosures of risks associated with investment. Cybersecurity and market failures at major digital asset exchanges and trading platforms have resulted in billions of dollars in losses. The United States should ensure that safeguards are in place and promote the responsible development of digital assets to protect consumers, investors, and businesses; maintain privacy; and shield against arbitrary or unlawful surveillance, which can contribute to human rights abuses.

(b) We must protect United States and global financial stability and mitigate systemic risk. Some digital asset trading platforms and service providers have grown rapidly in size and complexity and may not be subject to or in compliance with appropriate regulations or supervision. Digital asset issuers, exchanges and trading platforms, and intermediaries whose activities may increase risks to financial stability, should, as appropriate, be subject to and in compliance with regulatory and supervisory standards that govern traditional market infrastructures and financial firms, in line with the general

principle of “same business, same risks, same rules.” The new and unique uses and functions that digital assets can facilitate may create additional economic and financial risks requiring an evolution to a regulatory approach that adequately addresses those risks.

(c) We must mitigate the illicit finance and national security risks posed by misuse of digital assets. Digital assets may pose significant illicit finance risks, including money laundering, cybercrime and ransomware, narcotics and human trafficking, and terrorism and proliferation financing. Digital assets may also be used as a tool to circumvent United States and foreign financial sanctions regimes and other tools and authorities. Further, while the United States has been a leader in setting international standards for the regulation and supervision of digital assets for anti-money laundering and countering the financing of terrorism (AML/CFT), poor or nonexistent implementation of those standards in some jurisdictions abroad can present significant illicit financing risks for the United States and global financial systems. Illicit actors, including the perpetrators of ransomware incidents and other cybercrime, often launder and cash out of their illicit proceeds using digital asset service providers in jurisdictions that have not yet effectively implemented the international standards set by the inter-governmental Financial Action Task Force (FATF). The continued availability of service providers in jurisdictions where international AML/CFT standards are not effectively implemented enables financial activity without illicit finance controls. Growth in decentralized financial ecosystems, peer-to-peer payment activity, and obscured blockchain ledgers without controls to mitigate illicit finance could also present additional market and national security risks in the future. The United States must ensure appropriate controls and accountability for current and future digital assets systems to promote high standards for transparency, privacy, and security—including through regulatory, governance, and technological measures—that counter illicit activities and preserve or enhance the efficacy of our national security tools. When digital assets are abused or used in illicit ways, or undermine national security, it is in the national interest to take actions to mitigate these illicit finance and national security risks through regulation, oversight, law enforcement action, or use of other United States Government authorities.

(d) We must reinforce United States leadership in the global financial system and in technological and economic competitiveness, including through the responsible development of payment innovations and digital assets. The United States has an interest in ensuring that it remains at the forefront of responsible development and design of digital assets and the technology that underpins new forms of payments and capital flows in the international financial system, particularly in setting standards that promote: democratic values; the rule of law; privacy; the protection of consumers, investors, and businesses; and interoperability with digital platforms, legacy architecture, and international payment systems. The United States derives significant economic and national security benefits from the central role that the United States dollar and United States financial institutions and markets play in the global financial system. Continued United States leadership in the global financial system will sustain United States financial power and promote United States economic interests.

(e) We must promote access to safe and affordable financial services. Many Americans are underbanked and the costs of cross-border money transfers and payments are high. The United States has a strong interest in promoting responsible innovation that expands equitable access to financial services, particularly for those Americans underserved by the traditional banking system, including by making investments and domestic and cross-border funds transfers and payments cheaper, faster, and safer, and by promoting greater and more cost-efficient access to financial products and services. The United States also has an interest in ensuring that the benefits of financial innovation are enjoyed equitably by all Americans and that any disparate impacts of financial innovation are mitigated.

(f) We must support technological advances that promote responsible development and use of digital assets. The technological architecture of different digital assets has substantial implications for privacy, national security, the operational security and resilience of financial systems, climate change, the ability to exercise human rights, and other national goals. The United States has an interest in ensuring that digital asset technologies and the digital payments ecosystem are developed, designed, and implemented in a responsible manner that includes privacy and security in their architecture, integrates features and controls that defend against illicit exploitation, and reduces negative climate impacts and environmental pollution, as may result from some cryptocurrency mining.

Sec. 3. Coordination. The Assistant to the President for National Security Affairs (APNSA) and the Assistant to the President for Economic Policy (APEP) shall coordinate, through the interagency process described in National Security Memorandum 2 of February 4, 2021 (Renewing the National Security Council System), the executive branch actions necessary to implement this order. The interagency process shall include, as appropriate: the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Labor, the Secretary of Energy, the Secretary of Homeland Security, the Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget, the Director of National Intelligence, the Director of the Domestic Policy Council, the Chair of the Council of Economic Advisers, the Director of the Office of Science and Technology Policy, the Administrator of the Office of Information and Regulatory Affairs, the Director of the National Science Foundation, and the Administrator of the United States Agency for International Development. Representatives of other executive departments and agencies (agencies) and other senior officials may be invited to attend interagency meetings as appropriate, including, with due respect for their regulatory independence, representatives of the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau (CFPB), the Federal Trade Commission (FTC), the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and other Federal regulatory agencies.

Sec. 4. Policy and Actions Related to United States Central Bank Digital Currencies. (a) The policy of my Administration on a United States CBDC is as follows:

(i) Sovereign money is at the core of a well-functioning financial system, macroeconomic stabilization policies, and economic growth. My Administration places the highest urgency on research and development efforts into the potential design and deployment options of a United States CBDC. These efforts should include assessments of possible benefits and risks for consumers, investors, and businesses; financial stability and systemic risk; payment systems; national security; the ability to exercise human rights; financial inclusion and equity; and the actions required to launch a United States CBDC if doing so is deemed to be in the national interest.

(ii) My Administration sees merit in showcasing United States leadership and participation in international fora related to CBDCs and in multi-country conversations and pilot projects involving CBDCs. Any future dollar payment system should be designed in a way that is consistent with United States priorities (as outlined in section 4(a)(i) of this order) and democratic values, including privacy protections, and that ensures the global financial system has appropriate transparency, connectivity, and platform and architecture interoperability or transferability, as appropriate.

(iii) A United States CBDC may have the potential to support efficient and low-cost transactions, particularly for cross-border funds transfers and payments, and to foster greater access to the financial system, with fewer of the risks posed by private sector-administered digital assets. A United States CBDC that is interoperable with CBDCs issued by other monetary

authorities could facilitate faster and lower-cost cross-border payments and potentially boost economic growth, support the continued centrality of the United States within the international financial system, and help to protect the unique role that the dollar plays in global finance. There are also, however, potential risks and downsides to consider. We should prioritize timely assessments of potential benefits and risks under various designs to ensure that the United States remains a leader in the international financial system.

(b) Within 180 days of the date of this order, the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Director of the Office of Management and Budget, the Director of National Intelligence, and the heads of other relevant agencies, shall submit to the President a report on the future of money and payment systems, including the conditions that drive broad adoption of digital assets; the extent to which technological innovation may influence these outcomes; and the implications for the United States financial system, the modernization of and changes to payment systems, economic growth, financial inclusion, and national security. This report shall be coordinated through the interagency process described in section 3 of this order. Based on the potential United States CBDC design options, this report shall include an analysis of:

(i) the potential implications of a United States CBDC, based on the possible design choices, for national interests, including implications for economic growth and stability;

(ii) the potential implications a United States CBDC might have on financial inclusion;

(iii) the potential relationship between a CBDC and private sector-administered digital assets;

(iv) the future of sovereign and privately produced money globally and implications for our financial system and democracy;

(v) the extent to which foreign CBDCs could displace existing currencies and alter the payment system in ways that could undermine United States financial centrality;

(vi) the potential implications for national security and financial crime, including an analysis of illicit financing risks, sanctions risks, other law enforcement and national security interests, and implications for human rights; and

(vii) an assessment of the effects that the growth of foreign CBDCs may have on United States interests generally.

(c) The Chairman of the Board of Governors of the Federal Reserve System (Chairman of the Federal Reserve) is encouraged to continue to research and report on the extent to which CBDCs could improve the efficiency and reduce the costs of existing and future payments systems, to continue to assess the optimal form of a United States CBDC, and to develop a strategic plan for Federal Reserve and broader United States Government action, as appropriate, that evaluates the necessary steps and requirements for the potential implementation and launch of a United States CBDC. The Chairman of the Federal Reserve is also encouraged to evaluate the extent to which a United States CBDC, based on the potential design options, could enhance or impede the ability of monetary policy to function effectively as a critical macroeconomic stabilization tool.

(d) The Attorney General, in consultation with the Secretary of the Treasury and the Chairman of the Federal Reserve, shall:

(i) within 180 days of the date of this order, provide to the President through the APNSA and APEP an assessment of whether legislative changes would be necessary to issue a United States CBDC, should it be deemed appropriate and in the national interest; and

(ii) within 210 days of the date of this order, provide to the President through the APNSA and the APEP a corresponding legislative proposal, based on consideration of the report submitted by the Secretary of the Treasury under section 4(b) of this order and any materials developed by the Chairman of the Federal Reserve consistent with section 4(c) of this order.

Sec. 5. Measures to Protect Consumers, Investors, and Businesses. (a) The increased use of digital assets and digital asset exchanges and trading platforms may increase the risks of crimes such as fraud and theft, other statutory and regulatory violations, privacy and data breaches, unfair and abusive acts or practices, and other cyber incidents faced by consumers, investors, and businesses. The rise in use of digital assets, and differences across communities, may also present disparate financial risk to less informed market participants or exacerbate inequities. It is critical to ensure that digital assets do not pose undue risks to consumers, investors, or businesses, and to put in place protections as a part of efforts to expand access to safe and affordable financial services.

(b) Consistent with the goals stated in section 5(a) of this order:

(i) Within 180 days of the date of this order, the Secretary of the Treasury, in consultation with the Secretary of Labor and the heads of other relevant agencies, including, as appropriate, the heads of independent regulatory agencies such as the FTC, the SEC, the CFTC, Federal banking agencies, and the CFPB, shall submit to the President a report, or section of the report required by section 4 of this order, on the implications of developments and adoption of digital assets and changes in financial market and payment system infrastructures for United States consumers, investors, businesses, and for equitable economic growth. One section of the report shall address the conditions that would drive mass adoption of different types of digital assets and the risks and opportunities such growth might present to United States consumers, investors, and businesses, including a focus on how technological innovation may impact these efforts and with an eye toward those most vulnerable to disparate impacts. The report shall also include policy recommendations, including potential regulatory and legislative actions, as appropriate, to protect United States consumers, investors, and businesses, and support expanding access to safe and affordable financial services. The report shall be coordinated through the inter-agency process described in section 3 of this order.

(ii) Within 180 days of the date of this order, the Director of the Office of Science and Technology Policy and the Chief Technology Officer of the United States, in consultation with the Secretary of the Treasury, the Chairman of the Federal Reserve, and the heads of other relevant agencies, shall submit to the President a technical evaluation of the technological infrastructure, capacity, and expertise that would be necessary at relevant agencies to facilitate and support the introduction of a CBDC system should one be proposed. The evaluation should specifically address the technical risks of the various designs, including with respect to emerging and future technological developments, such as quantum computing. The evaluation should also include any reflections or recommendations on how the inclusion of digital assets in Federal processes may affect the work of the United States Government and the provision of Government services, including risks and benefits to cybersecurity, customer experience, and social-safety-net programs. The evaluation shall be coordinated through the interagency process described in section 3 of this order.

(iii) Within 180 days of the date of this order, the Attorney General, in consultation with the Secretary of the Treasury and the Secretary of Homeland Security, shall submit to the President a report on the role of law enforcement agencies in detecting, investigating, and prosecuting criminal activity related to digital assets. The report shall include any recommendations on regulatory or legislative actions, as appropriate.

(iv) The Attorney General, the Chair of the FTC, and the Director of the CFPB are each encouraged to consider what, if any, effects the growth of digital assets could have on competition policy.

(v) The Chair of the FTC and the Director of the CFPB are each encouraged to consider the extent to which privacy or consumer protection measures within their respective jurisdictions may be used to protect users of digital assets and whether additional measures may be needed.

(vi) The Chair of the SEC, the Chairman of the CFTC, the Chairman of the Federal Reserve, the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, and the Comptroller of the Currency are each encouraged to consider the extent to which investor and market protection measures within their respective jurisdictions may be used to address the risks of digital assets and whether additional measures may be needed.

(vii) Within 180 days of the date of this order, the Director of the Office of Science and Technology Policy, in consultation with the Secretary of the Treasury, the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Chair of the Council of Economic Advisers, the Assistant to the President and National Climate Advisor, and the heads of other relevant agencies, shall submit a report to the President on the connections between distributed ledger technology and short-, medium-, and long-term economic and energy transitions; the potential for these technologies to impede or advance efforts to tackle climate change at home and abroad; and the impacts these technologies have on the environment. This report shall be coordinated through the interagency process described in section 3 of this order. The report should also address the effect of cryptocurrencies' consensus mechanisms on energy usage, including research into potential mitigating measures and alternative mechanisms of consensus and the design tradeoffs those may entail. The report should specifically address:

(A) potential uses of blockchain that could support monitoring or mitigating technologies to climate impacts, such as exchanging of liabilities for greenhouse gas emissions, water, and other natural or environmental assets; and

(B) implications for energy policy, including as it relates to grid management and reliability, energy efficiency incentives and standards, and sources of energy supply.

(viii) Within 1 year of submission of the report described in section 5(b)(vii) of this order, the Director of the Office of Science and Technology Policy, in consultation with the Secretary of the Treasury, the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Chair of the Council of Economic Advisers, and the heads of other relevant agencies, shall update the report described in section 5(b)(vii) of this order, including to address any knowledge gaps identified in such report.

Sec. 6. *Actions to Promote Financial Stability, Mitigate Systemic Risk, and Strengthen Market Integrity.* (a) Financial regulators—including the SEC, the CFTC, and the CFPB and Federal banking agencies—play critical roles in establishing and overseeing protections across the financial system that safeguard its integrity and promote its stability. Since 2017, the Secretary of the Treasury has convened the Financial Stability Oversight Council (FSOC) to assess the financial stability risks and regulatory gaps posed by the ongoing adoption of digital assets. The United States must assess and take steps to address risks that digital assets pose to financial stability and financial market integrity.

(b) Within 210 days of the date of this order, the Secretary of the Treasury should convene the FSOC and produce a report outlining the specific **financial stability risks and regulatory gaps posed by various types of digital assets** and providing recommendations to address such risks. As the Secretary

of the Treasury and the FSOC deem appropriate, the report should consider the particular features of various types of digital assets and include recommendations that address the identified financial stability risks posed by these digital assets, including any proposals for additional or adjusted regulation and supervision as well as for new legislation. The report should take account of the prior analyses and assessments of the FSOC, agencies, and the President's Working Group on Financial Markets, including the ongoing work of the Federal banking agencies, as appropriate.

Sec. 7. Actions to Limit Illicit Finance and Associated National Security Risks. (a) Digital assets have facilitated sophisticated cybercrime-related financial networks and activity, including through ransomware activity. The growing use of digital assets in financial activity heightens risks of crimes such as money laundering, terrorist and proliferation financing, fraud and theft schemes, and corruption. These illicit activities highlight the need for ongoing scrutiny of the use of digital assets, the extent to which technological innovation may impact such activities, and exploration of opportunities to mitigate these risks through regulation, supervision, public-private engagement, oversight, and law enforcement.

(b) Within 90 days of submission to the Congress of the National Strategy for Combating Terrorist and Other Illicit Financing, the Secretary of the Treasury, the Secretary of State, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Director of the Office of Management and Budget, the Director of National Intelligence, and the heads of other relevant agencies may each submit to the President supplemental annexes, which may be classified or unclassified, to the Strategy offering additional views on illicit finance risks posed by digital assets, including cryptocurrencies, stablecoins, CBDCs, and trends in the use of digital assets by illicit actors.

(c) Within 120 days of submission to the Congress of the National Strategy for Combating Terrorist and Other Illicit Financing, the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Director of the Office of Management and Budget, the Director of National Intelligence, and the heads of other relevant agencies shall develop a coordinated action plan based on the Strategy's conclusions for mitigating the digital-asset-related illicit finance and national security risks addressed in the updated strategy. This action plan shall be coordinated through the interagency process described in section 3 of this order. The action plan shall address the role of law enforcement and measures to increase financial services providers' compliance with AML/CFT obligations related to digital asset activities.

(d) Within 120 days following completion of all of the following reports—the National Money Laundering Risk Assessment; the National Terrorist Financing Risk Assessment; the National Proliferation Financing Risk Assessment; and the updated National Strategy for Combating Terrorist and Other Illicit Financing—the Secretary of the Treasury shall notify the relevant agencies through the interagency process described in section 3 of this order on any pending, proposed, or prospective rulemakings to address digital asset illicit finance risks. The Secretary of the Treasury shall consult with and consider the perspectives of relevant agencies in evaluating opportunities to mitigate such risks through regulation.

Sec. 8. Policy and Actions Related to Fostering International Cooperation and United States Competitiveness. (a) The policy of my Administration on fostering international cooperation and United States competitiveness with respect to digital assets and financial innovation is as follows:

(i) Technology-driven financial innovation is frequently cross-border and therefore requires international cooperation among public authorities. This cooperation is critical to maintaining high regulatory standards and a level playing field. Uneven regulation, supervision, and compliance across jurisdictions creates opportunities for arbitrage and raises risks to financial

stability and the protection of consumers, investors, businesses, and markets. Inadequate AML/CFT regulation, supervision, and enforcement by other countries challenges the ability of the United States to investigate illicit digital asset transaction flows that frequently jump overseas, as is often the case in ransomware payments and other cybercrime-related money laundering. There must also be cooperation to reduce inefficiencies in international funds transfer and payment systems.

(ii) The United States Government has been active in international fora and through bilateral partnerships on many of these issues and has a robust agenda to continue this work in the coming years. While the United States held the position of President of the FATF, the United States led the group in developing and adopting the first international standards on digital assets. The United States must continue to work with international partners on standards for the development and appropriate interoperability of digital payment architectures and CBDCs to reduce payment inefficiencies and ensure that any new funds transfer and payment systems are consistent with United States values and legal requirements.

(iii) While the United States held the position of President of the 2020 G7, the United States established the G7 Digital Payments Experts Group to discuss CBDCs, stablecoins, and other digital payment issues. The G7 report outlining a set of policy principles for CBDCs is an important contribution to establishing guidelines for jurisdictions for the exploration and potential development of CBDCs. While a CBDC would be issued by a country's central bank, the supporting infrastructure could involve both public and private participants. The G7 report highlighted that any CBDC should be grounded in the G7's long-standing public commitments to transparency, the rule of law, and sound economic governance, as well as the promotion of competition and innovation.

(iv) The United States continues to support the G20 roadmap for addressing challenges and frictions with cross-border funds transfers and payments for which work is underway, including work on improvements to existing systems for cross-border funds transfers and payments, the international dimensions of CBDC designs, and the potential of well-regulated stablecoin arrangements. The international Financial Stability Board (FSB), together with standard-setting bodies, is leading work on issues related to stablecoins, cross-border funds transfers and payments, and other international dimensions of digital assets and payments, while FATF continues its leadership in setting AML/CFT standards for digital assets. Such international work should continue to address the full spectrum of issues and challenges raised by digital assets, including financial stability, consumer, investor, and business risks, and money laundering, terrorist financing, proliferation financing, sanctions evasion, and other illicit activities.

(v) My Administration will elevate the importance of these topics and expand engagement with our critical international partners, including through fora such as the G7, G20, FATF, and FSB. My Administration will support the ongoing international work and, where appropriate, push for additional work to drive development and implementation of holistic standards, cooperation and coordination, and information sharing. With respect to digital assets, my Administration will seek to ensure that our core democratic values are respected; consumers, investors, and businesses are protected; appropriate global financial system connectivity and platform and architecture interoperability are preserved; and the safety and soundness of the global financial system and international monetary system are maintained.

(b) In furtherance of the policy stated in section 8(a) of this order:

(i) Within 120 days of the date of this order, the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Commerce, the Administrator of the United States Agency for International Development, and the heads of other relevant agencies, shall establish a framework for interagency international engagement with foreign counterparts and

in international fora to, as appropriate, adapt, update, and enhance adoption of global principles and standards for how digital assets are used and transacted, and to promote development of digital asset and CBDC technologies consistent with our values and legal requirements. This framework shall be coordinated through the interagency process described in section 3 of this order. This framework shall include specific and prioritized lines of effort and coordinated messaging; interagency engagement and activities with foreign partners, such as foreign assistance and capacity-building efforts and coordination of global compliance; and whole-of-government efforts to promote international principles, standards, and best practices. This framework should reflect ongoing leadership by the Secretary of the Treasury and financial regulators in relevant international financial standards bodies, and should elevate United States engagement on digital assets issues in technical standards bodies and other international fora to promote development of digital asset and CBDC technologies consistent with our values.

(ii) Within 1 year of the date of the establishment of the framework required by section 8(b)(i) of this order, the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Commerce, the Director of the Office of Management and Budget, the Administrator of the United States Agency for International Development, and the heads of other relevant agencies as appropriate, shall submit a report to the President on priority actions taken under the framework and its effectiveness. This report shall be coordinated through the interagency process described in section 3 of this order.

(iii) Within 180 days of the date of this order, the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of the Treasury, and the heads of other relevant agencies, shall establish a framework for enhancing United States economic competitiveness in, and leveraging of, digital asset technologies. This framework shall be coordinated through the interagency process described in section 3 of this order.

(iv) Within 90 days of the date of this order, the Attorney General, in consultation with the Secretary of State, the Secretary of the Treasury, and the Secretary of Homeland Security, shall submit a report to the President on how to strengthen international law enforcement cooperation for detecting, investigating, and prosecuting criminal activity related to digital assets.

Sec. 9. Definitions. For the purposes of this order:

(a) The term “blockchain” refers to distributed ledger technologies where data is shared across a network that creates a digital ledger of verified transactions or information among network participants and the data are typically linked using cryptography to maintain the integrity of the ledger and execute other functions, including transfer of ownership or value.

(b) The term “central bank digital currency” or “CBDC” refers to a form of digital money or monetary value, denominated in the national unit of account, that is a direct liability of the central bank.

(c) The term “cryptocurrencies” refers to a digital asset, which may be a medium of exchange, for which generation or ownership records are supported through a distributed ledger technology that relies on cryptography, such as a blockchain.

(d) The term “digital assets” refers to all CBDCs, regardless of the technology used, and to other representations of value, financial assets and instruments, or claims that are used to make payments or investments, or to transmit or exchange funds or the equivalent thereof, that are issued or represented in digital form through the use of distributed ledger technology. For example, digital assets include cryptocurrencies, stablecoins, and CBDCs. ~~Regardless of the label used, a digital asset may be, among other things, a security, a commodity, a derivative, or other financial product.~~

Digital assets may be exchanged across digital asset trading platforms, including centralized and decentralized finance platforms, or through peer-to-peer technologies.

(e) The term “stablecoins” refers to a category of cryptocurrencies with mechanisms that are aimed at maintaining a stable value, such as by pegging the value of the coin to a specific currency, asset, or pool of assets or by algorithmically controlling supply in response to changes in demand in order to stabilize value.

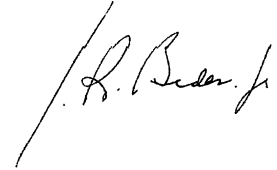
Sec. 10. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
March 9, 2022.

MINUTES

House Select Committee on Investigation

Representative Spencer Gosch, Chair
Representative Mike Stevens, Vice Chair



Seventh Meeting, 2021 Second Special Session
Thursday, March 10, 2022

Room 414 – State Capitol
Pierre, South Dakota

The seventh meeting of the House Select Committee on Investigation was called to order by Representative Spencer Gosch at 6:52 p.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 Stevens moved, seconded by Representative Jensen, 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 6:53 p.m.

Representative Cwach moved, seconded by Representative Peterson, 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 8:35 p.m.

Committee Action

Representative Peterson moved, seconded by Representative Jensen, to adopt the updated redacted table of contents provided by the Special Counsel (Document 1). The motion prevailed on a roll call vote with 7 voting AYE, 1 EXCUSED, and 1 NOT VOTING. Voting AYE: Barthel, Cwach, Haugaard, Jensen, Peterson, Smith, and Stevens. EXCUSED: Hansen. NOT VOTING: Gosch.

Adjournment

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

The Committee adjourned at 8:48 p.m.

SOUTH DAKOTA HOUSE OF REPRESENTATIVES

IN THE MATTER OF THE INVESTIGATION OF THE CONDUCT OF
Jason Ravensborg, Attorney General of the State of South Dakota

LIST OF REDACTED CONTENT FROM INVESTIGATIVE FILE

File Description	Redactions
<p>ND Report 1: a. Initial BCI Report by Joe Arenz — 09/15/20 (4 Pages) i. No attachment</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 2: a. Scene Assist report by Pat Helfrich — 09/15/20 (3 Pages) i. No attachment</p>	<p>No redactions.</p>
<p>ND Report 3: a. Scene Processing/Interview with Sheriff Mike Volek Report by Joe Arenz — 09/28/20 (8 pages) i. Attachment: Evidence Inventory and Receipt (1 page)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 4: a. Drone Photos and Pix4d Animations Report by Alex Droske — 10/05/20 (3 pages) i. Attachment: Photos and Drone footage folders (333 Photos & 2 Videos)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p> <p>Photographs showing body 023-028, 034-040, 107-109, 115-128</p>
<p>ND Report 5: a, Initial Scene Processing Report by Michael Mees — 10/05/20 (5 pages) i. Attachment: Initial Scene Photos Folder (373 photos)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p> <p>Photographs showing body 303, 349, 353, 355-359, 360-378, 383-389, 391, 556, 559, 561, 570-579, 580-586, 593-636</p>
<p>ND Report 6: a. Cell Phone Processing Report by Cassidy Halseth — 10/06/20 (9 pages)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>

<p>i. Attachment: 3 Consent to Search Forms for cell phones (1 page each)</p>	
<p>ND Report 7: a. Scene Processing Report by Arnie Rummel — 10/13/20 (5 pages) i. Attachment: Highway Patrol Appointment (2 pages)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 8: a. Autopsy Report by Scott Voeltz — 10/14/20 (4 pages) i. Attachments: Provisionary Autopsy Report by Ramsey County (2 pages) Evidence Inventory and Receipt (3 pages) Autopsy Photos (122 photos)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p> <p>All autopsy photographs.</p>
<p>ND Report 9: a. Vehicle Processing Report by Michael Mees — 10/14/20 (5 pages) i. Attachments: 1. Evidence Inventory and Receipt (2 pages) Hughes County Search warrant (2 pages) Digital Photos of vehicle (268 photos)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 10: a. Jason Ravnsborg First Interview Report by Joe Arenz — 10/14/20 (10 pages) i. Attachments: 1. Video Recording of Interview with Jason Ravnsborg Audio Recording of Interview with Jason Ravnsborg (1:07:02 in length) C. Email Containing Guest List (2 pages) D. Email Containing Name of Rooster's Waitress (1 page) E. Email Containing Photographs of Red Tags (1 page) F. Photograph of Jason Ravnsborg's Vehicle G. Consent to Search for Skid Test (1 page) H. Consent to Search for LG Stylo 5+ (1 page) I. Photograph of Broken Eyeglasses</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>

<p>ND Report 11:</p> <p>a. Anna Johnson Interview Report by Joe Arenz — 10/14/20 (4 pages)</p> <p>i. Attachment: Audio Recording of Anna Johnson Interview (21 : 19 in length)</p>	<p>Personal identifying information redacted, date of birth, home address.</p>
<p>ND Report 12:</p> <p>a. Tim Bormann Interview Report by Joe Arenz — 10/15/20 (5 pages)</p> <p>i. Attachments:</p> <p>1. Audio Recording of Tim Bormann Interview (26:11 in length)</p> <p>2. Video Recording of Tim Bormann Interview (29:56 in length)</p> <p>3. Screenshots of Text Messages (3 photos)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 13:</p> <p>a. Jennifer Boever Interview Report by Joe Arenz — 10/16/20 (3 pages)</p> <p>i. Attachment: Audio Recording of Jennifer Boever Interview (9:28 in length)</p>	<p>Personal identifying information redacted, date of birth, home address.</p>
<p>ND Report 14:</p> <p>a. 2011 Ford Taurus Search Warrant Report by Joe Arenz — 10/16/20 (4 pages)</p> <p>i. No attachment</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 15:</p> <p>a. 2011 Ford Taurus iVe Extraction Report by Pat Helfrich — 10/19/20 (3 pages)</p> <p>i. Attachment: iVe Report for 2011 Ford Taurus (24 pages)</p>	<p>iVe Report – all redacted except for cover page.</p>
<p>ND Report 16:</p> <p>a. Secondary Scene Processing Report by Michael Mees — 10/19/20 (4 pages)</p> <p>i. Attachments:</p> <p>1. Evidence Inventory and Receipt (1 page)</p> <p>2. Scene Photos (22 photos)</p> <p>3. Scene Drone Footage (22 videos)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 17:</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>

<p>a. David Natvig Interview Report by Pat Helfrich — 10/20/20 (4 pages)</p> <p>i. No attachment</p>	
<p>ND Report 18:</p> <p>a. Hyde County Sheriffs Department Reports by Joe Arenz — 10/20/20 (4 pages)</p> <p>i. Attachment: Hyde County Sheriffs Department Reports (9 pages)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 19:</p> <p>a. Victor Nemec Interview Report by Joe Arenz — 10/20/20 (5 pages)</p> <p>i. Attachment: Audio Recording of Victor Nemec Interview (30: 18 in length)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 20:</p> <p>a. Jason Jones Interview Report by Pat Helfrich — 10/20/20 (4 pages)</p> <p>i. No attachment</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 21:</p> <p>a. Dispatch Recordings and Logs Report by Joe Arenz — 10/20/20 (4 pages)</p> <p>i. Attachments:</p> <ol style="list-style-type: none"> 1. Audio Recording of the 911 Call (2:22 in length) 2. Audio Recording of Call from Dispatch to Sheriff Volek (1 : 14 in length) 3. Audio Recording of Call from Sheriff Volek to Dispatch (1 in length) 4. Central South Dakota Communications Center Dispatch Log (1 1 pages) 	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers, social security number.</p>
<p>ND Report 22:</p> <p>a. Cell Phone Exam Report by Cassidy Halseth — 10/20/20 (10 pages)</p> <p>b. Report 22-Cell Phone Extraction Cell Phone Exams</p> <ol style="list-style-type: none"> i. 2000536-429CH-Attachment #1 -Cellebrite HTML Report ii. 2000536-429CH-Attachment #2- Cellebrite HTML Report 	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p> <ol style="list-style-type: none"> i. Attachment #1 redacted entirely, pulled. ii. Attachment #2 personal cell phone numbers redacted.

<p>iii. 2000536-429CH-Attachment #3- Magnet Forensics Axiom HTML Report</p> <p>iv. 2000536-429CH-Attachment #4- Cellebrite HTML Report</p> <p>v. 2000536-429CH-Attachment #5- Magnet Forensics Axiom HTML Report</p> <p>vi. 2000536-429CH-Attachment #6- Cellebrite HTML Report</p> <p>vii. 2000536-429CH-Attachment #7- Magnet Forensics Axiom HTML Report</p> <p>viii. 2000536-429CH-Attachment #8- Cellebrite HTML Report</p> <p>ix. 2000536-429CH-Attachment #9- Magnet Forensics Axiom HTML Report</p> <p>1. Report.html contains dead links for iOS iMessage_SMS MMS-9 13 2020 12 14 23 AM. The redacted message is contained in the file named "Chat preview report"</p> <p>x. 2000536-429CH-Attachment #10- Cellebrite HTML Report</p> <p>xi. 2000536-429CH-Attachment #11 - Magnet Forensics Axiom HTML Report</p> <p>1. Report.html contains a dead link for iOS iMessage_SMS MMS-9 13 2020 12 14 23 AM. The redacted message is contained in the file named "Chat preview report"</p> <p>xii. 2000536-429CH-Attachment #12- Cellebrite HTML Report (empty)</p> <p>xiii. 2000536-429CH-Attachment #13- Magnet Forensics Axiom HTML Report</p> <p>1. Report.html contains dead links for iOS iMessage_SMS MMS-9 13 2020 12_14 23 AM and iOS iMessage_SMS MMS-9 14 2020 4 53 59 PM.html. The redacted messages are contained in the file named "Chat preview report"</p> <p>xiv. 2000536-429CH-Attachment #14- Cellebrite HTML Report</p> <p>xv. 2000536-429CH-Attachment #15- Magnet Forensics Axiom HTML Report</p>	<p>iii. Attachment #3 redacted all but first 3 pages.</p> <p>iv. Attachment #4 redacted entirely, pulled.</p> <p>v. Attachment #5 redacted entirely, pulled.</p> <p>vi. Attachment #6 redacted of personal cell phone numbers.</p> <p>vii. Attachment #7 redacted of personal cell phone numbers.</p> <p>viii. Attachment #8 redacted of personal cell phone numbers.</p> <p>ix. Attachment #9 redacted of personal cell phone numbers.</p> <p>1. Redacted all but last 2 pages of Report.html contains dead links for iOS iMessage_SMS MMS-9 13 2020 12 14 23 AM</p> <p>x. Attachment #10 redacted of personal cell phone numbers.</p> <p>xi. Attachment #11 redacted of personal cell phone numbers.</p> <p>xiii. Attachment #13 redacted/pulled all except first 3 pages and last page of Magnet Forensics Report.</p> <p>1. Pulled/redacted entirely SMS MMS-9 14 2020 4 53 59 PM.html.</p> <p>2. Redacted Facebook messages</p> <p>3. Redacted iOS iMessage (pages 1-23)</p> <p>xiv. Redacted entirely/pulled Attachment #14 Cellebrite Report</p>
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<p>ND Report 23:</p> <p>a. Latent Blood Collection on Highway 14 Report by Joe Arenz — 10/21/20 (4 pages)</p> <p>i. Attachments:</p> <ol style="list-style-type: none"> 1. Evidence Inventory and Receipt (1 Page) 2. Jeramie Quam's Photographs Folder (9 photos) 3. S/A Troy Kelly's Photographs Folder (17 photos) 4. Drone Photographs of Designated Areas (15 photos) 5. Troy Kelly's Photographic Log (1 page) 	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 24:</p> <p>a. Toxicology Report by Joe Arenz - 10/21/20 (4 pages)</p> <p>i. Attachments:</p> <ol style="list-style-type: none"> 1. NDBCI Evidence Inventory and Receipt (1 Page) 2. Crime Laboratory Evidence Inventory (1 Page) 3. Crime Laboratory Evidence Receipt (1 Page) 4. Copy of Toxicology Submission Form (1 Page) 5. Toxicology Alcohol/Volatiles Analytical Report (7 Pages) 6. Toxicology Carboxyhemoglobin Analytical Report (7 Pages) 7. Toxicology Drug Analytical Report (7 Pages) 	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p> <ol style="list-style-type: none"> 4. Toxicology Submission Form redacted. 5. Toxicology Report redacted of personal identifying information, date of birth. 6. Toxicology Report redacted of personal identifying information, date of birth. 7. Toxicology Report redacted of personal identifying information, date of birth.
<p>ND Report 25:</p> <p>a. Latent Blood Collection on Ford Taurus Report by Joe Arenz — 10/22/20 (5 pages)</p> <p>i. Attachments:</p> <ol style="list-style-type: none"> 1. Evidence Inventory and Receipt — Pills (1 page) 2. Evidence Inventory and Receipt — Vehicle Samples (1 page) <ol style="list-style-type: none"> A. Photographs of Headlight Bulb (8 photos) B. SA Troy Kelly's Photographs (32 photos) C. SA Jeramie Quam's Photographs (14 photos) D. Affidavit and Search Warrant (1 I pages) E. SA Troy Kelly's Photographic Log (2 pages) F. Order to Seal Affidavit (1 page) 	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>

<p>ND Report 26:</p> <p>a. Georgette Cermak Interview Report by Arnie Rummel 10/23/20 (3 pages)</p> <p>i. Attachment: Georgette Cermak Interview audio (9:49 in length)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 27:</p> <p>a. Joseph Boever's Personal Property Report by Joe Arenz — 10/23/20 (2 Pages)</p> <p>i. Attachments:</p> <ol style="list-style-type: none"> 1. Evidence Inventory and Receipt (1 Page) 2. Photographs of Personal Effects (50 photos) 3. Ramsey County Receipt (1 page) 	<p>Personal identifying information redacted, date of birth, home address.</p>
<p>ND Report 28:</p> <p>a. Janet Kopecky Interview Report by Joe Arenz — 10/23/20 (4 pages)</p> <p>i. Attachment: Audio Recording of Janet Kopecky Interview (13:37 in length)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 29:</p> <p>a. Brent Gromer Statement Report by Arnie Rummel — 10/26/20 (3 pages)</p> <p>i. Attachment: Statement by Brent Gromer (2 pages)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 30:</p> <p>a. Lincoln Day Dinner Witness Interview Report by Arnie Rummel — 10/26/20 (6 pages)</p> <p>i. Attachments:</p> <ol style="list-style-type: none"> 1. Arrival and Departure Video (2 videos) 2. JASON RAVNSORG's Receipt (1 page) 3. Chessa Quenzer Interview (18:17 in length) 4. Chessa Quenzer Diagram (1 page) 5. Brock Greenfield Interview (21 :24 in length) 	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 31:</p> <p>a. Nicole Baloun Interview Report by Joe Arenz — 10/26/20 (2 pages)</p> <p>i. Attachment: Audio Recording of Nicole Baloun Interview (4:19 in length)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>

<p>ND Report 32:</p> <p>a. Peggy Taylor/Dean Taylor Interview Report by Joe Arenz — 10/28/20 (4 pages)</p> <p>i. Attachments:</p> <ol style="list-style-type: none"> 1. Audio Recording of the Interview with Peggy Taylor (12:17 in length) 2. Audio Recording of Dean Taylor Interview (8:06 in length) 3. Photograph of Text Message (1 photo) 	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 33:</p> <p>a. Shalon Arenholz Interview Report by Joe Arenz — 10/28/20 (3 pages)</p> <p>i. Attachment: Audio Recording of Shalon Arenholz Interview (6:47 in length)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 34:</p> <p>a. Matison Taylor Interview Report by Joe Arenz 10/28/20 (3 pages)</p> <p>i. No attachment</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 35:</p> <p>a. Larry Nielson Interview Report by Arnie Rummel — 10/28/20 (3 pages)</p> <p>i. Attachment: Audio Recording of Larry Nielson Interview (7:35 in length)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 36:</p> <p>a. LG Stylo 5+ Cellebrite Advanced Services Report by Cassidy Halseth — 10/28/20 (5 pages)</p> <p>b. Report 36-Ravnsborg LG Stylo 5+cellbrite advanced services</p> <p>i. Magnet Forensics Axiom HTML Report</p> <ol style="list-style-type: none"> 1. Report.html contains dead links for Facebook Messenger Messages9 14 2020 9 04 43 AM.html. The redacted messages are contained in the file named "Chat preview report" 	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p> <p>Chat Preview report redacted to 1 page.</p>
<p>ND Report 37:</p> <p>a. Richard Ravnsborg Interview Report by Joe Arenz — 10/28/20 (4 pages)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>

<p>i. Attachment: Audio Recording of Richard Ravnsborg Interview (8:44 in length)</p>	
<p>ND Report 38: a. Sheriff Mike Volek 2nd Interview Report by Joe Arenz — 10/29/20 (4 pages) i. Attachment: Audio Recording of Sheriff Mike Volek Interview (20:59 in length)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 39: a. JASON RAVNSBORG 2nd Interview Report by Joe Arenz — 10/29/20 (16 pages) i. Attachments: 1. Spreadsheet of Phone Activity 2. Redacted Interview Video (02:10:16 in length)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 40: a. Flashlight Lab Analysis Report by Joe Arenz — 10/29/20 (4 pages) i. Attachments: 1. NDBCI Evidence Inventory and Receipt (3 Pages) 2. Crime Laboratory Evidence Inventory (1 Page) 3. DNA Evidence Information Sheet (1 Page) 4. Biological Screening Laboratory Report (5 Pages) 5. DNA Laboratory Report (6 pages) 6. Crime Laboratory Evidence Receipt (1 Page) 7. Crime Laboratory Submission Report (1 Page) 8. Crime Laboratory Evidence Return Sheet (1 Page)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p> <p>3. DNA Evidence Information Sheet - redacted dates of birth</p> <p>4. Biological Screening Laboratory Report – redacted dates of birth</p>
<p>ND Report 41: a. South Dakota Highway Patrol In-Car Videos Report by Joe Arenz — 11/03/20 (2 pages) i. Attachments: 3 SDHP In Car video of the scene.</p>	<p>No redactions.</p>
<p>ND Report 42: a. Photo Enhance Report by Derek Madsen — 11/03/20 (3 Pages) i. Attachments: 1. Bookmarked images of the Enhancement (5 photos) 2. AMPED Five Report (10 pages)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>

<p>ND Report 43:</p> <p>a. Photo Comparison Report by Derek Madsen — 11/03/20 (3 pages)</p> <p>i. Attachments:</p> <ol style="list-style-type: none"> 1. Bookmarked images of the Comparison (5 photos) 2. AMPED Five Report (10 pages) 	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 44:</p> <p>a. Interview Verbatims Report by Joe Arenz — 11/04/20 (3 pages)</p> <p>i. Attachments:</p> <ol style="list-style-type: none"> 1. JASON RAVNSBORG Interview September 14, 2020 (54 pages) 2. JASON RAVNSBORG Interview September 30, 2020 Redacted (1 17 pages) 	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p> <ol style="list-style-type: none"> 1. Interview – redacted dates of birth and personal cell phones 2. Interview – DPS redactions on pages 100-101; auditor redaction on 116
<p>ND Report 45:</p> <p>a. Photo Recreate Report by Derek Madsen — 11/04/20 (4 pages)</p> <p>i. Attachments:</p> <ol style="list-style-type: none"> 1. Bookmarked images of the Comparison (5 photos) 2. Apple iPhone XR Report (533 pages) 3. AMPED Five Report (17 pages) 	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p> <ol style="list-style-type: none"> 2. Apple Report redacted entirely/pulled
<p>ND Report 46:</p> <p>a. Final Autopsy Report by Joe Arenz — 11/05/20 (2 pages)</p> <p>i. Attachment: Ramsey County Medical Examiner Autopsy Report (8 pages)</p>	<p>Personal identifying information redacted, date of birth, home address.</p> <p>i. Redaction of Autopsy Report</p>
<p>ND Report 47:</p> <p>a. James Lappe Interview Report by Arnie Rummel — 1 1/16/20 (4 pages)</p> <p>i. Attachment: Diagram of Stop Area After Crash (1 page)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 48:</p> <p>a. SD Highway Patrol Crime Scene Mapping Report by Joe Arenz — 11/20/20 (3 pages)</p> <p>i. Attachment:</p> <ol style="list-style-type: none"> 1. AG Crash Map (1 page) 2. Crash Area Zoomed (1 page) 3. Crash Area (1 page) 	<p>Personal identifying information redacted, date of birth, home address.</p>

4. AG Crash Final (CAD Program required to read)	
<p>ND Report 49:</p> <p>a. Doctor Kelly Mills Information Report by Arnie Rummel — 11/25/20 (3 pages)</p> <p>i. Attachment: Prescription Drug Monitoring Program Report (2 pages)</p>	<p>Personal identifying information redacted, date of birth, home address.</p>
<p>ND Report 50:</p> <p>a. Surveillance Video Report by Derek Madsen 11/30/20 (2 pages)</p> <p>i. Attachment:</p> <p>1. AMPED Five Report (8 pages)</p> <p>2. Bookmarked Images of Enhancement (4 photos)</p>	<p>No Redactions.</p>
<p>ND Report 51:</p> <p>a. Letter to Pennington County State's Attorney Report by Joe Arenz — 12/02/20 (3 pages)</p> <p>i. Attachment:</p> <p>1. Copy of Envelope (1 page)</p> <p>2. Copy of Letter (8 pages)</p> <p>3. Evidence Inventory and Receipt (1 page)</p>	<p>Personal identifying information redacted, home address.</p>
<p>ND Report 52:</p> <p>a. Miscellaneous Interview Report by Joe Arenz — 12/09/20 (8 pages)</p> <p>i. Attachments:</p> <p>1. Audio Recording of Matthew Samp Interview Part 1 (00:00:50 in length)</p> <p>2. Audio Recording of Matthew Samp Interview Part 2 (00:00:16 in length)</p> <p>3. Audio Recording of Kristie Fiegen Interview (00:12:28 in length)</p> <p>4. Audio Recording of Scott Odenbach Interview (00:11:50 in length)</p> <p>5. Audio Recording of Stephanie Kozol Interview (00:15:12 in length)</p> <p>6. Audio Recording of Thomas Wollman Interview (00:20:07 in length)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 53:</p> <p>a. DVR Video Recovery Report by Jesse Smith — 12/09/20 (3 pages)</p>	<p>No redactions.</p>

i. No attachment	
<p>ND Report 54:</p> <p>a. Lab Analysis Report by Joe Arenz — 10/10/20 (6 pages)</p> <p>i. Attachments:</p> <ul style="list-style-type: none"> A. Crime Laboratory Evidence Receipt (2 pages) B. DNA Evidence Submission Forms (2 pages) C. Supplemental Biological Screening Laboratory Report (20 pages) D. Supplemental DNA Laboratory Report (20 pages) E. Crime Laboratory Evidence Return (2 pages) F. Crime Laboratory Inventory and DNA Information Sheets (15 pages) G. NDBCI Evidence Inventory and Receipt Form (9 pages) 	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p> <p>C. Supplemental Biological Screening Laboratory Report redacted of birthdates.</p> <p>D. Supplemental DNA Laboratory Report redacted of birthdates.</p> <p>F. Crime Laboratory Inventory and DNA Information Sheets redacted of birthdates.</p>
<p>ND Report 55:</p> <p>a. Miscellaneous Surveillance Videos Report by Joe Arenz — 12/11/20 (5 pages)</p> <p>i. Attachments:</p> <ul style="list-style-type: none"> 1. Video Footage from Appel's Quick Stop from September 12, 2020 2. Video Footage from Hoffman Trenching Inc. from September 12, 2020 3. Video Footage from Mashek's Food Center from September 12, 2020 	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 56:</p> <p>a. Secondary Laboratory Analysis Report by Joe Arenz — 01/06/21 (3 pages)</p> <p>i. Attachments:</p> <ul style="list-style-type: none"> 1. Email Chain from Prosecutor (2 pages) 2. Supplemental DNA Laboratory Report (19 pages) 	<p>2. Supplemental DNA Report redacted of birthdates.</p>
<p>ND Report 57</p> <p>a. Digital Media Search Warrants and Follow-Up Report by Cassidy Halseth — 01/20/21 (7 pages) i. No attachment</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>

<p>ND Report 58:</p> <p>a. SD Highway Patrol Report by Joe Arenz — 03/10/21 (2 pages)</p> <p>i. Attachment:</p> <p>1. SD Highway Patrol Report (404 pages)</p>	<p>1. SD Highway Patrol Reports redacted of personal identifying information, date of birth, home address, personal cell phone numbers, personal email addresses, social security numbers.</p> <ul style="list-style-type: none"> - Images of body redacted from report - Previous Police reports for Ravensborg redacted/pulled - Law on Charles Mix and Hyde County maximum speeds redacted/pulled.
<p>ND Report 59:</p> <p>a. Barnabas Nemece Interview by Joe Arenz — 03/11/21 — (6 pages)</p> <p>i. Attachments:</p> <p>1. Email from Barnabas Nemece to Emily Sovell (3 pages)</p> <p>2. Audio Recording of Interview with Barnabas Nemece (1:07:55 in length)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers and email address.</p>
<p>ND Report 60:</p> <p>a. Evidence Return Report by Joe Arenz — 03/11/21 (4 pages)</p> <p>i. Attachments:</p> <p>1. Crime Laboratory Evidence Return Sheet (2 Pages)</p> <p>2. Updated NDBCI Evidence Inventory and Receipt Forms (13 Pages)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>ND Report 61:</p> <p>Case Master Report</p> <p>Case Closure Report – Arrest</p> <p>(These are the additional records received from ND Asst Attorney General in response to subpoena which were not included in the investigative file from SD Dept of Public Safety)</p>	<p>Personal identifying information redacted, date of birth, home address, personal cell phone numbers.</p>
<p>62. Cell Phone Data (From ND Reports 22 and 36)</p>	<p>Contained under Reports 22 and 36.</p>
<p>63. Law Enforcement Videos and Case Reports</p>	<p>Pulled/redacted all reports for Ravensborg (previous).</p>
<p>64. Property — Evidence</p>	<p>Contained in other reports.</p>
<p>65. SD Highway Patrol In-Car Videos</p>	<p>Not needed.</p>

66. SDHP Reports	Duplicate of reports under 58.
67. Documents published on the SD Dept of Public Safety website (as of January 31, 2022) - Craig Price, Secretary of SD Dept of Public Safety letter to Speaker Gosch dated September 1, 2021 - Audio of 911 call placed by Jason Ravensborg - Transcript of 911 call placed by Jason Ravensborg - Accident report - Order Precluding Disclosure of Criminal Investigation Information - Toxicology Carboxyhemoglobin Analytical Report - Toxicology Drug Analytical Report - Toxicology Alcohol Volatiles Analytical Report - Photo of Ravensborg car	Redacted birth dates in accident report.
68. Attorney General letter regarding September 12, 2020 accident	No redactions.
69. Hyde County State's Attorney File (This file was received in response to subpoena.)	Personal identifying information redacted, date of birth, medical providers.
70. Ross Garber letter submitted on behalf of Attorney General dated January 27, 2022	No redactions.
71. Letter to South Dakota House of Representatives dated Feb 7, 2022 re: non-public access, under certain conditions, to confidential investigative files and other confidential information	No redactions.
72. Press Release from DPS Secretary Price Urging Committee to Consider Facts in Impeachment Investigation dated March 9, 2022 - March 9, 2022 letter to Speaker Gosch - AG Crash Supplemental (Quadrants Described) from Trooper John Berndt dated March 9, 2022	No redactions.

MINUTES

House Select Committee on Investigation

Representative Spencer Gosch, Chair
Representative Mike Stevens, Vice Chair



Eighth Meeting, 2021 Second Special Session
Monday, March 28, 2022

Room 414 – State Capitol
Pierre, South Dakota

The eighth meeting of the House Select Committee on Investigation was called to order by Representative Spencer Gosch at 3:07 p.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; John McCullough, Code Counsel; 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 Stevens moved, seconded by Representative Peterson, 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 3:08 p.m.

Representative Smith moved, seconded by Representative Peterson, 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 7:26 p.m.

Committee Action

Representative Stevens moved, seconded by Representative Jensen, to update the list of redacted content from the investigation file. 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 Peterson moved, seconded by Representative Hansen, to approve the minutes of the committee meetings on November 10, 2022, December 28-29, 2022, January 17, 2022, January 18-19, 2022, January 31, 2022, February 24, 2022, and March 10, 2022. 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 Peterson, to approve the committee report entitled "House Select Committee's Majority Report and Recommendations". The motion prevailed on a roll call vote with 6 voting AYE, 2 voting NAY, and 1 NOT VOTING. Voting AYE: Barthel, Hansen, Haugaard, Jensen, Peterson, and Stevens. Voting NAY: Cwach and Smith. NOT VOTING: Gosch.

The Chair permitted, without objection, a minority report of the Committee, entitled "House Select Committee's Minority Report and Recommendations", pursuant to Joint Rule 7-4 and Mason's Manual Section 674, subdivision 5.

Representative Peterson moved, seconded by Representative Smith, to release the redacted investigation file to the public. 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.

Adjournment

Representative Stevens 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 7:35 p.m.

GOAC 5/2 item 4
ELLSWORTH LOC #7

Argus Leader.

BUSINESS JOURNAL

Minnesota Attorney General opens investigation into Sanford, Fairview Health merger



Symmone Gauer
Sioux Falls Argus Leader

Published 10:06 a.m. CT Nov. 18, 2022 | Updated 10:21 a.m. CT Nov. 18, 2022

The Minnesota Attorney General's office announced it will be investigating the merger intent between Sanford Health and Fairview Health Services, a Minneapolis-based non-profit health system. The two healthcare systems publicly announced their effort Tuesday.

"We are aware of the proposed merger between Fairview and Sandford," John Stiles, deputy chief of staff and spokesperson for the Attorney General, said in an emailed statement to the Argus Leader. "We have opened an investigation into the proposed transaction's compliance with charities and nonprofit laws. We are also evaluating any possible effects on competition along with state and federal partners."

The news of the merger came with some pushback from people online as well as opposition from the Minnesota Nurses Association, who released a statement voicing their concerns.

More: Sanford Health announces plans to merge with Minneapolis-based Fairview Health

The Association said the merger "would put corporate expansion above patient care," citing how Fairview closed two hospitals in the middle of a pandemic while the CEO received more than \$3.5 million in annual compensation.

The statement also mentioned that Sanford paid \$49.5 million to its former CEO who the Association alleges spread medical disinformation.

"They [Sanford and Fairview] have repeatedly made clear that their priorities are firmly focused on corporate expansion and their own bottom lines," the statement reads.

GOAC 5/2 ITEM 4
ELLSWORTH Dec 18-1

IN THE SENATE OF THE STATE OF SOUTH DAKOTA
FOR THE SPECIAL SESSION OF THE NINETY-SIXTH LEGISLATURE
SITTING AS A COURT OF IMPEACHMENT

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In Re: ORIGINAL
Impeachment of
Attorney General Jason Ravensborg

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TRANSCRIPT OF PROCEEDINGS

June 21, 2022

Attachment to the Senate Journal

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A P P E A R A N C E S

MARK A. VARGO and ALEXIS A. TRACY,
appearing on behalf of the Prosecution;

MICHAEL J. BUTLER and ROSS GARBER,
appearing on behalf of the Respondent.

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1 The following Transcript of Proceedings was
2 taken at the South Dakota State Capitol Building,
3 Senate Chambers, 500 East Capitol Avenue, Pierre,
4 South Dakota, on the 21st day of June, 2022, commencing
5 at 8 o'clock a.m., before Cheri McComsey Wittler, a
6 Registered Professional Reporter, Certified Realtime
7 Reporter, and Notary Public within and for the State of
8 South Dakota.

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1 PRESIDENT RHODEN: The Senate will come to
2 order for the Third Legislative Day on the Court of
3 Impeachment.

4 The prayer today will be offered by Reverend
5 Craig Wexler, and then I will lead in the Pledge.

6 (Reverend Craig Wexler offers the prayer.)

7 (President Rhoden leads the Pledge of Allegiance.)

8 PRESIDENT RHODEN: Secretary will call the roll.

9 SECRETARY JOHNSON: Senator Bolin.

10 SENATOR BOLIN: Here.

11 SECRETARY JOHNSON: Breitling.

12 SENATOR BREITLING: Here.

13 SECRETARY JOHNSON: Cammack.

14 SENATOR CAMMACK: Here.

15 SECRETARY JOHNSON: Castleberry.

16 SENATOR CASTLEBERRY: Here.

17 SECRETARY JOHNSON: Crabtree.

18 SENATOR CRABTREE: Here.

19 SECRETARY JOHNSON: Curd.

20 SENATOR CURD: Here.

21 SECRETARY JOHNSON: Diedrich.

22 SENATOR DIEDRICH: Here.

23 SECRETARY JOHNSON: Duhamel.

24 SENATOR DUHAMEL: Here.

25 SECRETARY JOHNSON: Duvall.

1 SENATOR DUVALL: Here.
2 SECRETARY JOHNSON: Foster.
3 Frye-Mueller.
4 Greenfield.
5 SENATOR GREENFIELD: Here.
6 SECRETARY JOHNSON: Heinert.
7 SENATOR HEINERT: Here.
8 SECRETARY JOHNSON: Hunhoff.
9 SENATOR HUNHOFF: Here.
10 SECRETARY JOHNSON: Johns.
11 SENATOR JOHNS: Here.
12 SECRETARY JOHNSON: Johnson.
13 SENATOR JOHNSON: Here.
14 SECRETARY JOHNSON: Klumb.
15 SENATOR KLUMB: Here.
16 SECRETARY JOHNSON: Kolbeck.
17 SENATOR KOLBECK: Here.
18 SECRETARY JOHNSON: Maher.
19 SENATOR MAHER: Here.
20 SECRETARY JOHNSON: Nesiba.
21 SENATOR NESIBA: Here.
22 SECRETARY JOHNSON: Novstrup.
23 SENATOR NOVSTRUP: Here.
24 SECRETARY JOHNSON: Otten.
25 SENATOR OTTEN: Here.

1 SECRETARY JOHNSON: Rohl.
2 SENATOR ROHL: Here.
3 SECRETARY JOHNSON: Rusch.
4 SENATOR RUSCH: Here.
5 SECRETARY JOHNSON: Schoenbeck.
6 SENATOR SCHOENBECK: Here.
7 SECRETARY JOHNSON: Schoenfish.
8 SENATOR SCHOENFISH: Here.
9 SECRETARY JOHNSON: Smith.
10 SENATOR SMITH: Here.
11 SECRETARY JOHNSON: Stalzer.
12 SENATOR STALZER: Here.
13 SECRETARY JOHNSON: Steinhauer.
14 SENATOR STEINHAUER: Here.
15 SECRETARY JOHNSON: Sutton.
16 SENATOR SUTTON: Here.
17 SECRETARY JOHNSON: Symens.
18 SENATOR SYMENS: Here.
19 SECRETARY JOHNSON: Tobin.
20 SENATOR TOBIN: Here.
21 SECRETARY JOHNSON: Wheeler.
22 SENATOR WHEELER: Here.
23 SECRETARY JOHNSON: Wiik.
24 SENATOR WIIK: Here.
25 SECRETARY JOHNSON: Zikmund.

1 SENATOR ZIKMUND: Here.

2 SECRETARY JOHNSON: Mr. President, we have a
3 quorum.

4 PRESIDENT RHODEN: Thank you.
5 Approval of the Journal.

6 SECRETARY JOHNSON: Mr. President, the Committee
7 on Legislative Procedure respectfully reports that the
8 Secretary of the Senate has had under consideration the
9 Senate Journal of the Second Day. All errors,
10 typographical or otherwise, are duly marked in the
11 temporary journal for correction, and we hereby move the
12 adoption of the report.

13 SENATOR SCHOENBECK: Second.

14 PRESIDENT RHODEN: Comments on that motion.
15 Hearing none, all in favor say "aye," opposed
16 "nay."

17 Motion carries.

18 SECRETARY JOHNSON: A transcript of the Court of
19 Impeachment proceedings will be attached to the permanent
20 record of the Senate Journal before its certification and
21 serve as the full and correct record.

22 PRESIDENT RHODEN: The Secretary will now
23 administer my oath of office.

24 (The oath is administered to President Rhoden.)

25 PRESIDENT RHODEN: Now the Secretary will

1 administer the oath to the Senators.

2 Would you all please stand.

3 (The oath is administered to the Senators.)

4 SECRETARY JOHNSON: Thank you.

5 PRESIDENT RHODEN: Ladies and gentlemen, I'll
6 get us started with some opening comments.

7 This Court of Impeachment was convened on
8 April 26, 2022, by the adoption of Senate Resolution 701.
9 The authority for this trial is South Dakota Constitution
10 Article XVI Section 2, which provides that all
11 impeachments shall be tried by the Senate. When sitting
12 for that purpose, the Senators shall be under oath or
13 affirmation to do justice according to law and evidence.
14 No person shall be convicted without concurrence of
15 two-thirds of the members elected.

16 It is noted the Senators have taken their oath.
17 Additionally, the rules for the Trial of
18 Impeachment have been adopted in Senate Resolution 702 on
19 April 26, 2022. These rules have been made public --
20 have been made publicly available on the legislative
21 website since the date of their adoption.

22 In accordance with the rules and Senate
23 Resolution 702, the following is noted: First, the
24 counsel for Attorney General Ravensborg has filed a
25 written Answer to the Articles of Impeachment on May 31,

1 2022, denying the allegations contained in Article I and
2 Article II of House Resolution 7002.

3 In accordance with Rule 3-1, the entire
4 impeachment file of the House of Representatives has
5 been made available for Senators to review. Each party
6 to the Trial of Impeachment has provided the documents
7 that each party intends to submit to the Senate pursuant
8 to Rule 3-1 Sub 2. Those documents have been made
9 available for Senators' review. Pursuant to Rule 3-2
10 Sub 2, a party may submit additional documents to the
11 presiding officer during the trial.

12 Senators were given the opportunity to present
13 questions to both parties before the beginning of the
14 trial pursuant to Rule 3-1 Sub 3. Those questions have
15 been organized and submitted to each party. Senators may
16 submit additional questions to the presiding officer for
17 any witness or party at the conclusion of each party's
18 case presentation pursuant to Rule 4-3 Sub 8.

19 Prosecution witnesses' subpoenas have been
20 issued in the names of the Senate pursuant to Rule 3-3.
21 Counsel for the Respondents did not request any witness
22 subpoenas.

23 All documents submitted pursuant to Rule 3-1
24 Sub 2 are admitted into evidence.

25 The rules allow for each counsel to have, first,

1 one hour for an opening statement, then four hours to
2 present witness testimony, present exhibits, and
3 cross-examine witnesses and, finally, one hour for a
4 closing statement.

5 There are official timekeepers located in the
6 Senate Chambers, and they will provide intermittent
7 updates during the trial to respective parties and
8 presiding officer. All witnesses will be sworn and put
9 under oath and will appear and testify at the lower
10 podium.

11 For those ladies and gentlemen of you who are in
12 the gallery, this is a trial, and obviously decorum must
13 comply with the solemn occasion. It is my job as the
14 presiding officer to ensure order and that proper respect
15 in our environment is maintained. Accordingly, I'd ask
16 you to please place your cell phones on silent or
17 vibrate. Please do not remove your cell phones from your
18 pockets or your purses while we're in session. And I'd
19 ask you to not leave your seat if at all possible during
20 the trial. We'll have a number of breaks.

21 And I would also ask you to be silent while the
22 trial is going on. That means no talking, no outbursts
23 of any kind, no applause.

24 And I'd also remind you all that if you become
25 uncomfortable in the gallery, just through those doors

1 and to the left Rooms 412, 413, and 414 where they have
2 closed circuit television so you can watch the trial from
3 there, if you so wish.

4 For the Senators, I know you all know by the
5 virtue of your oath and your service to the State that
6 this is an awesome duty that you're undertaking today. I
7 ask that you provide your full attention to the people
8 involved in the process. I also ask that you remain
9 silent during the trial. And we'll have a number of
10 breaks through the trial when appropriate.

11 I'd also remind you that both lobbies on the
12 north and south side of the Senate Chamber are closed,
13 except that parties, senators, and legislative staff have
14 access to these two lobbies.

15 Also a reminder, I will not be granting personal
16 privileges during this impeachment trial.

17 So, with that, I thank you all very much. We
18 shall now proceed with the trial of impeachment.

19 And also a reminder, we have a doctor of the day
20 in the house. Just don't know if she's here yet.
21 Theresa Bormann, are you in the gallery?

22 Okay. We will have a doctor of the day. I
23 think she's on her way. Theresa Bormann will be our
24 doctor for the day.

25 With that, Mr. Vargo, you have the floor for

1 your opening statement. One hour.

2 As you were. This is not Mark Vargo. This is
3 Alexis Tracy.

4 MS. TRACY: Mr. President, Counsel, Senators,
5 there are times when an ordinary day filled with mundane
6 choices, tasks, and routines will be struck with tragedy,
7 altering life as we know it, a direct result of one of
8 those otherwise uneventful choices, tasks, and decisions.

9 How one responds to those life-altering moments
10 and the ones that follow seconds, minutes, hours, days,
11 weeks, and beyond define a person. Because in the
12 aftermath a person is generally presented a number of
13 occasions to do the right thing. When, why, and how a
14 person makes that choice is telling and can have a
15 rippling effect.

16 The night of September 12, 2020, was an
17 otherwise ordinary day, filled with mundane moments, that
18 through a series of tasks and choices ended in tragedy.
19 It was the response to those moments and the ones that
20 followed, those failed opportunities to do the right
21 thing, by Attorney General Jason Ravnsborg that bring us
22 here today.

23 To understand this process, we must understand
24 the events, the moments that led us here and are the
25 subject of Count I of the Article of Impeachment.

1 At approximately 9:15 p.m. on September 20
2 [sic], 2020, Jason Ravensborg, South Dakota Attorney
3 General, left a political function in Redfield,
4 South Dakota, to make the roughly hour-and-50-minute trip
5 home to Pierre. His departure time was corroborated by
6 interviews of other guests from the events that
7 identified him leaving between 9:00 and 9:30 p.m. and by
8 the GPS data on his cellular telephone that placed his
9 departure at 9:19 p.m.

10 For the drive back Jason Ravensborg activated the
11 OnMyWay app on his personal cell phone to earn perks and
12 rewards for not using that cell phone on the drive. He
13 then set that personal cell phone aside. Thereafter,
14 Attorney General Ravensborg for the trip home picked up
15 his work cell phone, placed calls to his father, accessed
16 e-mail and web browsers, perused articles on the
17 internet, all documented in the contents of that phone.

18 About an hour into the trip he approached the
19 small town of Highmore. Slowing down as he passed
20 through town, he began to accelerate as he exited the
21 community. He passed the 65 mile-per-hour sign, passed
22 the sign noting 48 miles to Pierre, and then looked down
23 as he began to accelerate, likely resuming cruise
24 control, looked over at the speedometer, fiddled with his
25 phone, and in the midst of distraction veered all four

1 wheels of the vehicle of his car over the fog line and
2 rumble strip. In the midst of these distractions, Wham.
3 Like a thunderbolt, he would later describe, the feeling
4 of his car impacting "something," as he would say to the
5 911 dispatcher.

6 As we know, something was someone: Joseph
7 Boever. Joseph Boever, who was leading his own ordinary
8 day, full of mundane tasks, his own pickup struck a
9 haybale after he was reaching over for cigarettes and he
10 received a ride back to town, only to return back on foot
11 to his vehicle for reasons that today remain a mystery.

12 Joseph Boever, a man who eyewitnesses, other
13 passing motorists, described seeing walking the shoulder
14 in the night, a night that by all accounts, including the
15 Attorney General's, was described as a very dark night.
16 Joseph Boever was seen walking nearly in the grass,
17 witnesses would tell, headed west out of Highmore before
18 coming back east on the north side of the road,
19 presumably headed home.

20 He was carrying a light, as described by the
21 motorists, that shown like a beacon, as described by
22 the North Dakota BCI investigator who recreated the
23 events. Joseph Boever was struck by Attorney General
24 Jason Ravensborg as he accelerated out of Highmore
25 traveling over that fog line at approximately 68 miles

1 per hour upon impact, via the South Dakota Highway Patrol
2 Crash Reconstruction Report, which is consistent with
3 that GPS data from the Attorney General's work phone,
4 putting him at 67.6 miles per hour at 10:23:36, the time
5 of impact, and 67.1 miles per hour in the two seconds
6 after.

7 Mr. Boever died upon impact. The Ramsey County
8 Medical Examiner noted cause of death was multiple
9 traumatic injuries, both internal and external, the
10 impact of the crash stopping his heart, lacerating
11 internal organs, and created trauma to the front of his
12 body so severe that his right leg was severed from the
13 body upon impact and projected out into the north ditch
14 while the rest of his body flew up onto the front of the
15 vehicle and his face crashed through the passenger side
16 window.

17 Mr. Boever's glasses crashed with his face
18 through the window and became a part of the debris that
19 was projected into the interior of the car, where they
20 would later be recovered, a partial frame in the back
21 seat and the remaining frame and lens on the floorboard
22 of the front passenger seat.

23 The body traveled with the vehicle for the two
24 seconds it took for that vehicle to begin to slow. At
25 10:23:39 GPS phone data shows a speed of 62.4 miles per

1 hour. So, again, from that 67 to 62 in those two seconds
2 afterwards. And at 10:23:40, just a second after that,
3 the phone data shows a speed of 56.8 miles per hour.

4 It was then as the body is traveling with the
5 vehicle at the heightened speed and the vehicle begins to
6 slow that Joe Boever's body came off the vehicle where
7 the exposed bone from his leg scraped the shoulder of the
8 road, and the entirety of his body came to rest barely in
9 the north side ditch just beyond a piece of vehicle
10 debris that was dislodged and had come to rest on the
11 shoulder of the road.

12 Attorney General Ravensborg was distracted,
13 looked down at the phone next to him, the speedometer,
14 potentially the radio, resumed cruise control, consistent
15 with that GPS data that showed acceleration after the
16 speed signs. Whatever drew his attention, we can say
17 with certainty and he cannot deny that he was distracted.
18 And in the midst of that distraction his tires veered
19 over the shoulder of the road, and he struck Mr. Boever,
20 who the Attorney General never saw until impact, in his
21 own words. He didn't know what he hit until the impact.
22 That's 14 minutes and 44 seconds into that first
23 interview. Meaning, of course, that he absolutely saw
24 the man that he struck in the moments after. As a
25 thunderbolt shook his vehicle and glass came crashing

1 into the passenger side, the moments that transpired
2 within the Attorney General's vehicle are told by his
3 accounts as well as the physical evidence.

4 The physical jolt of the crash, glass shattered
5 upon the passenger seat where his personal cell phone had
6 sat and was thrown into that front wheel well from the
7 force of the impact. But his work phone did not. It was
8 maintained in his possession.

9 Attorney General Jason Ravensborg startled,
10 looked up, to see Mr. Boever as he came through that
11 front windshield. The Attorney General went into tunnel
12 vision, as he would describe it at 1:47:04 in the second
13 interview. And though he couldn't bring himself ever in
14 the two-minute 911 call or three hours worth of two
15 separate interviews actually to say that he hit and
16 killed a man, he knew this fact to be true.

17 He knew it, and his refusal to provide the
18 painstaking details of those seconds that transpired
19 after -- he offered a litany of details down to the
20 verbatim conversations of the mundane, both before and
21 after, the conversations with his father, the Twins game
22 on the radio, how he acquired his insurance, physically
23 removing the car keys from his vehicle to hand them to
24 the sheriff. But the details of the most important
25 moments in the aftermath of killing a man he glossed

1 over, left out, cut short.

2 In his own words we get glimmers of the truth of
3 what he was thinking at that time. As he would later
4 tell investigators, No. No, no, no, no, no. I would not
5 expect a man to be out on the side of the road in the
6 dark like it was; 1:19:39, the second interview. Why
7 would a man be walking down the road; 2:04 in the second
8 interview. Wishing and hoping that the horror of those
9 moments weren't true, but knowing at the same time they
10 were. And, Wham. My life changes, he says at 2:04:04 in
11 the second interview. An unequivocal statement that is
12 true not only for the Attorney General but more so for
13 the Boever family. These tragic events had the potential
14 to either be mitigated by doing the right things or
15 aggravated by the decisions that followed.

16 Is the Attorney General's response that we find,
17 Count II, malfeasance, wrongdoing by the Attorney General
18 following the death of Joseph Boever? In the seconds in
19 the aftermath are explained not only by the, No, no, no,
20 no, no. What would a man be doing on the side of the
21 road, but are also demonstrated in the investigation that
22 shows via the GPS locator information on the Attorney
23 General's work cell phone, that he began braking at the
24 67.1-miles-per-hour mark. And for the next seven seconds
25 he slows down to just 11.9 miles per hour, braking

1 moderately. It took another seven seconds for him to
2 slow to -- from the 11.9 down to 8 miles per hour. More
3 of a coast. Two more seconds to go from the 8 miles an
4 hour to a complete stop at 10:23:54 p.m.

5 This was not a screeching halt, even though
6 that's how the Attorney General described it in his first
7 interview with law enforcement just days later: I
8 immediately jumped out of my car and dialed 911. He
9 slowed to a stop and gathered his thoughts about what to
10 do next.

11 At 10:24:22 the Attorney General initiated the
12 two-minute 911 call where instead of leading with I'm
13 south of Highmore and I've been in a crash, he leads
14 with, Well, Ally, this is the Attorney General.
15 Senators, this is not the first time, but you can assure
16 it will be the last time that he uses his title in an
17 attempt to set the tone and gain influence.

18 As seen in the evidence submitted to you today
19 for the proceedings of other occasions of travel stops,
20 as well as the interviews in this case, it is routine for
21 him to use that title and is one of his first go-to
22 lines. He continues to use that title throughout his
23 interviews in the investigation. You have it in your
24 evidence, but we'll show it to you here today.

25 (Video presentation.)

1 MS. TRACY: He reminds the North Dakota BCI that
2 he is the Attorney General when they want to conduct an
3 investigation on his phone. Senators, any new prosecutor
4 out there knows that that phone is evidence and needs to
5 be reviewed.

6 Going back to the 911 call with dispatch and the
7 statements that followed, Jason Ravensborg advises that he
8 hit "something." Doesn't say that he hit a man. And the
9 dispatcher specifically asks him if he thought it was a
10 deer. The Attorney General responds, still fresh on his
11 mind at this time, I have no idea. Yeah. It could be.
12 And, It was right in the roadway. Two statements that
13 are completely disproven by the evidence.

14 He doesn't volunteer anything like, It sure
15 looked like it might have been a man, or attempt to
16 provide additional information. As a child, my mother
17 used to call those lies by omission.

18 Other noteworthy statements by the Attorney
19 General's response:

20 "Dispatcher: Are you injured at all, Jason?

21 "Attorney General: I am not, but my car sure as
22 hell is." And then he doubled down on the middle of the
23 road statement with, "I'm out of the roadway. I was able
24 to get over. It sure hit me. Smashed my windshield."

25 The dispatcher advised that she'd be sending the

1 sheriff, and the call ended at 10:26:44 per data from the
2 Attorney General's phone, corroborating and consistent
3 with the 911 recording.

4 Following that call, the Attorney General was
5 alone on the side of the road in the pitch black night.
6 And he turned his phone light on to scan the ditches, as
7 he would later say. The phone corroborated the use of
8 that flashlight at 10:26:59 p.m. to 10:33:15 p.m. Six
9 minutes. Alone. In the dark. Roadside. Scanning the
10 ditches. Left to process.

11 Time to walk up to the large piece of debris
12 that was located past Joe Boever's lifeless mangled body,
13 meaning to get to that piece of debris he would have had
14 to walk on the shoulder 3 feet away from his body. And
15 he turned around and passed it again as he scanned the
16 ditches with his phone.

17 Six minutes before the Attorney General returned
18 to the front of his vehicle, as shown by his phone data,
19 10:33:15 the phone line goes off. 10:33:22 he takes the
20 photo that is saved to the phone of his vehicle. And
21 10:33:25 his GPS location data is confirming him in the
22 vicinity of the front of that vehicle.

23 At 10:34 p.m. his phone registered a call from
24 that work phone of his to the personal phone that
25 remained in the vehicle but slid to the floorboard

1 during the crash. Would have been nestled amongst the
2 broken glass from the windshield and the frames of the
3 glasses.

4 Sheriff Volek arrives. Believing that the
5 Attorney General hit a deer and not a man, the sheriff
6 conducts a mediocre investigation at best, gathered the
7 Attorney General's information for formalities,
8 registration and insurance, and subsequently sent the
9 Attorney General home in the sheriff's personal vehicle.

10 The Attorney General was once again headed back
11 to Pierre by 10:54 p.m. It's at that time while driving
12 he sends a photograph, text message, of his vehicle's
13 damage from that work cell phone to his chief of staff
14 Tim Bormann and the Division of Criminal Investigation
15 DCI Director Dave Natvig. Roughly a half-hour after the
16 crash he's back on his phone.

17 The next morning, Sunday, September 13, 2020,
18 Attorney General Jason Ravnsborg traveled back east to
19 Highmore to return Sheriff Volek's vehicle. Tim Bormann,
20 the Attorney General's chief of staff, followed. After
21 filling up in Highmore, Jason Ravnsborg travels the same
22 path out of Highmore that he had traveled just the night
23 before. And he decides to stop by the large piece of
24 debris from his vehicle that remained on the shoulder.
25 23:33 into the first interview he says, That's where I

1 knew approximately to look.

2 Jason Ravensborg gave the North Dakota BCI
3 investigators varying reasons for why he stopped: To
4 check and see if this deer made it or what happened by
5 checking on the other south side of the road; 22:43 in
6 the first interview. Though he stops on the north
7 instead of the south side of the road.

8 He went back because: The debris was still
9 there; 1:37:58, second interview. But he didn't clean up
10 the debris. Went back because he was curious how it all
11 played out; 1:38:36, second interview. But he knew how
12 it all played out. The Attorney General sent his chief
13 of staff to the right, east, away from the car debris and
14 Joe Boever's body, and Jason Ravensborg himself headed to
15 the left, west of that debris, where he virtually
16 immediately saw Joe Boever's remains.

17 He articulated to officers in those moments that
18 he thought he saw a fawn or a deer in the ditch; 23:50,
19 first interview. Out of respect for the victim's family,
20 we are not going to publish those photos to the public.
21 But in order to evaluate the integrity of that statement,
22 Senators, we would encourage you to look at those photos
23 of Mr. Boever's body when provided.

24 And then Attorney General Ravensborg instead of
25 calling 911 again, like he did the night before when he

1 thought he hit something, he and his chief of staff left
2 the crime scene, abandoned Joe Boever, and returned the
3 sheriff's vehicle, brought the sheriff back personally.
4 We have no recording of that conversation the way we
5 would with a 911 call. We only have the Attorney
6 General's account and sheriff's report.

7 The sheriff returned with the Attorney General
8 and his chief of staff. They pointed out Joe Boever's
9 lifeless body, and they left the crime scene per the
10 sheriff's direction and headed back to Pierre while the
11 sheriff began contacting other agencies to investigate.

12 The Highway Patrol responded to conduct their
13 crash reconstruction investigation. Evidence was
14 preserved, documented, and estimations made. The
15 North Dakota Bureau of Criminal Investigation, BCI, the
16 counterpart to our DCI, agreed to be the conflict agency
17 to send agents down to conduct the criminal
18 investigation.

19 Witnesses were interviewed, surveillance footage
20 tracked down, scene processed, evidence collected,
21 photographed -- drone photographs were provided for
22 aerial view. The Attorney General's car was processed
23 for evidence, inside and out. An autopsy was conducted.

24 The Attorney General was interviewed on two
25 separate occasions by BCI Agent Joe Arenz and Supervisory

1 Agent Arnie Rummel. The first time occurred on Monday,
2 September 14, at approximately 1:30 p.m., two days after
3 the crash. Keep in mind that the Attorney General
4 unequivocally knows at that time that he killed a man.
5 It's interesting to reflect on that and watch that
6 interview.

7 The second interview is just over two weeks
8 later on September 30, 2020, at approximately 2 o'clock
9 p.m. He knows they've processed his cell phones by then,
10 and everyone -- everyone -- is now aware that he hit and
11 killed a man, not a deer.

12 I wish we had time to play for you the entirety
13 of those two interviews. The first is approximately an
14 hour long. The second is two hours long. And we simply
15 don't have the time to do that today. But I encourage
16 you all if you haven't done so already -- I know it would
17 be a late night. But these are important proceedings. I
18 would encourage you to spend the three hours really
19 watching those interviews and listening to the statements
20 that are made. Because everything you need to know about
21 Count II, coupled with the physical evidence, is
22 contained in those interviews.

23 Among the misleading statements and outright
24 lies, the Attorney General tells law enforcement officers
25 who interviewed him that he maintained in both interviews

1 that he was in the middle of the roadway. Not consistent
2 with the crash investigation, the physical evidence, not
3 consistent with other eyewitness accounts, not consistent
4 with the lane driving conviction that is now on his
5 record. Maintained he was never on his phone. The phone
6 itself says otherwise.

7 And even after being confronted by the BCI, the
8 second interview, he attempted to deny and minimize that
9 fact. It's not consistent with the operating a motor
10 vehicle while using mobile electronic device conviction
11 that is also now on his record. He maintained he thought
12 he hit a deer. He advised that while he was on his phone
13 with dispatch he went all the way back to the piece of
14 car debris to check the Highmore sign. That fact came
15 afterwards, if at all. Maintained that he never saw Joe
16 Boever's body, even though he would have walked right
17 past it to get to the debris and afterwards as he's
18 scanning ditches with his phone.

19 He maintained to the public in the aftermath
20 that he attempted to reach out to Joseph Boever's family
21 to apologize immediately afterward. But he told another
22 story to the investigators.

23 As if attempting to utilize his title and the
24 lies weren't enough for malfeasance, while the
25 investigation was pending Attorney General Ravensborg

1 continued to use his position as Attorney General during
2 the criminal investigation to have his chief of staff
3 line up a blood draw for him, to buy time before turning
4 his cell work phone over, the one taxpayers pay for,
5 because, in his words, I am still the Attorney General.
6 He turned over his personal cell phone first.

7 To question his employee, an employee of the
8 State of South Dakota, ICAC Director Brent Gromer about
9 what BCI investigators will find on his phones, and use
10 DCI Director David Natvig to question another employee of
11 the State of South Dakota, employee Tyler Neuharth,
12 polygraph examiner, about what the results of a polygraph
13 might reveal.

14 As you consider all of the evidence in this case
15 about the facts and circumstances surrounding the death
16 of Joe Boever caused by the Attorney General and the
17 Attorney General's multiple opportunities to do the right
18 thing, the evidence will show that wrongdoing by the
19 Attorney General is even more significant than
20 malfeasance by other public officials.

21 It is a crime for any person to lie to law
22 enforcement. SDCL 22-11-9 Sub 3 defines false reporting
23 as: Any person who makes a report or intentionally
24 causes the transmission of a report to law enforcement
25 authorities which furnishes information relating to an

1 offense or other incident within their official control,
2 knowing that such information is false.

3 There's a constitutional right to remain silent.
4 It is a crime to lie to law enforcement. Telling a lie
5 to a federal official would have been a felony under
6 18 USCA [sic] 1001 Sub A. Beyond any person lying to law
7 enforcement, an attorney is required by statute pursuant
8 to SDCL 16-16-2 to possess "good moral character."

9 The In Re Discipline of Tornow case from 2013 in
10 Paragraph 36 underscores that: Attorneys admitted to the
11 practice of law have a continual and ongoing obligation
12 to meet these requirements on a daily basis.

13 Further codified in South Dakota Law,
14 Chapter 16-18, Appendix, provides South Dakota Rules of
15 Professional Conducts for attorneys in this state to
16 follow. Rule 8.4 defines: It is professional misconduct
17 for a lawyer to, B, commit a criminal act that reflects
18 adversely on the lawyer's honesty, trustworthiness, or
19 fitness as a lawyer in other respects; Subsection C,
20 engage in conduct involving dishonesty, fraud, deceit, or
21 misrepresentation; D, engage in conduct that is
22 prejudicial to the administration of justice; E, state or
23 imply that -- an ability to influence improperly a
24 government agency or official or to achieve results by a
25 means that violate the rules of professional conduct or

1 other law.

2 Not all lawyers are elected officials,
3 naturally, but this one is. And a prosecuting attorney
4 is held to an even higher standard. In the first comment
5 of Rule 3.8, Special Responsibilities of Prosecutors, a
6 prosecutor has the responsibility of a minister of
7 justice and not simply an advocate.

8 By statute, the Attorney General is the State's
9 top attorney and chief prosecutor, pursuant to 1-11-1.
10 The Attorney General serves also as the State's chief law
11 enforcement officer with statute directing that it is the
12 Attorney General who oversees the Law Enforcement
13 Standards and Trainings Commission for all law
14 enforcement officers in this state, pursuant to
15 SDCL 23-3-28, 23-3-28.3.

16 He shapes the standards of conduct for all other
17 law enforcement officers by this statute. The standards
18 set for the Attorney General are and should be higher
19 standards than the average person. His role is one of
20 the most powerful in the state. And to quote Uncle Ben,
21 "With great power comes great responsibility."

22 Senators, the conduct of the Attorney General in
23 the aftermath of the death of Joe Boever had the
24 potential to mitigate tragedy, and instead it aggravated
25 those offenses. A man lost his life due to the Attorney

1 General's distracted driving. In the seconds, minutes,
2 hours, days, weeks, and beyond that has transpired the
3 Attorney General has had countless occasions to do the
4 right thing, and at virtually every opportunity he has
5 chosen not to.

6 He's used his title in an attempt to gain
7 influence, lied, misled, and misdirected law enforcement
8 officers, committed crimes of dishonesty, utilized
9 resources within the Attorney General's Office for his
10 own personal gain in this criminal investigation, and at
11 the conclusion of these proceedings after you've spent
12 the last number of weeks poring over the evidence,
13 spending the next eight-hours-plus reviewing key portions
14 again, the Prosecution will ask you, Senators, to sustain
15 the Articles of Impeachment against the Attorney General
16 both as to Count I, the misdemeanor offenses that led to
17 Joe Boever's death, including lane driving and careless
18 driving offenses, but perhaps more important as to these
19 specific proceedings, the countless occasions of
20 malfeasance of office that followed and that are the
21 subject of Count II that should be sustained.

22 Thank you.

23 PRESIDENT RHODEN: Mr. Garber, you have one hour
24 for opening statement.

25 MR. GARBER: Good morning. My name is Ross

1 Garber. I practice law in Washington, D.C., in
2 Connecticut, and I'm here assisting Mike Butler in the
3 defense of the Attorney General.

4 I also teach impeachment and political
5 investigations law at Tulane Law School and have
6 represented over the past 20 years five governors'
7 offices in connection with formal impeachment
8 proceedings.

9 So what I'd like to start by doing is spending
10 some time talking about why we're all here today. And
11 that is not a criminal case, it's not a civil case, it's
12 not a traffic matter. This is an impeachment and removal
13 proceeding. And make no mistake, members of the Senate,
14 what you are here for is incredibly rare in the American
15 experience.

16 As you know, no elected official in South Dakota
17 has been removed through the impeachment process in the
18 entire history of this state. You may also know that not
19 a single federal executive branch official in the entire
20 history of the United States has been removed through the
21 impeachment process.

22 In the entire history of our country, in all of
23 the states, in fact, only eight governors have been
24 removed. All the states, the entire history. In the
25 modern era, which I define as since 1929, only two

1 governors -- only two governors in all of the states have
2 been removed through the impeachment process, and only
3 five other state officials have been removed through the
4 impeachment removal process. You think about how many
5 governors, how many state officials have been elected.
6 This is incredibly rare, what's being contemplated here.

7 I found no record of any attorney general,
8 certainly in the modern era, any place in the country
9 being impeached and removed. And I have found no
10 situation, in the modern era certainly, where an
11 official, an elected official, has been removed for
12 conduct not integral to the performance of their office.

13 And so let's think about some examples. What
14 gets an elected official, somebody who voters go to the
15 polls and elect for a term of office -- what gets
16 somebody removed by a legislative body? I'll give you
17 just a few examples, and there aren't very many
18 throughout history.

19 For example, 1941, the Massachusetts governor's
20 counsel, Daniel Coakley, was removed for selling pardons.
21 That's the kind of thing that gets an elected official
22 chosen by the voters removed from office.

23 In 1988, Arizona Governor Evan Mecham was
24 removed from office for loaning \$80,000 of state money to
25 a business that he and his wife owned. That's the kind

1 of thing that gets an official removed.

2 In 1994, Missouri Secretary of State
3 Judith Moriarty was removed for using her office to help
4 her son in an election.

5 In 2005, the University of Nebraska Regent
6 David Hergert was removed for misconduct in his campaign
7 for office.

8 In 2009, Illinois Governor Rod Blagojevich was
9 removed for trying to sell a United States Senate seat.
10 That's the kind of thing that gets you removed from
11 office. And notably in that case the Senate in that case
12 was unanimous, was not -- it was not a close call. The
13 Senate acted unanimously. Because it is quite a thing to
14 reverse the will of the voters. And the Senate in
15 Illinois acted unanimously in doing that.

16 Here's a situation that didn't warrant
17 impeachment removal, and that was a formal impeachment
18 investigation of the Governor of South Carolina,
19 Mark Sanford. In that situation there was a formal
20 process because the governor of that state left the
21 state, didn't tell anybody where he was going, ditched
22 his security detail to carry on an affair in
23 South Carolina.

24 I represented the Governor's Office in that
25 case, and the legislature made the decision that that

1 conduct was not good. It was not acceptable. It was not
2 appropriate. But it did not rise to the level of
3 impeachment, and Governor Sanford was not removed from
4 office. He was censured but not removed.

5 And here's why. Here's why it makes sense that
6 these things are so rare, that the standard is so high,
7 and that's because of the Constitution. The Constitution
8 of South Dakota is much like the Constitution of the
9 other states, much like the Constitution of the Federal
10 Government. And there are three principles in play here.
11 It's not just the impeachment clause. We're going to
12 talk about that in a second. We have separation of
13 powers, separation in balance of powers principles. We
14 have the principles in the Constitution regarding
15 elections and terms of office, and we have the
16 constitutional provisions related to impeachment.

17 So let's start with separation of powers.
18 Under the separation and balance of powers in the
19 Constitution -- it's one of the geniuses of the American
20 Constitutions -- we have coequal branches of government.
21 The Executive branch is coequal to the Legislative
22 branch. The Executive branch doesn't dominate the
23 Legislative branch. The Legislative branch doesn't
24 dominate the Executive branch.

25 And so, for example, this is not an

1 parliamentary system of government. This is not a system
2 of government -- we see it sometimes in parliamentary
3 systems like England where the Legislative branch holds a
4 vote of no confidence in the prime minister. We don't
5 have that here, and that's because the Legislative branch
6 and the Executive branch are coequal.

7 The Legislative branch doesn't oversee in that
8 way the Executive branch. And the framers of the U.S.
9 Constitution were actually very concerned in structuring
10 the Federal Constitution about creating a system where
11 the Legislative branch would have dominance over the
12 Executive branch. And, keep in mind, what you do over
13 the next couple of days could have implications for
14 government in South Dakota, for the history of
15 South Dakota, for the interplay between the branches of
16 government in South Dakota. And so I'd ask you to please
17 keep in mind those separation of powers principles.

18 The second notion, constitutional notion I
19 mentioned, was elections. Again, genius of the American
20 system. In South Dakota, as you know, you elect your
21 Attorney General. Voters go to the polls every four
22 years. It's built into the Constitution. Voters go to
23 the polls every four years, and they vote. And they
24 voted in this case for this Attorney General.

25 And also in your Constitution there's a fixed

1 term of office. It's in the Constitution. It's four
2 years. The legislature doesn't have the ability to cut
3 that term short. It's in the Constitution. It's a
4 four-year term.

5 And the reason for that, and your framers, just
6 like the federal framers, took a lot of these things into
7 account, is that you trust the voters to make decisions.
8 The voters get to choose their attorney general just like
9 they get to choose their governor. And every four
10 years -- a short period of time in history, every four
11 years the voters get to go back and choose their attorney
12 general, choose their governor again. And if they don't
13 think the attorney general is doing a good job, if they
14 think there's a reason why the attorney general shouldn't
15 continue to serve, then they don't reelect the attorney
16 general. Or the attorney general thinks that he can't
17 get reelected, then he doesn't run. But the system
18 trusts the voters. It trusts the political process to
19 make these decisions. It doesn't put the legislature in
20 a position of making these decisions.

21 So let's look closely at the third provision of
22 the Constitution that I mentioned, and that is the
23 impeachment and removal provision. That provides that
24 the governor and other state and judicial officers shall
25 be liable to impeachment for drunkenness, crimes, corrupt

1 conduct, or malfeasance or misdemeanor in office. "In
2 office."

3 Now the committee of the House that investigated
4 this and the Nebraska Supreme Court in the only case I
5 could find of an impeachment proceeding involving an
6 attorney general noted that an act or omission for which
7 an attorney general may be impeached and removed from
8 office must relate to the duties of that office.

9 Now as the House Committee noted, there is some
10 linguistic trick you can do to read the "in office" part.
11 Only with respect to malfeasance or misdemeanor. But,
12 number one, I'll note that the Attorney General here is
13 accused of malfeasance. So unquestionable the "in
14 office" part applies there.

15 But I'd submit it also applies to the rest of
16 the article. I don't think it can fairly be argued that
17 drunkenness by any Executive branch or Judicial branch
18 official would warrant removal from office. Or that any
19 crime -- think of the vastness of the criminal code, the
20 vastness of the criminal code, that any crime at all
21 would warrant removal of a governor or an attorney
22 general or a member of the Judicial branch from office.
23 No. It's got to relate to the office and be integral to
24 that office.

25 Now the Attorney General was accused -- is

1 accused of malfeasance. Again, in the House report on
2 this matter it cited a South Dakota Supreme Court case
3 that defined malfeasance as reference to evil conduct or
4 illegal deed, the doing of which one ought not to do in
5 the performance of an act by an officer in his official
6 capacity, that is wholly illegal and wrongful. So as you
7 consider malfeasance, consider whether it was integral to
8 the Attorney General's Office and whether it rose to that
9 high of standard.

10 So, members of the Senate, we heard a lot this
11 morning about a very tragic situation. But this is, as I
12 noted, a very rare and solemn and unusual and weighty
13 impeachment and removal proceeding. This is not, as I
14 mentioned before, a vote of no confidence. This isn't a
15 civil case. This isn't a criminal case. This certainly
16 is not a bar case.

17 The objective here, the issue here, it's not to
18 punish. It's not to provide restitution. It's not to
19 reprimand. It's not a recall effort. It's not to make a
20 statement. It's not an employment action. It's not a
21 censure provision. This is undoing the will of the
22 voters. Make no mistake, that's what you're considering
23 doing.

24 And here's -- in the case of Nixon, the House
25 Judiciary Committee conducted an investigation and

1 produced a report, the Rodino Report. Here's how that
2 report put it: Impeachment is a constitutional remedy
3 addressed to serious offenses against the system of
4 government. Impeachment is directed to address
5 constitutional wrongs that subvert the structure of
6 government or undermine the integrity of office and even
7 the Constitution itself.

8 The committee went on, The crucial factor is not
9 the intrinsic quality of behavior but the significance of
10 its effect on our constitutional system or of the
11 functioning of government. That's the measure, members
12 of the Senate.

13 Federalist 65 looked at it. Federalist 65 said:
14 Impeachment removal is reserved for those offenses which
15 proceed from the misconduct of public men or, in other
16 words, from the abuse or violation of a public trust.
17 They are of a nature which may with peculiar propriety be
18 denominated political, as they relate chiefly to injuries
19 immediately to the society itself. That's the standard.
20 That's the standard.

21 And the prosecutor's burden of proof reflects
22 that standard. It is very high. The prosecutor has the
23 burden of proving this to you by clear, satisfactory, and
24 convincing evidence, a very high standard, which is why I
25 think you saw in the case of the governor of Illinois a

1 unanimous conviction. This has to be something that the
2 prosecution proves by clear, satisfactory, and convincing
3 evidence and that that constitutional standard that I
4 met -- that I discussed was met.

5 In this situation it doesn't exist. But I'd ask
6 as you consider it, because it's your decision that
7 matters, you weigh those constitutional standards, you
8 weigh the burden of proof.

9 Thank you.

10 PRESIDENT RHODEN: Mr. Butler.

11 MR. BUTLER: I want to begin by focusing on
12 House Resolution 7002. That sets forth the two
13 Articles of Impeachment. And I'd ask that those be put
14 on the screen, and I'll first focus on Article I.

15 Article I, the first that you must consider, the
16 first that you must find that the Government's lawyers
17 have established by a standard of proof that we believe
18 is appropriate, clear and convincing evidence. It
19 states, Attorney General Jason Ravensborg committed crimes
20 causing the death of Joseph Boever. Then it breaks it
21 down into three subparts focusing principally on the
22 driving outside of his lane of travel.

23 I want to stop now there. There has been no
24 finding that Mr. Ravensborg was criminally culpable for
25 the death of Mr. Boever. This happened on September 12

1 of 2020. The Bureau of Criminal Investigation out of
2 North Dakota was brought in. South Dakota Highway Patrol
3 was brought in. I believe as special prosecutor
4 Mike Moore stated, as did Emily Sovell, the most
5 investigated accident in their lifetime in the state of
6 South Dakota.

7 In the end, after the investigation, the
8 charging decisions were made: A lane violation and
9 distracted driving using your phone. The special
10 committee rejected this as a basis for a finding that he
11 should be impeached, commenting on the lane change that
12 this is a common violation that occurs each and every day
13 in the state of South Dakota. It is insufficient for
14 removal of a constitutional officer. And, again, I go
15 back. There is no finding here of criminal culpability
16 in the death of Jason [sic] Boever. None. I
17 respectfully submit to this body that Article I is not
18 complicated. It requires a vote to not sustain the
19 Article of Impeachment.

20 Article II, malfeasance, which we know by now
21 requires conduct occurring in office. Attorney General
22 Jason Ravensborg committed malfeasance by the following
23 wrongful deeds: Following the collision he identified
24 himself by his official title, made a direct
25 misrepresentation to the dispatch officer, misleading

1 first responders as to the crime he had just committed.

2 If you want to assume for a minute that was done
3 while in office, which my assumption is for the sake of
4 discussion, not because I believe it, I hope you do
5 listen to the 911 call. Don't accept my interpretation
6 of it. Make your own. He did identify himself as the
7 Attorney General, said that he had struck something, was
8 asked if it was a deer, and he said it could have been.

9 Now according to the Government lawyers, this
10 somehow gained an advantage for him, was a misuse of his
11 power. Folks, he called 911. They dispatched sheriff
12 Mike Volek, who was there within minutes. He lived
13 nearby the accident. Sheriff Volek arrived at the scene.

14 They both walked up and down the area of the
15 road and ditch. Mr. Volek when he was interviewed said,
16 I would have walked right by where the body was in order
17 for me to see the small light that he did see. Sheriff
18 Volek said, I did not see a body.

19 I have not heard the allegation that Sheriff
20 Volek is incompetent, was dishonest, or was also engaged
21 in a conspiracy to cover up. I submit that the tragedy
22 that did occur here was traumatic. There's no question
23 about that.

24 The Government lawyers would have you judge him
25 now in hindsight but not for what occurred at the moment.

1 And, again, please listen to the audio recording of the
2 911 call. Listen to his first interview done on the 14th
3 of September. Without legal counsel. He was asked to
4 come in, and he did. Certainly the Attorney General knew
5 of his right to counsel. He waived that right and went
6 and answered questions.

7 In that first meeting they asked about his cell
8 phones. He turned over his personal phone, gave consent,
9 and on this point I will say at every stage of this
10 investigation the Attorney General consented to
11 everything. Every piece of property, every piece of
12 electronic equipment the Government wanted to analyze, he
13 consented. Those are not the actions of a man trying to
14 conceal wrongdoing.

15 On the 30th -- excuse me. Let me back up. He
16 kept his work phone. His personal phone was turned over
17 two days following the accident. He kept his work phone
18 at that time. Then on the 15th of September, three days
19 following the accident -- and I don't know if you can put
20 that up on the screen but he went to the Department of
21 Public Safety here in Pierre and he turned over his work
22 phone. Gave his consent to search it. That consent did
23 not reveal any misuse of that phone, any attempt to
24 delete or alter any data coming off the phone. Nothing.

25 That same day, but later, the Attorney General

1 goes to the Mickelson building here in Pierre where his
2 offices are, where DCI is. He did run into Mr. Gromer,
3 who I believe is now retired. He did ask him about the
4 forensic technology, his capacity to capture in realtime
5 what was going on, such as use of his cell phone
6 flashlight, would the timing be accurate, et cetera.

7 He was seeking information, but he wasn't
8 seeking advantage. His phone was turned over. The
9 devil's in the details, but the details support that
10 Attorney General Ravnsborg at all times cooperated with
11 this investigation, which went on for several months
12 until February of 2021.

13 Appearing before the House Special Committee was
14 Prosecutor Mike Moore, Prosecutor Emily Sovell. And I
15 have included those reports and documents that I
16 submitted to be uploaded because they reveal a very
17 thorough investigation. Many questions asked; many
18 questions answered. Some questions could not be
19 answered, including by investigators.

20 Both prosecutors waited until the investigation
21 was completed and by their account, following meetings,
22 discussions, et cetera, considerations of the elements of
23 each offense that could be charged, came up with their
24 decision: Class 2 misdemeanor, lane change violation,
25 distracted driving.

1 The cell phone would reveal that it was no
2 longer in use 90 seconds prior to the accident. And so
3 while some may want to talk about it, it was not a factor
4 in the accident. That evening driving back from Redfield
5 to Pierre he spoke approximately 25 minutes with his
6 father. He spent five minutes looking at headlines from
7 political websites, and the phone was locked and off
8 90 seconds before the accident. Those are the unrefuted
9 facts about this case. Any effort to twist them
10 otherwise would be improper.

11 When he was asked was he in the center lane --
12 or was he in the center of his lane of travel when the
13 accident occurred or in his lane he said he thought he
14 was. In fact, he strongly said he was. But it turns out
15 he was wrong. The Highway Patrol accident reconstruction
16 investigation that followed establishes that.

17 His vehicle went off on the shoulder of the
18 road. Exactly how far is unclear. Special Prosecutor
19 Moore said there's no question it went off the road, but
20 exactly how far was not clear. But we accept that
21 finding. Not here to dispute it.

22 But I respectfully submit, and in my career it
23 has proven to be true, that people can be involved in
24 traumatic and tragic events and have two very different
25 views of what happened. Or believe that they did do

1 something that later establishes they didn't. It's not
2 proof they're lying. It's proof they're mistaken. Being
3 mistaken is not impeachable. Being mistaken is human.
4 And although Attorney General Ravnsborg was elected
5 Attorney General, he did not leave the human race and
6 become perfect. He's still not perfect.

7 But what he did here each and every step along
8 the way was to provide complete cooperation. He didn't
9 have the answer why he was wrong as to where his vehicle
10 was located, but he was not lying about it. And if
11 you're going to say he knew it and he was lying, don't
12 just say it. Prove it. Prove it by clear and convincing
13 evidence.

14 Allegations are easily made, and it is
15 especially true today. They're made anonymously,
16 mean-spiritedly, but when we come here to this chamber
17 you have to put your name behind it and you have to
18 answer for it. If you know he lied, don't just say it.
19 Prove it.

20 During his second interview Mr. Ravnsborg was
21 asked, would you take a polygraph? Now in this case what
22 could you polygraph on? Was it a human being that you
23 hit? Did you see a human being in the ditch? I think
24 that's a pretty clear question.

25 He responded, Absolutely. I'll take a

1 polygraph. And he said it more than once. I'll take the
2 polygraph. A polygraph is an investigative tool. It's
3 not admissible to prove guilt, but it is used frequently;
4 hence, that's why prosecutors -- or I should say law
5 enforcement always have polygraphers on their staffs.
6 But it is used to conduct investigations. If someone is
7 deceiving, it will indicate so, and they'll be confronted
8 by it. If someone is not, they may be cleared. It's a
9 powerful tool.

10 Mr. Ravensborg, the Attorney General, when asked,
11 So if we arrange for a polygraph, you'd be willing to
12 take one? Absolutely. I'll go to North Dakota. Hell,
13 yes. I'll go. I'm willing.

14 But no polygraph was ever offered. When the
15 polygrapher from North Dakota was here before the special
16 committee he was asked why, and he opined that, well, I
17 discussed it with some others, and we concluded that even
18 if he's telling the truth, it would probably show he was
19 lying. I can tell you I've never heard that before. A
20 qualified polygrapher understands that everybody under
21 investigation believes somebody thinks they might be
22 lying. But it's their skill as a polygrapher that is
23 supposed to be able to discern that and eliminate that
24 from the consideration.

25 An alternate view is, well, what if he passes?

1 Are we better off just not knowing so we can make an
2 accusation that he really can't answer? I say you knew.
3 But I didn't know. I didn't see it. I say you did. But
4 I didn't. And back and forth it goes. A polygraph and
5 its results would have appeared in the investigation.

6 As we go through -- or the Government goes
7 through its case establishing on each article its proof,
8 clearly and convincingly, I'm going to ask that you
9 listen carefully and ask how it supports each of the
10 articles, how it establishes that a crime that qualifies
11 as impeachable was committed, and malfeasance in office.

12 In considering that, here is a definition
13 provided by our State Supreme Court on the meaning of
14 clear and convincing evidence: Evidence that is so
15 clear, direct, weighty, and convincing as to allow the
16 trier of fact to reach clear conviction of precise facts
17 at issue without hesitancy as to their truth. That is a
18 high standard, as it should be.

19 Now I do respect that your task here is a
20 weighty one. But I also respectfully submit it's not a
21 difficult one. We shouldn't be here. As the addendum to
22 the report filed by the special committee indicates,
23 undue influence was brought to bear on the prosecutors to
24 charge something more serious. Undue influence was used
25 to persuade members of the House of Representatives, by

1 robocalls, by billboards.

2 The special committee asked that it stop. The
3 head of the Department of Public Safety, Mr. Price, was
4 removed from further discussions with those involved in
5 the investigation because of his efforts to unduly
6 influence the outcome. Now that's wrong. I trust that
7 the line has been drawn and that will not occur here.

8 We know that the public may not understand
9 exactly what impeachment entails. We understand that.
10 And they have opinions. But they're not fully informed
11 about what must be found specifically in our
12 Constitution, by what standard of proof, and does it
13 apply in each of the articles. You follow that and you
14 acquit the Attorney General, you can hold your head high.
15 Because you did the right thing.

16 Thank you.

17 PRESIDENT RHODEN: We are going to take a
18 15-minute recess.

19 (A short recess is taken.)

20 PRESIDENT RHODEN: Senate will return to order.
21 Mr. Vargo, you may call your first witness.

22 MR. VARGO: Thank you, Mr. President. The
23 Prosecution will call Sergeant Kevin Kinney of the South
24 Dakota Highway Patrol.

25 (Discussion off the record.)

1 MR. VARGO: So our first witness will be
2 Sergeant Kevin Kinney of the South Dakota Highway Patrol.
3 And I believe the LRC is summoning him from the witness
4 room. Sergeant of arms, that is.

5 (The oath is administered to the witness.)

6 DIRECT EXAMINATION

7 BY MR. VARGO:

8 Q. Sergeant, would you please introduce yourself to the
9 members of the Senate.

10 A. Good morning. My name is Kevin Kinney, and I'm a
11 sergeant with the South Dakota Highway Patrol.

12 Q. How long have you been with the Patrol, sir?

13 A. I've been employed by the Highway Patrol since
14 August of 2003; so in August it will be 19 years.

15 Q. And in what capacity do you presently serve with the
16 Patrol, sir?

17 A. My current position with the South Dakota Highway
18 Patrol is that I am the director of the crash programs;
19 so I oversee the Crash Reconstruction Program and also
20 the Crash Assistance Program for the entire state of
21 South Dakota.

22 Q. Can you give us a little bit of an idea of your
23 background both educationally and experientially that
24 allows you to oversee all of the reconstruction work in
25 the state of South Dakota on behalf of the Patrol?

1 A. Sure. When I came on the Highway Patrol in August
2 of 2003, approximately one year later I started to pursue
3 educational opportunities in regards to investigating
4 crashes or reconstructing crashes. In August -- I'm
5 sorry. In 2004 I took my reconstruction course, and I
6 was considered a reconstructionist at that time.

7 In 2010 is when I was promoted to squad sergeant.
8 One year later I took my current position in headquarter
9 staff as the director of the crash programs. During that
10 time amongst all the different opportunities of going to
11 training, conferences, and such I also went back to
12 school and I attended the South Dakota School of Mines
13 and Technology in Rapid City starting in 2015 and I
14 graduated in May of 2019 with my Bachelor of Science in
15 Mechanical Engineering.

16 Q. Over the years how many reconstructions would you
17 say that you have performed?

18 A. I don't have an exact number, but it's been
19 hundreds.

20 Q. Can you explain to us a little bit for those of us
21 who maybe don't do this every day, Sergeant, what is a
22 reconstruction?

23 A. The easiest way to describe a reconstruction is the
24 process of putting the crash back together and
25 determining what happened in that crash, if possible.

1 And so when you have one vehicle that's moving to another
2 vehicle, essentially all objects want to move in a
3 straight line. And so we look at those forces and the
4 physics applied with a reconstruction, and we determine
5 speeds of vehicles and causes of crashes.

6 Q. And when you say that objects want to move in a
7 straight line, is there something special or something
8 different that you need to do to apply that to a
9 vehicle-pedestrian crash as opposed to a two-vehicle
10 crash?

11 A. No. The laws of physics are the same for every
12 crash.

13 Q. So can you describe in brief what happens during a
14 vehicle-pedestrian crash in terms of the impact on the
15 pedestrian in particular?

16 A. Sure. When a pedestrian is struck by a moving
17 vehicle you're going to have a couple different options.
18 And some of it depends on the shape of the vehicle. A
19 pedestrian can be projected forward. They can go
20 underneath the vehicle, they can go up over the top of a
21 vehicle, or they can go off so the side of the vehicle.
22 Depending on the speed of the vehicle will depend on what
23 type of injuries that pedestrian would sustain in that
24 crash.

25 Q. Okay. And specifically in the event that a

1 pedestrian does not either bounce off to the side or go
2 underneath or go over the top, in other words if the
3 pedestrian remains with the vehicle for an appreciable
4 period of time, does that pedestrian by definition go the
5 same speed as the vehicle for a period of time?

6 A. That is correct. If you have an object that
7 becomes -- for lack of a better term, is entangled with
8 the other object, it will gain the speed of the object
9 that it -- that struck it.

10 Q. So what, if anything, was your role in the
11 investigation of this particular crash, sir?

12 A. So my role as the director of the crash programs was
13 to come along side of our district crash coordinator and
14 be the on-scene or on-site supervisor to help make sure
15 that we had all the necessary tools that we needed to
16 complete a thorough investigation of this crash.

17 Q. And as part of that, did you oversee both the
18 collection of evidence, the taking of photographs, all of
19 the things that would normally be associated with a
20 reconstruction, even if you didn't do them yourself?

21 A. I was a part of that entire process. I saw photos
22 being collected, evidence being gathered by North Dakota
23 BCI, and I did observe that taking place.

24 Q. Sergeant, I'd like you to draw your attention to a
25 couple different photographs. I believe they'll come up

1 on the screen in front of you. If not, I have hard
2 copies that we can give you. Okay.

3 So, Sergeant, is this the vehicle that the Attorney
4 General was driving at the time of the crash?

5 A. That is correct.

6 Q. And would you explain to the members of the Senate
7 what it is that this immediately tells you about the
8 nature of the crash that occurred?

9 A. There's a couple things that stand out in this
10 picture to me. One is there's a hole in the windshield,
11 which would indicate that part of the pedestrian came
12 through the windshield. We know that it's farther up on
13 the vehicle so we know that it also indicates a higher
14 speed.

15 And then you'll also see that there's damage to the
16 passenger side mirror and what we would refer to as the
17 A pillar, which is the pillar in between the windshield
18 and the passenger side window. You can see that there's
19 a dent in it, meaning that some object struck that with
20 some force to create that dent.

21 Q. And moving on to the next photograph, I believe this
22 shows a little bit more detail as it relates to the side
23 mirror. What does that show you?

24 A. Yeah. You can see that the side mirror is not fully
25 detached from the vehicle, but it is essentially hanging

1 there by the wires that control or operate the mirror,
2 and so it was also hit at some point during the impact.

3 Q. From all of the evidence that you observed on scene,
4 particularly the evidence as it relates to the Attorney
5 General's vehicle, were you able to determine whether or
6 not it appears that Mr. Boever either went under or over
7 the Attorney General's vehicle?

8 A. Based on the evidence that we have before us here in
9 this picture, we didn't find -- we found no evidence that
10 the pedestrian went under the vehicle. But he did go on
11 top of the hood and then off to the side of the vehicle.

12 Q. And would it be your opinion -- would it be your
13 opinion, sir, that he fell off to the side, and that
14 would be potentially where the damage to the mirror
15 occurred?

16 A. That is correct.

17 Q. So while that may -- we'll go to one more picture.
18 Does this then also show the damage that was done to the
19 lower part of the Attorney General's vehicle?

20 A. Yes. You can see that the majority of the damage is
21 constrained to the right front of this passenger vehicle
22 along with if you follow the line from the headlight
23 down, you can see where there appears to be dust to the
24 right and a clearing to the -- clear red to the left.
25 That would be where Mr. Boever's leg would have impacted

1 the front side of Attorney General Ravensborg's vehicle.

2 Q. So after you've done the examination of the vehicle
3 that's involved and knowing what you knew -- what little
4 you knew at the time about the injuries to Mr. Boever
5 himself, what does the process of reconstruction look
6 like from there, sir?

7 A. Well, one of the first things that we do is once we
8 are made aware of the situation, we would secure the
9 scene. I think it's important to collect and document
10 and look at all the evidence that's left behind so that
11 we can use all of those pieces of evidence, whether it be
12 components from the vehicle that are left on the ground
13 as debris, any type of blood that we could locate on the
14 ground that would give us an area of impact, document
15 each of those things by taking photographs, and creating
16 a forensic map that would later be able to be used to
17 help us to determine that area of impact and also what
18 would have caused that crash.

19 Q. From what you knew at the very beginning, is it fair
20 to say that you were aware that this was a crash that
21 occurred at, for lack of a better term, highway speed?

22 A. That's correct.

23 Q. And is that based in part on the traumatic injury to
24 Mr. Boever's leg?

25 A. That is correct.

1 Q. In addition to anything associated with the
2 victim -- and you mentioned blood, and obviously we have
3 the victim's remains, his leg where it came to final
4 rest -- looking at this picture number 68, does that tell
5 you what other objects you might be looking for in the
6 area of the crash that would inform, again, an area of
7 impact?

8 A. Yes, it does. When you look at this you can tell
9 that there's significant damage done to the front of the
10 vehicle. That would include the front bumper. Also
11 you'll notice that there's numerous areas on the
12 vehicle's hood and bumper as well where there's red paint
13 chips that are missing from the vehicle.

14 Also you have damage to the windshield that would
15 indicate that there's glass breakage, and so there's a
16 good potential that you'll also see glass at the site of
17 the accident as well.

18 Q. And so in terms of putting together the physical
19 evidence, would it be fair to divide that physical
20 evidence potentially into at least three categories which
21 would be the blood, the paint chips, and the vehicle
22 debris?

23 A. That is correct.

24 Q. With reference to those three things, sir, during
25 the course of the examination or the investigation that

1 was conducted by the Highway Patrol specifically, were
2 any objects conforming to those three things found in the
3 lane of travel?

4 A. There was one piece of debris that was found in the
5 lane of travel, which would have been just to the south
6 of the white fog line on the northbound -- or on the side
7 that you would be traveling westbound on. So it was
8 approximately 2 inches into the lane of travel. Every
9 other piece of evidence that was located that evening was
10 completely on the shoulder or in the ditch.

11 Q. Okay. And is the process that you underwent next
12 sometimes referred to in the reconstruction community as
13 mapping the scene?

14 A. That is correct.

15 Q. Okay. I would like to show you another photograph,
16 268. Okay.

17 We've got a little lag there.

18 Sergeant, if you would, can you orient us a little
19 bit to where we are looking here and why this is kind of
20 the broadest angle that we'll look at, but what areas are
21 important here?

22 A. Sure. So as you're looking at this photograph,
23 you're going to -- your back is towards Highmore, and
24 you're looking to the west. This is the lane of travel
25 that the Attorney General would have been in as he's

1 traveling westbound.

2 You'll see that there's a no passing zone sign
3 that's also in our forensic map. And then a little bit
4 further down the road you'll see -- it just appears to be
5 like a yellow leg of some sort. It's off of our tripod,
6 which is our total station, and we use that to document
7 points of evidence, lane lines, fog lines, rumble strips,
8 any other items that would be important to drawing that
9 map to give a representation of that scene to somebody
10 else.

11 Q. And, specifically, are you trying to create what
12 you, I believe, refer to as trend lines?

13 A. So that's part of the process, yes. As we're
14 documenting all the debris and all the evidence and
15 everything like that, we're documenting those red paint
16 chips that we're locating. We're documenting the vehicle
17 car parts. And then Trooper Berndt, who was the lead
18 investigator, was on his hands and knees looking for the
19 blood evidence and locating all those pieces of blood
20 evidence, and we were documenting those into the forensic
21 map.

22 Q. And can you describe how that works in terms of
23 creating the trend line from the evidence that you find?

24 A. Sure. So one of the ways that I describe
25 determining the trend line is to help us determine the

1 direction that the vehicle would have been traveling at
2 the time of impact. If you think of a cup of sand and
3 you're standing on the roadway or another surface and you
4 take this cup of sand and you throw it out in front of
5 you, it starts very concentrated, and then it slowly
6 moves out to the left and right of that line where you
7 threw it.

8 Debris from a vehicle does exactly the same thing.
9 As it hits the ground the majority of the evidence is
10 going to be located down the center of that line, but
11 also it will move to the left and to the right and shape
12 what appears to be like a V pattern and it points back
13 towards the area of impact.

14 Q. Trooper, I'm going to try to translate this to
15 something that maybe more of us are aware of. Is this
16 something like what happens with a shotgun blast?

17 A. Sure. Yeah. If you're shooting a shotgun, as the
18 pellets come out of the end of the barrel they're going
19 to be very concentrated, but as they get closer to your
20 target they're going to be spread out more.

21 Q. And when you're doing reconstruction is it normal
22 process, normal practice, to use all of the points of
23 evidence, whether it be, again, the blood, the paint
24 chips, or the vehicle debris?

25 A. Yes. It would be considered negligent on our part

1 to just neglect pieces of evidence that are located on
2 the scene.

3 Q. Despite that fact, at the request of one of the
4 prosecutors, did you and the Highway Patrol at the
5 prosecutor's request create separate trend lines for the
6 blood, the paint chips, and the vehicle debris?

7 A. Yes, we did.

8 Q. And when you did that were your results any
9 different than when you considered all of the evidence
10 taken together?

11 A. Surprisingly, there was very little difference.
12 When we plotted the trend lines onto the forensic map of
13 all three of those separate items they were within 1
14 degree of each other as they were traveling down the
15 road. So that gives us an extremely high confidence that
16 the information we have is very accurate.

17 Q. And based on everything then that you had done, were
18 you able to reach a conclusion as to where you believed
19 was the area of impact?

20 A. That is correct.

21 Q. And I'm going to show you the next photograph, and
22 it's 276. There we go.

23 Where would you describe the area of impact as
24 being?

25 A. The area of impact was fairly close to where we set

1 up the total station. That's where the majority of the
2 evidence began. And then it continued towards the west
3 along the shoulder of the road.

4 Q. And specifically with respect to the north-south
5 variance, was the area of impact within the shoulder?

6 A. Yes. The area of impact would have been closer to
7 the grass edge but on the shoulder to the right of the
8 fog line and the rumble strips that you're seeing there.

9 Q. Trooper, I'm going to draw your attention, first of
10 all, to the fog line. And then I believe we can see just
11 to the right of the fog line kind of those striations.

12 Are those the rumble strips?

13 A. That's correct. To the right of the fog line would
14 be the rumble strips.

15 Q. And then about midway through the paved section
16 before you get to the grass, there's a darker area that
17 seems like it's where the asphalt makes a transition
18 between what type of asphalt that is.

19 Is that accurate?

20 A. It appears to me that the roadway was wider and then
21 they laid another set of asphalt over the top of it and
22 so it's a transition area there.

23 Q. Okay. Based on everything that you observed and
24 your professional experience, is it your opinion that the
25 area of impact in this case occurred in that last section

1 between that dark line to the right and the grass?

2 A. That is correct.

3 Q. And as best you can establish the area of impact,
4 once the Attorney General's vehicle was appropriately
5 situated for the area of impact as you determined it,
6 would all four of his tires have been past the fog line?

7 A. Yes. They would have.

8 Q. Would all four of his tires have been past the
9 rumble strips?

10 A. Yes. They would have.

11 Q. Now, trooper -- Sergeant. Excuse me. Don't want to
12 demote you.

13 A. We're all troopers.

14 Q. Is there some uncertainty in reconstruction as to an
15 exact area of impact? Is there a reason we don't call it
16 the point of impact?

17 A. Yeah. There's always some uncertainty. Yes.

18 Q. And I believe in presenting the voluntary
19 presentation that was done prior to the House vote you
20 referenced the fact that you were 95 percent certain on
21 the area of impact; is that correct?

22 A. Yes. I referred to 95 percent accurate for the area
23 of impact.

24 Q. Do you have an opinion, though, as to the degree of
25 certainty with which you can say that the Attorney

1 General's vehicle was on the shoulder?

2 A. I do. I would say that the shoulder here between
3 the fog line and the edge of the grass is -- I believe
4 it's approximately 10 and a half feet or so. The
5 Attorney General's vehicle is approximately 5 and a half
6 feet wide, and the area of impact happened within a foot
7 or two of the grass edge, which would put his entire
8 vehicle to the right side of the rumble strips. And so I
9 can say with 100 percent confidence that he was driving
10 down the shoulder of the road.

11 Q. And because of the importance of this case and its
12 high profile nature, did you consult people that you
13 might not otherwise consult, specifically a gentleman by
14 the name of John Daily?

15 A. Yes, we did.

16 Q. Who is John Daily?

17 A. John Daily is somebody who's published three books
18 or more, numerous articles. He has a master's in
19 mechanical engineering, and he's been in the
20 reconstruction field for many, many years. He teaches
21 many classes. I've been in some of his classes that he
22 teaches. And he's somebody that I guess I would call a
23 mentor that, you know, he's -- he's somebody that's
24 renowned. He's taught all over the world and all across
25 the United States.

1 Q. And when you submitted this to Mr. Daily did he
2 concur with your conclusions?

3 A. Yes, he did.

4 Q. And, specifically, did he concur with your
5 conclusion that he would say with 100 percent certainty
6 that the vehicle was entirely past both rumble -- all
7 four tires were past the rumble strip?

8 A. Yes, he did.

9 Q. We now have photograph number 299 up on the screen.
10 The reason I'm asking you to look at that one is because
11 of the dark object that is seen about two-thirds of the
12 way up the photograph.

13 Do you know what I'm talking about there in front of
14 the trooper?

15 A. I do.

16 Q. What is that?

17 A. The object that you're looking at is -- actually to
18 the left of where the cursor was there. It's a piece of
19 vehicle debris from the bumper of the Attorney General's
20 vehicle.

21 Q. And is that something that will be referred to
22 repeatedly and is mapped on the diagram that the
23 Highway Patrol created for the benefit of the Senate?

24 A. Yes, it will be.

25 Q. Okay. And then I believe you now have picture 301,

1 which is just a little bit further down the road with the
2 same thing.

3 So, Sergeant, because we're being mindful of
4 ensuring that we aren't accidentally showing anything that
5 relates to our victim, I'm going to ask you to take a
6 look at 327 as soon as that comes up.

7 And is that essentially the same area but now taken
8 in an eastward-facing direction with that same large
9 piece of debris?

10 A. That is correct. That is facing the east looking
11 back towards Highmore with the large debris piece on the
12 shoulder of the road.

13 Q. Okay. Sergeant, in addition to determining the area
14 of impact, was it part of your investigation to also
15 determine the braking capacity of the Attorney General's
16 vehicle?

17 A. Yes, it was.

18 Q. And we will not go into the mechanisms by which that
19 was done. If a person driving the Attorney General's
20 vehicle on this road engaged in what I will call full
21 braking -- first of all, did the Attorney General's
22 vehicle have ABS braking systems?

23 A. Yes. The Attorney General's vehicle did have ABS
24 braking.

25 Q. And are they particularly efficient at braking?

1 A. Yes, they are.

2 Q. And when a vehicle that has ABS brakes goes into a
3 full braking mode, does it leave those big, dark, thick
4 skid marks that we're used to seeing on pictures?

5 A. No. The intention of ABS brakes is to stop the tire
6 from -- or it's to prevent the tire from locking up. You
7 get a higher -- a better stopping force when the tire
8 doesn't completely lock.

9 Q. Okay. Based on the examination of the Attorney
10 General's vehicle, can you say, assuming that he was
11 going 67.6 miles an hour at the time of the collision,
12 how long after full braking would his vehicle come to a
13 complete stop?

14 A. It would be approximately 175 feet.

15 Q. And do you know how far it was down the road between
16 the area of impact and where the Attorney General's
17 vehicle actually stopped?

18 A. Yeah. The total distance from what we identified as
19 the area of impact to the final rest or the stopping
20 location of the Attorney General's vehicle was 613 feet.

21 Q. Now because this was an anti-lock brake system, were
22 you able to determine the speed based on the physical
23 debris or any other evidence that you gathered at the
24 scene?

25 A. No, we were not.

1 Q. However, did you also have access to some
2 information from GPS?

3 A. Yes, we did.

4 Q. From that information were you able to determine the
5 Attorney General's average speed between Redfield and the
6 area of impact outside Highmore?

7 A. Yes. We were able to do that, and it averaged
8 between 68 and 71 miles per hour.

9 Q. And in the course of doing your testing did you also
10 discover something about the Attorney General's
11 speedometer?

12 A. Yes. As we were testing or doing the brake testing
13 to check the brakes on the Attorney General's vehicle, we
14 were verifying the speed of his vehicle going into those
15 brake tests by radar, and it was determined that his
16 speedometer in the vehicle was reading approximately 3 to
17 5 miles per hour higher than what he was actually
18 traveling.

19 Q. So if he was traveling at -- we'll just pick a
20 number -- 60 miles an hour, his speedometer would have
21 said somewhere between 63 and 65 miles an hour?

22 A. That's correct.

23 MR. VARGO: Thank you, Sergeant.

24 Mr. President, I have no further questions of
25 this witness at this time.

1 PRESIDENT RHODEN: Mr. Butler, your witness.

2 CROSS-EXAMINATION

3 BY MR. BUTLER:

4 Q. Trooper, that photograph we were looking at with the
5 piece of debris on the shoulder, do you know what I'm
6 talking about?

7 A. I do.

8 Q. And that was from the right front corner of the
9 Attorney General's private vehicle?

10 A. That is correct.

11 Q. Do you know whether or not it was moved?

12 A. We have no indication that it was moved based on the
13 Attorney General's own statements that it was there that
14 night and that it was also there the following morning in
15 the same location.

16 Q. The photograph was taken what time of day, the one
17 that we were looking at?

18 A. I don't know the exact time of day, but it would
19 have been in the middle of the day.

20 Q. Would you describe what the conditions were when the
21 accident occurred?

22 A. My understanding is that it was later in the evening
23 and that it was a dark evening out.

24 Q. Was it cloudy?

25 A. Not that I'm aware.

1 Q. Okay. Well, I did a little bit of homework and it
2 was cloudy and it was dark and Sheriff Volek, in fact,
3 said it was very dark.

4 Do you remember seeing his statement?

5 A. I don't recall seeing that.

6 Q. Okay. How long was the Attorney General's vehicle
7 on the shoulder of the road?

8 A. Again, that's -- I don't know the exact time frame
9 that he was on the shoulder. I don't know.

10 Q. So if it was nearly instantaneous or if it were a
11 few seconds, you wouldn't know?

12 A. What I can tell you is that if a vehicle makes an
13 evasive maneuver to the left or to the right, if it's an
14 extreme enough maneuver, you will see tire marks that
15 will give you an indication that there was some sort of
16 extreme input in the steering. We did not observe any of
17 that. So because of that, that would tell me that he was
18 on the side of the road more than a second or two because
19 he had already transitioned over to the shoulder.

20 Q. What were the weather conditions that night?

21 A. Again, my understanding is that it was clear, it was
22 dark. I'm not aware of any other weather condition. We
23 did look at the weather as far as wind, and there was a
24 slight breeze that evening, from what I recall.

25 Q. By "slight breeze" do you mean 18 miles an hour?

1 A. The 18 miles per hour that you're referring to is
2 the highest recorded wind gust, which was not a
3 consistent through the evening. It was one time it was
4 recorded at that -- that velocity or speed.

5 Q. From the time of the accident until South Dakota
6 Highway Patrol was on the scene you would not know how
7 much traffic or the type of traffic that passed the
8 accident scene, would you?

9 A. I don't have an exact count of how many vehicles
10 would have been through the area, but it is not a highly
11 traveled road compared to other roads in the state.

12 Q. And was that considered in determining any movement
13 of debris, such as paint chips?

14 A. It absolutely was. The reason that we did -- part
15 of the reason we did the trend lines was we wanted to
16 look at each of those three different components of
17 evidence that we located, starting with the paint chips.

18 Paint chips are smaller and lighter. And we
19 thought, well, could the wind have affected the paint
20 chips? Based on what we determined with it matching with
21 the other types of evidence that we had, we can say that
22 we don't feel that they were moved at all.

23 Same thing with the vehicle debris. It was still
24 along the shoulder of the road in the same type of V
25 pattern that you see in the forensic map. And then

1 there's also glass that's in a straight line. That's not
2 going to move.

3 And then the other piece of evidence that I think is
4 probably the most convincing is the blood. The blood hit
5 the ground. It's considered high velocity spatter. And
6 if you know that liquid hits the ground and the wind
7 blows, it's not going to blow it anywhere. The blood's
8 going to stay exactly where it was. And all those other
9 pieces of evidence, the trend lines line up exactly with
10 those same.

11 Q. Was any of the debris specifically excluded from
12 trend line considerations?

13 A. At one point later in the investigation we were
14 asked to exclude all the evidence except for the blood
15 that was near the body, against my recommendation.

16 Q. And all other evidence then was included in the
17 trend lines, such as the bolt that was found in the lane
18 of travel?

19 A. That is correct.

20 MR. BUTLER: Thank you. I have nothing else.

21 PRESIDENT RHODEN: Mr. Vargo, do you wish to
22 redirect?

23 MR. VARGO: No, Mr. President.

24 PRESIDENT RHODEN: Thank you.

25 (The witness is excused.)

1 PRESIDENT RHODEN: You may call your next
2 witness.

3 MS. TRACY: The Prosecution calls Special Agent
4 Joe Arenz.

5 (The oath is administered to the witness.)

6 DIRECT EXAMINATION

7 BY MS. TRACY:

8 Q. Will you please state your name and occupation.

9 A. Joseph Arenz, Special Agent with the North Dakota
10 Bureau of Criminal Investigation.

11 Q. And I'll ask you to get as close as you can to the
12 microphone. Try to speak loudly.

13 What is your law enforcement background?

14 A. I have a bachelor's degree in criminal justice. I
15 am a licensed peace officer in the state of North Dakota.
16 I've been a law enforcement officer for 22 years,
17 including time with two local police departments where I
18 spent approximately seven years as a patrol officer, and
19 the rest of my time has been as a criminal investigator
20 investigating various different criminals -- or criminal
21 acts.

22 I've attended the National Forensic Academy through
23 the University of Tennessee, which is a 10-week crime
24 scene processing school. I'm also a licensed polygraph
25 examiner after attending the Texas Department of Public

1 Safety Polygraph School.

2 Q. In your capacity with the North Dakota Bureau of
3 Criminal Investigation, the BCI, did you have occasion to
4 become involved in a law enforcement investigation here
5 in South Dakota in September of 2020 regarding a
6 pedestrian being struck by South Dakota Attorney General
7 Jason Ravensborg's vehicle?

8 A. Yes, I did.

9 Q. How did that matter come to your attention?

10 A. I was at home and received a text message, along
11 with numerous other agents, from our chief agent who was
12 looking to see who would be available to travel to
13 South Dakota to assist with a vehicle versus a pedestrian
14 fatality accident involving the South Dakota Attorney
15 General.

16 Q. What day was that?

17 A. That would have been on September 13, which I
18 believe was a Sunday.

19 Q. And where did you respond to thereafter?

20 A. Upon me stating that I could travel to South Dakota,
21 I ended up traveling initially to Pierre, South Dakota,
22 where the BCI agents met up. Once we all got to Pierre,
23 then we traveled to the area west of Highmore in
24 Hyde County.

25 Q. When you arrived what role were you specifically

1 assigned by your supervisor for this case?

2 A. I was assigned to be the case agent.

3 Q. What does that mean?

4 A. As the case agent, I am in charge of overseeing the
5 case along with the supervisory special agent that's on
6 scene. We delegate responsibilities, ensure all tasks
7 are being done, and I maintain the investigation
8 throughout the course of it, ensuring all reports are
9 completed and dispersed to where they need to be.

10 Q. Who was your supervisor for this case?

11 A. Supervisory Special Agent Arnie Rummel.

12 Q. And, as you mentioned, he participated in this
13 investigation as well?

14 A. Yes, he did.

15 Q. Who did you first speak to when you arrived at the
16 crash scene near Highmore?

17 A. When we got there initially we met with a trooper
18 west of Highmore that was stationed near a white pickup
19 that was in the ditch near a hay bale. And he explained
20 to us that the rest of the scene was further east closer
21 to Highmore.

22 We then traveled to where the accident scene had
23 occurred, and upon arriving there, myself and Supervisory
24 Special Agent Arnie Rummel were provided information from
25 Sergeant Kinney and Trooper Berndt.

1 Q. What did you learn?

2 A. They walked us through the scene. They showed us
3 debris that was along the road. They explained that a
4 body had been found alongside the road, which was still
5 there when we arrived, and they showed us the body of
6 Mr. Boever and stated that Mr. Boever's leg had been
7 amputated during this accident and they showed us the
8 leg, which was further in the ditch.

9 They explained to us that the body had been
10 discovered earlier in the morning and that the
11 South Dakota Attorney General Jason Ravensborg had been in
12 an accident the night before and had struck something at
13 that time, but they weren't really sure what he had
14 struck, possibly a deer, but nobody had known really and
15 the deer wasn't discovered at that time. It was the next
16 morning then Jason Ravensborg came back and discovered a
17 body.

18 Q. So what else did you do that evening to further your
19 investigation?

20 A. Initially assigned other agents duties such as
21 photography, flying our drones, collecting evidence. The
22 first thing I really did was I interviewed Sheriff Mike
23 Volek, who is the Hyde County Sheriff and the officer who
24 had responded to the accident the night before.

25 Q. How did that go?

1 A. I spoke with him at the scene. He basically
2 explained to us that he had been called to an accident,
3 had met the Attorney General Jason Ravnsborg at the
4 accident scene, that there was damage to the front of the
5 vehicle. The vehicle had been towed. He had provided
6 Jason Ravnsborg with the sheriff's personal vehicle to
7 drive back to Pierre.

8 And then the next morning when Jason Ravnsborg
9 brought the vehicle back Jason reported to him that he
10 had found a body at the scene.

11 Q. Had the sheriff done up a report on that matter at
12 that time?

13 A. He did eventually provide a report. It wasn't at
14 that time, no.

15 Q. Did you throughout your investigation that evening
16 attempt to get in touch with Jason Ravnsborg himself?

17 A. Yes. That night. At approximately 10 p.m. I did.

18 Q. How did that go?

19 A. I called, and his phone went straight to voicemail.
20 I actually called twice. The first time I called I did
21 not leave a voicemail. I called back a short time later
22 and left a voicemail to have him call me.

23 Q. What happened the next day, September 14, 2020?

24 A. North Dakota BCI agents went to the Pierre Police
25 Department. We had been advised that Jason Ravnsborg's

1 vehicle had been towed to the Pierre Police Department
2 and was in a secure facility there.

3 We went there with the intentions of processing that
4 vehicle. We had a search warrant written for the vehicle
5 before we processed it, and then once the search warrant
6 was written, we processed and collected evidence from the
7 vehicle.

8 Q. Did you personally participate in the processing of
9 that vehicle for evidence?

10 A. Yes, I did. For a short time.

11 Q. And, thereafter, as the case agent, you would have
12 reviewed the photographs and evidentiary items seized and
13 been familiar with that entire processing?

14 A. Yes.

15 Q. I want to present to you some photographs from that
16 processing. Let's start with photograph 4450204.

17 Once it comes up on the screen here, I'll just ask
18 you to advise what that photo depicts and confirm that
19 this was a part of that processing investigation.

20 A. Yes. This was a photo of basically the overview of
21 the back seat of Jason Ravensborg's vehicle.

22 Q. And as you look at that photograph, it's kind of
23 where the cursor is, can you describe what's included in
24 that photograph? What's noteworthy?

25 A. Yes. There's part of a pair of broken eye glasses.

1 So what you see there is the black frames for the eye
2 glasses.

3 Q. Let's go on to photograph 4450198.

4 A. This would be a photograph of the front compartment
5 of the vehicle from the driver's side taking a photograph
6 of the passenger side.

7 Q. Okay. And moving on to photograph 4450212.

8 A. That is the front passenger seat floorboard. So
9 what you see there is what I believe to be a phone
10 charging cord, and then there is part of the broken black
11 eyeglass frames there and the lenses for the eyeglasses
12 along the floor. And then broken glass debris.

13 Q. When did you first have occasion to speak to
14 Attorney General Jason Ravnsborg?

15 A. On September 14 at approximately 1:30 p.m.

16 Q. During the course of that interview, did he tell you
17 anything that surprised you or stood out to you?

18 A. The purpose of that interview was just to sit down
19 with him and get a statement from him, his version of --
20 and his perception of what had happened that day.

21 Basically what he said is he had been driving. He
22 had been in a Lincoln Day Dinner, I believe is what they
23 call it, in Spink County and had been traveling back, had
24 traveled through the town of Highmore, and shortly after
25 leaving Highmore, traveling towards Pierre, all the

1 sudden he hit something. Didn't know what he hit.

2 Q. Okay. And any other statements that he made to you
3 during that interview that struck you?

4 A. Yeah. He made the statement that he didn't know
5 what he hit until impact.

6 Q. For the course of that interview what did you notice
7 about the specificity with which the Attorney General
8 described certain topics but not others?

9 A. He was more specific about certain topics prior to
10 and after the accident than during the accident. During
11 the accident it was rather vague. Didn't really --
12 couldn't really give any detail about what happened.

13 Q. So leading up to the crash he provided details about
14 listening to a Twins game?

15 A. Yes. He had listened to a Twins game. He was able
16 to give some details about the dinner, what he ate.

17 Q. Phone calls with his father?

18 A. Yes. Two phone calls with his father. He had
19 described that he had been on the phone and must have hit
20 a dead zone so the phone call disconnected, that he
21 called back then as soon as he received cell phone
22 service again, basically to let his father know that he
23 hadn't hung up and that it was a dropped call.

24 Q. He was going to stop at the gas station, but it was
25 closed. He talked about that too?

1 A. He traveled through Highmore, was going to stop at
2 the gas station, looked at the gas stations on both sides
3 of the road, as there is a gas station on both sides of
4 Highway 14 there in Highmore, and that they looked closed
5 so he continued on. He remembered seeing a 65 mile per
6 hour sign and also seeing a sign that said 48 miles to
7 Pierre.

8 Q. After he mentions those signs, did he have
9 additional specificity about the next transpiring events?

10 A. No.

11 Q. Does he reiterate the same specificity after the
12 crash itself?

13 A. Yes. Somewhat. He describes how he pulled over to
14 the side, that the vehicle had been shaking, that he got
15 out immediately and walked around his vehicle and then
16 called 911.

17 Q. So he mentions those markers in time, and then how
18 specifically does he describe events after he says
19 Sheriff Volek arrived?

20 A. He explains that when Sheriff Volek arrived they had
21 looked at the vehicle, checked the area, that Sheriff
22 Volek had told him that the vehicle wasn't going to be
23 drivable and would need to be towed, and so Sheriff Volek
24 took him to Sheriff Volek's house to loan Sheriff Volek's
25 personally owned vehicle to Mr. Ravensborg.

1 Q. Do you recall Attorney General Ravensborg
2 demonstrating and going through where he located his
3 insurance and his registration and all of those things?

4 A. Yeah. He explained that Sheriff Volek had asked him
5 for his registration and insurance card and that he had
6 to reach across the center console to the glove box, but
7 the glove box was already opened due to the impact of the
8 crash.

9 Q. And he talked about his conversation with the
10 sheriff about the Lincoln Day Dinner, him leaving. And
11 did he provide additional specificity about the sheriff
12 having to flag him down to get the keys to his vehicle?

13 A. Yes. He explained that after he was given Sheriff
14 Volek's vehicle he then left the scene. And, shortly
15 after, Sheriff Volek pulled him over because
16 Mr. Ravensborg had taken the keys to Mr. Ravensborg's
17 vehicle, and they were going to need those to have it
18 towed.

19 So he explained that he then was pulled over and
20 explained how he took the keys off the key ring to -- he
21 initially gave the whole set of keys to the sheriff and
22 the sheriff said, no, I just want the vehicle key and he
23 described how he then took the key off the ring and
24 provided it to the sheriff.

25 Q. So the benign, irrelevant details he provides great

1 specifics about, but he shortcuts the information when
2 it's important to the crash itself?

3 A. Yes.

4 Q. During this interview and as a part of the initial
5 fact gathering, did you ask the Attorney General about
6 the speed he generally travels?

7 A. Yes. We did talk about some speeds. He said that
8 he generally doesn't go more than 4 miles over the speed
9 limit.

10 Q. And why did you ask about this?

11 A. Just wanted to, again, know about the potential of
12 excess speed.

13 Q. I'm going to show you a series of clips from that
14 interview that you're referencing regarding speed.

15 (Video presentation.)

16 Q. (BY MS. TRACY) Do you recall those moments of that
17 interview?

18 A. Yes, I do.

19 Q. When was the next time that you spoke to Attorney
20 General Jason Ravensborg?

21 A. On September 30 of 2020.

22 Q. And where was that at?

23 A. At the Pierre Police Department.

24 Q. In the second interview did you ask the Attorney
25 General if he had reached out to the victim's family in

1 any way?

2 A. Yes, we did.

3 Q. And what was his response?

4 A. That they had contacted the sheriff's department
5 about getting the victim's family information to reach
6 out and express their condolences, but they didn't get
7 anywhere with that so they actually looked up the
8 obituary and found information.

9 They then did further research and found that
10 approximately six weeks previous to Mr. Boever's death
11 Mr. Boever's father had passed away also, and so at that
12 time they elected that, due to all of the circumstances,
13 it wouldn't be proper to reach out to the family.

14 Q. And this would have been about two weeks after
15 Mr. Boever's death?

16 A. Correct.

17 Q. I want to show you some video clips referencing
18 those statements.

19 (Video presentation.)

20 Q. (BY MS. TRACY) Obviously that last clip wasn't a
21 part of your interview but was from a statement
22 significantly after that. So any other statements that
23 the Attorney General may have made publicly about
24 reaching out to the victim's family would not be
25 consistent with what he told you during the interview?

1 A. That's correct.

2 Q. In your years of experience as an officer, why would
3 a person lie about reaching out to the family in a
4 situation like this when they didn't?

5 A. Could be a couple reasons. It could be that --
6 self-interest, attempting to make yourself look more
7 concerned and that you care more, would be one reason.

8 Q. Paint yourself in a better light?

9 A. Correct.

10 Q. What data did you recover from the iPhone, the
11 Attorney General's iPhone that was used during his travel
12 on September 12, 2020?

13 A. We were able to retrieve data that would show
14 internet usage such as e-mail, access to e-mail, internet
15 access, phone logs, text logs, those sorts of
16 information.

17 Q. While traveling.

18 A. Yeah. We could basically obtain it from whenever,
19 but specifically we were interested in during his travel.

20 Q. So by the time of the second interview you have this
21 phone data?

22 A. Yes, we do.

23 Q. And that phone data that showed call logs, internet
24 activity, phone usage on the trip from Redfield back to
25 Highmore, was that different than what the Attorney

1 General had previously told you?

2 A. Yes, it was.

3 Q. How so?

4 A. He had told us that his only phone usage was to call
5 his father those two times, and then when we were able to
6 obtain that data, it showed that he had been checking
7 e-mails and also going online and accessing different
8 websites.

9 Q. Did you ask him about that in the second interview?

10 A. Yes, I did.

11 Q. What was his response?

12 A. Initially he maintained that he had just used the
13 phone for the phone calls. And then I started asking
14 more about how he accesses his e-mail and if that was
15 possible, and then he acknowledged that he may have
16 checked some of his e-mails and that eventually got to
17 the point where he acknowledged that he also goes on and
18 browses news headlines.

19 Q. And so did this subject about phone usage come up
20 throughout the second interview repeatedly?

21 A. Yes, it did.

22 Q. Would you characterize his responses to you as
23 forthcoming?

24 A. No. The way I would characterize it is he was only
25 willing to acknowledge something once he knew we knew the

1 information already.

2 Q. Even though he knew that you already had his phones;
3 right?

4 A. Correct.

5 Q. I want to show you four different clips from your
6 interview referencing those inquiries.

7 (Video presentation.)

8 Q. (BY MS. TRACY) And do those clips show a
9 progression of those inquiries throughout that interview?

10 A. Yes, they do.

11 Q. By the time of this interview do you know that
12 Joe Boever was not struck in the middle of the road?

13 A. Yes, we do.

14 Q. And what information have you received to that end?

15 A. We had received the information from the South
16 Dakota Highway Patrol's work that it had been on the
17 shoulder of the road.

18 Q. You had also been out to the crash scene yourself?

19 A. Yes, I had.

20 Q. And observed the debris and items there?

21 A. Yes.

22 Q. And was there anything from that scene that led you
23 to believe that this happened -- Mr. Boever was struck in
24 the middle of the road?

25 A. No.

1 Q. Did the Attorney General ever directly admit that he
2 was on the shoulder of the road in this interview?

3 A. Not directly.

4 Q. What did he tell you about that?

5 A. He made comments throughout the interviews that he
6 had been in the middle of the road, but then he also made
7 comments about who would ever have thought that a guy
8 would have been walking on the side of the road.

9 Q. So would you say that that's an indirect
10 acknowledgment that Mr. Boever was on the shoulder of the
11 road?

12 A. Yes.

13 Q. And you had mentioned in your law enforcement
14 background that you are a polygraph examiner?

15 A. That's correct.

16 Q. Why was a polygraph not used in this case?

17 A. Whenever you administer a polygraph -- a polygraph
18 is not an appropriate tool to use on every single case.
19 Each case has to be evaluated. And what happens is if
20 it's going to be considered is the examiners evaluate the
21 case to determine if it's a case that's proper for a
22 polygraph. We have to consider numerous different things
23 when we're looking at that.

24 We don't want to ever administer a test that we
25 don't have the confidence in our results. From the

1 nature of this, just with all of the facts of the case,
2 not only myself but a few other examiners did not feel
3 that it was a case that would allow for a test that any
4 examiner was going to have great confidence in the
5 results.

6 Q. And a lack of confidence in those results could
7 actually be more harmful to the suspect; correct?

8 A. It could be. Specifically in this case, I
9 personally felt, and so did the other examiners I spoke
10 to, that the likelihood that Mr. Ravensborg would fail
11 this test and show that he's lying were very great, to
12 the point where -- and just with the nature of it, we
13 wouldn't have been confident in those results for certain
14 due to the polygraph itself. And just the nature of
15 everything that we had discovered, we didn't think it
16 would be appropriate to use a polygraph at that time.

17 Q. And when you say would fail the polygraph,
18 regardless of whether or not he was answering the
19 question truthfully.

20 A. Correct. Regardless of whether he was being
21 truthful in everything he had told us up to that point,
22 we believed that it would be very likely that that sort
23 of test he would fail and show that he was lying about
24 it. And we didn't want to give him a test that could
25 potentially show he was lying when he was, in fact,

1 telling the truth on something.

2 Q. Okay. What -- well, before I ask that, and the
3 entirety of your two interviews with Mr. Ravensborg were
4 recorded; correct?

5 A. Correct.

6 MS. TRACY: And I would just reference if the
7 Senate wants more to those interviews and the transcripts
8 in the case as evidence.

9 Q. (BY MS. TRACY) What were some of the other things
10 that were done during the course of your investigation?

11 A. We interviewed the individuals who were at the
12 Lincoln Day Dinner. So the people that attended. We
13 also interviewed the waitress that was there who was able
14 to ensure us that Mr. Ravensborg had not been consuming
15 alcohol.

16 We did have a blood draw done on him on the 14th
17 also. We had went to the scene and done skid testing a
18 couple days after the accident where the Highway Patrol
19 tested the braking of his vehicle.

20 We went out to the scene several days after and used
21 a chemical that's supposed to show blood that maybe is
22 invisible to the naked eye -- in the dark when you
23 sprayed it, it will glow a bright blue color -- to see if
24 there had been blood towards the area of impact to help
25 determine specifically where that was.

1 Q. Did you receive the results of the autopsy in this
2 case?

3 A. Yes, we did. An autopsy was done, and we received
4 those results also.

5 Q. What was noteworthy about those results and the
6 discussion with the physician thereafter?

7 A. The results were -- I believe the terminology they
8 used was something along the lines of multiple impact
9 trauma to Mr. Boever. In a conversation that was had
10 with the medical examiner by Supervisory Special Agent
11 Arnie Rummel, the medical examiner stated that Mr. Boever
12 would have been hit on the front side, not in the back.

13 Q. Because the injuries that they observed in the
14 autopsy were consistent with being struck from the front?

15 A. Correct.

16 Q. Why was that important?

17 A. It showed -- Mr. Ravensborg was traveling west on
18 Highway 14; so it showed that Mr. Boever was traveling
19 east.

20 Q. You may have already mentioned this, but did you
21 interview other motorists who passed by?

22 A. Yes, we did. We interviewed numerous other
23 motorists that had passed by in the time -- around that
24 time frame up to all the way when -- around the time when
25 Mr. Boever's vehicle had been driven in the ditch and

1 struck the hay bale.

2 Q. And did you learn that some individuals had actually
3 seen him walking?

4 A. Yes.

5 Q. What else did you learn about that?

6 A. Learned that he had been seen walking. One
7 individual had actually stopped and asked him if he
8 wanted a ride. And they noted that he had some sort of a
9 flashlight -- whether it was a cell phone or
10 flashlight -- illuminated in his hand.

11 Q. And you received, during the course of your
12 investigation, contents of the cell phone exams conducted
13 on the Attorney General's cell phones?

14 A. Yes, we did.

15 Q. Did you re-interview Sheriff Volek?

16 A. Yes, we did.

17 Q. Why was that important?

18 A. The biggest reason that we wanted to interview him
19 again was because when we were out at the scene on the
20 13th we found a small flashlight laying along the
21 shoulder of the road basically right where the concrete
22 meets the grass.

23 And as of when we got there, and we didn't get there
24 until 5 o'clock that evening, that flashlight was still
25 turned on and still illuminating. And just through

1 investigation we were able to determine that was most
2 likely Joe Boever's flashlight that he had been carrying
3 that day.

4 And so in reviewing Sheriff Volek's report, he notes
5 that when he was out there he saw a light laying along
6 the shoulder of the road that was illuminating so I
7 wanted to speak with him about that light.

8 Q. In your interview with him do you recall if he
9 indicated he went all the way up to that light to take a
10 look at it?

11 A. He did not walk over to check out the light. He saw
12 it and thought it was part of the car that was still
13 illuminating.

14 Q. Do you recall if he indicated to you whether he
15 would have walked right by the body and not seen it
16 himself?

17 A. I don't recall if he said that, but if he had walked
18 to the flashlight, he would have walked right past the
19 body.

20 Q. But he didn't give any indication that he walked up
21 to it or --

22 A. Yeah. He said that he didn't walk up to it. He
23 could see it in the distance, but he never walked over to
24 further examine it.

25 Q. And you -- what was his explanation for that light

1 that he saw?

2 A. He thought it was part of Mr. Ravensborg's vehicle
3 that was still illuminating, even though it had been
4 disconnected from the rest of the vehicle.

5 Q. You also received the South Dakota Highway Patrol
6 reports and crash reconstruction?

7 A. Yes, I did.

8 Q. And how did that affect your investigation?

9 A. It assisted in the reconstruction in the path of the
10 vehicle. Then I believe our forensic -- or our cyber
11 forensic guy was able to provide speeds for the Highway
12 Patrol using the phone GPS. So that all was taken into
13 account.

14 Q. So there was some communication back and forth about
15 that?

16 A. Yes, there was.

17 MS. TRACY: Special Agent Arenz, I have no
18 further questions at this time.

19 PRESIDENT RHODEN: Cross-examine, Mr. Butler.

20 CROSS-EXAMINATION

21 BY MR. BUTLER:

22 Q. So Sheriff Volek did tell you he walked past where
23 Mr. Boever's body would have been while looking at the
24 light -- or while looking for the light.

25 A. No. I don't believe he said that.

1 Q. "Sheriff states he would have walked past
2 Mr. Boever's body to get to the flashlight." Quote.

3 A. Okay. I don't recall him telling me --

4 Q. You disagree with that statement appearing in a
5 Bureau of Criminal Investigation report?

6 A. No. I believe that it's there. I just don't recall
7 him specifically telling me that.

8 Q. Was Mr. Ravensborg resist -- or did he resist turning
9 over access or giving access to any investigative items
10 in this case?

11 A. No, he did not.

12 Q. With regard to the polygraph, why did you even offer
13 one if you had no intent to provide it?

14 A. At that moment when I offered him the polygraph I
15 hadn't made that determination yet. That was something
16 that was considered, but then after further discussion
17 with other examiners it was deemed that it wouldn't be
18 necessary -- or it wouldn't be appropriate. And it's not
19 an exam I would have done anyways. I would have had to
20 find an examiner to do it.

21 Q. So when you offered the polygraph examination did
22 you think at that time it could be appropriate?

23 A. I didn't know at that time, but I offered it. And
24 that is something we do once in awhile is offer something
25 that we may eventually not follow through on anyways.

1 Q. And you say you had a meeting with other
2 polygraphers?

3 A. That's correct.

4 Q. What are their names?

5 A. I had a meeting with Supervisory Special Agent Mark
6 Nickel, who's a polygraph examiner in North Dakota for
7 the Bureau of Criminal Investigation, and I also had a
8 phone conversation with Tyler Neuharth, who is a DCI
9 polygraph examiner.

10 Q. And I'm really trying to understand this. Because
11 your answer was confusing to me. You think Mr. Ravensborg
12 could have been telling the complete truth but failed the
13 polygraph; is that right?

14 A. I think that the polygraph was not going to be able
15 to answer the question on whether he was telling the
16 truth.

17 Q. For example, could you have fashioned a question,
18 Were you aware that you had struck and killed a human
19 being on the night of September 12, 2020?

20 A. No. That would not have been an appropriate
21 question at the time.

22 Q. I have spoken with a polygrapher who's been in the
23 business longer than you. He was with the Sioux Falls
24 Police Department, DCI, has taught polygraphy, and he
25 strongly disagrees that you could not fashion a question

1 for a polygraph exam on whether he was aware that he had
2 struck and killed a human being, which is why I'm not
3 sure how you can tell this body it was not possible.

4 A. I didn't say it wasn't possible. I said that we
5 didn't feel that it was appropriate. Polygraph is
6 somewhat subjective in that different examiners have
7 differing opinions on that. And I'm not saying that no
8 examiner anywhere would ever disagree with that, but the
9 ones I spoke to, we all agreed, including one of his
10 examiners himself who didn't think it was an appropriate
11 test.

12 Q. What was it about the Attorney General that would
13 have made him a unique person in any respect with regard
14 to administering a polygraph?

15 A. The unique part about this would have been that even
16 though his statement is that he didn't know what he hit
17 on the day of the accident, the next day he went there
18 and he saw what he hit and he saw the body, which is
19 going to always be engrained in his mind for the rest of
20 his life. And, as examiners, we did not feel we could
21 ask questions that that image of that body laying there
22 along this roadway wasn't going to pop into his mental
23 image -- that mental image wasn't going to pop up every
24 question we ask.

25 Q. Have you polygraphed people who were suspects who

1 knew specifically what they were accused of?

2 A. Yes.

3 Q. Even though they were denying it, you still offered
4 them a polygraph?

5 A. Yes.

6 Q. Okay. How did those turn out?

7 A. Various different ways. I've run a lot of polygraph
8 tests. Some have passed. Some have -- some have passed
9 and shown to be not showing any deception. Some have
10 shown deception.

11 Q. Are there techniques for attempting to determine
12 whether a person's anxiety, nervous condition, et cetera,
13 can be adjusted for during the course of a polygraph?

14 A. Yes.

15 Q. Did you ever inform the Attorney General that you
16 would not offer a polygraph?

17 A. I don't believe we ever did tell him that we
18 wouldn't. We just never came back with offering that
19 again and attempting to set one up or schedule one.

20 Q. When he told you that he would absolutely take a
21 polygraph and for you to set it up, the truth is you were
22 surprised, weren't you?

23 A. Not really.

24 Q. Okay. The technique of offering a polygraph
25 oftentimes is done to test the person who is denying what

1 he's being accused of. For example: You saw a human
2 being. He says, No, I didn't. You want to take a
3 polygraph? You expect him to say no, don't you?

4 A. No.

5 Q. And I noticed in none of your reports did you
6 mention that you had offered him a polygraph. Why was
7 that omitted?

8 A. I believe it is in one of the reports. I believe
9 it's in my interview report.

10 Q. Okay. It's in a transcript of your interview, but
11 do you recall putting it in a report?

12 A. I can't remember if it's in the transcript or in the
13 report or in both.

14 MR. BUTLER: Nothing else. Thank you.

15 PRESIDENT RHODEN: Do you wish to redirect the
16 witness?

17 MS. TRACY: Yes, Mr. President.

18 REDIRECT EXAMINATION

19 BY MS. TRACY:

20 Q. Agent Arenz, are you aware that Attorney General
21 Ravensborg had talked to Tyler Neuharth about a polygraph?

22 A. Yes, I am. Or that somebody had. I don't know if
23 it was specifically Attorney General Ravensborg or one of
24 his staff.

25 Q. Okay. And that Tyler Neuharth had advised that the

1 polygraph would not be valid?

2 A. I believe that was something that was said,
3 something along those lines. That's very similar to the
4 conversation myself and Tyler Neuharth also had.

5 Q. So it would be somewhat disingenuous to offer to do
6 something that you know wouldn't be valid anyway?

7 A. That's correct.

8 MS. TRACY: No further questions.

9 MR. BUTLER: I do have a follow-up.

10 That report that you were just showing, Counsel,
11 does it say in there Mr. Ravensborg spoke with Tyler
12 Neurath [sic]?

13 MS. TRACY: I don't know if questions are being
14 asked of me, but I was reviewing my notes to myself,
15 Mr. Butler.

16 MR. BUTLER: Does that report you were showing
17 the officer tell you that the Attorney General spoke with
18 Agent Neurath? Yes or no?

19 MS. TRACY: I don't know what report you're
20 referencing. I didn't show the witness a...

21 MR. BUTLER: You should. You were showing him
22 something.

23 RE-CROSS-EXAMINATION

24 BY MR. BUTLER:

25 Q. The fact is no one has said the Attorney General

1 spoke with an Agent Neurath here in South Dakota about
2 polygraphs.

3 Are you aware that he ever had that conversation?

4 A. Like I just said, I don't know that he ever did have
5 that conversation. I believe it was one of his staff
6 members spoke to Mr. Neuharth or Tyler Neuharth.

7 Q. Okay. A staff member spoke with Agent Neurath;
8 correct?

9 A. I believe so, yes.

10 Q. Okay. Was it at the Attorney General's request?

11 A. I have no idea.

12 Q. Was the Attorney General in any way, shape, or form
13 involved in that communication?

14 A. I do not know.

15 MR. BUTLER: That's all I have.

16 PRESIDENT RHODEN: Anything else, Mr. Vargo?

17 MS. TRACY: Nothing from this witness.

18 PRESIDENT RHODEN: Thank you. The witness may
19 step down.

20 (The witness is excused.)

21 PRESIDENT RHODEN: We are going to take a
22 10-minute recess. Back here at a quarter after.

23 (A short recess is taken.)

24 PRESIDENT RHODEN: The Senate will return to
25 order.

1 Ms. Tracy, you may call your next witness.

2 MS. TRACY: Thank you.

3 The Prosecution calls Special Agent Cassidy
4 Halseth.

5 (The oath is administered to the witness.)

6 DIRECT EXAMINATION

7 BY MS. TRACY:

8 Q. Will you please state your name and occupation.

9 A. Cassidy Halseth. I'm a Special Agent with the
10 Bureau of Criminal Investigation for the State of North
11 Dakota.

12 Q. What is your law enforcement background?

13 A. Started my law enforcement career in 2001. 2002 I
14 moved on to the Minot Police Department where I was an
15 officer there until 2017. 2011 I was brought into the
16 investigations unit at the Minot Police Department where
17 I kind of started specializing in cybercrimes, crimes
18 involving computers, cell phones, things of that nature,
19 became an active member of the Internet Crimes Against
20 Children Task Force.

21 In 2017 I took a position with the Bureau of
22 Criminal Investigation and was assigned to the cybercrime
23 unit, again kind of specializing in those crimes against
24 children.

25 Q. In your capacity with the BCI, did you have occasion

1 to become involved in a law enforcement investigation in
2 South Dakota in September 2020 regarding a pedestrian
3 being struck by the South Dakota Attorney General
4 Jason Ravnsborg?

5 A. I did. I was contacted via a text message from a
6 chief agent asking if there was agents available to
7 respond to South Dakota to assist with an investigation.

8 Q. And did you respond?

9 A. I did.

10 Q. Approximately when did you arrive down to the crime
11 scene then?

12 A. So where I'm located in North Dakota is a little bit
13 further away from Pierre than the other agents that
14 responded; so I was a couple hours behind them. I would
15 guess I got to the Highmore area approximately 5 to
16 6 o'clock, if I remember correctly.

17 Q. And what were some of your main roles in the
18 investigation?

19 A. So initially when we arrived on scene it was
20 myself and another agent from the Bismarck headquarters,
21 Pat Helfrich. Again, other agents were already there.
22 They were already starting to start their crime scene
23 processing. So I turned into more of an assisting role.
24 Whatever help those agents needed, as far as taking
25 photographs or whatever the case may be, I filled in

1 whatever they needed.

2 Q. Did you end up assisting specifically regarding your
3 areas of specialization with some of the technology
4 review?

5 A. I did. So that day -- I'm a drone pilot with the
6 bureau. Another agent there was also a drone pilot. I
7 assisted that agent with flying the drone, taking overall
8 drone scene pictures and collecting that data.

9 But that initial response, there was no other
10 technical stuff that was done that day.

11 Q. How about the next day?

12 A. So the next day I had responded with Agent Helfrich.
13 Again, Agent Helfrich is part of the cybercrime unit.
14 One of his specialties is vehicle forensics. So we
15 responded to where the vehicle was located, and I
16 assisted Agent Helfrich with attempting to recover data
17 from the infotainment center on the vehicle.

18 Q. Did Supervisory Special Agent Rummel ultimately that
19 day receive consent to search the Attorney General's
20 cell phones?

21 A. Yes. While we were working on the vehicle I got
22 word that the Attorney General's cell phone had been
23 turned over and that he had consented for the extraction
24 of the data from the phone to be completed. So I was
25 called away from the vehicle and started working on that

1 cell phone.

2 Q. And what type of phone was this phone that was
3 provided to you that day?

4 A. I was told that it was Jason Ravensborg's personal
5 cell phone, and it was an LG model cell phone.

6 Q. When you conduct cell phone analysis or exams can
7 you give us an explanation of how that's done?

8 A. For the most part, we -- with the North Dakota
9 Bureau of Criminal Investigation we have two tools that
10 we use for most of our cell phone extractions. One of
11 them's probably very familiar with everybody -- or most
12 people in law enforcement side of things, and that would
13 be called the Cellebrite. So iPhone is connected to the
14 Cellebrite unit.

15 In this case I was using a Cellebrite universal
16 forensic extraction device PC version. So the phone was
17 plugged into a laptop computer. The software then
18 communicates with the cell phone to extract the data out
19 of the cell phone.

20 Q. And so in layman's terms are you trying to take,
21 say, a copy of that phone's contents?

22 A. That's exactly what we're trying to do. We're not
23 altering the content of the phone or the data on the
24 phone. We are trying to get a copy of the data that was
25 existing on the phone in the state when we received it.

1 Q. And then conduct an analysis of that copy of the
2 data?

3 A. Correct.

4 Q. How did that go on this phone?

5 A. Not well. That particular phone wasn't heavily
6 supported by Cellebrite or the other tool that we used to
7 extract cell phones. I was able to get an extraction
8 done on it, but the data that was recovered was pretty
9 minimal. Mainly consisted of things like pictures and
10 videos, things of that nature.

11 In my opinion, I knew that there was probably a
12 better way to get the data out of that phone. I just
13 didn't have the tools with me at that time to get that
14 data.

15 Q. So was the phone taken with you?

16 A. It was.

17 Q. And is it fair to say it took quite a while to find
18 the tools to extract data from that phone?

19 A. Yeah. I actually reached out to Cellebrite, the
20 company itself. They have a service called Advanced
21 Services where you can actually send cell phones to them.
22 Their engineers will then use different techniques to
23 recover the data from a phone, and then they'll return
24 that data along with the phone to you for your analysis.

25 Q. Once you received the contents of that LG phone and

1 you were able to finally search it and analyze the data,
2 did you discover anything noteworthy?

3 A. The biggest thing that stood out to me on that
4 particular cell phone, that LG cell phone, was that
5 Jason Ravensborg was utilizing a third-party application
6 that basically one would use -- it gives the user of the
7 cell phone a benefit by not using their phone while
8 driving.

9 So you turn on the application while you're driving.
10 If you don't use your phone, you collect these rewards
11 that can be redeemed at different places, you know, for
12 all kinds of different things.

13 Q. And is that -- are you referencing the OnMyWay app?

14 A. That is correct. Yes.

15 Q. Did anything else that you discovered about the
16 contents of that phone indicate that the Attorney General
17 was using that personal cell phone after the Lincoln Day
18 Dinner on the ride back from Redfield to Highmore?

19 A. No. The only thing of note that was located on the
20 phone is there was some missed calls on the phone, but
21 nothing was answered. Some missed phone calls.

22 That phone appeared, again, to be you turn on that
23 application, you put that phone down in the car and
24 collect the benefits. Because you're not going to
25 obviously use it and get the benefits.

1 Q. Let's talk about the second phone, the Attorney
2 General's iPhone XR.

3 A. Correct.

4 Q. And did Supervisory Special Agent Rummel also
5 receive consent to search that work cell phone as well?

6 A. We did, yes.

7 Q. And when was that?

8 A. So that would have been on the morning of
9 September 14, probably late in the morning of
10 September 14.

11 Q. Okay. And did you subsequently utilize the
12 technology at your disposal to extract information from
13 that phone?

14 A. Yes. So that phone was hand-delivered to me by
15 Jason Ravensborg. I immediately started working and
16 processing on that cell phone. While that phone was
17 processing, though, I was contacted by a special --
18 Supervisory Special Agent Rummel, and he requested that I
19 return -- I was in Pierre at that time at the Department
20 of Public Safety office working on that phone. They had
21 given us some space. And Supervisory Special Agent
22 Rummel asked if I would return out to Highmore to assist
23 with recovery surveillance footage. So I left that phone
24 processing with Special Agent Helfrich so that I could go
25 do that.

1 Q. And what happened with the processing of that phone
2 thereafter?

3 A. So I ended up not ever returning back to Pierre.
4 While we were recovering the video surveillance footage,
5 the agents that were in Pierre were told to start heading
6 back. We were going to head back to North Dakota. So I
7 met with Agent Helfrich in between Pierre and Highmore.
8 He turned over my equipment that I had brought with,
9 along with the cell phones, and he had stated that the
10 extraction that I had started on the phone had failed and
11 that he didn't have time to restart it so that it needed
12 to still be processed.

13 Q. So once you got back to North Dakota did you run
14 further extraction on that phone?

15 A. We did. And, again, I knew right from the beginning
16 that we had a piece of hardware at headquarters in
17 Bismarck called a GrayKey that I knew was going to get us
18 the best extraction on that particular model of phone.
19 So as soon as we returned to Bismarck, that Apple
20 iPhone XR was put on the GrayKey unit and a full file
21 system extraction was completed on it.

22 Q. Is it fair to say there was a lot of data extracted?

23 A. Yeah. If I remember right, it was in the
24 20 millions or close to 20 million artifacts on that
25 phone.

1 Q. And what types of information were recovered?

2 A. All kinds of it. I mean, there was phone logs, text
3 messages, application installations, the screen time on
4 and off, if the phone was unlocked, if it was not locked,
5 data showing if the flashlight had been turned on and
6 off, you know, if third-party texting applications had
7 been used, GPS -- different GPS coordinates and
8 locations. It even documented like how many steps he
9 took around the time of the 911 call, things of that
10 nature.

11 Q. In your analysis of that data, did you break that
12 out into some reports?

13 A. I did. I thought it was prudent to kind of show the
14 usage of the cell phone. So using the data that I
15 recovered I was able to approximately determine when
16 Jason Ravensborg left Pierre for the dinner in Spink
17 County.

18 I documented then his travel from Pierre to there,
19 any of the phone usage that was done on the phone during
20 that time period. I then broke it down when he got to
21 the dinner to show the different types of usage that was
22 going on on the phone during the dinnertime.

23 I, again, was able to determine an approximate time
24 that he left that dinner and started to head back to
25 Pierre. So I documented the phone usage, travel, from

1 the dinner to -- up until the time of the 911 phone call.
2 And then I broke it down from the time of the 911 phone
3 call until the time he left Highmore. And then Highmore
4 to Pierre.

5 Q. In conjunction with that analysis, what were some of
6 the noteworthy things you recovered from the Attorney
7 General's work phone?

8 A. The biggest thing that I noticed is that he did use
9 his phone quite often while he was traveling. He was
10 checking his e-mails. He would be checking websites,
11 things like that, when he was traveling.

12 So when he was going to the dinner, activity like
13 that was going on. When he left the dinner, activity of
14 that such was going on. And I definitely noticed that
15 just a few minutes prior to the 911 phone call that there
16 was activity of e-mail being checked and web browser
17 activity showing that the user was manually looking at
18 some websites.

19 Q. Was it your understanding from the investigation
20 that the Attorney General had denied being on his phone
21 for his trip home?

22 A. That was my understanding.

23 Q. So the phone data you recovered refuted those
24 statements?

25 A. Correct.

1 Q. How does -- how is GPS data recovered?

2 A. So especially on a smartphone there's a lot of
3 different applications that are working to show that
4 phone's location. Because it's an important aspect as
5 far as the working of the phone -- you know, if you want
6 to use your Google Maps, you have to have a location.

7 Also the applications that you're using, they want
8 to track your behavior, where you frequent to travel,
9 things of that nature, so they can get you, you know, the
10 best advertisements and kind of target things towards the
11 things that you're looking at.

12 So there's a lot of social engineering that's going
13 on in the background, and GPS location is one of the
14 things that those applications, you know, want to focus
15 on.

16 Q. So the more the phone's being used, the more GPS
17 data you can have to recover?

18 A. I mean, that's all very dependent, but it seems the
19 more usage that the phone is doing, there's probably a
20 more chance or a greater chance that something's going to
21 interact with it that's going to want to know the GPS
22 location.

23 Q. What did the GPS data on the Attorney General's
24 phone tell you about the speeds he traveled on his way
25 back from Redfield to Highmore?

1 A. It showed that he was traveling -- sometimes he was
2 getting down to as low as 62 miles per hour, and his
3 phone speed got up to as high as 77 miles per hour as he
4 was driving between Redfield and Highmore.

5 Q. So if his phone is showing that it's traveling with
6 the vehicle at a maximum speed of 77 miles per hour but
7 the Attorney General's speedometer was reading 3 to 5
8 miles higher than that, he would have thought he was
9 traveling 80-plus miles per hour at that point?

10 A. I have no reason not to believe that.

11 Q. Certainly more than the at most 4 miles per hour
12 over that he told Special Agent Arenz?

13 A. That is my understanding.

14 Q. What data -- well, let me rephrase that.

15 Special Agent Halseth, did you note some of the GPS
16 time data in your original report?

17 A. I did.

18 Q. And were you asked to do some additional review of
19 the GPS data included in the phone contents in
20 preparation for today's proceeding?

21 A. I was.

22 Q. Including GPS data points for the phone travel
23 leading up to and through Highmore but also the GPS data
24 points and timing through and after the crash?

25 A. Yes.

1 Q. I want to show you a table that's from our GPS phone
2 data point table.

3 A. Sorry. I'm going to need my readers for this.

4 Q. And it's a two-page document there. Do you
5 recognize this document?

6 A. I do.

7 Q. And what does it depict?

8 A. It depicts the time and speed of the GPS coordinates
9 that I was able to collect from the cell phone, along
10 with some artifact times that were also collected off of
11 the cell phone.

12 Q. And so it's a true and accurate compilation of speed
13 and timing of other events from the phone contents that
14 you recovered on the Attorney General's work iPhone?

15 A. Correct.

16 Q. Depicting the second breakdown of the GPS data,
17 flashlight used, et cetera?

18 A. Correct.

19 MS. TRACY: I would note for the Senate that
20 this document has been provided to you in advance of
21 trial in the prosecution folder labeled "Cell Phone
22 Data," the document labeled "GPS Data Points."

23 Q. I want to show you what's been labeled "AG Driving."
24 Agent Halseth, do the blue lines on this diagram --
25 are they the GPS coordinates that are registering the

1 times and speeds that come from the phone data we just
2 referenced --

3 A. Yes.

4 Q. -- arising from the phone content you acquired?

5 A. Correct.

6 Q. And so those are plotted out on this "AG Driving"
7 diagram?

8 A. Correct.

9 Q. Now I want to show you what's been labeled "AG 911
10 Intervals."

11 Is the information displayed on this document
12 consistent with the data and location information
13 observed between the beginning and ending of the 911 call
14 the Attorney General made, as evidenced by the
15 information you recovered from his phone?

16 A. Yes.

17 Q. And, finally, I want to show you what's been labeled
18 "AG Walking Increments."

19 Does this document also contain data based upon the
20 GPS data you retrieved from the iPhone in question?

21 A. It does.

22 Q. At 10:33 p.m. how many GPS data points does the
23 phone register?

24 A. I'm sorry. Can you repeat that time? I didn't
25 catch it.

1 Q. Yes. At 10:33 p.m. -- after 10:33 p.m., excuse me,
2 how many GPS data points does the phone register?

3 A. Four.

4 Q. And, as we analyze this, why would we have a
5 six-minute gap of GPS coordinates from the time that the
6 phone flashlight goes on at 10:33 until the flashlight
7 goes off?

8 A. The data was basically a null set. It was
9 inaccurate. Or I shouldn't say inaccurate. That's a bad
10 term.

11 There was no accurate GPS points recorded on the
12 phone in between 10:26 and 10:33, and I don't really have
13 an explanation for why.

14 Q. And you testified that there were all of these other
15 GPS data points registering on the Attorney General's
16 phone throughout the day, following the Redfield dinner,
17 tracking back through Highmore, at the crash, and then
18 after 10:33 p.m. when the Attorney General is stopped
19 roadside there are only four data points for GPS; is that
20 correct?

21 A. Correct.

22 Q. Certainly, there's other information that indicates
23 that the phone still is used thereafter; right?

24 A. There is.

25 Q. With text messages, a photograph text message of the

1 photo of his vehicle that he sends?

2 A. That is correct. I know there were some phone calls
3 and some texting and a picture sent after leaving the
4 accident scene heading back towards Pierre.

5 Q. But no additional GPS data points?

6 A. No.

7 MS. TRACY: Agent Halseth, I have no further
8 questions at this time.

9 PRESIDENT RHODEN: Mr. Butler, you have the
10 witness.

11 CROSS-EXAMINATION

12 BY MR. BUTLER:

13 Q. You indicated that the Attorney General denied using
14 his cell phone between Redfield and Highmore?

15 A. That is what I was told. I never spoke with the
16 Attorney General, but that's kind of the general
17 consensus that I got from the agents that had spoke with
18 him.

19 Q. Well, I can tell you he was on the phone for
20 25 minutes with his father.

21 A. You are absolutely correct. I did forget about
22 that, yeah. I think he did reference that he made a
23 phone call, but other than that phone call, he wasn't on
24 his phone.

25 Q. When you receive a phone from someone do you

1 typically attempt to ascertain whether or not there's
2 been any effort to alter or remove or eliminate data from
3 the phone?

4 A. Yeah. We'll normally be able to tell that once we
5 get the extraction completed on the phone. We'll be able
6 to see if there's any type of manipulation that way.

7 Q. Was that done in this case?

8 A. Absolutely.

9 Q. And any data you could tell that was altered,
10 eliminated, or removed?

11 A. Not that I can tell, no.

12 Q. And from your report or reports --

13 A. Actually could I answer that question a little more
14 truthfully. I mean, there were some things that were
15 deleted, but I have nothing to believe that the things
16 that were deleted on the phone were done in any type of
17 inappropriate fashion, I guess.

18 Q. That the phone, or the cell phone that had been
19 examined, the work phone, was in locked mode or locked
20 position at least 90 seconds prior to the collision; is
21 that correct?

22 A. I don't know the times right off the top of my head,
23 but it was around a minute or two, if I remember
24 correctly.

25 Q. And nothing you've testified to here today changes

1 that conclusion?

2 A. No.

3 Q. To your knowledge, were your reports and findings
4 disseminated to all appropriate parties, including the
5 prosecutors in this case?

6 A. That's my understanding, yes.

7 MR. BUTLER: I don't have anything else. Thank
8 you.

9 PRESIDENT RHODEN: Redirect?

10 MS. TRACY: Nothing further from this witness.

11 PRESIDENT RHODEN: Thank you. The witness may
12 step down.

13 (The witness is excused.)

14 PRESIDENT RHODEN: You may call your next
15 witness.

16 MR. VARGO: Call Special Agent Brent Gromer.

17 (The oath is administered to the witness.)

18 PRESIDENT RHODEN: Mr. Vargo, you may proceed.

19 MR. VARGO: Thank you, Mr. President.

20 DIRECT EXAMINATION

21 BY MR. VARGO:

22 Q. Special Agent Gromer, would you please introduce
23 yourself to the members of the Senate.

24 A. My name is Brent Gromer. I am a retired supervisory
25 special agent with the South Dakota Division of Criminal

1 Investigation.

2 Q. Can you give us just a very brief background in your
3 training and experience as a law enforcement officer and
4 perhaps a little bit about what positions you served in
5 as a law enforcement officer, especially around the end
6 of your career with DCI?

7 A. I spent 25 years in law enforcement in South Dakota.
8 The last little over 22 and a half years was with the
9 Division of Criminal Investigation where I investigated
10 all types of felony crimes.

11 The latter part of my career, about the last half of
12 my career with the South Dakota DCI, I was assigned to
13 the South Dakota Internet Crimes Against Children Task
14 Force, and the last eight years of my career I was the
15 supervisor over the South Dakota Internet Crimes Against
16 Children Task Force, as well as the Electronic Crimes
17 Unit for the Division of Criminal Investigation where I
18 oversaw the forensic examinations done in South Dakota.

19 Q. And is there -- the interplay between the Internet
20 Crimes Against Children and the -- I think you called it
21 the digital crimes unit?

22 A. Yes.

23 Q. Is that simply because many of our internet crimes
24 against children involve technology?

25 A. Yes. That's correct.

1 Q. And at that point would you say that you would have
2 occupied the highest position in the DCI as it related to
3 the examination of forensic devices?

4 A. Yes. That's accurate.

5 Q. And you said you did that for eight years?

6 A. Yes.

7 Q. I would like to direct your attention to about the
8 middle of September of 2020, shortly after the crash that
9 brings us here today.

10 Do you know the date that I'm talking about?

11 A. I do.

12 Q. And were you in Pierre shortly after that crash?

13 A. I was.

14 Q. And for what reason?

15 A. We were actually conducting new agent interviews to
16 hire a new ICAC agent.

17 Q. Okay. And were you basically borrowing space from
18 somebody?

19 A. We were. We were utilizing a conference room in the
20 headquarters at the Mickelson building here in Pierre.

21 Q. And at that point the Attorney General had been in
22 office for just a little over a year and a half
23 basically?

24 A. Yes.

25 Q. Up to that point, what was the nature of your

1 contact, direct contact, with the Attorney General?

2 A. Very limited.

3 Q. Okay. Describe what you mean by "very limited."

4 A. I don't -- I don't recall ever having a private
5 conversation with him prior to that, with just he and I.

6 Q. Okay. Had you ever had an extended conversation
7 with him about your job or the needs of your department
8 or anything like that?

9 A. No. Never.

10 Q. Would that principally have gone through chain of
11 command essentially?

12 A. Correct.

13 Q. Okay. When you were in Pierre getting ready to
14 interview these potential agents did you notice that
15 the Attorney General was in the same vicinity that you
16 were?

17 A. I saw him come to the door, and he and Director
18 Natvig left the office that I was in.

19 Q. Okay. And shortly thereafter the Attorney General
20 returned to the office that you were in?

21 A. He came to the doorway, yes.

22 Q. And what did he do when he got to the doorway?

23 A. He motioned for me to follow him.

24 Q. And where did he take you?

25 A. To Director Natvig's office.

1 Q. And at that point where was Director Natvig?

2 A. I was not -- I'm not sure where he was when we
3 walked in. He was not in the office when we walked into
4 the office.

5 Q. Did he join you at some point during the
6 conversation that we're about to discuss?

7 A. Yes, he did.

8 Q. Okay. When the Attorney General summonsed you to
9 Director Natvig's office what was the topic that he led
10 with?

11 A. He wanted to ask me about evidence that could be
12 recovered from a cellular telephone.

13 Q. Was there any pretense that this was about him
14 educating himself on the activities of your unit?

15 A. No.

16 Q. Or a criminal case in which the State of South
17 Dakota was prosecuting?

18 A. No.

19 Q. Or his office was prosecuting. I should be more
20 exact.

21 A. No.

22 Q. How do you know that?

23 A. Just based on the context. He immediately asked
24 about information that could be recovered from a cell
25 phone and started referring to his own phone.

1 Q. What specific questions did he have about the
2 capacity of a forensic expert to seize data from his
3 phone?

4 A. Specifically he had asked me about an app that was
5 on his personal phone or what he called his campaign
6 phone, the OnMyWay app. And he stated that this phone
7 would ping even when it was locked or in airplane and was
8 questioning whether or not that app would make it appear
9 that the phone was being used when, in fact, it was not.

10 Q. And were you able to reassure him that the very
11 nature of the app is to show that you're not using your
12 phone?

13 A. Correct.

14 Q. Did that seem to put him at ease somewhat?

15 A. No. Then he switched and asked questions about
16 whether or not the activation of the flashlight would be
17 recoverable, as well as any e-mails and things of that
18 nature.

19 Q. And, again, was there any pretense that this was
20 about anything related to your job?

21 A. No. He was actually talking about facts of the
22 investigation.

23 Q. Were you uncomfortable with this?

24 A. Yes.

25 Q. Why?

1 A. We were not supposed to be involved. We conflicted
2 out of this investigation and contacted North Dakota to
3 do the investigation, and we were not supposed to have
4 anything to do with it.

5 Q. Have you ever given a criminal defendant expert
6 advice where the State of South Dakota is prosecuting
7 that criminal defendant?

8 A. Not outside a criminal trial.

9 Q. When you're called at a trial you simply testify to
10 the facts.

11 A. Correct.

12 Q. But if, for instance, the Brown County State's
13 Attorney's Office were prosecuting the case and a
14 criminal defendant called you and wanted to know from you
15 things that would help them prepare their case, would you
16 participate in that process?

17 A. No, I would not.

18 Q. Would you have participated in this process if it
19 weren't the Attorney General himself that was asking you
20 to participate?

21 A. No, I would not.

22 Q. Special Agent Gromer, have you had a chance to
23 listen to some of the testimony that was presented to the
24 House Special Investigative Committee?

25 A. Yes, I did.

1 Q. And specifically did you listen to testimony that
2 was given by Mr. Bormann and Mr. Natvig?

3 A. Yes, I did.

4 Q. And are there any portions of that testimony that
5 you would take issue with?

6 A. Yes.

7 Q. And specifically what are they, sir?

8 A. The context of that meeting, I believe, was -- the
9 meeting that I had between the Attorney General and
10 myself was minimized, and there were certainly aspects of
11 that testimony that were not factual.

12 Q. Let's go, first of all, to the minimization. What
13 do you mean by that?

14 A. It was referred that the meeting was just a
15 happenstance meeting by the water cooler between two
16 individuals that knew each other. That was not the
17 correct context. And then as far as the -- the context
18 was minimized that it was just a happenstance.

19 Q. And then what about you referenced that there were
20 some things that you believe were just flat out wrong.
21 What were those?

22 A. That's correct. There was statements that the
23 conversation was just about transferring data between a
24 cell phone as they were trying to exchange those cell
25 phones and that it was just about moving contacts and

1 things of that nature. That was not correct.

2 Q. Special Agent, I do want to ask you one other
3 question. You've been involved in how many searches that
4 related to electronic devices over the course of your
5 career?

6 A. Thousands.

7 Q. At any point when you were interested in seizing or
8 examining a cell phone and one for which you believe you
9 had probable cause and, if necessary, could obtain a
10 search warrant, have you ever had a defendant tell you,
11 well, I'll give one phone but I won't give you the other
12 one?

13 A. During the course of an investigation we've had them
14 turn over certain phones and not others, yes.

15 Q. And if that happens, do you just let the other phone
16 walk out the door, or would your process be then to go
17 get a warrant for that phone?

18 A. If we have probable cause to support affidavits in
19 support of a request for a search warrant, we would
20 complete that document and attempt to get a search
21 warrant for that device.

22 MR. VARGO: Thank you, Special Agent Gromer. I
23 have no further questions on direct.

24 PRESIDENT RHODEN: Thank you.

25 Mr. Butler, you have the witness.

CROSS-EXAMINATION

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BY MR. BUTLER:

Q. What date did this conversation take place?

A. On September 15 of 2020.

Q. Three days following the accident?

A. I believe that's correct.

Q. Was Mr. Ravensborg a defendant at that point in time?

A. He was certainly a subject in a criminal investigation that I was aware of.

Q. Was he a defendant at that point in time?

A. I guess it depends on -- he was not charged at that point in time; so if that's when the title of defendant kicks in, he was not charged at that time.

Q. Do you know whether he had either his personal or his work cell phone any longer in his possession when he spoke to you?

A. I do not know. I do recall he handed a phone case to someone, but I did not see a cellular phone.

Q. He had turned his personal phone over on the 14th of September. Are you aware of that?

A. I'm not. But okay.

Q. And on the morning of the 15th prior to speaking to you he had turned his work phone over to the Department of Public Safety. Were you aware of that?

A. I don't know that information.

1 Q. With that information in mind, could you tell me
2 what advantage the Attorney General gained by having that
3 conversation with you?

4 A. It's speculation. It may prepare him for a later
5 interview to be able to explain some of the data that may
6 have been recovered on his phone.

7 Q. What information did you give him that would help
8 prepare him?

9 A. I didn't say that I gave him any information, but
10 that may have been some of the information. I told him
11 in generalities what data would come off the phone and
12 basically explained to him that if he was on his phone at
13 the time of the accident, the digital evidence would show
14 that, and if he was not, the digital evidence would also
15 show that.

16 Q. That wouldn't particularly be inside baseball
17 information, would it?

18 A. No. I didn't give him any inside baseball
19 information.

20 Q. So you didn't give him anything. So going back to
21 my question, what advantage did he gain by asking you how
22 something might work when his phones were already turned
23 over into evidence?

24 A. I don't know, I guess. I don't know how to answer
25 that.

1 MR. BUTLER: That's all.

2 PRESIDENT RHODEN: Redirect, Mr. Vargo.

3 MR. VARGO: Briefly, Mr. President.

4 REDIRECT EXAMINATION

5 BY MR. VARGO:

6 Q. Special Agent Gromer, you've also done interviews
7 with criminal defendants, have you not?

8 A. I have.

9 Q. Or, in this case, I suppose, more accurately,
10 criminal suspect?

11 A. Correct.

12 Q. Is it useful to the suspect when doing an interview
13 to know what you know?

14 A. It would be.

15 Q. In other words, to know what information you already
16 have or what information you may later obtain?

17 A. Correct.

18 Q. Would that be of advantage to the suspect?

19 A. I believe so.

20 Q. And from your answers to Mr. Butler, is it fair to
21 say that you tried to avoid any kind of detail here?

22 A. I did.

23 Q. Why?

24 A. Because he was a criminal defendant -- or criminal
25 suspect at that time, and I knew there was a criminal

1 investigation that was ongoing.

2 MR. VARGO: Thank you, sir.

3 MR. BUTLER: I have no questions.

4 PRESIDENT RHODEN: Thank you.

5 The witness may step down.

6 (The witness is excused.)

7 PRESIDENT RHODEN: Mr. Vargo, you may call your
8 next witness.

9 MR. VARGO: Call Supervisory Special Agent
10 Arnie Rummel.

11 (The oath is administered to the witness.)

12 PRESIDENT RHODEN: Mr. Vargo, you may proceed.

13 MR. VARGO: Thank you, Mr. President.

14 DIRECT EXAMINATION

15 BY MR. VARGO:

16 Q. Special Agent Rummel, would you introduce yourself
17 to the members of the Senate.

18 A. My name is Arnie Rummel. I'm a Supervisory Special
19 Agent for the Bureau of Criminal Investigation for the
20 State of North Dakota.

21 Q. Please repeat your answer.

22 A. My name is Arnie Rummel. I am a Supervisory Special
23 Agent for the Bureau of Criminal Investigation for the
24 State of North Dakota.

25 Q. And in that capacity, sir, have you become the

1 supervisor overseeing the investigation into the
2 affairs of the death of Joe Boever and the involvement of
3 the South Dakota Attorney General Jason Ravensborg?

4 A. Yes, I have.

5 Q. Have you previously testified before the House
6 Subcommittee on investigations in this matter?

7 A. Yes, I have.

8 Q. And did you at that time express to the House
9 Special Committee your opinion that the Attorney General
10 had not been truthful with you during the course of this
11 investigation?

12 A. I did.

13 Q. Special Agent Rummel, I'm going to tell you that --
14 well, I'm going to ask you, I guess, first.

15 Did they ever ask you to elaborate in what ways you
16 believed that Mr. Ravensborg had been untruthful?

17 A. No. Not specifically.

18 Q. Okay. That's what I'm going to do today.

19 But before we get there to any kind of specifics, I
20 want to ask you is there an overarching reason that you
21 would conduct more than one interview with a witness or a
22 suspect, either one?

23 A. Yes.

24 Q. And what are some of those reasons, sir?

25 A. So one of the reasons is we get the person locked

1 into the story of the events of the day. In this
2 specific case it was prior to us having the information
3 that we were going to get from the evidence that we had
4 collected, but we wanted to know the version of what
5 happened coming from the person that was involved in the
6 event.

7 Q. And particularly if that first interview was
8 conducted early in the investigation, is it sometimes
9 useful to go back to again either a witness or a suspect
10 and ask more detailed questions when additional
11 information has been unearthed by the investigation
12 itself?

13 A. Yes. As more information is brought out or more
14 evidence is obtained, whether it be from witnesses or
15 from the crime lab, we would go back and speak to the
16 person to get the -- what their answers are, in light of
17 what we knew at that point in time.

18 Q. So I'm going to ask you about some very specific
19 factual scenarios. During the course of your interviews
20 with Mr. Ravensborg did he inform you, I think multiple
21 times, about where he had walked during the process of
22 his call to 911?

23 A. Yes. He said he walked past the piece of debris on
24 the shoulder of the road when he was on his walk with
25 911.

1 Q. And during the course of that did he also express to
2 you or tell you what his motivation was for doing so?

3 A. He said he wanted to make sure that it was Highmore
4 that he had traveled through, that it was the city of
5 Highmore, rather than something different.

6 Q. And, specifically, did he say what he was looking
7 for to make sure that it was Highmore?

8 A. It was the sign indicating Highmore was the town
9 that he had driven through.

10 Q. Had you seen that sign in the course of your
11 investigation?

12 A. Yes. Numerous times.

13 Q. And can you describe it? I mean, we're not talking
14 I-90 here; so can you describe what the sign looks like?

15 A. It's a green and white sign. It's approximately two
16 and a half feet wide. I believe it has a white border on
17 it. Just on the outskirts of Highmore.

18 Q. Okay.

19 MR. VARGO: So if we could play clip number 2
20 and clip number 13, please.

21 (Video presentation.)

22 MR. VARGO: Sorry. Lag.

23 Q. (BY MR. VARGO) So when he describes both walking
24 toward Highmore to see the sign and then back to the car
25 and where he took the photograph, is your impression of

1 that first clip that he's talking about the entirety of
2 the time that he's away from his car?

3 A. Yes.

4 Q. Okay.

5 MR. VARGO: So if we could play number 13.

6 (Video presentation.)

7 Q. (BY MR. VARGO) So at the time of this second
8 interview, Special Agent Rummel, did you have concerns
9 over whether or not what the Attorney General was telling
10 you was truthful?

11 A. Yes, I did.

12 Q. Why?

13 A. Part of the --

14 Q. Closer to your mic, please.

15 A. Part of the evidence collection is we're confirming
16 the statements that he made. So I actually went out
17 there at night to determine how close you had to be to
18 the sign to actually see the sign and to be able to read
19 the sign.

20 MR. VARGO: So if we can pull up the driving
21 intervals.

22 Q. (BY MR. VARGO) Special Agent Rummel, this is kind
23 of a conglomeration of data entered by the Highway Patrol
24 as it relates to certain physical evidence and then the
25 information that Special Agent Halseth was able to

1 retrieve from the phone.

2 Are you familiar with this diagram?

3 A. Yes, sir. I am.

4 Q. So if we use the large piece of debris as the rough
5 point that Mr. Ravensborg was describing, from that
6 location roughly how far is it to the Highmore sign?

7 A. About 475 feet.

8 Q. And when you recreated this event the next night did
9 you get close to the sign -- excuse me. Did you get
10 close to the spot that Mr. Ravensborg had described?

11 A. I'm sorry. I didn't catch the last part.

12 Q. When you recreated this event the next night did you
13 get close to the spot that Mr. Ravensborg described?

14 A. Yes. I walked the distance to where the sign --
15 where I was able to actually read the sign.

16 Q. And in order to do that did you have to go far
17 beyond where Mr. Ravensborg had described?

18 A. Yes, I did.

19 Q. Now you do wear glasses.

20 A. That is correct. It's for astigmatism and for
21 reading.

22 Q. Does that have any impact on your ability to see
23 things at a distance?

24 A. No. I actually have 20/20 and 20/15 in separate
25 eyes.

1 Q. Okay. Do you remember how far you had to get beyond
2 where that piece of debris had been before you could see
3 the Highmore sign?

4 A. Yes. I had to -- there's a fence line that borders
5 the State shop that's out there. I had to get to that
6 fence line before I could actually read the Highmore
7 sign.

8 Q. And that Highmore sign, is there any illumination on
9 it in the normal course of events?

10 A. It's reflective so if there's light shining on it,
11 the light would allow people to see it better, but in
12 this particular case it was at night. There was no
13 headlights; so it's not illuminated at all. You can see
14 it in the distance, but it isn't lit up.

15 Q. Okay. And you just mentioned something about
16 headlights, though. Do we know whether or not there were
17 other vehicles on the road at the time that Mr. Ravensborg
18 was looking at the sign?

19 A. Mr. Ravensborg said he did not believe he was passed
20 by any vehicle while he was standing out -- or while he
21 was at the scene of the crash.

22 Q. So as far as he told you, the light -- or the sign
23 would have been unilluminated?

24 A. That is correct.

25 Q. Now once Special Agent Halseth had done some

1 additional work with the GPS data --

2 MR. VARGO: Would you pull up the 911
3 increments, please -- intervals.

4 Q. -- did you have additional concerns about the
5 veracity of the description that Mr. Ravensborg had given
6 you?

7 A. Yes, I did.

8 Q. So as we look at this diagram, the 911 intervals,
9 this represents the GPS locations for the entirety of the
10 911 call.

11 A. That is correct, sir.

12 Q. And I think we used every five seconds because
13 otherwise it just got way too busy.

14 A. Yes.

15 Q. But what is the furthest east from the place where
16 the Attorney General's vehicle stopped that he ever
17 walked while he was still on 911?

18 A. Somewhere around 100 feet is the furthest he got
19 from his vehicle.

20 Q. And that would mean an additional 300 feet to the
21 west compared to that piece of debris, roughly?

22 A. That is correct.

23 Q. So if you couldn't see it from 400 some feet, are
24 you likely to be able -- 475, I think is what you said?

25 A. That is correct.

1 Q. Is there any chance you're going to be able to see
2 it from 775?

3 A. Absolutely not.

4 MR. VARGO: And if we could pull up the walking
5 increments, please.

6 Q. (BY MR. VARGO) This last diagram, Special Agent
7 Rummel, I am referencing as walking increments. And I
8 believe it shows us two related but somewhat separate
9 sets of GPS data.

10 To the right we see a number of -- I think those are
11 the black ones. A number of GPS data points which are
12 numbered 1 through 5. Do you see those?

13 A. I do.

14 Q. And based on the fact that the GPS and the phone
15 data are drawn from the same device, can we reliably
16 compare the GPS data with other events that occur on the
17 phone?

18 A. Yes.

19 Q. So, for instance, we know that the 911 call ends at
20 10:26:44. And the GPS data point number 1 is at
21 10:26:47; so three seconds later.

22 A. That is correct.

23 Q. And we know that at 10:26:59 the flashlight comes on
24 the phone.

25 A. That is correct.

1 Q. And that -- excuse me. That data point, 10:26:59,
2 represents further down the road than any of the previous
3 data points that were made while the Attorney General was
4 on the phone with 911.

5 A. Yes, sir.

6 Q. And then we have two more data points proceeding
7 down the road. They now get spottier; so we have
8 10:27:05 and 10:27:09.

9 A. Yes, sir.

10 Q. And then the next data point in terms of time
11 returning to the vehicle would be number 6, which is
12 listed at 10:33:25.

13 A. Yes, sir.

14 Q. So that's roughly a discrepancy of six minutes and
15 change.

16 A. Correct.

17 Q. And then we have four -- excuse me -- three more
18 data points, a total of four, in the next 10, 15 seconds,
19 all clustered around the vehicle?

20 A. Yes, sir.

21 Q. And according to Special Agent Halseth, those are
22 our remaining GPS data waypoints. That's all we've got.

23 A. That's correct.

24 Q. What I want to ask you, first of all, Special Agent
25 Rummel, is whether or not that is then consistent with

1 the description that Mr. Ravensborg gave you of where he
2 walked with reference to the large piece of debris.

3 In other words, is six minutes enough time to get up
4 to that and then get back to the vehicle?

5 A. To the debris?

6 Q. To the debris and back to the vehicle.

7 A. Yes.

8 Q. Would that even be very much of a stretch?

9 A. No. Not at all.

10 Q. And in that description, sir -- that's actually the
11 next area that I'd like to cover with you. In that
12 description is Mr. Ravensborg very adamant that he walked
13 up to that large piece of debris?

14 A. Yes, he is.

15 Q. And slightly past it?

16 A. Yes.

17 Q. Knowing what you know, can you envision any
18 mechanism by which a person could walk down the shoulder,
19 past a large piece of debris with a flashlight on,
20 scanning the ditch, and not see the body of Joe Boever?

21 A. No. I don't believe it's possible.

22 Q. And was that an opinion that you formed even during
23 the first and second interviews prior to the GPS data?

24 A. Yes.

25 Q. What makes you think that that's true?

1 A. Due to the fact that Mr. Boever's deceased and he is
2 completely white, he's laying just off of the roadway
3 within two feet, and if you're scanning with a white
4 light, a light from your flashlight or from a camera
5 light and you go across a white anything, it's
6 reflective. So, therefore, you would see it. It
7 would -- it would stick out. And there isn't any way you
8 can go by without seeing that.

9 Q. Special Agent, are you familiar with all of the
10 photographs that were taken by all of the various
11 agencies, your own and the South Dakota Highway Patrol,
12 the drone footage, whatever, that were taken in this
13 case?

14 A. Yes. I'm familiar with all of them.

15 Q. From those, we have selected seven which we believe
16 is appropriate for the Senators to view as against the --
17 the statement that you just made that the body would have
18 been highly visible to anybody walking in the vicinity.

19 MR. VARGO: Mr. President, it would be my
20 suggestion at this time -- I have one or two more
21 questions prior to this moment, but I do believe that it
22 would be appropriate then to release the Senators. We
23 have physical copies of those photographs to protect the
24 family of Mr. Boever from those being accidentally
25 disseminated from this chamber.

1 We will set up two copies on each lobbying area.
2 And I am going to ask the witness a couple of questions
3 about two of them in particular, but there are a total of
4 seven. I will tell you that they are not pleasant, but I
5 do believe that they're very important and would ask your
6 indulgence in actually viewing them.

7 If we want to do that consistent with the lunch
8 break, we could possibly make happen at the same -- or
9 subsequently so that we don't have to break, reconvene,
10 and then break again. But that's up to you,
11 Mr. President.

12 PRESIDENT RHODEN: I believe -- I would just as
13 soon that we wrap up this testimony. And so I think we
14 should --

15 MR. VARGO: Very good. I'll ask my questions,
16 and then I'll ask the President for the indulgence of
17 five minutes for the Senators to go see those particular
18 photographs.

19 PRESIDENT RHODEN: Very good.

20 Q. (BY MR. VARGO) Special Agent Rummel, within the
21 seven photographs that we've selected some are largely to
22 ensure that the people understand the relationship
23 between that large piece of debris and Mr. Boever.

24 A. Yes, sir.

25 Q. But I'm going to ask you about two in specific.

1 Photograph number 2 and photograph number 7, what do they
2 depict that, again, feeds your opinion that Mr. Ravensborg
3 was not being truthful with you when he said he had not
4 seen Mr. Boever's remains?

5 A. I believe that from that point of view you would see
6 the whiteness as you went by.

7 Q. And so is number 2 a photograph taken facing east?

8 A. That is correct.

9 Q. And probably 5 to 10 feet before you actually are
10 even with Mr. Boever?

11 A. Yes.

12 Q. And then photograph number 7 is the same thing but
13 coming west and, again, 5 to 10 feet taken from the
14 shoulder?

15 A. Yes. They're from both sides of where the victim's
16 body was -- came to rest.

17 MR. VARGO: All right. Mr. President, if we
18 could take that five minutes to allow the Senators to
19 view those photographs.

20 PRESIDENT RHODEN: Yeah. We'll be at ease for
21 five minutes while the Senators view the photographs, or
22 less than that if all the Senators are -- as soon as the
23 Senators are back in the seat, we'll go back to
24 questioning.

25 (Senators view the photographs.)

1 PRESIDENT RHODEN: Members of the Senate, the
2 audience, we are going to, I think, take a break now for
3 lunch for one half hour. So it is 12:20 now. We will
4 back in at 10 minutes until 1:00.

5 And, Senators, there is pizza in the lobby. And
6 I would make an announcement that the downstairs
7 cafeteria in the Capitol basement is open; so if you want
8 to grab some lunch down there. With that, we will be in
9 recess until 10 until 1:00.

10 Thank you.

11 (A lunch recess is taken.)

12 PRESIDENT RHODEN: Senate will come to order
13 again.

14 Mr. Vargo, you may proceed.

15 MR. VARGO: Thank you, Mr. President.

16 Q. (BY MR. VARGO) Special Agent Rummel, I want to go
17 back to the question of what the Attorney General would
18 have seen or could not have seen.

19 In addition to just kind of the physical facts, the
20 sharp contrast between Mr. Boever's body and the
21 surrounding area -- and for those that maybe chose not to
22 look at the pictures, and I certainly understand that --
23 Mr. Boever was originally dressed in darker clothing,
24 wasn't he?

25 A. Yes, he was. Yes, he was.

1 Q. So a dark blue shirt and blue jeans.

2 A. Blue jeans. Correct.

3 Q. Did it appear to you that the traumatic nature of
4 the crash had essentially -- if not removed those, had
5 bunched them in such a way that almost -- most of his
6 body was visible?

7 A. Yes, sir. That's accurate.

8 Q. And is that part of what you were saying when you
9 said a white object against a dark background with a
10 flashlight would show up quite visibly?

11 A. That is correct.

12 Q. But in addition to all of that, Special Agent, was
13 there something about -- or was there anything about the
14 way that the Attorney General described how he was
15 scanning the ditch that stood out to you?

16 A. His description was he was scanning the ditch, and
17 as he was describing it he was showing us that he was
18 looking up in the sky, which was absurd at best
19 (Indicating).

20 Q. And did you confront him on that?

21 A. Yeah. Because he would have been laying in the
22 ditch if it would have been there, whatever he said he
23 was looking for.

24 Q. So I'm going to play you the clip of that, sir.

25 (Video presentation.)

1 Q. (BY MR. VARGO) So when you confront him with that
2 he says he looked at both?

3 A. He looked at both.

4 Q. Both on the ground and in the air.

5 A. Correct.

6 Q. Agent Rummel, we talked at the very beginning about
7 the fact that you are the -- or were the supervisor on
8 scene here.

9 A. Yes, sir.

10 Q. And from one man with gray hair to another, can you
11 tell me a little bit about what makes you the supervisor?
12 I've been admonished that I introduced you by name but
13 not by experience.

14 Can you tell us a little bit about who you are and
15 where you've been as it relates to law enforcement.

16 A. I started my law enforcement career in 1981. I
17 worked for the Dickinson Police Department as a patrolman
18 for a period of like five years. I was an investigator
19 at that same agency for another five years. And I've
20 been with BCI for 30-plus years, of which I have been a
21 supervisor for all of it.

22 Q. And how many criminal investigations would you say
23 you've conducted over that 40-plus years?

24 A. I would say hundreds. If we're talking about death
25 investigations, easily in the hundreds. As far as other

1 things, I can't even venture a guess because there's, you
2 know, smaller crimes that we end up investigating,
3 including narcotics and burglaries and such, but they all
4 are investigations of importance.

5 Q. In this particular case, so in addition to doing
6 whatever you did on the ground, so to speak,
7 participating in the interviews and whatnot, were you
8 also responsible for knowing what was being done by the
9 rest of your agents?

10 A. Yes, I was.

11 Q. And we had some cross-examination of Special Agent
12 Arenz here just a little bit ago. Mr. Butler wanted to
13 know whether Mr. Arenz -- Agent Arenz, excuse me -- had
14 put his offer of a polygraph in a report specifically,
15 not just in the -- not just in the transcript of the
16 interview.

17 Were you able to go look at Special Agent Arenz's
18 reports and find that?

19 A. Yes. I was the one that approved those reports, and
20 in paragraph 66 he does talk about the polygraph with the
21 Attorney General at that time in that report.

22 Q. And there was also some discussion about whether or
23 not Mr. Ravensborg himself would have known about what his
24 people had said about the propriety of the polygraph.

25 A. That is correct.

1 Q. And, again, you're not a polygrapher?

2 A. No, sir. I am not.

3 Q. Have you supervised polygraphers?

4 A. Yes. I currently supervise some.

5 Q. And were you Joe's supervisor in this case?

6 A. Yes, I was.

7 Q. And so let me ask, first of all, is a question about
8 what you knew and when you knew it one that is more
9 difficult for a polygraph? I won't say impossible, but
10 is it more difficult for a polygraph?

11 A. Yes, it is.

12 Q. And did you specifically have a conversation with
13 the Attorney General about that during the course of your
14 second interview?

15 A. Yes, I did.

16 Q. And I'm showing you on screen your questions -- or
17 mostly it's Joe's questions and his results. But do you
18 see about five, six lines down, Well, they told me the
19 only concern would be now you know it versus you didn't
20 know it at the time?

21 A. That's correct.

22 Q. And the "they" that he is referring to, that would
23 be South Dakota DCI agents?

24 A. Yes, sir.

25 Q. That either he or some member of his office had

1 talked to?

2 A. That's correct.

3 Q. And it is pretty clear from this that the
4 information that they received had come back to the
5 Attorney General?

6 A. Yes, it did.

7 Q. Okay. So let's go back to some of your impressions
8 about the Attorney General's veracity during the course
9 of your interview with him.

10 Were there things that you believe -- believed, long
11 before the GPS data came in, about the crash and the
12 aftermath of the crash suggested that Mr. Ravensborg knew
13 that he hit a man not just before he left the scene but
14 before his vehicle came to a stop?

15 A. Yes.

16 Q. What are some of those, sir?

17 A. Well, part of --

18 Q. You need to be by your mic.

19 A. So prior to the GPS coordinates, during the first
20 interview he said, "I turned around and I saw him." To
21 me that was one of the indicators.

22 The other indicator was, "I did not know what I hit
23 until impact." That tells me that upon impact he knew
24 what he hit. He could identify what he hit after the
25 impact, which is instantaneously.

1 Q. So I'm going to kind of focus in on that part of it,
2 the -- between impact and the vehicle stopping. Because
3 the reference to turning around and seeing the body is
4 after that, obviously.

5 A. Yes, it is.

6 Q. Let's start with first whether he knows that he hits
7 a man before he comes to a stop.

8 Did you participate in an experiment or re-creation
9 of trying to re-create what it is that the Attorney
10 General would have seen as he drove down the road?

11 A. Yes, I did.

12 Q. And, specifically, were you the Joe Boever in that
13 experiment?

14 A. Yes, I was.

15 Q. And you were dressed in dark clothing?

16 A. I was dressed in blue jeans and dark blue shirt.

17 Q. And you were carrying, specifically, Joe Boever's
18 flashlight?

19 A. We used Joe's flashlight for that, yes.

20 Q. And is it fair to say that west of Highmore there's
21 not a lot of artificial light?

22 A. It's very dark out there. There is not.

23 Q. And is that specifically how the Attorney General
24 described that location that night?

25 A. I think his words were "extremely dark."

1 Q. Does that flashlight show up?

2 A. Yes, it does.

3 Q. And did you use the phrase I believe in one of your
4 reports "like a beacon"?

5 A. Yes.

6 Q. Now is it possible that if a flashlight's pointed in
7 a direction other than in front of the person who's
8 walking down the shoulder -- if it's pointed in a
9 different direction, might it be harder to see?

10 A. I agree with that statement, yes.

11 Q. But can you come up with a good reason why he would
12 be pointing it in the air or behind him or off into the
13 grass?

14 A. No. I believe he would be using it to watch where
15 he's going. There might be some hand movement as he
16 steps, but that movement in itself would make it more of
17 a beacon because it would be shining in the light of the
18 person that's approaching them.

19 Q. There would be almost like the difference between a
20 flashing light and a light that's simply on?

21 A. Correct.

22 Q. And would you say that that is visible from how far?
23 Did you guys attempt to re-create that?

24 A. We did, and the people in the car said that we could
25 see you for a long ways, almost from the highway

1 department building that's there. So it's quite a
2 distance to the scene.

3 Because we actually went to the area of impact to do
4 that test, and they said they could see me right away if
5 I was walking with that light.

6 Q. And the highway department entrance would be just
7 past that Highmore sign?

8 A. I believe it's just before that.

9 Q. Okay. So we're talking in the vicinity of 300 feet?

10 A. Yes.

11 Q. And so if you don't see anybody for 300 feet, is
12 that a fairly egregious lack of attention?

13 A. I'd say that, yes.

14 Q. Even for people who are on their phones.

15 A. That is correct.

16 Q. Even people who are messing with their radios?

17 A. That is correct.

18 Q. Even people who might be looking to reset their
19 speedometers or their cruise controls?

20 A. Yes, sir.

21 Q. Was there anything else physically about the scene
22 that suggests to you that the Attorney General knew what
23 he had hit before he even came to a stop in terms of
24 when and -- or not when. Excuse me. Where he parked.

25 A. The fact that it took him such a long period of time

1 to actually stop made me think that he was panicked, if
2 you will, about what he just did.

3 Q. So sometimes we use the phrase "panic stop" to mean
4 you slam on your brakes as hard as you can. Are you
5 using it really in the opposite sense?

6 A. That is correct. I'm using it that internally he's
7 like fight or flight possibly. Or I can't believe what I
8 just did and slowly comes to a stop because he needs to
9 make a decision at that point of whether he's going to,
10 you know, call 911 or what he's going to do at that
11 point.

12 Q. Okay. So we'll get to the "when" again, but I want
13 to ask you about the "where." I'm showing on the screen
14 photograph 35350. And I believe that's in our packet
15 under the reconstruction photos. But the -- is this an
16 attempt by North Dakota BCI to re-create where the
17 Attorney General's vehicle was at the time that it came
18 to a full stop prior to being towed?

19 A. Yes, it is. Yes, it is.

20 Q. And that's based, I assume, on the picture that the
21 Attorney General himself had taken?

22 A. Yes. The Attorney General took the initial picture
23 and I had another agent from BCI superimpose it so that
24 we could put it in the exact place that it was when it
25 came to rest.

1 Q. So using the various markers like telephone poles or
2 lights from Highmore or whatever the case may be, did
3 they attempt to establish exactly where the Attorney
4 General's vehicle was and then take a photo without the
5 vehicle to re-create that location?

6 A. Yes, sir.

7 Q. And then superimpose the Attorney General's photo --
8 and that's why we can kind of see -- it's almost like a
9 ghost vehicle in the sense that you can see through it?

10 A. Yes. You can see the white fog line through the
11 vehicle in this picture that is superimposed.

12 Q. And from where that would have been, sir, is it fair
13 to say that the Attorney General's vehicle was parked at
14 least partially in the lane of traffic?

15 A. Yes, it was.

16 Q. Would you consider that normal?

17 A. No.

18 Q. Is that another indication to you of more of a panic
19 situation?

20 A. Yeah. Yes.

21 Q. And is the panic -- let me just ask you this: Did
22 the Attorney General describe to you that he had hit deer
23 before?

24 A. Yes, he did. He said he had hit a couple before.

25 Q. And so whatever the opinions may be in this room for

1 all of those of us, which has got to be most of us, who
2 have probably hit deer at some point, is there any reason
3 to be panicked after you hit a deer and you realize
4 you're uninjured?

5 A. No. There isn't anything you can do at that point.
6 So it's a deer was hit.

7 Q. And it's sort of obvious from the picture, but let
8 me ask it out loud. Is there room to move the vehicle to
9 the right and get entirely out of the lane of travel?

10 A. Yes.

11 Q. So in addition to that -- you've referenced already
12 the amount of time that it took him to come to a stop.

13 A. Yes, sir.

14 Q. I'm not going to pull this up because it's basically
15 numbers; it's not all that helpful. But we'll pull up
16 the diagram that gives a little bit of a visual on
17 this.

18 The area of impact is the small red car and then an
19 AOI in the middle of that screen. And as we move to the
20 left on that, Special Agent Halseth identifies that those
21 are each the times and the speeds at which
22 Mr. Ravensborg's vehicle was traveling. So for the two
23 seconds after the collision, which we know based on the
24 location, not so much timing -- but from the location if
25 we know the area of impact, we know that that happened at

1 10:23 and 36 seconds.

2 In the next two seconds there's no real appreciable
3 slowing. It goes from 67.6 to 67.1. Is that what you're
4 talking about?

5 A. That's correct. That's correct.

6 Q. And then in the next seven seconds the vehicle slows
7 from 67.1 miles an hour to 11.9 miles an hour; is that
8 right?

9 A. That is correct.

10 Q. And I believe that the reconstructionist would refer
11 to that as moderate braking.

12 A. Yes, sir.

13 Q. Would you agree with that?

14 A. I would agree with that.

15 Q. So it's not exactly slamming on your brakes, but
16 it's also you're braking at least?

17 A. You're stepping on the brake, slowing down. You're
18 not hammering them or slamming them, no.

19 Q. In the next seven seconds from 10:23:45 to 10:23:52
20 the decrease in speed is from 11.9 miles an hour to
21 7.9 miles an hour. Is there something about that that
22 again causes you concern about exactly what was going on
23 inside that car?

24 A. Yes. I believe it's just a rolling stop.

25 Q. And then we have a two-second stop from 7.9. Two

1 seconds later the vehicle is stopped?

2 A. That is correct.

3 Q. And I believe you already started to answer this,
4 but if you could, tell the Senate why it is that you
5 believe that that is inconsistent with somebody who just
6 hit a deer?

7 A. Because somebody that just hit a deer would just
8 stop and pull over to the side, not take their time and
9 do a rolling stop.

10 In my opinion, it's whether to flee or stop or what
11 am I going to do next because I know what just happened
12 to me.

13 Q. And before we move on to some of the other
14 statements that the Attorney General made to you, from
15 the time that the vehicle stops until the phone is
16 unlocked is how long?

17 A. About two seconds.

18 Q. And then another 10 seconds before the phone is
19 unlocked?

20 A. Before the -- yeah. It's two seconds, and then
21 there's an additional 10 seconds before dialing of 911.

22 Q. And then another 16 seconds between the phone being
23 unlocked and the 911 call.

24 A. I believe that's correct.

25 Q. What does that tell you, if anything?

1 A. There is hesitation about what needs to be taken
2 care of.

3 Q. And, again, in your experience, North Dakota has
4 deer; right?

5 A. Yes, sir.

6 Q. Is that something that you associate with a -- even
7 a catastrophic collision with a deer?

8 A. No, sir.

9 Q. Special Agent Rummel, in the course of interrogation
10 is it unusual for someone to have kind of their taking
11 points that they want to repeat over and over?

12 A. Yes. They're trying to make a point, and they
13 repeat it and repeat it.

14 Q. Okay. So I -- I guess I phrased that badly. Is
15 that usual or unusual?

16 A. It's dependent on if they're telling the truth or
17 not.

18 Q. Okay. Are there times when somebody who has their
19 talking points, if you can get them off their talking
20 points, they might accidentally tell you the truth?

21 A. That is correct.

22 Q. Did you feel like that happened to you at times with
23 the Attorney General?

24 A. Yes. I believe so.

25 Q. And I have two specific instances that I want to

1 talk to you about. So we got to listen to a couple of
2 references to a man on the side of the road.

3 A. I'm sorry. I missed that again.

4 Q. Let's do this: I want to play for you two clips
5 from the second interview that you conducted with
6 Mr. Ravensborg.

7 (Video presentation.)

8 Q. (BY MR. VARGO) What I want to ask you is during
9 this phase of your investigation, your conversation with
10 Mr. Ravensborg, had he ever acknowledged that he was on
11 the shoulder?

12 A. Not until that point in time.

13 Q. And did it appear to you -- did he again then deny
14 it later?

15 A. Yes. He denied it later, but he actually said, Why
16 is he walking down the side of the road?

17 Q. And did you take that as something where he was
18 admitting something; maybe you had moved him off his
19 talking points a little bit?

20 A. That's correct.

21 Q. All right. So this next statement relates to the
22 what he saw prior to impact. Or prior to coming to a
23 stop, I should say.

24 (Video presentation.)

25 Q. (BY MR. VARGO) When somebody says "I never saw

1 anything until impact" what does that suggest to you?

2 A. He saw somebody at impact.

3 MR. VARGO: Let's play the second one, please.

4 (Video presentation.)

5 A. So in that incident he says that he did see him when
6 he turned around. He saw him. But then he caught
7 himself in that particular statement and tried to
8 downplay it or reverse it, if you will.

9 Q. So those would be instances where Mr. Ravensborg may
10 have been accidentally telling you the truth.

11 A. That is correct.

12 Q. I'd like to talk to you about some of the other
13 statements that he makes.

14 Special Agent, are there times when it is very
15 important to you to know not just what a defendant said
16 happened but maybe a little bit about what's going on in
17 their mind?

18 A. One more time, please.

19 Q. Are there times when you want to know not just what
20 they saw but what they were thinking?

21 A. Yes.

22 Q. And are there times when defendants use what they're
23 thinking to try to convince you that what they're telling
24 you is the truth?

25 A. That is correct.

1 Q. Okay. So I'd like to play for you -- it's actually
2 four different clips. And we'll do them one at a time
3 and let you comment on each of them where I believe that
4 you have said that you found that that is what was
5 happening here.

6 MR. VARGO: So if we would start with --
7 (Video presentation.)

8 Q. (BY MR. VARGO) So that basically has two
9 contentions in it, two assertions in it. One is that
10 he's a military man, and he would never leave a dead man
11 behind.

12 A. Yes, sir.

13 Q. And the second is that if he knew there was a man
14 that was hit, he would have demanded, "insisted upon" I
15 believe were his words, an immediate blood test or breath
16 test.

17 A. That is correct.

18 Q. When he found out the next morning that this was, in
19 fact, a man and that what was left by the side of the
20 road was the remains of a human being, did he leave that
21 man behind?

22 A. Yes, he did.

23 Q. Were there two of them standing there at that time?

24 A. There were two people standing there.

25 Q. They each had a car?

1 A. Each had a car.

2 Q. Each had a phone?

3 A. Each had a phone.

4 Q. He knew how to use his phone.

5 A. Correct.

6 Q. He's called 911 just 12 hours before.

7 A. That is correct.

8 Q. And yet he decided that the fastest way to find the
9 sheriff was to drive to his house, and neither of them
10 stayed behind.

11 A. That is correct. I'm unsure -- just to make a
12 clarification, I'm unsure if Bormann actually had his
13 phone with.

14 Q. But if Mr. Ravensborg is acting according to plan, he
15 has two phones with; right?

16 A. He has two phones with him. Correct.

17 Q. So we have at least two phones, probably three?

18 A. Quite likely.

19 Q. And the second assertion is that if he knew it was a
20 man, he would have insisted on a breathalyzer right away.

21 A. That is correct.

22 Q. Would have insisted on a drug test right away.

23 A. That is correct.

24 Q. And the next morning when he found out it was a man,
25 did he insist on a breathalyzer?

1 A. No, sir.

2 Q. Did he insist on a drug test?

3 A. No, sir.

4 (Video presentation.)

5 Q. (BY MR. VARGO) So that really has two parts that I
6 want to talk to you about. One is his expressed concern
7 was that they check the other side of the road.

8 A. Yes, sir.

9 Q. When he went back did he check the other side of the
10 road?

11 A. No, sir. They drove past that area to the gas
12 station, turned around, and came back to the north side
13 of the road.

14 Q. And the second one -- and we're going to get to a
15 few others of these, but we might as well do it now when
16 we've played the clip.

17 The second one is that he wanted to see if the deer
18 made it.

19 A. That's absurd because if the deer isn't there, how
20 do you know if it's alive or what it is; so it's just an
21 absurd statement.

22 (Video presentation.)

23 Q. (BY MR. VARGO) So this time he's telling you that
24 he went back because the debris was there and it might be
25 a problem for some other driver. Or at least that's the

1 implication; right?

2 A. That is my belief.

3 Q. First off, the debris is on the shoulder?

4 A. Yes.

5 Q. The rest of us who are driving down the lane of
6 traffic, that shouldn't be a particular problem?

7 A. No, sir.

8 Q. From his description, though, of where he parked and
9 where he walked before he saw Mr. Boever, did Attorney
10 General Ravensborg acknowledge that he had gone past the
11 debris?

12 A. Yes, sir.

13 Q. And consistent with his statement and his worry that
14 this debris was a danger to somebody else, did he pick it
15 up and throw it into his trunk?

16 A. No, sir.

17 Q. Did he kick it into the ditch where it might be a
18 problem for the lawn mower but probably not for anything
19 else?

20 A. No, sir.

21 Q. Never touched it.

22 A. No.

23 Q. And that's even before he knew that this was a crime
24 scene. Or before he acknowledges knowing that this is a
25 crime scene.

1 A. That's correct.

2 (Video presentation.)

3 Q. (BY MR. VARGO) You ever hit a deer, Special Agent
4 Rummel?

5 A. Yes, sir.

6 Q. Single digits still or double digits?

7 A. Single digits.

8 Q. Okay. You ever have anybody tell you that they had
9 to put their mind at ease about how they hit a deer?

10 A. Other than Jason Ravensborg, no.

11 Q. One other type of untruthfulness that I'd like you
12 to focus in on. Were there certain statements that he
13 made to you that you deemed so absurd that they just put
14 in doubt basically everything else that he said?

15 A. The not using his cell phone was the start of it,
16 that due to the fact that most people use their cell
17 phone.

18 Q. Mic.

19 A. I said the fact that he said he doesn't ever use his
20 cell phone and that he's in the middle of the road. From
21 the initial investigation at the scene, we knew that it
22 was not in the middle of the road.

23 Q. So that kind of set the tone. Were there other
24 individual statements, though, that even standing alone,
25 without reference to the physical evidence or the witness

1 statements of others or all the other investigation that
2 you put together, so deeply made no sense to you?

3 I'll tell you what. Why don't I play some clips,
4 and then you can comment on each of them.

5 (Video presentation.)

6 Q. (BY MR. VARGO) The suggestion is that because the
7 family has already suffered a tragedy, it would be the
8 wrong time to offer condolences for this tragedy?

9 A. Yes, sir.

10 Q. You ever had somebody tell you something like that
11 before?

12 A. No, sir.

13 Q. Did it feel to you more like this was he was trying
14 to convince himself that it was okay not to contact the
15 family?

16 A. That is my belief.

17 (Video presentation.)

18 Q. (BY MR. VARGO) So is this sort of part of your
19 conversation about phone use?

20 A. Yes, it is.

21 Q. And, specifically, he's gone from the I don't use it
22 for anything except phone calls to the I used it for
23 something; right?

24 A. That is correct. Yes.

25 Q. But at this point he's now saying he looks at it for

1 the time?

2 A. That is what he's saying he's looking at it for is
3 just the time, which he opens it to see the time, which
4 actually makes the time smaller. So --

5 Q. When was the last car you were in that didn't have a
6 clock radio in it?

7 A. I think I had a '73 Chevy pickup that did not.

8 Q. All right. One more for you, Agent Rummel.

9 (Video presentation.)

10 Q. (BY MR. VARGO) So here Mr. Ravensborg's basically
11 suggesting to you that he wouldn't use his phone in the
12 car because he knows it's the law?

13 A. Yes, sir. That is correct.

14 Q. From your investigation, though, did he use the
15 phone before the crash?

16 A. Yes, he did.

17 Q. Did he use the phone after the crash?

18 A. Yes, he did.

19 Q. So whether -- is it only the law within a mile of
20 Highmore?

21 A. That is what he's portraying there, but it's still
22 the law even then.

23 Q. So, Special Agent Rummel, I want to finish up by
24 talking to you about your supervisory role. In the
25 course of supervising agents, are you occasionally called

1 upon to judge whether they've done a good job or not?

2 A. Yes, I am.

3 Q. And, specifically, is there something that we refer
4 to in the business as Giglio? Do you know what that is?

5 A. Yes, sir. I do. That's a U.S. Supreme Court
6 Decision.

7 Q. Okay. And for ease of translation, let me just say
8 Giglio is a law that requires -- or case that requires us
9 if a law enforcement officer has been found to be
10 untruthful, that agency has to turn that information over
11 to the prosecutor, and the prosecutor has to turn it over
12 to the defense.

13 If an agent under your control, sir, had any level
14 of administrative finding about being untruthful as it
15 related to a criminal case, would they be subject to that
16 Giglio rule?

17 A. Yes, they would. They would be --

18 Q. What would the practical effect be on their career?

19 A. It would end at that point in time.

20 Q. Why is that?

21 A. Because they are no longer useful in the court of
22 law. They're not trustworthy. And you have to release
23 that information to the defense. And, with that, you're
24 not able to continue in your position.

25 Q. And would that qualify whether you were a rookie

1 patrol officer or the director of BCI?

2 A. That is correct. Everybody has the same rule.

3 MR. VARGO: I believe that's all the questions I
4 have for you, Special Agent. Thank you, sir.

5 THE WITNESS: Thank you.

6 PRESIDENT RHODEN: Mr. Butler, cross-examine.

7 CROSS-EXAMINATION

8 BY MR. BUTLER:

9 Q. Is everything that you've been testifying about here
10 today contained in your reports?

11 A. No, sir.

12 Q. What is not contained in your reports that you've
13 testified to?

14 A. Are you speaking specifically about my reports or --

15 Q. Your reports.

16 A. -- or the team reports?

17 Q. Your reports.

18 A. There's a lot of things that are not in my report.

19 Q. Well, let's go back again because you've testified
20 to quite a few opinions, particularly regarding the
21 truthfulness of the Attorney General.

22 Are your opinions contained, with regard to
23 Mr. Ravensborg, in your reports?

24 A. No, sir.

25 Q. These opinions that you're now expressing, did you

1 have them then and choose not to put them in your
2 reports?

3 A. I am the supervisor so I don't usually -- the case
4 agent is the one that does the reports of record, for the
5 most part.

6 Q. Let me go back. The opinions that you have been
7 expressing here to the State Senate regarding all the
8 various reasons you question the credibility of the
9 Attorney General, can you identify where those are
10 contained in reports authored by you?

11 A. They aren't in the reports.

12 Q. When did you arrive at these various opinions
13 regarding the credibility of the Attorney General?

14 A. As we were working on the case, I made those
15 opinions throughout the investigation of the case.

16 Q. But I want to know why they're not in your reports.
17 This is something that you would need to disclose if you
18 held those opinions, is it not?

19 A. We don't generally put opinions in our reports.

20 Q. Well, you're testifying to them here today, are you
21 not?

22 A. Yes.

23 Q. But you kept them to yourself. That is your
24 testimony.

25 A. No. I've shared them with the House, as well as

1 here today, as well as the other people involved.

2 Q. For example, having testified to these opinions but
3 not disclose them in your reports, would it be something
4 that you would be permitted to testify to in a court of
5 law?

6 MR. VARGO: Objection as to relevance. This is
7 not a court of law. I don't believe there's any
8 comparison that needs to be drawn or is fruitful to be
9 drawn.

10 PRESIDENT RHODEN: Objection's overruled. You
11 may answer.

12 A. Could you repeat the question, please.

13 Q. Not having disclosed any of the opinions that you've
14 been testifying to today, would you be permitted to
15 testify to those opinions in a court of law?

16 A. I believe I would.

17 Q. Okay. Are you allowed typically to give your
18 opinion on the credibility of a witness in a court of
19 law?

20 A. Sometimes.

21 Q. Okay. And sometimes are you not allowed to give
22 that opinion?

23 A. Yes. I'm sure there are times that that would
24 apply.

25 Q. And part of the reason I'm asking is is a great deal

1 of what you're testifying about here today I'm hearing
2 for the first time. I've never seen a word about a
3 number of these opinions that you now express, and that
4 concerns me. Do you understand why?

5 A. No, sir.

6 Q. You don't understand?

7 A. If you read the reports, they would intermingle, and
8 you would know that there was some problems with the
9 truthfulness.

10 Q. Okay. I'm supposed to guess, rather than hear it
11 directly from you?

12 A. You heard it from me today.

13 Q. Okay. How many traffic fatalities have you
14 investigated in your career?

15 A. Maybe three.

16 Q. The interviews that you've referred to here today,
17 the findings of accident reconstruction, findings of the
18 telephone forensics, everything that was done, have you
19 reviewed it?

20 A. Yes, sir.

21 Q. And it was turned over to our state prosecutors?

22 A. I believe so.

23 Q. Did you have conversations with our state
24 prosecutors?

25 A. Yes, I did.

1 Q. Did you express opinions to them about the Attorney
2 General that are not in your reports?

3 A. Yes.

4 Q. So they're aware of much of what you were saying
5 here today?

6 A. Yes. A portion of it at least.

7 Q. And despite being aware of them, and everything
8 contained in your reports, the charges here were leaving
9 the lane of travel and distracted driving, which are
10 Class 2 misdemeanor offenses in the state of South
11 Dakota; is that correct?

12 A. I believe that's correct.

13 Q. You were aware that your -- I guess the Bureau of
14 Criminal Investigation interviewed Sheriff Volek.

15 A. Did you say our bureau?

16 Q. Yes.

17 A. That is correct.

18 Q. And did he inform your investigators that he would
19 have walked right past the location of where Mr. Boever
20 was found the next day?

21 A. I don't believe so.

22 Q. BCI interviewed Sheriff Volek and was given the
23 following information -- and I'll skip down to the part
24 I'm referring to -- "The sheriff states he would have
25 walked past Mr. Boever's body to get to the flashlight."

1 Does that refresh your memory?

2 A. I believe that was us that was saying that.

3 Q. You believe what?

4 A. It was us that told him that --

5 Q. Are you familiar with this report?

6 PRESIDENT RHODEN: Probably get on your mic a
7 little better.

8 THE WITNESS: Maybe like this? Is that better?
9 Is this better? Let's try it? Okay. I'm sorry.

10 Q. Assuming your officers took down correctly what he
11 said, does what I read to you help refresh your memory?

12 A. I believe that it was one of us that actually said
13 that.

14 Q. "The sheriff states he would have walked past
15 Mr. Boever's body to get to the flashlight."

16 A. I don't recall seeing that.

17 Q. Okay. Well, now that I've read it to you, and it
18 does come from the official investigation which you
19 headed up, how do you explain that he did not see the
20 body?

21 A. The sheriff?

22 Q. Correct.

23 A. Because he said he didn't go to the light. He did
24 not go to the light that was on the side of the road. He
25 saw it but didn't go to it. He thought it was part of

1 the car.

2 Q. He says he would have walked past Mr. Boever, and my
3 question to you is how do you explain he did not see
4 Mr. Boever's body?

5 A. I don't believe he walked past it.

6 Q. So you are saying either the person who wrote the
7 report or Sheriff Volek is not being accurate or
8 truthful?

9 A. I'm not sure. But I am sure that he did not walk to
10 the light.

11 Q. Tell me why you're sure of it.

12 A. Because I was in those interviews.

13 Q. I'm sorry. Say it again.

14 A. I was in those interviews.

15 Q. Okay. Do you know why it would be contained in a
16 report of BCI interview of Sheriff Volek?

17 A. It may have been a misunderstanding or something.
18 I'm not sure.

19 Q. Or maybe you're the one that's misunderstanding.
20 That's a possibility as well, is it not?

21 A. No. I was in those interviews. I know he said he
22 didn't go to that light.

23 Q. The photographs that you made available -- or that I
24 should say the prosecution made available for Senate
25 members to look at, what time of day were they taken, the

1 pictures of Mr. Boever's body?

2 A. Estimating, around 6 o'clock in the evening.

3 Q. Okay. What was the lighting outside at that time?

4 A. It was daylight. It was bright.

5 Q. Okay. And so there was not an attempt -- and I
6 understand why not, but there was not an attempt to
7 replicate what the Attorney General was seeing that night
8 under the conditions that he saw them.

9 A. That is correct. We removed the body to the funeral
10 home prior to that -- to darkness because we needed to
11 complete our crime scene.

12 Q. Earlier you -- there was a diagram, I believe,
13 charting GPS points taken from the phone or something
14 like that. Do you know what I'm talking about?

15 A. There were several of them.

16 Q. I want to know from that data that was provided from
17 the cell phone, how close was Mr. Ravensborg to Mr. Boever
18 that night?

19 A. Within I believe it was 12 meters.

20 Q. And that's from the cell phone data?

21 A. I believe so.

22 Q. Okay. And at that point in time his phone was
23 positioned how? Cell phone light.

24 A. He said he was scanning the -- like this
25 (indicating).

1 Q. And Mr. Boever was in the ditch, and that was a
2 slope away from the road; correct?

3 A. That is correct.

4 Q. How many times did you yourself speak with
5 Sheriff Volek?

6 A. Three times.

7 Q. Three times?

8 A. I believe so.

9 Q. Okay. Did you find him to be credible?

10 A. Yes.

11 Q. With regard to the cell phone data that was
12 obtained, was the Attorney General on his telephone at
13 the time of the collision?

14 A. No, sir. We could not prove that.

15 Q. So your answer is no?

16 A. That is correct.

17 Q. When you were meeting with the Attorney General on
18 the second occasion, and that would be the 30th of
19 September, in that interview you indicated to him that
20 you knew he was on his cell phone at the time of the
21 collision, or words to that effect, didn't you?

22 A. Yes. I believe so.

23 Q. And he insisted that that was not the case.

24 A. Yes.

25 Q. And you insisted that it was.

1 A. That was my belief, yes.

2 Q. And you believed what you were saying, no doubt.

3 A. As -- what's the question again?

4 Q. You believed what you were saying to him in that
5 interview, the second interview when you told him he was
6 on his cell phone at the time of the collision, you
7 believed that.

8 A. That it was likely that he was on his phone, yes.

9 Q. Okay. And the subsequent analysis done of the phone
10 proved you to be incorrect and the Attorney General to be
11 correct.

12 A. That is correct.

13 Q. And were you as sure about yourself on that occasion
14 as you are sure -- as sure of yourself today regarding
15 the supposition about the Attorney General's credibility?

16 A. Am I as certain about his credibility?

17 Q. You were certain of yourself in that second
18 interview, and you were proven to be wrong. Today you
19 testified again with a certain level of certitude. Why
20 wouldn't you be wrong this time as well?

21 A. Because we have more evidence since then.

22 Q. Say that again.

23 A. We have additional information and the totality of
24 all the situation.

25 Q. What does this additional information prove?

1 For example, you were speculating as to his state of
2 mind after he struck the body and it took him longer than
3 you think it should have to stop his car. You were up
4 here speculating as to what must have been going through
5 his mind at the time.

6 What is the additional information that informs that
7 opinion?

8 A. The time frame, that it's broken down into seconds
9 from the collision and the speed all put together in the
10 total case.

11 Q. How does that help you understand the Attorney
12 General's state of mind within a second after the
13 collision?

14 A. It's just mere deduction and evidence.

15 Q. Okay. So what is the evidence that supports your
16 opinions as to what he was thinking?

17 A. So if somebody is in a crash and they say that they
18 slam on the brakes, they stop that car within a short
19 distance of time. That is what he told us. That wasn't
20 the truth. He went for a longer -- way longer period of
21 time, which indicates to me that he had other thoughts
22 going through his mind at that time.

23 Q. What was the answer or explanation that he gave for
24 why it took him longer than you thought appropriate to
25 stop his vehicle?

1 A. He said he was pumping his brakes and trying to save
2 his own life.

3 Q. He said he was tapping on the brakes, that he had
4 learned while in the military, that that would keep the
5 vehicle from probably potentially sliding out of control
6 or words to that effect. That is what he explained to
7 you.

8 A. That's incorrect. He said he was slamming the
9 brakes or hammering the brakes.

10 Q. You don't think he used the word "tapping" on them?

11 A. I don't believe so.

12 Q. Okay. And what was wrong with that explanation?

13 A. I'm sorry?

14 Q. Is there a problem with that explanation?

15 A. With anti-lock brakes if you slam on the brakes,
16 your car stops faster.

17 Q. We'll see if we can find it. I believe his words
18 that he were -- was tapping, but he came to a slower stop
19 than I guess your studies or somebody's studies would
20 have shown panic braking would have led him to do.

21 After the charging decisions were made in this case,
22 did you call and express your opposition to those charges
23 to Michael Moore or Emily Sovell as the two state
24 prosecutors?

25 A. No, sir. I did not.

1 Q. And in the years that you've been conducting
2 investigations, typically your role is to investigate,
3 and then ultimately prosecutors make the decisions as to
4 what offenses they believe have been shown by the
5 evidence.

6 Is that a fair statement?

7 A. In the state of North Dakota it would be something
8 comparable but we're in South Dakota and I'm not aware of
9 all the South Dakota laws that pertain to this. If this
10 event happened in North Dakota, it would have been a
11 felony.

12 Q. Well, let's go back to South Dakota, and we have
13 South Dakota prosecutors who got your information.

14 A. Yes, sir.

15 Q. And they made the decisions they thought were
16 appropriate. And without regard to what you say would or
17 would not have happened in North Dakota, you do have to
18 accept their decisions, don't you?

19 A. Yes.

20 Q. You're not questioning their competency as
21 prosecutors, are you?

22 A. I did not.

23 Q. Had you ever met Jason Ravensborg before you
24 interviewed him?

25 A. No, sir. I had never met him. Did not know him.

1 Q. Do you know anything about him?

2 A. No. I don't know anything about him other than what
3 I've learned through this investigation.

4 Q. Okay. And part of the reason I ask that question is
5 if a person had known they had killed a human being and
6 wanted to cover it up, don't you suppose they would have
7 gone about it just a bit differently than the manner in
8 which you have described here?

9 A. Not necessarily.

10 Q. Was it just sheer luck that the sheriff didn't see
11 the body?

12 A. In regards to the sheriff, he's obviously deceased
13 now. He was 70 years old. And I don't think he did a
14 complete investigation. That's my thoughts on the
15 sheriff.

16 Q. So he avoided that problem.

17 And then coming back the next day and finding the
18 body. And then I believe you were asked about two people
19 with cell phones and both going to the sheriff to report
20 what they had found, and you found that to be an odd
21 thing or unusual?

22 A. The fact that one didn't stay because he's a
23 military man and would never leave him behind, the fact
24 that they both left him behind and went to the sheriff.

25 Q. And from that you infer a guilty conscience or a

1 guilty mind on his part?

2 A. It's just a statement that he said he would never do
3 and did.

4 Q. And from that you then infer what?

5 A. Another incidence of not being truthful.

6 Q. Okay.

7 So could you tell me again what it is that he said
8 with regard to the brakes? As far as your recollection
9 goes, what did he say as to how he worked the brakes
10 following the collision?

11 A. I believe he said he slammed or hammered the brakes,
12 something to that -- I don't remember the exact words,
13 but I don't believe it was "tap."

14 Q. But you're part right. He said he was pumping the
15 brakes.

16 A. He was also demonstrating at that time. He was
17 hitting his knee and showing that maneuver.

18 Q. And he said he pumped the brakes. Are you denying
19 that?

20 A. No. He did say he pumped the brakes.

21 Q. And in looking at the transcript, I do see that you
22 said slammed the brakes, but he is saying he pumped the
23 brakes. Maybe it's a tomato-tomahto comparison. But
24 it's different than you describe it.

25 MR. BUTLER: I don't have any additional

1 questions. Thank you.

2 PRESIDENT RHODEN: Thank you.

3 Redirect, Mr. Vargo.

4 MR. VARGO: Thank you, Mr. President.

5 Mr. President, I'd like to start by asking
6 Mr. Butler if I could borrow the copy of the report to
7 which he was referring to Sheriff Volek's statements or
8 at least a reference so that Special Agent Rummel can see
9 it in context.

10 PRESIDENT RHODEN: Mr. Butler, can you identify
11 to us what the name of the document is so we can enter
12 that into the record?

13 Mr. Vargo, can you identify this document we're
14 talking about?

15 MR. VARGO: Certainly. As best I can. These
16 are ones that the defense Bates-stamped; so I don't know
17 what their original references are.

18 It is Ravensborg documents 93 and 95, presumably,
19 Mr. Butler, from the Bates-stamped version that you
20 submitted?

21 MR. BUTLER: These would be my Bates-stamped
22 numbers but it also has, I think, report page numbers,
23 and it does reference the investigative entity as well.

24 MR. VARGO: I'm sure it does. It doesn't
25 necessarily on every page so...

1 PRESIDENT RHODEN: Please proceed.

2 REDIRECT EXAMINATION

3 BY MR. VARGO:

4 Q. So let's start there if we could, Special Agent
5 Rummel. So in both of those documents is the sheriff's
6 reference to walking past the flashlight, not walking
7 past the piece of debris?

8 (Witness examines documents.)

9 A. I'm sorry. Could you ask the question again,
10 please.

11 Q. Let me put it this way: The flashlight is found
12 significantly further east to the area of impact than is
13 the piece of debris; is that correct?

14 A. That is correct.

15 Q. So if, in fact, the sheriff had walked up to the
16 flashlight, that would have meant that he walked past
17 Mr. Boever's body; is that correct?

18 A. That is correct.

19 Q. The sheriff at least on one occasion denied that he
20 walked up to the flashlight; is that correct?

21 A. Yes, sir.

22 Q. And, specifically, he said he thought that the
23 flashlight was the headlight of Mr. Ravensborg's vehicle
24 which had been knocked out and was somehow still
25 functioning?

1 A. That is accurate.

2 Q. From Mr. Ravensborg's second interview -- I want to
3 quote you something just so we can see if we can reach
4 some form of consensus on exact language -- do you recall
5 Mr. Ravensborg saying, "I remember hitting it and letting
6 off, hitting it and letting off, hitting it, you know. I
7 don't know if it was three or four times or I don't
8 know"?

9 A. Yes.

10 Q. Do you remember him saying that to you?

11 A. Yes. Now that it's read to me.

12 Q. And his explanation as we go further is that, "If
13 you slam it, you can spin yourself or go in a ditch or
14 roll over or something is I guess what I knew. That's
15 why I hit hard but not to the floor."

16 Do you remember that?

17 A. Yes, sir.

18 Q. Now does he explain at any point why it would be
19 that he would spin out at 12 miles an hour?

20 A. No, he does not.

21 PRESIDENT RHODEN: Mr. Vargo, for the benefit of
22 members, when referring to the report could you give a
23 page number?

24 MR. VARGO: The truth is probably not because I
25 don't believe that these are numbered. We can find it,

1 and I will make the reference shortly.

2 But I do believe that's all the questions I have
3 on redirect. Thank you, Special Agent Rummel.

4 PRESIDENT RHODEN: Any further witnesses,
5 Mr. Vargo?

6 MR. VARGO: Mr. President, the Prosecution
7 rests.

8 PRESIDENT RHODEN: Mr. Butler, you may present
9 the Respondent's case.

10 MR. BUTLER: Mr. President, we have no witnesses
11 to present; so we rest.

12 PRESIDENT RHODEN: The Respondent rests.

13 MR. VARGO: Mr. President, per your previous
14 question, pages 96 and 97 are the source of those
15 particular quotes about braking.

16 PRESIDENT RHODEN: 96 and 97. Thank you,
17 Mr. Vargo.

18 The Respondent rests.

19 Being all right with the members, or whether it
20 is or not, we will take a 15-minute recess. 15 minutes.

21 (A short recess is taken.)

22 PRESIDENT RHODEN: The Senate will return to
23 order.

24 We are now in the question phase of the trial.
25 I've had the Senators -- thank you for submitting your

1 questions. Some of these questions to me are a little
2 confusing so I've decided to have the members who wrote
3 the questions ask them personally. So I'll go down the
4 list, and you can stand, key up your mics, and state your
5 question for the appropriate party.

6 With that, we will start with Senator Wheeler.
7 I believe you have a question.

8 SENATOR WHEELER: Thank you, Mr. President.

9 My first question is directed to the Prosecution
10 in general. The Articles of Impeachment for the first
11 article specify crimes and mention a few statutory crimes
12 but don't necessarily charge out a specific crime that
13 we're asked to sustain on.

14 I'm asking you, is the Prosecution asking us to
15 sustain that article based upon any particular crimes?

16 MS. TRACY: The Prosecution would believe that
17 any of the crimes leading up to the -- involving the
18 death of Joe Boever, I think it would be most prudent to
19 consider the crimes that were actually charged and so
20 would refer the Senate to Count II, improper lane
21 driving, that was specifically mentioned in the articles.

22 And I think it would be appropriate to consider
23 Count III, careless driving, that he was originally
24 charged with as well. This is not a criminal burden of
25 proof, and I think that whether that was pled out or as

1 part of a plea agreement or a burden of proof matter is
2 not pertinent to these proceedings and could still be
3 considered.

4 PRESIDENT RHODEN: Senator Wheeler.

5 SENATOR WHEELER: Thank you.

6 I did want to ask a question of one witness,
7 Joe Arenz. Joe Arenz.

8 PRESIDENT RHODEN: Joe. Mr. Arenz, could you
9 come in. We have a question for a witness.

10 Senator Wheeler, would you state your question,
11 please.

12 SENATOR WHEELER: Thank you.

13 PRESIDENT RHODEN: And we would remind the
14 witness that you are still under oath.

15 Senator Wheeler.

16 SENATOR WHEELER: My question gets to this
17 further issue of whether the sheriff walked by the area
18 in which the body would have been located. We already
19 heard some testimony on that specifically. But I believe
20 you were also in those interviews with Sheriff Volek, and
21 because he is no longer here to testify, I want to ask
22 you specifically based upon your recollection of what the
23 sheriff said, would he have walked directly by the area
24 where the body was located?

25 WITNESS ARENZ: My recollection of what he said

1 is that he did not walk by that but that if he had went
2 to the flashlight, he would have walked by it. But that
3 he didn't -- he never went and checked the flashlight.

4 PRESIDENT RHODEN: Senator Wheeler.

5 SENATOR WHEELER: Thank you. That's all the
6 questions I have for the witness.

7 My third and last question --

8 PRESIDENT RHODEN: You're dismissed. Thank you.

9 (The witness is excused.)

10 SENATOR WHEELER: -- goes to the Respondent.

11 And I would ask the Respondent to -- at the time of the
12 crash how far into the shoulder was your vehicle?

13 MR. BUTLER: I don't know. I would agree that
14 there were at least two wheels on the shoulder and
15 possibly four. I would go with what Mr. Moore when he
16 appeared before the committee said, which is that there's
17 an area or an approximation or some discretion in the
18 judgment with regard to accident reconstruction.

19 So was he on the shoulder of the road? Yes.
20 How far? I don't know.

21 SENATOR WHEELER: That's all I have.

22 PRESIDENT RHODEN: Thank you. Are you finished,
23 Senator Wheeler?

24 SENATOR WHEELER: I am. Thank you.

25 PRESIDENT RHODEN: Thank you. We will move to

1 Senator Otten. You had a couple of questions, Senator
2 Otten. You have the floor.

3 SENATOR OTTEN: Thank you, Mr. President.

4 The first one is for any one of the
5 investigators. My question is is when the Attorney
6 General retrieved his insurance card from the glove box
7 were the interior lights of the car working?

8 If unknown, were the lights observed to be
9 working or not at any other time during the
10 investigation?

11 MS. TRACY: I believe that Joe Arenz is --

12 PRESIDENT RHODEN: Microphone on.

13 MS. TRACY: Mr. Arenz is probably the best.

14 PRESIDENT RHODEN: Mr. Arenz, did you hear the
15 question?

16 You're under oath. Just a reminder, you're
17 still under oath. Would you like to have the question
18 repeated?

19 WITNESS RUMMEL: Yes, please.

20 PRESIDENT RHODEN: Senator Otten.

21 SENATOR OTTEN: My question is is so when the
22 Attorney General retrieved his insurance card from the
23 glove box were the interior lights working? And if
24 unknown, were the interior lights observed to be working
25 or not at any other time during the investigation?

1 WITNESS RUMMEL: So at the time that he removed
2 the insurance card it is not known. We don't have any
3 idea. As far as the next -- or the day after -- two days
4 later when we examined the car, I believe it was on. Am
5 I absolutely certain? I am not.

6 PRESIDENT RHODEN: Senator Otten.

7 SENATOR OTTEN: That would be my last question
8 for the investigators.

9 Do you want me to proceed to my next?

10 PRESIDENT RHODEN: You're dismissed. You're
11 dismissed. Thank you.

12 (The witness is excused.)

13 SENATOR OTTEN: This question would go to -- and
14 it's a two-part question to the defense. Actually more
15 than two parts.

16 So my first question is how many Lincoln Day
17 Dinners approximately does the Attorney General think he
18 attended in 2021?

19 MR. BUTLER: Sir, could you repeat that? I
20 wasn't sure I heard it.

21 PRESIDENT RHODEN: Would you repeat the
22 question.

23 SENATOR OTTEN: How many Lincoln Day Dinners
24 approximately does the Attorney General believe he
25 attended in 2021?

1 MR. BUTLER: Zero in '21.

2 SENATOR OTTEN: Mr. President, was he not
3 attending a Lincoln Day Dinner in 2021 that he was coming
4 back from?

5 Or 2020. I'm sorry. So my question is 2020.
6 My apologies.

7 MR. BUTLER: In 2020, approximately 10.

8 SENATOR OTTEN: Okay. Follow-up on that is so
9 is the Attorney General saying he attends these and other
10 events as a citizen and not as a function of being the
11 Attorney General?

12 MR. BUTLER: I'm not sure how to answer that
13 question. I mean, he's obviously the Attorney General.
14 But he's going like everyone here goes to political
15 events in their off hours. And I think that's the answer
16 I would stand with. I mean, in terms -- I'm not sure --
17 I want to be sure I'm responding to your question. Okay.

18 Ask it again, would you?

19 SENATOR OTTEN: Is the Attorney General stating
20 he attends these and other events as a citizen and not as
21 a function of the Attorney General?

22 Parts of the Articles of Impeachment and what's
23 been in question is whether the Attorney General was
24 actually performing a function of the Office of the
25 Attorney General. So it goes to that.

1 MR. BUTLER: Well, one, he was not performing
2 the functions -- official functions of his office as
3 Attorney General by attending a political event.

4 And I'd probably stay right there with that.
5 Otherwise, you get into the position where once elected
6 until out of office you are in office. And I don't think
7 there's any support in the Constitution. And I think, as
8 Mr. Garber said earlier, that is a meaningful
9 distinction. But there is not the in-office performance
10 of duties taking place when he went to Redfield.

11 SENATOR OTTEN: Mr. President.

12 PRESIDENT RHODEN: Senator Otten.

13 SENATOR OTTEN: Does the Prosecution have a
14 response to that also?

15 MS. TRACY: The Prosecution would reference the
16 Senators to the Attorney General's own statements in the
17 recorded interviews that he is always on as Attorney
18 General, that he possesses his work cell phone with him
19 at all times.

20 The Prosecution is not familiar with a
21 prosecutor in this state who does not anticipate being
22 contacted for work events and is not familiar with off
23 hours for the job. So, yes, the Prosecution believes
24 certainly at the time it's part of his constantly
25 presenting himself as the Attorney General, and I think

1 in that function it's appropriate.

2 Beyond that, the malfeasance that comes
3 afterwards he certainly is acting in his capacity as he
4 answers questions and utilizes that title.

5 PRESIDENT RHODEN: Senator Otten.

6 SENATOR OTTEN: Thank you, Mr. President.

7 This is a question out of curiosity also, I
8 guess. So if the Attorney General was attending the
9 Lincoln Day Dinner as Attorney General but personally,
10 why was he using the state phone for personal use instead
11 of his own personal phone that he had with him?

12 PRESIDENT RHODEN: Who do you wish to direct
13 that question to, Senator Otten?

14 SENATOR OTTEN: To the defense, Mr. President.
15 And then a response from the Prosecution.

16 MR. BUTLER: I don't know that I have an answer
17 for that, per se. He does have a work phone. He has a
18 personal phone. And he's indicated to me at times he
19 does use his work phone on, like, for example, here
20 calling his father. I would characterize it as an
21 innocent act, not something malevolent, evil, or illegal.
22 An innocent act.

23 PRESIDENT RHODEN: Thank you.

24 Next question, Senator Otten.

25 SENATOR OTTEN: Thank you, Mr. President.

1 Is there a response from the Prosecution to that
2 question and answer also? Thank you.

3 MS. TRACY: The Prosecution's response, Senator,
4 would be that he gets paid to not utilize his personal
5 cell phone. I think that's one of the practical reasons
6 with the OnMyWay app that he's not utilizing it but would
7 certainly believe that use of that state cell phone
8 further underscores that he is still serving in his
9 capacity.

10 Thank you.

11 PRESIDENT RHODEN: Thank you.

12 We will move on to Senator Sutton. I believe
13 you have a question.

14 SENATOR SUTTON: Thank you, Mr. President.

15 Actually I have several to the defense. And my
16 first question is to the Attorney General. What made you
17 decide to call 911 first and not a tow truck if you
18 thought you hit a deer?

19 MR. BUTLER: The Attorney General did not
20 testify here. And it strikes me a little bit as what's
21 happening is I'm going back and asking him questions that
22 he otherwise would have answered had he testified. And I
23 don't say that lightly because it makes me the fall guy
24 that I have no desire to be.

25 He called 911. As to what else -- what his

1 thought processes were beyond that, I just can't answer.

2 SENATOR SUTTON: My second question --

3 PRESIDENT RHODEN: Senator Sutton. I believe --
4 did you submit to me two questions?

5 SENATOR SUTTON: Yes, sir.

6 PRESIDENT RHODEN: Okay.

7 SENATOR SUTTON: So my second question is how
8 long was the initial search by the Attorney General and
9 Sheriff Volek after the crash?

10 MR. BUTLER: You know, I'm not sure that part of
11 it is well documented as to how long they searched
12 themselves. But I would say it's fair to say probably
13 not more than 15 minutes. Maybe less, a little bit less.

14 You have the call to 911. Sheriff Volek
15 arrives. He has a conversation with the Attorney
16 General. I think at that point they both believed it was
17 a deer. Sheriff Volek indicated he saw nothing unusual
18 at that point about the Attorney General's behavior, but
19 they did go up the road and look. As to how many times,
20 I can't say because it's not clear in the reports.

21 SENATOR SUTTON: That's all, Mr. President.

22 PRESIDENT RHODEN: Thank you.

23 And, as a reminder, I was going to ask these
24 questions presented to you from the -- from the podium.
25 I thought it was a better idea to allow you to state your

1 questions so you can explain it if there's questions
2 about the questions. But it remains in -- the request
3 is, the requirement is that the questions -- all
4 questions from the members be submitted to me in writing.

5 So, with that, we will move on to Senator
6 Kolbeck.

7 SENATOR KOLBECK: Thank you, Mr. President.

8 I would like to direct this question to
9 Mr. Rummel.

10 PRESIDENT RHODEN: Please --

11 WITNESS RUMMEL: I did not hear the question.

12 PRESIDENT RHODEN: Remind you, you're under
13 oath. You remain under oath.

14 WITNESS RUMMEL: Yes, sir.

15 SENATOR KOLBECK: Thank you.

16 The question I have is do you know what time the
17 sunrise was on September 30, 2020? Approximate time.

18 WITNESS RUMMEL: I do not.

19 SENATOR KOLBECK: I researched it, and sunrise
20 was at 7:19 a.m. And I believe if I researched it
21 correctly, it was a sunny day.

22 The body was not discovered until sometime after
23 9 a.m. that morning. So my question is -- and there's
24 been a lot of talk about traffic driving by the scene of
25 that accident. My question is if the body as we heard

1 was lying only less than 3 feet off the shoulder of the
2 road, how come a driver of a vehicle, a car or a semi
3 driver -- and I'm sure there was traffic -- did not
4 discover that body prior to it being found almost two
5 hours after sunrise?

6 So how much more difficult would it be to see
7 the body at night by walking the side of the road versus
8 the two hours the sunlight that we had that morning of
9 September 13, 2020?

10 WITNESS RUMMEL: So I would say for one thing at
11 65 miles an hour it would be much more difficult to see
12 an item in the ditch versus walking by at 2 miles an
13 hour, 3 miles an hour. So that would be the logic part
14 of it.

15 As far as driving by at 65 miles an hour, there
16 are things in the ditch that you just don't see. And
17 it's -- it's not -- as you all well know, it's not a
18 complete man. There's pieces missing. So, with that, it
19 would be so much easier to see it walking versus driving
20 at 60, 65 miles an hour.

21 Does that answer your question, sir?

22 SENATOR SUTTON: Yes. I can understand that.
23 But you also gave testimony that Mr. Boever was wearing
24 blue jeans and a dark shirt and that most of that had
25 been removed from his body following the collision and

1 that his body was totally white or completely white, as
2 we saw in those pictures.

3 And so, therefore, my question would just kind
4 of be relevant to the fact that if that was the case, and
5 you testified that that was the way the incident was at
6 that accident scene, that his body would not have been
7 seen by some motorist prior to 9:00, 9:30 a.m. on
8 September 13.

9 Thank you.

10 WITNESS RUMMEL: Was that a question, sir? Or
11 was that just a statement?

12 SENATOR SUTTON: Sorry. Question would be is
13 how come that -- because of your description of the way
14 the body was and the color of the body, that that would
15 not have been seen even at 65 miles an hour?

16 WITNESS RUMMEL: During the daylight there's
17 more light everywhere compared to at night where the
18 color of the grass is absorbing what light there is
19 versus the whiteness of the body that is reflective.

20 PRESIDENT RHODEN: Thank you, sir. You're
21 dismissed.

22 (The witness is excused.)

23 PRESIDENT RHODEN: Senator Schoenbeck, you have
24 a question?

25 SENATOR SCHOENBECK: Thank you, Mr. President.

1 I would direct this to the Respondents based on
2 a couple of comments that were made.

3 Does the Attorney General believe that he has a
4 constitutional right against self-incrimination in an
5 impeachment proceeding?

6 MR. BUTLER: We chose not to call him as a
7 witness. I'm not prepared to go any farther than that.

8 PRESIDENT RHODEN: Any follow-up?

9 SENATOR SCHOENBECK: Yes, Mr. President. I
10 would like to hear from the Prosecution on that subject
11 of whether or not there was a constitutional right
12 against self-incrimination.

13 PRESIDENT RHODEN: Can you hold the mic a little
14 closer.

15 SENATOR SCHOENBECK: Do you need me to repeat
16 it, Alexis?

17 MS. TRACY: No. I think I heard you.

18 The Prosecution does not believe there is a
19 constitutional right against self-incrimination in an
20 impeachment process. It's a completely different
21 function.

22 MR. BUTLER: If I may, the only other
23 observation I would make is the burden of proof is on the
24 Prosecution in this case. So presumably nothing would
25 have to be done by the Respondent if it felt that burden

1 was not satisfied.

2 I have not called this a matter of
3 constitutional right against self-incrimination, merely
4 that the burden rests with the Government.

5 PRESIDENT RHODEN: Being no further questions --
6 that's all I have on my sheet.

7 Okay. We'll give Senator Curd a second to get
8 his question jotted down.

9 Senator Curd.

10 SENATOR CURD: Thank you, Mr. President. My
11 question is for Special Agent Rummel.

12 PRESIDENT RHODEN: Mr. Rummel. Welcome back.
13 Go ahead, Senator Curd.

14 SENATOR CURD: Thank you, Mr. President.
15 Special Agent Rummel, I'm curious if you are
16 familiar with a condition called dissociative amnesia.

17 WITNESS RUMMEL: No, sir. I'm not.

18 SENATOR CURD: Mr. President, if you'd allow the
19 latitude to help further my question for the Special
20 Agent and the members of the Senate, I can read a brief
21 definition for you. It comes from the Cleveland Clinic.
22 I'll be brief.

23 PRESIDENT RHODEN: You'll need to hang closer to
24 your mic.

25 SENATOR CURD: Okay.

1 So according to the Cleveland Clinic, this is an
2 extraordinary rare condition. It affects about
3 1 percent of men and 2.6 percent of women in the general
4 population.

5 [Reading] In general, dissociative amnesia
6 occurs and has been linked to overwhelming stress, which
7 may be caused by traumatic events such as war, abuse,
8 accidents, or disasters. The person who has experienced
9 such an event may have suffered the trauma individually
10 or just witnessed it. There are several types, one of
11 which is localized. In a localized dissociative amnesic
12 event memory loss affects specific areas of knowledge or
13 parts of a person's life and could include memory loss
14 for a very specific trauma. One example would be a
15 victim of a crime may have no memory of being robbed at
16 gunpoint but can recall details from the rest of the day
17 with significant degree of certainty.

18 So my question, Special Agent, although this is
19 a rare condition, is it a potentially plausible reason
20 why everything that you have stated before the Senate
21 today and all of the information and facts provided by
22 the Prosecution but still the Attorney General -- if this
23 was indeed a rare case of dissociative amnesia of a
24 localized variety, to be an explanation where all things
25 could be true?

1 And I will elaborate slightly by saying that all
2 of the information you provided, all of the Prosecution
3 information could all be truthful and accurate -- and I
4 have no reason to believe that it's not -- but that what
5 the Attorney General has said could also potentially be
6 valid, that he is unable to recall the specific events
7 and the details because he himself is part of this
8 particular phenomenon, albeit rare?

9 WITNESS RUMMEL: So the question is do I believe
10 that he has that?

11 SENATOR CURD: I'm just wondering if you believe
12 it could be an explanation.

13 He certainly, to my knowledge, has not had a
14 psychological or psychiatric evaluation and, to my
15 knowledge, has not been diagnosed with this. I'm just
16 asking if you think it is a potential explanation where
17 all things could be true?

18 WITNESS RUMMEL: I highly doubt that because he
19 remembers some things that he wants specifically in great
20 detail, things that are part and parcel to it, but the
21 actual events that puts him at blame, that's the amnesia
22 part or that's the part he doesn't want to remember.

23 The reference that you do is a victim, a victim
24 that's held at gunpoint. I don't see the Attorney
25 General as a victim. I see him as a suspect.

1 SENATOR CURD: Just, Mr. President, same
2 question for the Prosecution and the Respondent if they
3 would just briefly opine.

4 PRESIDENT RHODEN: Well, state that again,
5 Senator Curd. What did you say?

6 SENATOR CURD: The same question. Albeit rare,
7 and what I'm offering here is a rare instance of
8 dissociative amnesia, although be it localized, and
9 understanding that the person doesn't necessarily have to
10 experience the trauma themselves. They could only have
11 witnessed it.

12 PRESIDENT RHODEN: So, Senator Curd, I will err
13 on being very generous as far as allowing the questions.
14 But it's an odd situation when you're -- you know, if
15 this was a viable defense, the defense should have
16 brought it forward. And now you're asking the defense if
17 it's a viable defense. So...

18 SENATOR CURD: I understand, Mr. President.
19 I'll accept whatever ruling you have. I have the same
20 question for the Prosecution and the Respondent.

21 PRESIDENT RHODEN: Okay. Do you wish to answer,
22 Mr. Butler, or reply?

23 MR. BUTLER: My response is not so much to
24 attach a label to it but to look at some common
25 experiences in life where you have or are involved in a

1 traumatic event. Maybe not one involving death but a
2 traumatic event. And people remember what they remember.
3 It's not always a knowing falsehood if it turns out to be
4 incorrect.

5 When he says, I was traveling in the lane, did
6 he believe that to be true at the time? I absolutely
7 believe he did. Did accident reconstruction later come
8 along and require him to reconsider? It did, and he did.

9 That is normal, I believe, when traumatic events
10 occur in our lives. I honestly don't think it
11 necessarily requires a diagnosis as much as it may
12 require us to look honestly at what occurred and not
13 necessarily go back after six months and pick apart not
14 just words but snippets of phrases in interviews and see
15 if there is a way to characterize that as a falsehood
16 rather than a misstatement.

17 MS. TRACY: And the Prosecution's response to
18 that was, no, we do not believe that that is a plausible
19 explanation. If that were the case, then the
20 inconsistencies would not conveniently be designed to
21 mislead law enforcement.

22 And I think that there has been an abundance of
23 evidence that's been demonstrated in that result. It
24 wasn't that the Attorney General blacked out in this
25 situation. It wasn't that he -- there are periods of

1 time that he can't explain. He provided explanations
2 that he glossed over providing the extreme details of
3 other aspects, but there are significant moments, where
4 when given multiple opportunities -- and I think the use
5 of his phone is the most blatant example of that. It
6 wasn't good for him to tell the truth about that. He
7 knew that would reflect poorly upon him so he
8 intentionally lied until law enforcement was able to pull
9 out partial truths.

10 And it's not mischaracterizations,
11 misstatements, or snippets. It's pieces of evidence
12 contained within the Attorney General's own explanations
13 that just don't make sense.

14 PRESIDENT RHODEN: Thank you all. And that
15 is -- brings us to the end of the question phase of this
16 trial.

17 We are going to take a 10-minute break right
18 now. We will come back in at 3:15. At that time we will
19 receive the closing remarks starting with the prosecuting
20 side and then the Respondent.

21 Witnesses are hereby released. So thank you for
22 your testimony to the witnesses today.

23 We are in recess.

24 (A short recess is taken.)

25 PRESIDENT RHODEN: The Senate will return to

1 order.

2 Mr. Vargo, you can proceed with your closing
3 remarks. One hour.

4 MR. VARGO: By deed and by word Jason Ravensborg
5 has forfeited his right to be the Attorney General of
6 this great state. The House Impeachment Articles make it
7 very clear that he is charged both with deeds and with
8 words.

9 And we'll begin with Article I of the
10 impeachment, which is the misdemeanors while in office.
11 Those misdemeanors are absolutely clear. They are
12 matters for which Mr. Ravensborg has taken responsibility
13 in a court of law to the extent that it was imposed upon
14 him. His counsel now acknowledges that, in fact, he was
15 driving outside of the lane. So while a good and
16 honorable prosecutor decided that the charges that could
17 be sustained beyond a reasonable doubt were misdemeanors,
18 that does not mean that you should allow yourself to use
19 the phrase that they were "only misdemeanors."

20 The words "only a misdemeanor" with respect to
21 the death of a human being are offensive, and in this
22 case they are misleading. Joe Boever lost his life. And
23 he lost his life because of a pattern of conduct on the
24 night in question and because of a pattern of conduct
25 over the course of a career.

1 The Attorney General was entirely outside the
2 lane of travel. Mike Moore is not a traffic
3 reconstructionist, and his doubt expressed to the House
4 Subcommittee means nothing more than the hesitancy of a
5 prosecutor when you are faced with a standard of beyond a
6 reasonable doubt.

7 But there were warning signs to Jason Ravensborg
8 as he drove down the road. There is a fog line, which is
9 the primary warning sign. There are the warning signs on
10 steroids in the rumble strip, which Mr. Ravensborg crossed
11 first with the passenger side of his vehicle and then
12 with the tires on the driver's side of his vehicle.

13 We had a victim in this matter who was doing
14 exactly what he was supposed to do. He is walking on the
15 shoulder. He is walking against the flow of traffic so
16 that he is more visible. He is walking with a flashlight
17 in hand in a dark area where that flashlight stood out
18 like a beacon. And Jason Ravensborg, the degree of
19 distraction was so severe that he claims that he didn't
20 know what he hit until after he hit it.

21 So one of two things is true, ladies and
22 gentlemen: He is so far outside of the lane of travel
23 and he is so far from paying attention to where he is
24 going -- and I want you to think about this for just a
25 moment, that as all of these things are happening, the

1 GPS tells us that he doesn't brake for two seconds after
2 the impact. And then he takes seven seconds to slow to
3 12 miles an hour and then another seven seconds to slow
4 to 8 miles an hour.

5 When he is that deeply distracted -- as
6 John Daily told the House Subcommittee -- or Special
7 Committee, we don't necessarily know why he was
8 distracted, but we know that he was distracted. And
9 there is one thing that is crystal clear to every single
10 person in this room: Wherever his attention was, it was
11 not on the road. And it was not on the road as he was
12 accelerating to highway speeds coming out of the city of
13 Highmore.

14 Every single one of us, ladies and gentlemen,
15 has been inattentive while driving. But what do you do
16 while you're accelerating? What do you do, in converse,
17 when you know maybe you're doing something you shouldn't
18 do? You're looking at that phone. You're playing with
19 the radio. You're reaching for a pop that you've got
20 sitting on the passenger seat or in the seat behind you.
21 You slow down. You take your foot off the gas. You
22 don't bury your head in the sand and keep accelerating.
23 The degree of distraction was extreme.

24 And the habitual nature of that distraction is
25 abundantly clear by his behavior both before and after.

1 At highway speeds heading down South Dakota's roads
2 Jason Ravensborg has his phone on, his cruise control on.
3 If we believe him. That's what he does when he gets
4 outside of the town.

5 And as far as the idea that he was not acting in
6 an official capacity or he was not in office when he
7 committed these misdemeanors, Jason Ravensborg is the one
8 that tells us you're the AG, you're always running. He
9 wasn't on stage there because he was a candidate for
10 Attorney General. He was on stage there because he was
11 the Attorney General.

12 And so the misdemeanors, which these days are
13 simply crimes that involve less than a year -- a year or
14 less in jail. Class 2 misdemeanors involve 60 days -- or
15 30 days or less in jail. Misdemeanors in office, though,
16 relate to the idea of what he was doing and why he was
17 there. If the man is on his state cell phone, the man is
18 coming from an event where he is recognized and accepted
19 as the Attorney General, that man is acting in office.

20 But he compounds what he did with lies. What
21 does he tell you about his speed? What does he tell
22 Special Agent Arenz and Special Agent Rummel? I set my
23 cruise control at 65, 67. That's what I would have done.
24 Well, based on what his speedometer shows, if he sets it
25 at 65 to 67, we know he would have been going 61 to 63

1 miles an hour.

2 We know that wasn't true. We know that he got
3 up to 77 miles an hour, which means that his speedometer
4 would have showed him that he was going about 81 miles an
5 hour. So we know that he's lying about his speed.

6 We know that he is lying to the people who own
7 the app OnMyWay. Think about it for a minute. How
8 honest is it, if I have two cell phones, to connect one
9 to OnMyWay and be rewarded money, prizes, I don't know
10 what the stuff is, discounts, whatever it is? He's
11 earning benefit by having a phone that he's not using
12 while he's driving. But, of course, he's using the other
13 phone in exactly that moment. How honest is that? How
14 truthful, how representative of South Dakota values is it
15 to be lying for pennies a mile?

16 Now Mr. Ravensborg and his attorney would like to
17 make a great deal out of his willingness to take a
18 polygraph. I have several responses to that, one of
19 which is he knew from his own people that this was not an
20 appropriate topic for a polygraph.

21 Tyler Neuharth told him and he told Special
22 Agent Rummel in the interview that he had been told that
23 this was not appropriate because it's hard to prove the
24 "what did you know and when did you know it." Whether or
25 not he knew it once upon a time at the moment of the

1 collision that that was a man, because he now knows it,
2 he would likely fail that polygraph.

3 But, there is, of course, unnamed, unquoted
4 Sioux Falls polygrapher who thinks it's just fine to
5 administer this polygraph. And I've got to ask you: Why
6 isn't he here, and why didn't he give the Attorney
7 General a polygraph? He has every access to that. He
8 could have presented that to you if he chose to do so.
9 So the idea that somehow he was prevented by North Dakota
10 from taking the polygraph is about as honest as the rest
11 of the story that he's told you.

12 He lies about where he is in the lane. And
13 Mr. Butler has several times acknowledged on behalf of
14 the Attorney General that he knows that he wasn't in the
15 lane of travel. Which is fascinating, ladies and
16 gentlemen, because it's the first.

17 Jason Ravensborg lied to 911. He lied to law
18 enforcement. But, okay, let's say that he maybe didn't
19 realize he was in the lane. Two months ago when the
20 House Special Committee -- or, excuse me, the House
21 proper was examining the question of Jason Ravensborg's
22 impeachment Mr. Ravensborg issued a document that he
23 referred to as "Evidence, Allegations, and
24 Misconceptions."

25 It's a little weird to think that it's him

1 because he refers to himself routinely in the third
2 person. But in the accompanying letter he says, I'm
3 going to be issuing this under separate cover or as a
4 separate document. So these are his words. These are
5 his allegations.

6 One of the "Evidence, Allegations, and
7 Misconceptions" is headed, "Jason's vehicle was off the
8 road. False." So he didn't just lie to 911. He didn't
9 just lie to law enforcement. He lied to the House the
10 night before they were going to consider his impeachment
11 proceeding. And he did that with all of the same
12 knowledge that he has here before you today.

13 So he can't claim situational amnesia. He
14 can't claim that he has come around to understanding
15 that he was outside the lane of travel. He lied to the
16 House.

17 And while I know that Mr. Butler will refer --
18 or has referred, excuse me -- to the question of whether
19 or not you can simply be mistaken about something, I want
20 you to think about the difference between these events
21 and the simple, logical conclusion that one reaches about
22 the nature of a collision that is catastrophic.

23 Let's assume for a minute that Mr. Ravensborg is,
24 in fact, unbelievably distracted, which we do think is
25 true. Let's assume that he's so distracted that he

1 doesn't actually recognize that he's on the shoulder.

2 And then, as he says, "Wham." The crash happens.

3 Now, first of all, we know that that body rode
4 the front of his hood for about two, two and a half
5 seconds. Second of all, we know that the natural
6 reaction to that after you probably blink is that you're
7 going to look up, and you're going to see where you are.

8 We can, I suppose, wrap our heads around the
9 idea that he didn't know that he was on the shoulder
10 prior to the crash. But it is not possible, I submit to
11 you, to believe that he did not know that he had been on
12 the shoulder in the immediate aftermath of that crash.

13 And part of what we then learn from him is
14 accidental truths.

15 (Video presentation.)

16 MR. VARGO: You've heard better lies from five
17 years old.

18 But the last and perhaps the most egregious of
19 the lies relates to the question of when and how he uses
20 his phone. And I think it's appropriate that we simply
21 do that. And I want you to understand when we play this
22 clip this is not reordered. This is in order --
23 obviously, they're snippets so we're skipping things.
24 This is in order how he started his story and how he
25 finished his story. And if you can watch this and not

1 come to the conclusion that the Attorney General was
2 deliberately lying to DCI, I suppose we're done.

3 (Video presentation.)

4 MR. VARGO: A flat no.

5 (Video presentation.)

6 MR. VARGO: I don't "not" use my phone.

7 (Video presentation.)

8 MR. VARGO: It goes from I don't use my phone to
9 I glance at my phone to, well, that's what I do. I do it
10 all the time. And if it's too long, I just hit next.
11 And by "next" do you think, folks, that he's talking
12 about next I pay attention to the road and I drive down
13 the road and I pay attention to the things that are in
14 front of me, or do you think that he means he goes to a
15 different article?

16 He lies about whether he saw a human being and
17 about whether he saw the remains of a human being. And
18 much has been made over whether or not Sheriff Volek saw
19 the human being or should have had the same opportunity.
20 Those two references to which Mr. Butler referred are in
21 the reconstruction reports from Trooper John Berndt.

22 Trooper Berndt did not speak to Sheriff Volek.
23 He was relating from his own understanding. How he made
24 he that mistake, I have no idea. It doesn't matter. If
25 you look at the reports that were filed by Special Agent

1 Arenz and Special Agent Rummel and Sheriff Volek's own
2 description, he never says that he went up to the
3 flashlight.

4 We've transitioned into a place where the
5 Attorney General wants you to feel sorry for him. In his
6 "Evidence, Allegations, and Misconceptions" the final one
7 was, "Jason was treated differently because he is the
8 Attorney General," and the italicized word right after
9 that is "True."

10 And it is certainly true that he was on the news
11 more than you and I would be, and we're on the news if we
12 did something like this more than an average citizen
13 would be. That part's true. There is a certain degree
14 of scrutiny that comes with public office, and if you
15 can't embrace that, you probably shouldn't be in public
16 office.

17 But let's look a little bit at what it is that
18 didn't happen to him that would have happened to every
19 other citizen of the state of South Dakota. He did not
20 give a blood test until the next day. He did not give a
21 blood test while he was on scene. He did not give a
22 breath test until the next day. He did not give a breath
23 test until he was off scene.

24 He was loaned the sheriff's personal vehicle.
25 Now I know we're real friendly folk here, but I don't

1 think that happens all that often. He is not questioned
2 on scene the night of. Sheriff Volek doesn't ask him
3 anything about other than, oh, you hit a deer. Okay.

4 But then, and perhaps more to the point, he's
5 not questioned the next day. We now know that a man
6 lies dead, and the sheriff's response to that is to tell
7 Tim Bormann, oh, go take care of him. You want to know
8 the quality of this investigation up to the point the BCI
9 took over, it is encapsulated in that phrase: "Go take
10 care of him."

11 It doesn't ask how did you not know it was a
12 human? Doesn't ask how did it happen? Were you on your
13 phone? Nothing. No questions at all until two days
14 later. He turns off his phone. And when he is told, We
15 need both your phones -- and I submit that there's no
16 doubt but that a search warrant could have been issued on
17 them had he not been cooperative. And he did sign the
18 consent; don't get me wrong -- he insists on keeping one
19 phone because, Well, I am still the Attorney General.

20 Does that sound to you like the sort of thing
21 that some poor mechanic, waitress, rancher would be
22 allowed to do? So was he treated differently? He
23 absolutely was. To his great benefit.

24 So I want to address the question of impeachment
25 and the standards that you apply here. LRC has provided

1 you with an outline or a statement that:

2 [Reading] Each Senator should make the decision
3 on impeachment questions based on how they view the
4 evidence in the performance of their duties as a State
5 Senator and with regard to the oath of office they took
6 to perform these duties. This is neither a criminal nor
7 a civil legal proceeding. It is a constitutionally
8 prescribed impeachment trial that you serve on and
9 decide, pursuant to your election to the office of State
10 Senate, and you should decide it as you see appropriate
11 in fulfilling the duties of your office.

12 And that is exactly the standard that was
13 articulated as I listened to some of the podcasts that
14 Mr. Garber has about impeachment. One of the folks that
15 he had on as a guest was the prosecutor who prosecuted
16 Alcee Hastings, a federal judge who was accused of taking
17 bribes. And the prosecutor basically said the standard
18 is whatever the senate decides the standard is, and each
19 individual senator, more to the point, whichever they
20 decide the standard is.

21 And another nationally recognized impeachment
22 scholar has said that impeachment and the criminal matter
23 are entirely independent of each other and should be
24 treated separately. That expert is Ross Garber. When
25 Nancy Pelosi thought that, well, you can't impeachment

1 Trump -- she didn't have that opinion for very long, by
2 the way, but for a while she held that, and he disagreed
3 with that. I understand why we worry about impeachment.
4 I understand why this can't simply be a given.

5 In Federalist 65, Alexander Hamilton wrote that
6 impeachment will "seldom fail to agitate the passions of
7 the whole community and to divide it into parties...There
8 will always be the greatest danger that the decision will
9 be regulated more by the competitive [sic] strength of
10 the parties than by the real demonstrations of innocence
11 or guilt."

12 But I respectfully submit to you that that is
13 not what has happened here. This chamber, I don't think
14 I need to point out to you, is largely composed of the
15 partisan allies of the Attorney General. There are
16 multiple members of this chamber who wrote or texted to
17 the Attorney General in the days following the crash
18 expressing their condolences to him, some -- bless their
19 hearts -- to the family of Joe Boever, and expressing
20 their joy that Mr. Ravensborg was unharmed.

21 If there are factions that now exist in the
22 question of whether or not the Attorney General deserves
23 to be impeached, they arose from the events of
24 impeachment. This is not a situation where one sector of
25 the party had it out for Jason Ravensborg and just waited

1 for the moment when they could find something he did
2 wrong. You of all people know that prior to this event
3 there wasn't a Jason faction and a not-Jason faction. He
4 was the Attorney General, and he was treated as such. If
5 this created factions, it created them based on the
6 Attorney General's conduct and candor, not a question of
7 the subsets of the Republican party.

8 And I will point out that Mr. Garber's analysis
9 of when impeachment is appropriate judged by who actually
10 got impeached ignores a very important matter, which is a
11 question of resignations. Mr. Garber, as he pointed out
12 to me, has now represented five governors who were
13 charged formally, investigated or formal proceedings were
14 initiated as it related to impeachment. Three of those
15 five, ladies and gentlemen, resigned.

16 If we defer the decision about whether an
17 official should leave office to their resignation, we are
18 relying on people who have demonstrably done bad things
19 to make the moral decision about what their punishment
20 should be. And I am old enough to recall that every once
21 in awhile my father let me pick a punishment. Let me
22 just tell you that was not meant to be pleasant for me
23 and was largely because if I suggested something too
24 light, I knew that he would come up with the actual real
25 punishment.

1 But because this Attorney General has not done
2 the right thing, because he has not chosen to acknowledge
3 the harm that he has done to the reputation of law
4 enforcement, of the bar, of prosecution, and of elected
5 officials in this state, you now have the responsibility
6 to do the right thing.

7 And those cases to which Mr. Garber referred in
8 opening about cases that were impeached, I submit that at
9 least a few of them are strikingly similar to what we
10 have here. Money is the easy thing to look at. When you
11 steel money we kind of understand that we're against
12 that. Who steals money steals trash; who steals my good
13 name. He put Brent Gromer into an impossible situation.
14 A career law enforcement officer who was put between a
15 rock and a hard place and kind of found an out by not
16 really saying much of anything.

17 But if loaning money to yourself is an
18 appropriate grounds for impeachment, which Mr. Garber
19 suggested, or helping your son's election campaign is an
20 appropriate grounds for impeachment, so too does it seem
21 that stealing the knowledge and expertise of a good and
22 honorable officer is grounds for impeachment.

23 And then we get to the question of what it means
24 to be "in office." It feels like that moment where in
25 order to buy this argument you truly have to just stick

1 your head in the sand. This man made this about his
2 office. When you lead with 911 with "I am the Attorney
3 General," to what end? Because it works for him. It has
4 worked for him. And it is --

5 (Video presentation.)

6 MR. VARGO: Ask yourself on any of those whether
7 there was any legitimate purpose to informing the person
8 who had pulled him over or the person to whom he was
9 speaking to emphasize that he was the Attorney General.
10 You can even see it in -- or hear it in the 911 call and
11 see it in that very last clip when he's pulled over. I
12 believe it's Nebraska. His hesitation. Well, Ally --
13 Ally, I am the Attorney General. Or when he's talking to
14 the trooper on the side of the road there and he says,
15 Well, here's the other thing. And he stops, he turns off
16 the car, and he does this thing that appears to be his
17 go-to gesture, and he says, The thing is, I'm the
18 Attorney General in South Dakota.

19 Now that's the same stop where he's already
20 tried the -- when the trooper asks him, Why are you
21 driving so fast, and he says, Well, I'm going to drill,
22 and I'm the commander. Again, is there a legitimate
23 reason to say that I am the commander and that's why I'm
24 speeding? Or is that just designed to impress upon the
25 officer that I'm a big deal, and you should probably just

1 believe me and let me go.

2 Historically and in this case, Jason Ravensborg
3 uses his office to get out of trouble. He does it on the
4 911 call. Ask yourselves about the press release that he
5 issued the next day, drafted by a friend of his, who is a
6 representative, with Tim Bormann, who is a State
7 employee. But it goes out on Attorney General
8 letterhead. And does it simply reassure the public, hey,
9 a bad thing happened, but I'm on the job; the office will
10 continue to run?

11 That's not at all what it says. It lays out the
12 facts of the case. It begins his defense. It is the
13 germ of what he is going to tell the world. It is his
14 trial balloon, and it is out there on Attorney General
15 letterhead. Is that the use of his office in an
16 appropriate manner or an inappropriate manner?

17 Why else is the chief of staff of the Attorney
18 General's Office the one that sets up your blood test?
19 Is that an appropriate use of State employees? Why else
20 does he talk to both Brent Gromer and Tyler Neuharth
21 about what it is that law enforcement is going to be able
22 to find if they examine either, in one case, the
23 polygraph and, in the other case, his phone?

24 The day after -- well, I don't know if I got it
25 the day after. But the day after the impeachment vote in

1 the House as a whole in April, I received a letter from
2 Law Enforcement Standards and Training division that
3 referenced an officer who has the potential to testify in
4 Pennington County who had been removed from the academy
5 for lying. So we're talking about a kid not yet through
6 the academy who lied -- and let me be very specific here.
7 The allegation is that he lied about whether he had done
8 his homework. And as a result of that he's booted out of
9 the academy.

10 So if we hold that youngster to a standard of
11 professionalism and integrity and honesty that we don't
12 hold our Attorney General to, what are we saying about
13 ourselves? And what are we saying about the point of
14 being elected in this state?

15 Mr. Ravensborg can come up and say, well, I
16 really wasn't on the phone at the time of the crash so
17 none of this really matters. My lies about phone use --
18 you know, Bill Clinton did that one to us. He convinced
19 the Senate that it didn't matter as long as the lie
20 wasn't an important lie.

21 Bill Clinton wasn't an attorney, he wasn't
22 Attorney General, and he didn't act as the chief law
23 enforcement officer of anything. Acted as the commander
24 in chief. But we know what would happen to any officer,
25 patrol officer, who did what Jason Ravensborg did, and

1 they would be a former officer. And that is what he
2 should be as well.

3 South Dakota Law makes it a crime to lie in a
4 criminal investigation, and I don't think I really need
5 to cite chapter and verse to a bunch of people from
6 South Dakota about integrity and honesty and why we don't
7 lie in public life.

8 Now Mr. Butler has suggested Mr. Ravensborg was
9 mistaken about being outside of his lane. Again, I bring
10 you back to the fact that it's just not possible that he
11 didn't know immediately after the crash even if he didn't
12 know immediately before the crash. And I also bring you
13 back to the fact that he didn't simply tell that lie
14 once. He told it probably a half a dozen to a dozen
15 times in the course of those interviews with law
16 enforcement.

17 And most of the time -- I shouldn't say most of
18 the time. Several times he makes it very clear --
19 gesture. He's going to the right. He's pulling over.
20 He's trying to save his life. Only if he had done any of
21 that, he would have ended up in the ditch next to Joe
22 Boever's pickup.

23 So those are the two questions that you have
24 before you. There is a third, though. In the event that
25 you vote to impeach, which I submit you should -- I've

1 often been warned you can't tell a judge or a legislator
2 that they must do anything, and so I suppose legislators
3 who are also judges, that would be particularly
4 difficult -- you also have to decide a question of
5 debarment. In other words, can Mr. Ravnsborg ever run
6 again. And I submit to you that if you have made the
7 primary decision that he should be impeached, that that
8 becomes a fairly easy answer. But I want you also to
9 think about this statement that he has made.

10 (Video presentation.)

11 MR. VARGO: This happened to me. My life
12 changed. And, most importantly of all, most offensively
13 of all, I would not do anything different. How about you
14 just look where you're going? That would be something
15 you could do different. And Joe Boever would still be
16 alive. How about you stay in your lane? We know for
17 sure Joe Boever would be alive then.

18 And so if we think -- if you believe that an
19 impeachment vote is proper, the idea that the person who
20 you're impeaching has already said I'm going to go out
21 and do it again, I wouldn't change a single thing I
22 did -- and you know how he's telling the truth on that
23 one? Because he did. 10 minutes down the road he's
24 sending pictures via text message while he drives
25 somebody else's car after Joe Boever lies dead. So we

1 know he's willing to do it again.

2 And so if he is unfit to serve as Attorney
3 General today, he will be unfit to serve as Attorney
4 General tomorrow, and he will be unfit to serve as
5 Attorney General in any foreseeable future. And so the
6 debarment vote should closely follow the question of
7 impeachment.

8 Mr. Ravensborg's attorneys have taken great pains
9 to raise a specter of what impeachment would mean.
10 They've used phrases like "overturning an election,"
11 "risking constitutional" -- I don't know if they used the
12 word "crisis," "undercutting democracy itself." And they
13 refer to the "genius of the American system."

14 But genius of the American system is where we
15 got impeachment from. And there are consequences to
16 inaction as well. There are consequences to law
17 enforcement, who you have then told that little lies are
18 okay. Even lies that result in somebody's death or lies
19 about somebody's death can be okay.

20 There are consequences to the bar where we have
21 the duty of candor, which has very clearly been violated.
22 There are consequences to prosecution. Every
23 South Dakota prosecutor that I know holds dear the idea
24 that we don't do this for the cash. Go to your county
25 commissions. Ask them what they're paying us. I

1 guarantee the men and women who fill those roles are not
2 there because they are making the most money they
3 possibly could.

4 But there are also consequences to this great
5 state as a whole and to our community as a whole, and
6 none greater than this: That you will place a stamp of
7 approval on Jason Ravensborg's view of how office and
8 position work. You would effectively endorse the idea
9 that there comes a point when you are too powerful to
10 fail, too powerful to be held accountable, and that there
11 are two standards of law in this great state, one for
12 patrol deputies and another for the chief law enforcement
13 officer. And, oh, the one for the chief law enforcement
14 officer is lower.

15 There are two standards in this state, one for
16 working people and another for elected people. You will
17 reinforce the idea that our elected officials are
18 separate from and above the laws that you pass and that
19 they are sworn to enforce. By your vote here today you
20 will decide whether you want to be -- whether you want
21 that to be who we are and who we will be seen as in our
22 South Dakota.

23 PRESIDENT RHODEN: We will now take closing
24 remarks from the Respondent, Mike Butler.

25 Sorry. Mr. Garber. You have one hour.

1 MR. GARBBER: Thank you. You're going to hear
2 from Mr. Butler in just a couple of minutes. There were
3 a lot of factual assertions that we heard. Mr. Butler is
4 going to address those.

5 But before he does, I think I'd like to see if I
6 could reorient us on the standards. As we have discussed
7 before, it is true, I'm engaged by governors' offices to
8 come in and explain the standard for impeachment and how
9 it's applied. I teach a law school class where I explain
10 to my students here's the history of impeachments, here's
11 the standards for impeachments, here's how they're
12 applied, and if there's an acquittal in this case, I can
13 explain that to everybody. I can explain the Senate of
14 South Dakota acted as a bullwork, as the system is
15 designed.

16 I will tell you, it would be very hard to
17 explain a conviction. I've spent the day listening to
18 what sounded like a prosecution of a vehicular crime.
19 But we know that those criminal issues have already been
20 resolved. There was also essentially a prosecutorial
21 argument about lying to law enforcement. Notably, the
22 Attorney General wasn't charged with that, hasn't been
23 charged with that.

24 But also this isn't a criminal case. This is,
25 as we know, an impeachment and removal case, and removal

1 in this situation cannot be sustained without doing
2 violence to some significant parts of the Constitution.

3 For example, as I explained earlier, the notion
4 of separation and balance of powers, coequal branches --
5 this is not the United Kingdom. This isn't a form of
6 government that's parliamentary in nature. There's no
7 vote of no confidence in the system. The Executive
8 branch is coequal with the Legislative branch, and the
9 Legislative branch doesn't oversee the Executive branch
10 in that way.

11 And removal in this case would actually do
12 violence to the provision of your Constitution dealing
13 with elections where it's actually the voters who choose
14 who the Attorney General is. It's the Constitution that
15 prescribes the term of office. The Legislative branch,
16 the Senate, with all due respect, doesn't cut those
17 things short absent incredibly extraordinary
18 circumstances.

19 And if the circumstances were, as my friends
20 suggested, we would have seen many, many, many more
21 removals of public officials. Imagine if the standard
22 were telling untruths. We would see many, many, many
23 more of these kinds of proceedings.

24 But that's not the standard. The standard, as
25 we have talked about, is in your Constitution. The

1 Governor and other state and judicial officers -- and the
2 standard, again, that you apply here is applicable to all
3 of these other officials.

4 [Reading] Shall be liable to impeachment for
5 drunkenness, crimes, corrupt conduct, or malfeasance or
6 misdemeanor in office.

7 Now you can't read the "in office" part out of
8 the Constitution. And you also can't stretch it to the
9 point where it would be meaningless, where an elected
10 official is essentially in office 24 hours a day. That
11 would read it out of the Constitution.

12 I would urge you to look at two documents. One
13 is a submission that I made to the House going on at much
14 more length than you're thankfully hearing today about
15 the standards for impeachment. And the other is a report
16 that the House Special Committee put together, which I
17 think is quite well done, and it goes element by element
18 by element.

19 And in that report it does note a decision by
20 the Nebraska Supreme Court addressing impeachment of an
21 attorney general in that case where the Nebraska Supreme
22 Court said that "in office" means, "act or omission for
23 which --" in that case it was the attorney general may be
24 impeached and removed from office "must relate -- must
25 relate to the duties of that office." And I'd ask you to

1 focus on that standard. Is that what was happening here?
2 Has that standard been met?

3 Same thing with the standard for malfeasance.
4 Again, the House Select Committee cited a case from the
5 South Dakota Supreme Court saying, "reference to evil
6 conduct --" in the context of malfeasance, "reference to
7 evil conduct or an illegal deed, the doing of that which
8 one ought not to do, the performance of an act by an
9 officer in his official capacity that is wholly illegal
10 and wrongful."

11 Again, members of the Senate, this isn't a
12 criminal proceeding, despite how it seemed today. This
13 isn't a civil proceeding. This isn't a bar proceeding.
14 This isn't a vote of no confidence. This isn't an
15 employment proceeding. This is rare -- a very rare
16 removal, and very different standards apply.

17 And with respect to burden, it is true, you
18 determine what the burden is. And what I mean by that is
19 that the Supreme Court is not going to second-guess you.
20 It is not going to ask you what was the standard of proof
21 that you applied? Isn't going to prescribe for you a
22 standard of proof and say that you missed it. That was
23 the lesson of Nixon vs. The United States where the
24 United States Supreme Court said that the Senate gets to
25 make its procedures in the case of impeachment and

1 removal.

2 But as the House noted, the correct standard
3 actually is at least clear, satisfactory, and convincing.
4 That's the standard that the South Dakota Supreme Court
5 applied to lower government officials. Certainly for a
6 statewide official it should be at least that high.
7 Clear, satisfactory, and convincing.

8 And I'll leave you with a reminder of what the
9 U.S. House Judiciary Committee said in the context of the
10 Nixon impeachment.

11 [Reading] Impeachment is a constitutional remedy
12 addressed to serious offenses against the system of
13 government. Impeachment is directed to address
14 constitutional wrongs that subvert the structure of
15 government or undermine the integrity of office and even
16 the Constitution itself. The crucial factor, the report
17 went on, is not intrinsic quality of behavior but the
18 significance of its effect upon our constitutional system
19 or the functioning of our government.

20 Members of the Senate, that standard, those
21 principles, have not been met. Not even close. I
22 couldn't begin to explain an argument that they have.
23 And so I think acquittal is the only answer here.

24 And, Mr. President, members of the Senate,
25 Counsel, I appreciate your hospitality in having me here

1 and listening to my discussion about this. And, with
2 that, I will turn it over to Mr. Butler.

3 PRESIDENT RHODEN: Further closing remarks,
4 Mr. Butler.

5 MR. BUTLER: When we opened this morning I
6 referred the Senate to the Articles of Impeachment.
7 Article I charged Attorney General Jason Ravnsborg
8 committed crimes causing the death of Joseph Boever. As
9 I pointed out then and I point out now, there was no
10 finding of criminal culpability in the death, the tragic
11 death, of Joseph Boever. No amount of fire and brimstone
12 changes that as a given fact.

13 The Prosecution did slightly shift, either
14 intentionally or not, to instead of crimes, referring to
15 it as misdemeanors in office. Is that important? It
16 certainly can be. Because we are back to "in office."
17 And, as my co-counsel has pointed out, those words are
18 central to the question of removal from office and when
19 it can occur.

20 Now the Prosecution, with regard to the
21 in-office requirement that they must prove, said once
22 Attorney General, always Attorney General. And I would
23 submit that's not a legal argument. It's a phrase, but
24 it's not a legal argument.

25 "In office," as courts have looked at it,

1 involves illegal or evil behavior involving the use of
2 your office. Not a traffic accident.

3 Misdemeanor in office. The Florida Supreme
4 Court defined the term "misdemeanor in office" as, Any
5 act involving moral turpitude, which is contrary to
6 justice, honesty, principles, or good morals if performed
7 by virtue or authority in office. The Court found that
8 misdemeanor in office is synonymous with misconduct in
9 office. The term "misdemeanor" historically was adopted
10 to apply to all offenses other than treason or felony.

11 It says nothing about driving off the shoulder
12 of a road. It must be a serious offense. The Senate
13 should not be reduced to a traffic court. That's not the
14 role that you would be playing here today. It is
15 whether, for the first time ever, the conduct in office,
16 the misdemeanor in office, was so egregious, unlawful,
17 and evil it warrants his removal. Not were two tires off
18 the road or were four.

19 The Second Article of Impeachment: Malfeasance
20 in office. Again, the conduct of your office. Do we
21 really think that means when you call 911 after an
22 accident you identify yourself as the Attorney General?
23 Is there any serious argument to be made by a
24 serious-minded person that that warrants removal from
25 office? "I am the Attorney General." You got to go.

1 You can't do that.

2 As counsel said, we literally would have to back
3 up the school bus then if that is the direction we would
4 go in minimizing and trivializing the seriousness of what
5 went on here today. Not of the death of Joseph Boever.
6 That is a serious matter. And there was a civil
7 settlement for negligence. Negligence is a civil
8 standard different than the criminal standard. But the
9 family did receive a settlement, and they couldn't have
10 done it without the Attorney General's cooperation.

11 Going back to some of the facts of the case, as
12 much as I really don't care to because I really think
13 it's beside the point, but there was one in particular
14 and it involved the sheriff and what he said or didn't
15 say about walking past the body.

16 Now I have two reports, neither of which I have
17 prepared, both of which the Bureau of Criminal
18 Investigation did prepare, and I'll read them to you, the
19 relevant part. On the report it says, page 43, "Sheriff
20 Volek states he does not see Mr. Boever's body but agrees
21 he had to walk directly past him." Page 13, "The sheriff
22 states he would have walked past Mr. Boever's body to get
23 to the flashlight."

24 Now we are told to disregard that because
25 there's no good answer for it, other than Sheriff Volek

1 didn't see it. It was dark. It was cloudy. The road
2 was not lit up. The body was in a ditch and the ditch
3 sloped away from the road. It just happened.

4 And for the Government to simply fill in the
5 blanks with a witness who acknowledged, I kept this out
6 of my reports -- all the different things about people
7 being honest or what he can read into someone's mind and
8 how each little action or behavior informed him of
9 dishonesty, that he kept out because it has no place in
10 police reports, number one -- I had never heard of it or
11 seen it until today, and I suspect for good reason.

12 And as sure as that officer is of himself, when
13 he was asked did he tell the Attorney General, You were
14 on your phone, We know that -- the second interview,
15 September 30, 2020 -- he admitted that he did do that.
16 He admitted that he did believe that. The Attorney
17 General said, I was not. Forensic evidence established
18 the Attorney General was correct and he was not. And yet
19 I tell you had it not been for the forensic evidence, he
20 would have added that to his list to stand here and tell
21 you he knows he's right. The human lie detector.

22 And speaking of such, the Attorney General
23 offered to take a polygraph, period. Even if he had been
24 told, well, there could be a problem because now you know
25 the gentleman is deceased, I'll still take it.

1 Absolutely. All that remained for them to do is give you
2 reasons they did not believe he should take it. Fine.
3 But he never backed off, and he said, I would,
4 absolutely.

5 That is an action of someone who has an innocent
6 state of mind. It's not the defendant saying, Oh, I've
7 heard bad things. I don't want to do it. It's the
8 Attorney General saying, I have heard things, but I will
9 do it.

10 It has been a long day, and I'm not going to
11 make it longer. But I want to leave you with a thought.
12 What you do here today does make history in one form or
13 another, long after your terms have ended and I've been
14 replaced, you've been replaced, and we've all been
15 replaced. And they'll look back and wonder, What did
16 they mean? And will they say, He was not well-liked,
17 that Attorney General; he lost the confidence of law
18 enforcement or of the people or of the Governor?

19 Well, losing the confidence isn't grounds for
20 impeachment either. That takes place at a ballot box or,
21 as will happen here in a few days, at a convention. And,
22 as we all know, he has lost on that level. Because he is
23 not seeking a reelection. But he does seek to vindicate
24 himself.

25 The right answer here is the two articles

1 alleging conduct occurring in office were not established
2 by clear and convincing evidence. And, again, I think it
3 is important so I'll read it one last time, and then I'll
4 close.

5 [Reading] Clear and convincing evidence is
6 evidence that is so clear, direct, weighty, and
7 convincing as to allow the trier of fact to reach clear
8 conviction of precise facts at issue without hesitancy as
9 to their truth.

10 If that can not be done on both counts, both
11 articles, on the in-office component, it's done.

12 But I submit to you this matter never should
13 have been here in the first place. It was a tragedy and
14 always will be. But justice isn't always done by not
15 following the law to seek vindication. That will always
16 be regretted in time. Whatever moment of feeling good
17 someone gets from removing this man from office because
18 he did cause the death -- not criminally so, but he
19 did -- whatever temporary satisfaction you get, this
20 state will live with that in history. I hope and I do
21 trust that you will not let that happen.

22 Thank you very much.

23 PRESIDENT RHODEN: We are going to recess for a
24 15-minute break, and we've got to do some setup to get
25 ready for the votes. So the Senate is in recess. We

1 will reconvene at 4:40.

2 (A short recess is taken.)

3 PRESIDENT RHODEN: The Senate will return to
4 order.

5 I would just make a couple of reminders on this
6 first vote that will also apply to the second vote.
7 First of all, they will be put to you in a form of a
8 question. These questions are debatable. They will
9 require a two-thirds majority vote. The motion to
10 reconsider is never in order. Beyond that, the regular
11 rules of debate will apply.

12 Also remind the members that we have a court
13 reporter. When we do the voice vote we need you to speak
14 up.

15 Okay. We will get started.

16 On Article I the question before the Senate is
17 shall the Senate sustain the First Article of
18 Impeachment, crimes causing the death of Joseph Boever
19 against Attorney General Jason Ravnsborg, and remove him
20 from the Office of Attorney General?

21 Are there any remarks?

22 SENATOR SCHOENBECK: Mr. President.

23 PRESIDENT RHODEN: Senator Schoenbeck.

24 SENATOR SCHOENBECK: Thank you, Mr. President,
25 members of the body.

1 Every day in South Dakota somewhere our friends,
2 our family, our neighbors are highly likely to be out
3 walking somewhere on a road. It's not an unusual event.
4 In the summer we probably have tourists, flat tire, out
5 of gas, any number of things. Could be Highway 12, 212,
6 81, 50. It doesn't matter.

7 Picture that person that you know walking where
8 they're supposed to be along the road like hundreds, if
9 not thousands, of South Dakotans do every year. Now
10 picture a vehicle coming at them at highway speeds. And
11 this vehicle has had its first set of tires on the side
12 go over the fog line, then the rumble strips, which make
13 a hell of a lot of noise. And then the other two tires,
14 they cross the fog line. Now they've crossed the rumble
15 strips, and they're bearing down on that family or friend
16 or neighbor that you know and they smash them at highway
17 speeds accelerating their body to the highway speed that
18 the car's accelerating to so hard they put the face
19 through the windshield so the driver of this vehicle
20 could actually reach over and touch that face.

21 And if the defense is I was not a distracted
22 driver, then there's a way, way bigger -- way, way bigger
23 set of facts here we should be thinking about. Because
24 that means this person -- this person ran down that
25 family, friend, or neighbor at highway speeds, seeing

1 them right in front of them, put their head through the
2 windshield, they were on the vehicle for a couple of
3 seconds before the body rolls off, and says, I hit
4 something.

5 Well, that was a lie. There is no question that
6 was a lie. There's no question that this person ran down
7 an innocent South Dakotan. Ran them down. And we do not
8 have to leave our decisions about crimes to the charging
9 decisions of the Deputy State's Attorney for Hyde County.
10 We don't have to. If we think that's criminal conduct,
11 then it is criminal conduct for purposes of the
12 Constitution.

13 There's some other statements that have been
14 made here. There is no such thing as a burden of proof.
15 And every one of you knows that because we make a couple
16 thousand votes a year, and we don't sit down and say
17 beyond a reasonable doubt, clear and convincing? Okay.
18 I'll vote for that water bill or I won't. It doesn't
19 work that way.

20 What we do is the instructions or the statements
21 that have been shared with all of you, that each Senator
22 should make the decision on the impeachment question
23 based upon how they view the evidence in the performance
24 of their duties as a State Senator with regard to the
25 oath of office they took to perform those duties. This

1 is neither a criminal or a civil legal proceeding.

2 It is exactly what you do with every single
3 decision you have made every year and every day you've
4 been in this body. There's no such thing as a burden of
5 proof. So this discussion about clear and convincing,
6 that's all made up. That's all made up.

7 And here's another interesting thing. There is
8 no such thing as a right against self-incrimination in
9 this proceeding. That's a criminal concept. So the
10 Attorney General, if he was going to -- as the phrase --
11 I didn't write it down, but vigorously defend or
12 something, there's a mic right there, and that's a damn
13 short walk. And somebody could have got up there and
14 told us why the heck if he wasn't a distracted driver,
15 why he ran down a South Dakota citizen at highway speeds
16 and put their head through his windshield and then lied
17 about it.

18 He had no right against self-incrimination. He
19 chose -- he chose not to be here to share with us what
20 the hell he was doing killing that person.

21 The issues about the tires off the road, those
22 are science. The standards used by National Highway
23 Traffic Safety Institute to reconstruct, that's not
24 guesswork. That's not magic. The law enforcement
25 officers had no reason to make any of this up.

1 We'll talk about malfeasance with the next one,
2 but this one as to criminal conduct, if this was anybody
3 besides the Attorney General that did that to your
4 neighbor, your family, your friend, we wouldn't be having
5 this discussion.

6 Why this has dragged out, why we're even having
7 this trial is beyond me. This is only because of the
8 sordid political agendas other folks have. There should
9 have been a resignation a long time ago. There should
10 have been contrition that hasn't happened. And there
11 should be impeachment.

12 Thank you.

13 PRESIDENT RHODEN: Further remarks.

14 SENATOR HEINERT: Mr. President.

15 PRESIDENT RHODEN: Senator Heinert.

16 SENATOR HEINERT: Mitakuyepi, Mr. President.

17 Senators, we were tasked with, it seems like, an
18 impossible task. It's never happened in the state
19 before. Nobody wanted to be here. The Attorney General
20 doesn't want to be here. We don't want to be here. The
21 family of Joseph Boever doesn't want to be here. But
22 here we are.

23 We were told that this isn't a criminal or a
24 civil trial. So I'm not an attorney. I know a few
25 members of our body, they are. So how do I reconcile all

1 of this information that we've received?

2 And it comes down to what do you believe? Do
3 you believe the actions that the Attorney General took
4 prior to that accident and after warrant his removal from
5 office?

6 Now I looked at the data, and I was extremely
7 disheartened when I saw some of those pictures and when I
8 read the reports. That man laid out there for almost a
9 day. And in our way you cannot go on your journey when
10 that happens. With all of these proceedings happening
11 right now, he still cannot go; so he's waiting for us to
12 finish this.

13 There was something that really struck me as
14 we've went through this. I'm going to pause right now.

15 (Pause.)

16 SENATOR HEINERT: That's how long it took for
17 the time that he struck Mr. Boever to stop his car.
18 18 seconds. He went over a football field and a half
19 before he stopped.

20 So what do I believe? Why did it take so long?
21 Why was he so far down the road? What I believe is he
22 knew. He knew that something terrible happened and he
23 was going to have to answer for it and he panicked. And
24 he thought maybe if I get far enough down the road, they
25 won't see what's laying in the ditch back here.

1 And it worked. It worked the whole night. So
2 if I believe that, then I have to look at what else was
3 done. And from everything I've read, everything I've
4 seen and what I believe, I have to sustain this Article
5 of Impeachment. Ask yourself if you believe it too.

6 Pilamaye`.

7 PRESIDENT RHODEN: Further remarks.

8 SENATOR CAMMACK: Mr. President.

9 PRESIDENT RHODEN: Senator Cammack.

10 SENATOR CAMMACK: Mr. President, every day in
11 South Dakota there are folks that drive outside of the
12 lane of traffic. But in this instance we've got -- the
13 science says that very likely there were four wheels
14 outside across that fog line, four wheels that had
15 crossed a rumble strip. Anybody that's crossed a rumble
16 strip you can -- even if you're not in the car, you can
17 hear it forever. And crossed the rumble strip twice and
18 ended up in the taking of a human life.

19 In the end, regardless of the outcome of these
20 questions, there will be no winners. It's not possible.
21 But I ask that you vote yes on the question.

22 Thank you.

23 PRESIDENT RHODEN: Further remarks.

24 SENATOR RUSCH: Mr. President.

25 PRESIDENT RHODEN: Senator Rusch.

1 SENATOR RUSCH: Thank you, Mr. President.

2 Ladies and gentlemen of the Senate, my fellow
3 Senators, my friends here after eight years in this body,
4 I never imagined in those eight years that I would
5 approach this on this kind of an issue regarding the
6 impeachment of another person that I had regarded as my
7 friend for many years.

8 I think I've probably known the Attorney General
9 longer than anyone else here. He started practicing in
10 my court in Yankton when he first got out of law school.
11 He appeared in my court numerous times. And, you know, I
12 have difficulty reconciling the young man and the
13 maturing man that I knew there in my court with a lot of
14 the testimony here today.

15 Based on my personal experiences with him, I
16 don't believe that he would get up here and deliberately
17 about -- lie about these issues. But the fact that he
18 isn't lying doesn't mean that his recollection about what
19 happened is necessarily accurate.

20 You know, that's one thing that I learned in
21 many, many years in the courtroom is that people can tell
22 absolutely what they think is the truth and it's not the
23 truth because they recollect things differently.

24 You know, I don't think there's any evidence to
25 support the claim by his cousin that he committed suicide

1 by throwing himself in front of the car. I don't think
2 there's any evidence to support a claim by his other
3 cousin that this is some kind of a gigantic cover-up
4 because he's an elected official. You know, if that was
5 true, we wouldn't be here today.

6 You know, I am impressed with the investigation
7 that the North Dakota BCI did. I think they did an
8 absolutely thorough investigation and followed up on
9 every possible lead that they could.

10 You know, the issue addressed by the House
11 Investigating Committee that he can't be impeached
12 because this was not part of his official office duties
13 as Attorney General is inaccurate, in my opinion. He
14 identified himself as the Attorney General. He consulted
15 with the Attorney General's Office staff about how to
16 proceed in this matter. He consulted with the head of
17 the Division of Criminal Investigation about this matter.
18 He consulted with the Attorney General's Office chief of
19 staff. He consulted with different DCI experts about the
20 cell phone and polygraph. He put out a press release on
21 A.G.'s Office stationery.

22 You know, regretfully, I think that the actions
23 that he took after the accident converted this into
24 something involving -- directly involving the Attorney
25 General's Office in the entire matter. And a result of

1 that, this was treated differently than your ordinary
2 vehicular homicide case.

3 The decision what to charge him with was made by
4 a committee of prosecutors. He was allowed to plead to
5 two Class 2 misdemeanors. And, just as an aside, I was
6 one of the substitute justices that sat on the Bill
7 Janklow case. Bill Janklow, in a similar case, although
8 I would have to say much more egregious, was convicted of
9 second degree manslaughter for that, and he served his
10 sentence on that.

11 He was, of course, a federal officer at that
12 time, not subject to impeachment. But the prosecutor
13 there made the decision to go ahead and try the case and
14 left the decision to a jury of Moody County jurors. And
15 that didn't happen in this case. In this case, the case
16 was plea bargained away to a couple of Class 2
17 misdemeanors. And that's not our decision. We're bound
18 by that decision.

19 You know, I spent a dozen years as a prosecutor.
20 I'm adamant about the powers and the rights of a
21 prosecutor. And we don't have a right to second-guess
22 those charging decisions. But, you know, we certainly
23 have a right to think about whether it should have been
24 plea bargained down to that level.

25 In preparation for this hearing -- I don't want

1 to call it a trial -- this impeachment hearing, I got a
2 book about the impeachment of Andrew Johnson, which is,
3 of course, the most important impeachment that we've had
4 in the United States, and if I could just read a
5 paragraph or so here.

6 [Reading] So in 1868 Congress and the public
7 would have to consider the definition of a high crime and
8 the meaning of a misdemeanor. It was bewildering. The
9 multitude of strangers were waiting for impeachment,
10 Mark Twain observed. They did not know what impeachment
11 was exactly, but they had a general idea that it would
12 come in the form of an avalanche or a thunderclap or that
13 maybe the roof would fall in. For no one knew what the
14 first ever impeachment of the President of the
15 United States would look like or what sufficient grounds,
16 legal or otherwise, were necessary. No one knew partly
17 because the U.S. Constitution provides few guidelines
18 about impeachment beyond stipulating in Article II
19 Section 4 that a federal officer can be impeached for
20 treason, bribery, or a high crime or misdemeanor. The
21 president -- if the President of the United States was to
22 be impeached for treason, bribery, or a high crime or
23 misdemeanor, then the country had to define high crime.
24 Originally the crime warranting impeachment was
25 maladministration, but James Madison had objected as the

1 term was too hazy. Yet high crimes and misdemeanors is
2 fuzzy too. Alexander Hamilton clarified, sort of. A
3 high crime is an abuse of executive authority proceeding
4 from an abuse or violation of some public trust.
5 Impeachment is a national inquest into the conduct of
6 public men. Fuzzy again. Are impeachments to proceed
7 because of violations of law or infractions against that
8 murky thing called public trust? But surely if the only
9 crimes that were impeachable were high, then the founders
10 must have meant high misdemeanors as well, for a
11 misdemeanor is a legal offense ranked below that of a
12 felony. Could a president be impeached for any
13 misdemeanor, like stealing a chicken, or did it have to
14 be something, well, higher?

15 I don't want in any way to indicate that the
16 death of a human being is equivalent to stealing a
17 chicken, but in this case the misdemeanors that were
18 charged were equivalent to that.

19 What really troubles me about these proceedings
20 is I don't know what happened here. I'm troubled by
21 that. It's clear that Attorney General Ravnsborg has a
22 long history of being a poor driver. He doesn't pay
23 attention when he drives and was planned that night that
24 he wasn't going to pay attention because he was going to
25 be thinking about upcoming cases.

1 How fast was he driving? Was he using his cell
2 phone when he hit Mr. Boever? How did he get on the
3 shoulder of the highway? No explanation about why he
4 didn't see Mr. Boever walking along the road with a
5 flashlight.

6 No satisfactory explanation about why he didn't
7 see Mr. Boever's face in his windshield. No satisfactory
8 explanation about why he didn't see the body or why the
9 sheriff didn't see the body when they apparently or may
10 have walked right by it. No satisfactory explanation of
11 why the sheriff didn't investigate the lit flashlight
12 when he saw it.

13 But the Count I charges that he has been
14 committed [sic] of crimes. He's only been convicted of a
15 couple of Class 2 misdemeanors, traffic offenses. So do
16 we impeach for Class 2 misdemeanors? And I guess my
17 answer to that is no.

18 And I might have a different answer to that in
19 respect to Count II, but my answer in Count I is that we
20 don't impeach for Class 2 misdemeanors.

21 Thank you.

22 SENATOR CASTLEBERRY: Mr. President.

23 PRESIDENT RHODEN: Further remarks.

24 Senator Castleberry.

25 SENATOR CASTLEBERRY: Thank you, Mr. President.

1 When I was growing up I went between our two
2 houses, which one was in Rapid Valley and one was in
3 Hill City. And so many times during the week we would
4 drive back and forth on Highway 16 and Highway 385. And
5 throughout my childhood we probably hit 10 deer.

6 And I will tell you, the one thing that we
7 always did because it was the humane thing to do, was to
8 stop and ensure that that animal was deceased. And when
9 it was practical, if they were not, my mother would
10 discharge a firearm to ensure that that animal did not
11 suffer.

12 When he thought that he had struck a deer, he
13 called 911, and he stayed. When he knew that he had
14 struck a human he did not call 911, and he left.

15 There's no question here that this is a tragedy
16 of chance. There were miles and miles of highway where
17 he could have veered off the road, and for whatever
18 reason destiny has forever intertwined these two people.

19 For Mr. Boever it meant the end of his life.
20 And for Mr. Ravensborg it led to discrepancy after
21 discrepancy to show us what the Attorney General of our
22 state was capable of, which I think is grounds for
23 impeachment.

24 Thank you.

25 PRESIDENT RHODEN: Further remarks.

1 SENATOR JOHNS: Mr. President.

2 PRESIDENT RHODEN: Senator Johns.

3 SENATOR JOHNS: Thank you, Mr. President.

4 First of all, on behalf of all the members of
5 the Senate, we send our sincerest condolences to the
6 Joseph Boever family. It certainly is a tragedy, and
7 it's too bad that we have to be here today. And things
8 could have possibly been different if other charges had
9 been brought in this case.

10 Second, we're not entitled to exercise unbridled
11 discretion in this case. The Constitution's clear.
12 There's only five grounds for which it can impeach. One
13 is drunkenness. Doesn't apply. Crimes. Corrupt conduct
14 or misfeasance or misdemeanors in office. Crimes here
15 mean felonies. There's no reason why you would say
16 misdemeanors and felony -- crimes and misdemeanors. It's
17 crimes are limited specifically to felonies. Now the
18 felony that could have been charged and was charged in
19 Governor Janklow's case was manslaughter, recklessly
20 taking the life of another human being.

21 If you look at the elements of Article I, these
22 people -- he is not charged with recklessly taking the
23 life of a human being. Nor is he even charged with
24 negligently taking the life of another human being. He's
25 charged with lane changing and distracted driving.

1 They're Class 2 misdemeanors. A felony is something you
2 can go to the penitentiary for. A Class 2 misdemeanor is
3 \$500 and a -- or 1,000 -- well, no. It's 500 and six
4 months in jail or something now. But it's changed. And
5 then there's a Class 1 misdemeanor.

6 We aren't looking at a Class 1 misdemeanor.
7 We're not looking at a felony. We're looking at two
8 Class 2 misdemeanors that caused the death of another
9 individual. And neither of these relate to any
10 performance of anything that would be related to his
11 performance in office.

12 These misdemeanors, as used in the Constitution,
13 must relate specifically to duties of office. They must
14 be integral to that office. And driving while you're
15 coming back from a Lincoln Day Dinner, which is an act of
16 a politician, somebody that wants to get elected -- it's
17 not a requirement that I go to a Lincoln Day Dinner as a
18 Attorney General. There's no requirement. That's not
19 one of the things that I'm required to do as an Attorney
20 General. I'm doing that because I want to get reelected.
21 I'm going to all of these places and doing a lot of those
22 things, but that's the act of a politician.

23 I'm going to keep my remarks as to the Second
24 Article since we'll be voting on them separately. But we
25 do need to keep our eye on the ball, and we don't have a

1 felony charge here. There was nothing ever alleged in
2 that respect. And we're limited to specifically what
3 they said in the article, and there's nothing mentioned
4 about a crime that would qualify under our Constitution
5 for this death. And for that reason I would submit that
6 we must vote -- that the article has not been sustained.

7 Thank you.

8 PRESIDENT RHODEN: Further remarks.

9 Senator Wheeler.

10 SENATOR WHEELER: Members of the Senate, as I've
11 been contemplating this matter for a long time, I try and
12 bring myself back to the law -- to my duty to do law --
13 to do justice according to law and evidence. That's what
14 our oath is, to do justice according to law and evidence.

15 And so when thinking about this First Article I
16 first have to ask myself what is the law? The law is
17 that we can only impeach by drunkenness, crimes, corrupt
18 conduct, or malfeasance or misdemeanors in office.

19 Now there's been some debate about what "crimes"
20 mean. There's been an argument made that it only applies
21 to felonies. There was an argument made by the
22 Respondent's team that it only applies to crimes made in
23 office. I submit to you both of those are wrong. Crimes
24 means crimes. It's a plain word that all of us
25 understand. And any crime you commit can potentially

1 make you liable for impeachment. Now whether any crime
2 rises to the level of impeachment, I'll address a little
3 bit later.

4 But as the definition of crime in general means
5 any crime you commit -- because if you believe the
6 Respondent's argument that it only applies to crimes in
7 office, well, then someone could commit murder not
8 related to their office, be convicted and sent to prison,
9 and yet still be an official of this state because we
10 would have been powerless to remove them. That cannot
11 be. That's an absurd reading of our Constitution.

12 And so I look at this to say we can impeach for
13 any crimes. And so then I now must look to what is the
14 law the House gave to us? The House's duty is to
15 impeach. They submit Articles of Impeachment. Our
16 question that we are going to answer to today is to
17 sustain that Article of Impeachment.

18 And so I review what the House sent to us. The
19 House said that they are impeaching Attorney General
20 Jason Ravnsborg for crimes causing the death of Joseph
21 Boever. That is all they specified, crimes causing the
22 death of Joseph Boever.

23 Now they did specify three paragraphs regarding
24 the facts surrounding that, and they mentioned two
25 Class 2 misdemeanors to which he pled no contest. But

1 the impeachment article did not limit us to just those
2 two crimes. The impeachment article applies to any
3 crimes causing the death. So I exclude crimes involving
4 lying to law enforcement because those didn't result in
5 his death. Those were afterwards. We'll deal with those
6 in Count II. But in this case I am only looking at what
7 caused his death.

8 And so in this case I now go to the evidence.
9 The evidence in this case was presented to me by the --
10 all of the investigators who were involved, clearly that
11 he was off the road, and he was off the road by all four
12 tires.

13 Now I won't get too much into a debate about the
14 burden of proof except to say I believe it's correct that
15 one doesn't exist. We set our own standards
16 individually. But I believe that the Prosecution team
17 has proven this case by a clear and convincing standard.
18 It is clear to me his tires were off the road. All of
19 the science proves that.

20 They have three different ways they try and do
21 the trajectory of where the car came from, where was the
22 area of impact, and he was so far to the right, to the
23 north, that it was clear that his tires were -- all four
24 were across the rumble strip.

25 And it was clear that they had been there for

1 more than just a few seconds. It wasn't a brief swerve
2 because there wasn't any tire marks indicating there was
3 a jerking motion, and so he had been there for at least
4 more than a few seconds.

5 And if you've been doing that, then his driving
6 was reckless. If you've been doing that, he had lost so
7 much control of his driving that he went all four tires
8 off the road. This is beyond distracted driving. This
9 is beyond careless driving. It doesn't matter -- and I
10 completely agree at the moment of impact he was not on
11 his phone. But it's clear that he was on it very much
12 shortly before then.

13 And the Attorney General did not provide to us
14 an explanation of what he was doing. I specifically
15 asked the question to them because this is what I wanted
16 to know is why was he so far off the road? How far was
17 he off the road? And all they can say is they don't
18 know.

19 They had the opportunity to present evidence to
20 rebut this, and they did not. They didn't provide any
21 debating or disputing scientific evidence that maybe it
22 only was two lanes -- maybe just two tires off the road.
23 They didn't really even try and question it at all. So
24 we're only left with the investigators' conclusions that
25 to me remain unrebutted, that he was four tires off the

1 road. And when you're so far -- when you do that for so
2 long that you are so distracted that you don't see the
3 individual in front of you, then you have definitely in
4 my mind committed reckless driving.

5 And if you've committed reckless driving --
6 recklessness is a standard for manslaughter. If you
7 recklessly kill another human being, you've committed
8 manslaughter. That's second degree manslaughter in our
9 code. That's a felony. And he would very likely -- I
10 wouldn't say that. I'm not going to say very likely
11 because I've seen second degree manslaughter cases where
12 people don't go to prison. Because there's a lot of
13 variation in recklessness and degree of culpability. But
14 he would definitely be charged with a felony.

15 Now in this case the prosecutors didn't do that.
16 I'm not going to second-guess their particular
17 prosecutorial decision. Because they have a different
18 standard. They're in criminal court. They have to
19 explain what he was doing off the road, which they can't
20 necessarily do, or how far or why he was on there for so
21 long, what he was doing at the moment of the impact that
22 distracted him.

23 Maybe they felt there was enough question that
24 they couldn't present it to a jury and prove beyond a
25 reasonable doubt. I'm not going to second-guess them on

1 that question. But to me the evidence presented here
2 today is clear that he was, and he was there for so long
3 that there could be no question that he was driving
4 recklessly. And so to me he committed manslaughter, and
5 that is a crime.

6 Then that gets to my final question is is
7 whatever he committed worthy of being impeached, worthy
8 of being removed from office? If this was just a Class 2
9 misdemeanor, if it was just careless driving or just an
10 illegal lane change, there was nothing more involved, I
11 would not find that to be a removable offense. Speeding
12 is a Class 2 misdemeanor. It's not a removable offense.

13 But that's not what he did here today. Or
14 that's not what he did that we are judging today. We
15 today have seen that that careless driving actually rose
16 to the level of recklessness, actually rose to the level
17 of manslaughter. And so we must send the signal to
18 everybody that if you drive recklessly on a road and kill
19 somebody, you can no longer be an official in this state.

20 And so I ask the members of this body to sustain
21 the Article of Impeachment sent to us by the House
22 because they have -- it has been proven to us by the law
23 and the evidence that a sustaining vote is the only vote
24 that should result.

25 Thank you.

1 PRESIDENT RHODEN: Further remarks.

2 Senator Duhamel.

3 SENATOR DUHAMEL: Thank you, Mr. President.

4 All four wheels across the rumble strips. So
5 distracted he did not know what he hit. So reckless.
6 Clear, convincing, direct evidence. This is a serious
7 offense that killed a man. I will vote to sustain the
8 Articles of Impeachment.

9 PRESIDENT RHODEN: Further remarks.

10 SENATOR DIEDRICH: Mr. President.

11 PRESIDENT RHODEN: Senator Diedrich.

12 SENATOR DIEDRICH: Thank you, Mr. President.

13 I want to thank the fellow members of the bar
14 for them sharing their expertise and information on this.
15 And I'm not going to be redundant on it. I just simply
16 want to say --

17 PRESIDENT RHODEN: Senator, could you try and
18 get a little closer to your microphone.

19 SENATOR DIEDRICH: I just wanted to say that I
20 agree with the good Senators from Lawrence County and
21 Beadle and Kingsbury and Clay and Turner County as to
22 Article I and how they look at that and the information
23 they've shared with us.

24 And I think that topic has probably been well
25 explained. We've had excellent information from the

1 investigators today and the reports that we've all had
2 access. The hours and hours and hours that I know
3 everybody looked at. We took this job very seriously.

4 I think a really important thing to me is the
5 fitness for office. And for our chief law enforcement
6 officer in the state to conduct himself in the manner
7 that occurred before and after, more importantly after
8 the accident in his dealings with law enforcement, in his
9 call to 911 and to his referencing himself, using the
10 letterhead of the State and his office to make political
11 statements essentially, those things have eroded and
12 caused the loss of confidence in our chief law
13 enforcement officer by law enforcement throughout the
14 state and probably a lot of public that we don't know.
15 We can't really quantify that.

16 But I think that that -- it is up to us and it's
17 appropriate for us to make a determination as to the
18 qualifications and the performance of our constitutional
19 officers when we have the opportunity based on tragedies
20 that may occur from the way they conduct themselves.

21 And so it's -- the matter of the driving and the
22 distraction and leaving the road is just so well settled.
23 The other part that's really important to keep the public
24 trust in the state of South Dakota and our law
25 enforcement in South Dakota is to ensure that we have the

1 appropriate chief law enforcement. And I think that this
2 is an opportunity to make that statement clear for future
3 generations. And so I urge you to vote to sustain number
4 two.

5 PRESIDENT RHODEN: Further remarks.

6 Hearing no further remarks, the question before
7 the Senate is shall the Senate sustain the First Article
8 of Impeachment, crimes causing the death of Joseph Boever
9 against Attorney General Jason Ravnsborg, and remove him
10 from the Office of Attorney General?

11 Members in favor will vote "aye," those opposed
12 "nay." This is a two-thirds majority vote.

13 The Secretary will please call the roll.

14 SECRETARY JOHNSON: Senator Bolin.

15 SENATOR BOLIN: Yes.

16 SECRETARY JOHNSON: Breitling.

17 SENATOR BREITLING: Yes.

18 SECRETARY JOHNSON: Cammack.

19 SENATOR CAMMACK: Aye.

20 SECRETARY JOHNSON: Castleberry.

21 SENATOR CASTLEBERRY: Aye.

22 SECRETARY JOHNSON: Crabtree.

23 SENATOR CRABTREE: Aye.

24 SECRETARY JOHNSON: Curd.

25 SENATOR CURD: Aye.

1 SECRETARY JOHNSON: Diedrich.
2 SENATOR DIEDRICH: Aye.
3 SECRETARY JOHNSON: Duhamel.
4 SENATOR DUHAMEL: Aye.
5 SECRETARY JOHNSON: Duvall.
6 SENATOR DUVALL: Aye.
7 SECRETARY JOHNSON: Foster, excused.
8 Frye-Mueller, excused.
9 Greenfield.
10 SENATOR GREENFIELD: No.
11 SECRETARY JOHNSON: Heinert.
12 SENATOR HEINERT: Aye.
13 SECRETARY JOHNSON: Hunhoff.
14 SENATOR HUNHOFF: Aye.
15 SECRETARY JOHNSON: Johns.
16 SENATOR JOHNS: Nay.
17 SECRETARY JOHNSON: Johnson.
18 SENATOR JOHNSON: Aye.
19 SECRETARY JOHNSON: Klumb.
20 SENATOR KLUMB: No.
21 SECRETARY JOHNSON: Kolbeck.
22 SENATOR KOLBECK: No.
23 SECRETARY JOHNSON: Maher.
24 SENATOR MAHER: No.
25 SECRETARY JOHNSON: Nesiba.

1 SENATOR NESIBA: Aye.
2 SECRETARY JOHNSON: Novstrup.
3 SENATOR NOVSTRUP: No.
4 SECRETARY JOHNSON: Pardon?
5 SENATOR NOVSTRUP: No.
6 SECRETARY JOHNSON: Otten.
7 SENATOR OTTEN: Aye.
8 SECRETARY JOHNSON: Rohl.
9 SENATOR ROHL: Aye.
10 SECRETARY JOHNSON: Rusch.
11 SENATOR RUSCH: No.
12 SECRETARY JOHNSON: Schoenbeck.
13 SENATOR SCHOENBECK: Aye.
14 SECRETARY JOHNSON: Schoenfish.
15 SENATOR SCHOENFISH: Aye.
16 SECRETARY JOHNSON: Smith.
17 SENATOR SMITH: Aye.
18 SECRETARY JOHNSON: Stalzer.
19 SENATOR STALZER: Aye.
20 SECRETARY JOHNSON: Steinhauer.
21 SENATOR STEINHAUER: No.
22 SECRETARY JOHNSON: Sutton.
23 SENATOR SUTTON: Aye.
24 SECRETARY JOHNSON: Symens.
25 SENATOR SYMENS: No.

1 SECRETARY JOHNSON: Tobin.

2 SENATOR TOBIN: Aye.

3 SECRETARY JOHNSON: Wheeler.

4 SENATOR WHEELER: Aye.

5 SECRETARY JOHNSON: Wiik.

6 SENATOR WIIK: Aye.

7 SECRETARY JOHNSON: Zikmund.

8 SENATOR ZIKMUND: Aye.

9 SECRETARY JOHNSON: Mr. President, there are
10 24 yeas, 9 nays, and 2 excused.

11 PRESIDENT RHODEN: The question having received
12 a two-thirds majority vote of the members elect, the
13 Attorney General of the State of South Dakota is
14 convicted of the First Article of Impeachment and removed
15 from the Office of Attorney General.

16 We will now take up Article II. The question
17 before the Senate is shall the Senate sustain the Second
18 Article of Impeachment, malfeasance in office following
19 the death of Joseph Boever against Attorney General
20 Jason Ravensborg, and remove him from the Office of
21 Attorney General?

22 Are there any remarks?

23 SENATOR RUSCH: Mr. President.

24 PRESIDENT RHODEN: Senator Rusch.

25 SENATOR RUSCH: I'm not going to be repetitive

1 on a lot of the things I said before. I voted no on
2 Count I, but Count II is a different issue on this case.

3 And in respect to Count II, I'm concerned about
4 whether the Attorney General misused his office as
5 Attorney General. You know, obviously, he's a poor
6 driver. There have been numerous incidents where he's
7 avoided responsibility for his poor driving by
8 identifying himself as Attorney General.

9 In this case he started out by identifying
10 himself as Attorney General and got special treatment as
11 a result. How many other cases have received the use of
12 the sheriff's personal car? How many other cases have
13 received such an inadequate investigation? How many
14 other cases have had a committee of prosecutors to decide
15 what charges to bring?

16 What really concerns me, though, is the fact
17 that he was consulting with staff at the Attorney
18 General's Office about this and how to handle this
19 matter. The head of the DCI that was involved in it, his
20 chief of staff in the Attorney General's Office was
21 involved in that. He consulted DCI experts about the
22 cell phone and polygraph. He put out a press release on
23 his A.G.'s Office stationery.

24 Although there's the argument that this was not
25 part of his Attorney General's Office, he made this part

1 of his Attorney General's Office. He directly involved
2 the Attorney General's Office in this entire matter. He
3 affected the credibility of the Attorney General's Office
4 by his conduct. And I believe that in respect to
5 Count II the answer should be yes and that he should be
6 impeached in this matter.

7 Thank you.

8 PRESIDENT RHODEN: Further remarks?

9 SENATOR JOHNS: Mr. President.

10 PRESIDENT RHODEN: Senator Johns.

11 SENATOR JOHNS: Thank you, Mr. President.

12 Again, I want us to look at what the elements
13 are in the Articles of Impeachment. And we're talking
14 about malfeasance, and we're talking about malfeasance
15 while in office.

16 Now I understand that law enforcement lost
17 confidence in our Attorney General right after the event
18 and the things that did follow and that that would have
19 been appropriate at the time for him to resign from
20 office but he decided not to and that was a decision he's
21 entitled to.

22 You know, when you lose confidence in your
23 elected leaders -- in parliamentary countries you have a
24 no confidence vote. Or in South Dakota if it's a
25 municipal leader, you can have recall elections. In

1 California they have recall elections for state
2 officials. We just don't have it here. But we respect
3 the rights of the electors as to the decisions they make
4 to put in office. There's a huge difference when it
5 comes to impeachment.

6 Why haven't we seen it since we've been a state?
7 Because of the fact that we are extremely reluctant to
8 remove someone from office unless they've really
9 committed major, major faux pas or criminal offenses or
10 things where it's truly a misuse of office where you're
11 using everything that's related to office. And I can
12 understand the arguments just made by the Senator from
13 Clay County where he's saying that they made too much use
14 of it.

15 But then I got to look at when it comes to
16 malfeasance and what the South Dakota Supreme Court has
17 said about malfeasance. It says that, first of all, it
18 has to be done in the official capacity. But that's only
19 one element.

20 The next element is it must be done knowingly.
21 A third element is must be done willfully. And, finally
22 and most importantly, it must be done with an evil or
23 corrupt motive or purpose. And if you really analyze the
24 evidence, I don't think we have any evidence here that
25 anything he did was done with an evil or improper,

1 corrupt purpose. I don't see it.

2 You know, we're asked to draw inferences. And
3 inferences can lead to a conclusion. But inferences must
4 be based on evidence, evidence that you're satisfied
5 with, and then it has to be reasoned that this is
6 something that logically follows.

7 We don't have it here, folks. I think we had a
8 lot of speculation in some of the opinions. And the
9 opinions rendered by one of the witnesses as to whether
10 he thought he was lying or not would never come up in
11 court. The only thing you're entitled to in court when
12 it comes to a person's credibility is I can give an
13 opinion as to whether or not they're deemed to be
14 credible within the community. Or I can -- but it's
15 reputation. It's a reputation for being a false --
16 falsifier.

17 And I just struck -- and, you know, do I approve
18 of what happened? No. Like the Senator from Yankton --
19 or Vermillion, I truly think that things have happened
20 that really have demeaned that office. But is it grounds
21 for impeachment? And I have to say no. But -- and I
22 understand the majority of you are going to go the other
23 way, and that's okay because that's why you have your
24 position and you get paid the big bucks. But my position
25 is legally it's not sustained.

1 So thank you.

2 PRESIDENT RHODEN: Further remarks.

3 Senator Duhamel.

4 SENATOR DUHAMEL: Thank you, Mr. President.

5 The standard is honesty. As much as anything,
6 this is about an elected official not telling the truth.
7 Law enforcement testified that the Attorney General lied
8 about several things.

9 He said he was not using his phone while driving
10 until they proved that he was. He insisted he was
11 driving in the middle of the road and that he had to
12 wrestle the vehicle to the side. He initially didn't
13 offer that he had asked law enforcement what
14 investigators would find on his phone. An abundance of
15 evidence that the Attorney General misled or lied to law
16 enforcement.

17 The Attorney General has the duty to hold
18 himself to a higher standard of personal and professional
19 conduct. As the chief law officer, the top cop, once
20 you're caught in a lie how do you ever overcome that?
21 Ever. He lost the faith of law enforcement and the
22 people of South Dakota because of his conduct.

23 PRESIDENT RHODEN: Further remarks.

24 Senator Wheeler.

25 SENATOR WHEELER: Thank you, Mr. President.

1 Members of the Senate, I'll try and go through a
2 similar analysis as the last one. I believe this one
3 will be a little more brief.

4 To me, the question on the law is a little
5 more -- is a little more close because of the murky
6 definition of what "in office" means. I tried to do a
7 lot of research on this, and whether it applies to simply
8 exercising -- only official exercising of his official
9 duties and he has to do something there that would apply,
10 or could it mean more broadly to his conduct as an
11 official of this state?

12 And as the Prosecution team pointed out, as the
13 Attorney General he has higher duties than your average
14 official. As an attorney he has a duty to candor, and as
15 a prosecutor he has a duty to be a minister of justice.
16 And when you lie to law enforcement you're violating that
17 duty.

18 When -- and I -- there's a lot of questions
19 about what happened in terms of what he knew and when he
20 knew it. I don't know all those questions. I don't know
21 all those answers. But I do know that he lied about his
22 cell phone use. That was clearly shown by the evidence,
23 that he minimized that conduct at first and just
24 continued to only admit to evidence as it was presented
25 to him by law enforcement.

1 And so the idea that our chief law enforcement
2 officer could lie to law enforcement, even about a small
3 matter, and still remain our chief law enforcement
4 officer to me is untenable. To me when you are the
5 Attorney General you have a higher duty when your
6 relation -- in all of your interactions with other law
7 enforcement officers you must always tell the truth.

8 He could have chosen to not have an interview
9 with them at all, and that might have come with other
10 political implications, but he chose to sit down with
11 that interview and minimize his conduct to such an extent
12 that he lied. And we cannot send the message that our
13 chief law enforcement officer can lie to law enforcement
14 and remain in office. Therefore, I believe that the law
15 and the evidence again bring me to vote yes on sustaining
16 this article.

17 Thank you.

18 PRESIDENT RHODEN: Further remarks.

19 Any further remarks?

20 Hearing none, the question before the Senate:
21 Shall the Senate sustain the Second Article of
22 Impeachment, malfeasance in office following the death of
23 Joseph Boever against Attorney General Jason Ravensborg,
24 and remove him from Office of Attorney General?

25 Members in favor of that question will vote

1 "aye," those opposed "nay." This is also a two-thirds
2 majority vote.

3 The Secretary will please call the roll.

4 SECRETARY JOHNSON: Senator Bolin.

5 SENATOR BOLIN: Yes.

6 SECRETARY JOHNSON: Breitling.

7 SENATOR BREITLING: Yes.

8 SECRETARY JOHNSON: Cammack.

9 SENATOR CAMMACK: Aye.

10 SECRETARY JOHNSON: Castleberry.

11 SENATOR CASTLEBERRY: Aye.

12 SECRETARY JOHNSON: Crabtree.

13 SENATOR CRABTREE: Aye.

14 SECRETARY JOHNSON: Curd.

15 SENATOR CURD: Aye.

16 SECRETARY JOHNSON: Diedrich.

17 SENATOR DIEDRICH: Aye.

18 SECRETARY JOHNSON: Duhamel.

19 SENATOR DUHAMEL: Aye.

20 SECRETARY JOHNSON: Duvall.

21 SENATOR DUVALL: Aye.

22 SECRETARY JOHNSON: Foster is excused.

23 Frye-Mueller is excused.

24 Greenfield.

25 SENATOR GREENFIELD: Aye.

1 SECRETARY JOHNSON: Heinert.
2 SENATOR HEINERT: Aye.
3 SECRETARY JOHNSON: Hunhoff.
4 SENATOR HUNHOFF: Aye.
5 SECRETARY JOHNSON: Johns.
6 SENATOR JOHNS: Nay.
7 SECRETARY JOHNSON: Pardon? Nay?
8 SENATOR JOHNS: No.
9 SECRETARY JOHNSON: Johnson.
10 SENATOR JOHNSON: Aye.
11 SECRETARY JOHNSON: Klumb.
12 SENATOR KLUMB: Aye.
13 SECRETARY JOHNSON: Kolbeck.
14 SENATOR KOLBECK: Aye.
15 SECRETARY JOHNSON: Maher.
16 SENATOR MAHER: Aye.
17 SECRETARY JOHNSON: Nesiba.
18 SENATOR NESIBA: Aye.
19 SECRETARY JOHNSON: Novstrup.
20 SENATOR NOVSTRUP: No.
21 SECRETARY JOHNSON: Otten.
22 SENATOR OTTEN: Aye.
23 SECRETARY JOHNSON: Rohl.
24 SENATOR ROHL: Aye.
25 SECRETARY JOHNSON: Rusch.

1 SENATOR RUSCH: Aye.
2 SECRETARY JOHNSON: Schoenbeck.
3 SENATOR SCHOENBECK: Aye.
4 SECRETARY JOHNSON: Schoenfish.
5 SENATOR SCHOENFISH: Aye.
6 SECRETARY JOHNSON: Smith.
7 SENATOR SMITH: Aye.
8 SECRETARY JOHNSON: Stalzer.
9 SENATOR STALZER: Aye.
10 SECRETARY JOHNSON: Steinhauer.
11 SENATOR STEINHAUER: Aye.
12 SECRETARY JOHNSON: Sutton.
13 SENATOR SUTTON: Aye.
14 SECRETARY JOHNSON: Symens.
15 SENATOR SYMENS: Aye.
16 SECRETARY JOHNSON: Tobin.
17 SENATOR TOBIN: Aye.
18 SECRETARY JOHNSON: Wheeler.
19 SENATOR WHEELER: Aye.
20 SECRETARY JOHNSON: Wiik.
21 SENATOR WIIK: Aye.
22 SECRETARY JOHNSON: Zikmund.
23 SENATOR ZIKMUND: Aye.
24 SECRETARY JOHNSON: Mr. President, there are
25 31 yeas, 2 nays, and 2 excused.

1 PRESIDENT RHODEN: So the question having
2 received a two-thirds majority vote of the members elect,
3 the President declares the Attorney General of
4 South Dakota is convicted of the Second Article of
5 Impeachment and removed from the Office of Attorney
6 General.

7 Now as a reminder, members of the Senate, we
8 have two votes on disqualification. We will have one
9 vote for each of the two Articles of Impeachment that
10 both passed, starting with Article I.

11 So the question before the Senate is shall
12 Jason Ravensborg be disqualified from holding any office
13 of trust or profit under the State as a result of being
14 convicted on the First Article of Impeachment?

15 Are there any remarks?

16 Senator Schoenbeck.

17 SENATOR SCHOENBECK: I think we're all weary of
18 the culmination of these events that have weighed on us;
19 so I'll be brief.

20 I think the result to impeach has to go hand in
21 hand with the message you send about whether that person
22 can ever hold public office again in our state. I think
23 yes is the appropriate vote.

24 Thank you.

25 PRESIDENT RHODEN: Further remarks.

1 Any further remarks?

2 Hearing no further remarks, the question before
3 the Senate is shall Senator [sic] Ravensborg be
4 disqualified from holding any office of trust or profit
5 under the State?

6 Members in favor will vote "aye," those opposed
7 "nay." This is also a two-thirds majority vote.

8 The Secretary will call the roll.

9 SECRETARY JOHNSON: Senator Bolin.

10 SENATOR BOLIN: Aye.

11 SECRETARY JOHNSON: Breitling.

12 SENATOR BREITLING: Aye.

13 SECRETARY JOHNSON: Cammack.

14 SENATOR CAMMACK: Aye.

15 SECRETARY JOHNSON: Castleberry.

16 SENATOR CASTLEBERRY: Aye.

17 SECRETARY JOHNSON: Crabtree.

18 SENATOR CRABTREE: Aye.

19 SECRETARY JOHNSON: Curd.

20 SENATOR CURD: Aye.

21 SECRETARY JOHNSON: Diedrich.

22 SENATOR DIEDRICH: Aye.

23 SECRETARY JOHNSON: Duhamel.

24 SENATOR DUHAMEL: Aye.

25 SECRETARY JOHNSON: Duvall.

1 SENATOR DUVALL: Aye.
2 SECRETARY JOHNSON: Foster is excused.
3 Frye-Mueller is excused.
4 Greenfield.
5 SENATOR GREENFIELD: Aye.
6 SECRETARY JOHNSON: Heinert.
7 SENATOR HEINERT: Aye.
8 SECRETARY JOHNSON: Hunhoff.
9 SENATOR HUNHOFF: Aye.
10 SECRETARY JOHNSON: Johns.
11 SENATOR JOHNS: Aye.
12 SECRETARY JOHNSON: Johnson?
13 SENATOR JOHNSON: Aye.
14 SECRETARY JOHNSON: Pardon?
15 SENATOR JOHNSON: Aye.
16 SECRETARY JOHNSON: Klumb.
17 SENATOR KLUMB: Aye.
18 SECRETARY JOHNSON: Kolbeck.
19 SENATOR KOLBECK: Aye.
20 SECRETARY JOHNSON: Maher.
21 SENATOR MAHER: Aye.
22 SECRETARY JOHNSON: Nesiba.
23 SENATOR NESIBA: Aye.
24 SECRETARY JOHNSON: Novstrup.
25 SENATOR NOVSTRUP: Aye.

1 SECRETARY JOHNSON: Otten.
2 SENATOR OTTEN: Aye.
3 SECRETARY JOHNSON: Rohl.
4 SENATOR ROHL: Aye.
5 SECRETARY JOHNSON: Rusch.
6 SENATOR RUSCH: Aye.
7 SECRETARY JOHNSON: Schoenbeck.
8 SENATOR SCHOENBECK: Aye.
9 SECRETARY JOHNSON: Schoenfish.
10 SENATOR SCHOENFISH: Aye.
11 SECRETARY JOHNSON: Smith.
12 SENATOR SMITH: Aye.
13 SECRETARY JOHNSON: Stalzer.
14 SENATOR STALZER: Aye.
15 SECRETARY JOHNSON: Steinhauer.
16 SENATOR STEINHAUER: Aye.
17 SECRETARY JOHNSON: Sutton.
18 SENATOR SUTTON: Aye.
19 SECRETARY JOHNSON: Symens.
20 SENATOR SYMENS: Aye.
21 SECRETARY JOHNSON: Tobin.
22 SENATOR TOBIN: Aye.
23 SECRETARY JOHNSON: Wheeler.
24 SENATOR WHEELER: Aye.
25 SECRETARY JOHNSON: Wiik.

1 SENATOR WIIK: Aye.

2 SECRETARY JOHNSON: Zikmund.

3 SENATOR ZIKMUND: Aye.

4 SECRETARY JOHNSON: Mr. President, there are
5 33 yeas and 2 excused.

6 PRESIDENT RHODEN: So the question having
7 received a two-thirds majority vote of the members elect,
8 the President declares the Attorney General of the State
9 of South Dakota is disqualified from holding any office
10 of trust or profit under the State as a result of being
11 convicted of the First Article of Impeachment.

12 On the Second Article of Impeachment the
13 question before the Senate is shall Jason Ravensborg be
14 disqualified from holding any office of trust or profit
15 under the State as a result of being convicted of the
16 Second Article of Impeachment?

17 Are there any remarks?

18 Senator Schoenbeck.

19 SENATOR SCHOENBECK: Mr. President, members of
20 the body, especially since my seat mate asked me, I will
21 tell you that we had no prior impeachment to draw upon in
22 drafting these. The constitutional provision is in the
23 disjunctive because I thought some people might want to
24 vote one way on the first question and differently on the
25 second question. That's why you have two questions. And

1 you have two questions on each article so they stand
2 independently. And I would encourage you to vote again
3 yes on this one.

4 Thank you.

5 PRESIDENT RHODEN: Further remarks.

6 Hearing no further remarks, the question before
7 the Senate is shall Jason Ravensborg be disqualified from
8 holding any office of trust or profit under the State as
9 a result of being convicted of the Second Article of
10 Impeachment?

11 Members in favor will vote "aye," those opposed
12 "nay." Also a two-thirds majority vote.

13 Secretary will please call the roll.

14 SECRETARY JOHNSON: Senator Bolin.

15 SENATOR BOLIN: Aye.

16 SECRETARY JOHNSON: Breitling.

17 SENATOR BREITLING: Aye.

18 SECRETARY JOHNSON: Cammack.

19 SENATOR CAMMACK: Aye.

20 SECRETARY JOHNSON: Castleberry.

21 SENATOR CASTLEBERRY: Aye.

22 SECRETARY JOHNSON: Crabtree.

23 SENATOR CRABTREE: Aye.

24 SECRETARY JOHNSON: Curd.

25 SENATOR CURD: Aye.

1 SECRETARY JOHNSON: Diedrich.
2 SENATOR DIEDRICH: Aye.
3 SECRETARY JOHNSON: Duhamel.
4 SENATOR DUHAMEL: Aye.
5 SECRETARY JOHNSON: Duvall.
6 SENATOR DUVALL: Aye.
7 SECRETARY JOHNSON: Foster is excused.
8 Frye-Mueller is excused.
9 Greenfield.
10 SENATOR GREENFIELD: Aye.
11 SECRETARY JOHNSON: Heinert.
12 SENATOR HEINERT: Aye.
13 SECRETARY JOHNSON: Hunhoff.
14 SENATOR HUNHOFF: Aye.
15 SECRETARY JOHNSON: Johns.
16 SENATOR JOHNS: Aye.
17 SECRETARY JOHNSON: Johnson.
18 SENATOR JOHNSON: Aye.
19 SECRETARY JOHNSON: Klumb.
20 SENATOR KLUMB: Aye.
21 SECRETARY JOHNSON: Kolbeck.
22 SENATOR KOLBECK: Aye.
23 SECRETARY JOHNSON: Maher.
24 SENATOR MAHER: Aye.
25 SECRETARY JOHNSON: Nesiba.

1 SENATOR NESIBA: Aye.
2 SECRETARY JOHNSON: Novstrup.
3 SENATOR NOVSTRUP: Aye.
4 SECRETARY JOHNSON: Otten.
5 SENATOR OTTEN: Aye.
6 SECRETARY JOHNSON: Rohl.
7 SENATOR ROHL: Aye.
8 SECRETARY JOHNSON: Rusch.
9 SENATOR RUSCH: Aye.
10 SECRETARY JOHNSON: Schoenbeck.
11 SENATOR SCHOENBECK: Aye.
12 SECRETARY JOHNSON: Schoenfish.
13 SENATOR SCHOENFISH: Aye.
14 SECRETARY JOHNSON: Smith.
15 SENATOR SMITH: Aye.
16 SECRETARY JOHNSON: Stalzer.
17 SENATOR STALZER: Aye.
18 SECRETARY JOHNSON: Steinhauer.
19 SENATOR STEINHAUER: Aye.
20 SECRETARY JOHNSON: Sutton.
21 SENATOR SUTTON: Aye.
22 SECRETARY JOHNSON: Symens.
23 SENATOR SYMENS: Aye.
24 SECRETARY JOHNSON: Tobin.
25 SENATOR TOBIN: Aye.

1 SECRETARY JOHNSON: Wheeler.

2 SENATOR WHEELER: Aye.

3 SECRETARY JOHNSON: Wiik.

4 SENATOR WIİK: Aye.

5 SECRETARY JOHNSON: Zikmund.

6 SENATOR ZIKMUND: Aye.

7 SECRETARY JOHNSON: Mr. President, there are
8 33 yeas, 2 excused.

9 PRESIDENT RHODEN: So the question having
10 received a two-thirds majority vote of the members elect,
11 the President declares the Attorney General of the State
12 of South Dakota is disqualified from holding any office
13 of trust or profit under the State as a result of being
14 convicted of the Second Article of Impeachment.

15 We'll be at ease for a minute.

16 (Pause.)

17 PRESIDENT RHODEN: May I have your attention.
18 We will take a 15-minute break and prepare the resolution
19 and so we can tie things up for tonight. 15-minute
20 break. When you come back it shouldn't take us long to
21 finish.

22 We are in recess.

23 (A short recess is taken.)

24 PRESIDENT RHODEN: The Senate will come to
25 order.

1 Madam Secretary.

2 SECRETARY JOHNSON: Senator Cammack moves that
3 the Senate Court of Impeachment do now dissolve.

4 SENATOR SCHOENBECK: Second.

5 PRESIDENT RHODEN: Comments on that motion.

6 Hearing none, all in favor of that motion will
7 say "aye," opposed "nay."

8 Motion carried.

9 Motions and resolutions.

10 SECRETARY JOHNSON: Senate Resolution 703
11 memorializing the proceedings of the Senate Court of
12 Impeachment.

13 Senator Cammack moves that Senate Resolution 703
14 be placed on today's calendar for immediate consideration
15 pursuant to Special Rule Number 5.

16 (The motion is seconded.)

17 PRESIDENT RHODEN: Comments on that motion.

18 Hearing none, all in favor say "aye," opposed
19 "nay."

20 Motion carries.

21 SECRETARY JOHNSON: Senate Resolution 703, a
22 resolution memorializing the proceedings of the Senate
23 Court of Impeachment.

24 Senator Cammack moves that Senate Resolution 703
25 be adopted.

1 PRESIDENT RHODEN: Is there a second?

2 SENATOR WHEELER: Second.

3 PRESIDENT RHODEN: Comments on that motion.

4 SENATOR SCHOENBECK: Mr. President.

5 PRESIDENT RHODEN: Senator Schoenbeck.

6 SENATOR SCHOENBECK: Mr. President, members of
7 the body, the resolution memorializes the actions taken
8 by the Court of Impeachment.

9 Thank you.

10 PRESIDENT RHODEN: Any other remarks?

11 Hearing none, the question before the Senate is
12 the adoption of Senate Resolution 703. Members in favor
13 will vote "aye," opposed "nay."

14 Secretary will please call the roll.

15 SECRETARY JOHNSON: Senator Bolin.

16 SENATOR BOLIN: Aye.

17 SECRETARY JOHNSON: Breitling.

18 SENATOR BREITLING: Aye.

19 SECRETARY JOHNSON: Cammack.

20 SENATOR CAMMACK: Aye.

21 SECRETARY JOHNSON: Castleberry.

22 SENATOR CASTLEBERRY: Aye.

23 SECRETARY JOHNSON: Crabtree.

24 SENATOR CRABTREE: Aye.

25 SECRETARY JOHNSON: Curd.

1 SENATOR CURD: Aye.
2 SECRETARY JOHNSON: Diedrich.
3 SENATOR DIEDRICH: Aye.
4 SECRETARY JOHNSON: Duhamel.
5 SENATOR DUHAMEL: Aye.
6 SECRETARY JOHNSON: Duvall.
7 SENATOR DUVALL: Aye.
8 SECRETARY JOHNSON: Foster is excused.
9 Frye-Mueller, excused.
10 Greenfield.
11 SENATOR GREENFIELD: Aye.
12 SECRETARY JOHNSON: Heinert.
13 SENATOR HEINERT: Aye.
14 SECRETARY JOHNSON: Hunhoff.
15 SENATOR HUNHOFF: Aye.
16 SECRETARY JOHNSON: Johns.
17 SENATOR JOHNS: Aye.
18 SECRETARY JOHNSON: Johnson.
19 SENATOR JOHNSON: Aye.
20 SECRETARY JOHNSON: Klumb.
21 SENATOR KLUMB: Aye.
22 SECRETARY JOHNSON: Kolbeck.
23 SENATOR KOLBECK: Aye.
24 SECRETARY JOHNSON: Maher.
25 SENATOR MAHER: Aye.

1 SECRETARY JOHNSON: Nesiba.
2 SENATOR NESIBA: Aye.
3 SECRETARY JOHNSON: Novstrup.
4 SENATOR NOVSTRUP: Aye.
5 SECRETARY JOHNSON: Otten.
6 SENATOR OTTEN: Aye.
7 SECRETARY JOHNSON: Rohl.
8 SENATOR ROHL: Aye.
9 SECRETARY JOHNSON: Rusch.
10 SENATOR RUSCH: Aye.
11 SECRETARY JOHNSON: Schoenbeck.
12 SENATOR SCHOENBECK: Aye.
13 SECRETARY JOHNSON: Schoenfish.
14 SENATOR SCHOENFISH: Aye.
15 SECRETARY JOHNSON: Smith.
16 SENATOR SMITH: Aye.
17 SECRETARY JOHNSON: Stalzer.
18 SENATOR STALZER: Aye.
19 SECRETARY JOHNSON: Steinhauer.
20 SENATOR STEINHAUER: Aye.
21 SECRETARY JOHNSON: Sutton.
22 SENATOR SUTTON: Aye.
23 SECRETARY JOHNSON: Symens.
24 SENATOR SYMENS: Aye.
25 SECRETARY JOHNSON: Tobin.

1 SENATOR TOBIN: Aye.

2 SECRETARY JOHNSON: Wheeler.

3 SENATOR WHEELER: Aye.

4 SECRETARY JOHNSON: Wiik.

5 SENATOR WIIK: Aye.

6 SECRETARY JOHNSON: Zikmund.

7 SENATOR ZIKMUND: Aye.

8 SECRETARY JOHNSON: Mr. President, there are
9 33 yeas, 2 excused.

10 PRESIDENT RHODEN: So the motion having received
11 an affirmative vote of the majority of the members elect,
12 the President declares the motion carried, and Senate
13 Resolution 703 is adopted.

14 SENATOR CAMMACK: Mr. President.

15 PRESIDENT RHODEN: Senator Cammack.

16 SENATOR CAMMACK: I would like to take a moment
17 to congratulate you and thank you, everyone, whether it
18 was staff or prosecution or the defense or the members of
19 the body and the members that were in the gallery. I
20 felt that today everyone was treated with respect and
21 with civility, and that's no minor -- minor task to
22 accomplish.

23 Today we did make history. Like I said earlier,
24 there were no winners today, but we did our business.
25 And thank you for your hard work.

1 PRESIDENT RHODEN: Senator Schoenbeck.

2 SENATOR SCHOENBECK: Thank you, Mr. President,
3 members of the body. I want to join in on a couple of
4 points.

5 First, the staff in this, Reed and John and
6 Hilary and Isaiah [sic], they were jumping without a
7 parachute. You know, they had to create a way to land on
8 the way down, and I don't think we should
9 underestimate -- and Sue is probably busy working
10 somewhere. All these people, the work they did and the
11 hours they put in, you just really can't imagine how
12 much.

13 And then I -- on a different level, the members
14 of the body, I just want to say I was so impressed by
15 the -- I could tell, in the days leading up, the readings
16 that people were doing and the time they were putting in
17 and the efforts they were making and the questions they
18 had, that people took their job seriously.

19 And I know that a number of people here had very
20 close relationships with the Attorney General, and that's
21 not an easy thing to set aside and do your job. And I
22 don't think anybody that's not here on this floor can
23 really appreciate what all of you did and the difficult
24 decisions you weighed, regardless of whatever decision
25 you finally reached. I know that everybody worked so

1 hard and so thoughtful, and I just want to say on behalf
2 of the citizens of South Dakota, thank you.

3 PRESIDENT RHODEN: I will take the opportunity
4 to also pile on.

5 You know, this has been a pretty incredible
6 process. And for me it was quite an eye-opener to work
7 as closely as I did -- I think the first time since I was
8 in the legislature -- with the LRC and with the staff,
9 with Boots, you know, all of us working on a process that
10 we were making it up as we went.

11 And I also want to say a special shout-out to
12 Matt Michels for coming alongside me through this
13 process. I've had a pretty challenging time in my
14 personal life and a lot of things going on and don't know
15 quite how I would have dealt with that all had it not
16 been for Matt taking the pressure off and helping me make
17 the decisions and pointing me in the right direction.
18 And all of you. And I'm very proud to be part of this
19 chamber.

20 Any other remarks before we go back to the
21 Secretary?

22 Thank you, all.

23 Madam Secretary.

24 SECRETARY JOHNSON: Senator Gammack moves that
25 when we adjourn today we adjourn to convene at 10 a.m. on

1 Wednesday, June 22, the Fourth Legislative Day.

2 SENATOR CAMMACK: As a matter of clarification,
3 we tried to get it to 9:00, and the House is not going to
4 come in until 10:00; so we would just be sitting here.
5 So sorry.

6 (The motion is seconded.)

7 PRESIDENT RHODEN: Do I get to announce --

8 SECRETARY JOHNSON: It's 10 o'clock -- the
9 motion is 10 o'clock tomorrow.

10 PRESIDENT RHODEN: Do I get to order Schoenbeck
11 to stand down?

12 The motion has been made and seconded; is that
13 correct?

14 Comments on the motion.

15 Hearing none, all in favor say "aye," opposed
16 "nay."

17 Motion carries.

18 Hold on.

19 SECRETARY JOHNSON: Senator Cammack moves that
20 the Senate do now adjourn.

21 (The motion is seconded.)

22 PRESIDENT RHODEN: All in favor of Senator
23 Cammack's motion to adjourn will say "aye," opposed
24 "nay."

25 Motion carries.

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The Senate is adjourned.

(The Senate is adjourned at 6:06 p.m.)

1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY)

4

5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter, and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had on the 21st day of June, 2022, and that the attached
11 is a true and correct transcription of the proceedings so
12 taken.

13 Dated at Onida, South Dakota this 19th day
14 of July, 2022.

15

16

17

18 /s/ Cheri McComsey Wittler
19 Cheri McComsey Wittler,
20 Notary Public and
21 Registered Professional Reporter
22 Certified Realtime Reporter

23

24

25

GOAC 5/2 item 4
ELLSWORTH Doc 19

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF LINCOLN)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

WE THE PEOPLE for FREE, FAIR and
TRANSPARENT ELECTIONS, LLC,
 Plaintiff,

41CIV22-000463

vs.

**ORDER REQUIRING
PRESERVATION OF RECORDS**

SHERI LUND, LINCOLN COUNTY
AUDITOR and LINCOLN COUNTY
AUDITOR'S OFFICE, IN and for
LINCOLN COUNTY, SOUTH DAKOTA,
 Defendant(s).

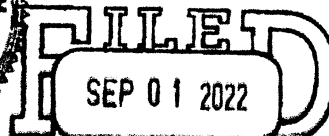
In this recently filed action and, in light of the similar and/or parallel public records denial appeal file 41CIV22-000298, with good cause appearing herein especially given the representative repeated responses offered by numerous county auditors or local election-related officials, it is hereby,

ORDERED, ADJUDGED, AND DECREED that: (1) each County Auditor in the State shall now and hereafter preserve the machine logs from the automatic tabulation machines in such County on and after the November 3, 2020, election and after through the conclusion of this proceeding and any potential appeal thereof; (2) each County Auditor in the State shall now and hereafter preserve, to the extent such existed, the Cast Vote Records ("CVR") of the ballots counted, including any and all electronic or data storage drive(s) that such information has been or is stored on, for the November 3, 2020, election and after through the conclusion of this proceeding and any potential appeal thereof; (3) each County Auditor in the State shall now and hereafter preserve any and all election-related documents, data or other related election information as outlined and envisioned under and as a required part of 52 USC § 20701, including any and all electronic or data storage drive(s) that any such information has been or is stored on, for the November 3, 2020, election and after through the conclusion of this proceeding and any potential appeal thereof. The Court's Order shall now remain in force and effect until any superseding Order may be heard, considered and subsequently entered in and for this matter.

BY THE COURT

Honorable John Pekas
Circuit Court Judge, Second Judicial Circuit

ATTEST:
ANGELLA M. GIBBS, CLERK OF COURTS
BY DEPUTY
(REG.)



At Minnehaha County, S.D.
for Lincoln County

Special Case - Dakota (see memo 5/3/22)
Complaint: Racist Rapid City, SD, by actions actually denied. See memo 5/3/22
GOAC 5/2 Item 4
ELLSWORTH DC20
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION
NY 0027 10/20/22
Att 02/26/22

NDN COLLECTIVE, individually and on behalf of all others similarly situated, and SUNNY RED BEAR, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

RETSEL CORPORATION, d/b/a GRAND GATEWAY HOTEL and d/b/a CHEERS SPORTS LOUNGE AND CASINO, CONNIE UHRE, and NICHOLAS UHRE,

Defendants.

Case No.: 5:22-cv-5027

COMPLAINT

Plaintiffs NDN Collective and Sunny Red Bear, individually and on behalf of all others similarly situated, alleges as follows:

INTRODUCTION

1. This lawsuit arises out of the explicit racial discrimination by Defendants Retsel Corporation d/b/a Grand Gateway Hotel ("Grand Gateway Hotel") and d/b/a Cheers Sports Lounge and Casino ("Cheers Bar"), Connie Uhre, and Nicholas Uhre (collectively, the "Uhres").

2. Connie Uhre owns and operates the Grand Gateway Hotel in Rapid City, South Dakota. She also owns and operates Cheers Bar, which is located on the same

premises as, and connected to, the Grand Gateway Hotel. The Grand Gateway Hotel and Cheers Bar are managed by Nicholas Uhre, Connie's son.

3. On March 21 and 22, 2022, the Defendants discriminated against NDN Collective and Sunny Red Bear on the basis of their race, in violation of 42 U.S.C. § 1981.

4. The Defendants' intentional racial discrimination against the Plaintiffs is part of a policy, pattern, or practice of intentional racial discrimination against Native Americans.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343 because this complaint involves a claim to recover damages for the protection of civil rights under 42 U.S.C. § 1981, which provides for redress when the right to make or enforce a contract is interfered with on the basis of racial discrimination or animus, and 42 U.S.C. § 1988, which authorizes the recovery of attorneys' fees.

6. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 *et seq.*, Rules 57 and 65 of the Federal Rules of Civil Procedure, and the general legal and equitable powers of this Court.

7. Venue is appropriate under 28 U.S.C § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in the District of South Dakota and Defendants reside or are located in this judicial district.

PARTIES

8. Plaintiff NDN Collective is a 501(c)(3) non-profit organization registered in Rapid City, South Dakota. NDN Collective's mission includes educating, funding, and organizing those engaged in Native American issues. NDN Collective seeks to increase philanthropic and capital investment in Native communities; to use trainings, leadership development, and education to prepare Indigenous communities to create sustainable outcomes for their people and planet; and to develop a political agenda for activism related to the Indigenous community goals of, among other things, protecting and defending their land, air, water and the planet. NDN Collective makes regular use of public accommodations in Rapid City, including hotels.

9. Plaintiff Sunny Red Bear is an individual residing in Rapid City, South Dakota. Ms. Red Bear is Native American and a member of a protected class.

10. Defendant Retsel Corporation is a South Dakota corporation. On information and belief, Retsel Corp. does business as the Grand Gateway Hotel. The 2021 Annual Report filed with the South Dakota Secretary of State for Retsel Corp. lists its actual address in this state as 1721 N Lacrosse Street, Rapid City, South Dakota. That address is the same as the address listed online for the Grand Gateway Hotel.¹

11. On information and belief, Retsel Corp. also operates the Cheers Bar, which is located within the Grand Gateway Hotel. The website for the Grand Gateway

¹ See Grand Gateway Hotel, available at <https://www.grandgatewayhotel.com/> (last accessed March 22, 2022).

Hotel contains a section for the Cheers Sports Lounge and Casino, which states, among other things “The Grand Gateway Hotel – a hotel, a restaurant, and a sports bar – all on the same property.”²

12. On information and belief, Defendant Connie Uhre is an individual and a South Dakota resident residing in Rapid City, South Dakota. Connie Uhre owns and operates Retsel Corp. d/b/a Grand Gateway Hotel, and d/b/a Cheers Sports Bar and Lounge. The 2021 Annual Report for Retsel Corp. lists Connie Uhre as President and a director of that entity.

13. On information and belief, Defendant Nicholas Uhre is an individual and South Dakota resident residing in Rapid City, South Dakota. On information and belief, Nicholas Uhre is the manager of the Grand Gateway Hotel and Cheers Bar. The 2021 Annual Report for Retsel Corp. lists Nicholas Uhre as a director of that entity.

14. Retsel Corp., and its businesses, Grand Gateway Hotel and Cheers Bar, are vicariously liable for the actions of the employees, owners, managers, and directors of the corporation. The Uhres are also individually liable for their actions.

ADDITIONAL FACUTAL ALLEGATIONS

15. The Grand Gateway Hotel and Cheers Bar are open to the public and offer services as public accommodations.

² See Grand Gateway Hotel, available at <https://www.grandgatewayhotel.com/rapid-city-hotel-dining/cheers-sports-lounge-casino> (last accessed March 22, 2022).

16. On or around March 20, 2022, Connie Uhre posted on social media that she will “not allow a Native American to enter our business including Cheers” because she is unable to tell “who is a bad Native or a good Native.”³

17. In another since-deleted social media post,⁴ Connie Uhre not only stated that she was banning Native Americans from the Grand Gateway Hotel and from Cheers Bar, but she also offered a “very special rate” to ranchers and travelers—presumably, only non-Native ranchers and travelers:



Connie Uhre

Do to the killing that took place at the Grand Gateway Hotel on March 19 2022 at 4 am plus all the vandalism we have had since the Mayor and Police Department are working with the non profit organization (Dark Money) . We will no long allow any Native American on property. Or in Cheers Sports Bar. Natives killing Natives. Rancher and Travelers will receive a very special rate of 59.00 a night. Book Direct.

10 Like Reply

³ Siandhara Bonnet, *Hotel threatens to ban Native Americans following shooting*, Rapid City Journal, March 21, 2022, available at https://rapidcityjournal.com/news/local/hotel-threatens-to-ban-native-americans-following-shooting/article_d3282ee4-95fb-5873-a02a-2d0af19c0975.html (last accessed March 22, 2022); KOTA Staff, *Rapid City hotel purportedly bans Native Americans from its property*, KOTA, March 21, 2022, available at <https://www.kotatv.com/2022/03/22/rapid-city-hotel-purportedly-bans-native-americans-its-property/> (last accessed March 22, 2022).

⁴ It is unclear if this is the same social media post quoted in the articles cited in note 3.

18. Nicholas Uhre also sent an email on or around March 20, 2022, in which he stated, “I really do not want to allow Natives on property. Every time we have problems I call the police with it, the first thing they ask is what nationality is he or she and 98% of the time I have to say native [sic], and we call at least once a week. they [sic] kill each other walk around with guns . . . The problem is we do not know the nice ones from the bad natives...so we just have to say no to them!!”⁵

19. Despite these overtly racial comments, the Uhres claim the Grand Gateway Hotel and Cheers Bar do not have a policy discriminating against Native Americans. This claim is pretext for intentional racial discrimination against the Plaintiffs and the members of the class.

I. Intentional Racial Discrimination Against Sunny Red Bear

20. On March 21, 2022, Plaintiff Sunny Red Bear entered the Grand Gateway Hotel with another Native American woman. The two women tried to rent a room at the hotel.

21. After initially beginning to process the rental and providing a price quote, a hotel employee refused to rent a room to them, claiming that the hotel had a policy that it did not rent rooms to people with “local” identification. This was mere pretext to discriminate against Ms. Red Bear based on her race.

⁵ Arielle Zions, *Workers quit, lawsuit pending after hotel owner calls for ban on Native Americans*, SDPB, March 22, 2022, available at <https://listen.sdpb.org/business-economics/2022-03-22/workers-quit-law-suit-pending-after-hotel-owner-calls-for-ban-on-native-americans> (last accessed March 23, 2022).

22. The hotel employee first claimed that this local identification policy was an actual policy. Then she reversed herself, claiming there was not a formal policy but that this was an effort to implement and/or deal with the fallout from Connie Uhre's social media posts. On information and belief, no written policy existed, and no such policy was provided to Ms. Red Bear.

23. The hotel employee also did not allow the other woman to rent the room under her name using her identification.

24. As a direct result of Connie Uhre's decision, announced on social media, to exclude Native Americans from her businesses, Ms. Red Bear was discriminated against in violation of federal law. On information and belief, Nicholas Uhre has also endorsed and enforced this policy.

25. As a result of the Defendants' public statements endorsing racial discrimination at their businesses, and as a result of the March 21, 2022, incident, Ms. Red Bear felt and feels threatened, embarrassed, humiliated, disturbed, and shocked. She feels unwelcome to return.

26. Ms. Red Bear had not done anything to warrant exclusion from the Grand Gateway Hotel. Instead, Ms. Red Bear and her companion were excluded on the basis of their race and protected status as Native Americans.

27. As a result of the Defendants' intentional policy of racial discrimination, Ms. Red Bear was prevented from completing any transactions at the Grand Gateway Hotel and at Cheers Bar.

II. Intentional Racial Discrimination Against NDN Collective.

28. On March 22, 2022, representatives of NDN Collective entered the Grand Gateway Hotel to reserve five rooms on behalf of the organization.

29. NDN Collective was told that they could not rent rooms due to some “issues” that the hotel had.

30. When NDN Collective stated that Expedia showed rooms available, the front desk employee confirmed that rooms were, in fact, available but the hotel would not rent those available rooms to NDN Collective.

31. At no point did the NDN Collective representative present a form of identification, local or otherwise.

32. The NDN Collective representative asked to speak to a manager. At all times, the interaction with the front desk employee was respectful and polite.

33. Immediately thereafter, an individual believed to be Nicholas Uhre approached the NDN Collective representatives and forcefully demanded that they leave the hotel. He then followed them out of the hotel. The representatives of NDN Collective were intimidated by Nicholas Uhre’s threatening demeanor.

34. As a direct result of Connie Uhre’s decision, announced on social media, to exclude Native Americans from her businesses, NDN Collective was discriminated against in violation of federal law. Nicholas Uhre also endorsed and enforced this policy, including by intimidating the NDN Collective representatives and excluding them from the hotel.

35. As a result of the Defendants' public statements endorsing racial discrimination at their businesses, NDN Collective and its members felt and feel threatened, embarrassed, humiliated, disturbed, and shocked.

36. Further, as a result of the March 22, 2022, incident at the Grand Gateway Hotel, NDN Collective and its members felt and feel threatened, embarrassed, humiliated, disturbed, and shocked. They feel unwelcome to return.

37. The individuals present at the Grand Gateway Hotel on behalf of NDN Collective had not done anything to warrant exclusion from the Grand Gateway Hotel. Instead, they were excluded on the basis of their race and protected status as Native Americans, the racial identity of their organization, and NDN Collective's advocacy for Native Americans.

38. As a result of the Defendants' intentional policy of racial discrimination, NDN Collective was prevented from completing any transactions at the Grand Gateway Hotel and at Cheers Bar.

CLASS ACTION ALLEGATIONS

39. The Plaintiff brings this claim on behalf of a class, pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3).

40. Pursuant to a pattern or practice of intentional and willful racial discrimination, Plaintiffs and other Native American patrons have been, are being, and will be denied equal services at the Defendants' businesses, which are public accommodations.

41. The alleged class consists of:

All Native Americans who have or will visit the Grand Gateway Hotel and/or Cheers Bar. Excluded from the Class are Defendants and their officers, directors, management, employees, subsidiaries, and affiliates. Also excluded is courthouse personnel and their spouses and immediate family.

Alternatively, the Plaintiffs will seek to certify a subclass consisting of

All Native Americans with a Rapid City address who have or will visit the Grand Gateway Hotel and/or Cheers Bar. Excluded from the Class are Defendants and their officers, directors, management, employees, subsidiaries, and affiliates. Also excluded is courthouse personnel and their spouses and immediate family.

42. The Plaintiffs may alter the class definition(s) to conform with developments in the case and discovery.

43. **Numerosity under Federal Rule of Civil Procedure 23(a)(1):** The class is so numerous that joinder of all members is not practicable. Approximately 10,000 Native Americans live in Pennington County alone.

44. **Commonality and Predominance under Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3):** There are questions of law and fact common to the class members. These common questions predominate over any questions relating to individual class members. Specifically, common questions include, but are not limited to, whether the Defendants have discriminated and will discriminate against class members, whether the Defendants have a policy of discrimination against class members, and whether such discrimination violates federal law.

45. **Typicality under Federal Rule of Civil Procedure 23(a)(3):** The Plaintiffs' claims are typical of the claims of class members. All are based on the same or similar facts and the same legal theories.

46. **Adequacy of Representation under Federal Rule of Civil Procedure 23(a)(4):** Plaintiffs are adequate Class Representatives because their interests do not conflict with the interests of Class Members they seek to represent. Additionally, Plaintiffs have retained counsel experienced in civil rights litigation and class action litigation.

47. **Declaratory and Injunctive Relief under Federal Rule of Civil Procedure 23(b)(2):** Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the Class, thereby making appropriate final injunctive relief and declaratory relief with respect to the Class as a whole.

48. **Superiority of Class Action under Federal Rule of Civil Procedure 23(b)(3):** A class action is the superior method for the fair and efficient adjudication of this matter, in that individual actions are not economically or practically feasible, and members of the class are unlikely to be aware of their rights or pursue litigation.

49. On behalf of the class, the Plaintiffs may seek the following relief: certification of a class or classes as appropriate, compensatory and punitive damages as determined by a jury, injunctive and declaratory relief, and attorneys' fees and costs.

CLAIMS FOR RELIEF⁶

Count I: Violation of 42 U.S.C. § 1981. Against all Defendants

50. The Plaintiffs incorporate all previous paragraphs of this Complaint as if fully set forth herein.

51. Section 1981 provides that all persons within the jurisdiction of the United States shall have “the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens.” 42 U.S.C. § 1981. This includes “the making performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” *Id.* § 1981(b).

52. Section 1981 is not limited to existing contractual relationships.

53. Sunny Red Bear is a member of a protected class.

54. Sunny Red Bear was engaged in an activity protected by 42 U.S.C. § 1981 when she attempted to make a contract for the purchase of hotel rooms at the Grand Gateway Hotel.

55. The Grand Gateway Hotel, at the instruction of Connie and/or Nicholas Uhre, intentionally interfered with the formation of that contract based solely on Ms. Red Bear’s membership in a protected class.

⁶ The Defendants also violated 42 U.S.C. § 2000a *et seq.* and the South Dakota Human Relations Act, SDCL ch. 20-13, by engaging in racial discrimination in public accommodations. The Plaintiffs are in the process of filing a complaint with the South Dakota Human Rights Commission, and may amend this complaint 30 days after that administrative complaint is submitted to comply with the jurisdictional prerequisite as interpreted in *Bilello v. Kum & Go, LLC*, 374 F.3d 656 (8th Cir. 2004). This jurisdictional prerequisite does not exist with respect to claims under 42 U.S.C. § 1981.

56. The Defendants acted with discriminatory intent. Connie and Nicholas Uhre's racist comments, and the discriminatory policy in place at the Grand Gateway Hotel, successfully interfered with and prevented Ms. Red Bear from enjoying her right to enter into a contract with the Grand Gateway Hotel. As a result, Ms. Red Bear was denied access to the Grand Gateway Hotel and the Cheers Bar, located on and within the same property.

57. The Defendants' actions proximately and directly caused injury and harm to Ms. Red Bear, including the denial of federally and constitutionally protected rights, public embarrassment, severe emotional distress, mental pain and suffering, injury to dignity, anguish, and personal degradation on the basis of race.

58. NDN Collective represents members of a protected class and it shares the racial identity of its members.

59. NDN Collective was engaged in an activity protected by 42 U.S.C. § 1981 when it attempted to make a contract for the purchase of hotel rooms at the Grand Gateway Hotel.

60. The Grand Gateway Hotel, at the instruction of Connie and/or Nicholas Uhre, intentionally interfered with the formation of that contract based solely on NDN Collective's identity and association with members of a protected class.

61. The Defendants acted with discriminatory intent. Connie and Nicholas Uhre's racist comments, and the discriminatory policy in place at the Grand Gateway Hotel, successfully interfered with and prevented NDN Collective from enjoying its right to enter into a contract with the Grand Gateway Hotel. As a result, NDN

Collective and its members were denied access to the Grand Gateway Hotel and the Cheers Bar, located on and within the same property.

62. The Defendants' actions proximately and directly caused injury and harm to NDN Collective, including the denial of federally and constitutionally protected rights, public embarrassment, severe emotional distress, mental pain and suffering, injury to dignity, anguish, and personal degradation on the basis of race.

63. As a result of an unlawful policy or practice, the Defendants denied Ms. Red Bear and NDN Collective the use and enjoyment of the benefits, privileges, terms and conditions that it extends to all other guests and invitees.

64. While both Ms. Red Bear and NDN Collective were denied the ability to contract for hotel rooms, the Defendants offered a reduced rate to non-Native persons. That rate was not available to the Plaintiffs on the same terms as it was available to others.

65. By discriminating against the Plaintiffs on the basis of race, the Defendants denied the Plaintiffs the same right to enjoy the benefits, privileges, terms, and conditions of contract that are enjoyed by white citizens, in violation of the Plaintiffs' rights under the Civil Rights Act of 1866, 42 U.S.C. § 1981.

66. As a result of the Defendants' unlawful conduct, the Plaintiffs have suffered and will continue to suffer economic loss, humiliation, embarrassment, emotional distress, and unlawful deprivation of their federally protected rights to enjoy equal treatment in the making and enforcing of contracts in places of public

accommodation without regard for their race. Plaintiffs are entitled to compensatory damages in an amount to be determined at trial.

67. The Defendants' conduct was intentional, deliberate, reckless, hurtful, wanton, discriminatory, done with malice and in reckless disregard of the rights of Ms. Red Bear, providing a justification and need for punitive damages in this case.

68. The Plaintiffs are entitled to an injunction prohibiting the Defendants from future violations of federal law.

69. The Plaintiffs are entitled to recover attorneys' fees and expert fees under 42 U.S.C. §§ 1981 and 1988 (b) and (c).

**Count II: Declaratory Relief, 28 U.S.C. §§ 2201 and 2202.
Against All Defendants**

70. The Plaintiffs incorporate all previous paragraphs of this Complaint as if fully set forth herein.

71. A dispute currently exists with respect to the rights and obligations of the Plaintiffs, on one hand, and the Defendants, on the other.

72. The Plaintiffs are entitled to a declaratory judgment finding that the foregoing actions of the Defendants violate the Civil Rights Act of 1866, 42 U.S.C. § 1981.

PRAYER FOR RELIEF

73. Plaintiff respectfully requests that this Court:
- a. Certify this matter as a class action;
 - b. Award compensatory, general, and special damages as each Plaintiff is entitled to recover in an amount determined at trial;
 - c. Award punitive damages to each Plaintiff in an amount that will punish the Defendants' conduct and discourage and deter Defendants and others from engaging in similar discrimination in the future;
 - d. Issue injunctive relief prohibiting Defendants and all persons acting in concert with them from engaging in further unlawful conduct;
 - e. Award to Plaintiffs their costs, expenses, disbursements, and reasonable attorneys' fees in this action pursuant to 42 U.S.C. § 1988;
 - f. Award pre-judgment and post-judgment interest;
 - g. Pursuant to 28 U.S.C. §§ 2201 and 2202, declare that the Defendants' conduct is unlawful; and
 - h. Grant other and further relief, both general and specific, at law, or in equity, as the Court finds is just and proper.

Dated: March 23, 2022

Respectfully submitted,

/s/ Brendan V. Johnson

Brendan V. Johnson (SD Bar # 3263)

Timothy W. Billion (SD Bar # 4641)

ROBINS KAPLAN LLP

140 North Phillips Ave, Suite 307

Sioux Falls, SD 57104

Tel: 605-335-1300

BJohnson@RobinsKaplan.com

TBillion@RobinsKaplan.com

ATTORNEYS FOR PLAINTIFFS

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I (a) PLAINTIFFS
 NDX COLLECTIVE, individually and on behalf of all others similarly situated, and SUNNY RED BEAR, individually and on behalf of all others similarly situated.

(b) County of Residence of First Listed Plaintiff Pennington County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Name, Address, and Telephone Number)
 Robins Kaplan LLP | 605-335-1300
 140 N Phillips Ave, Ste 307 Sioux Falls, SD 57104

DEFENDANTS
 RETSEL CORPORATION, d/b/a GRAND GATEWAY HOTEL and d/b/a CHEERS SPORTS LOUNGE AND CASINO, CONNIE UHRE, and NICHOLAS UHRE.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) _____

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in one Box for Plaintiff and one Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <u>and</u> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

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CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 165 Other Contract <input type="checkbox"/> 175 Contract Product Liability <input type="checkbox"/> 190 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care <input type="checkbox"/> 368 Asbestos- Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage - Product Liability	<input type="checkbox"/> 420 Labor-Related Seizure of Property 21 U.S.C. 881 <input type="checkbox"/> 430 Other LABOR <input type="checkbox"/> 440 Fair Labor Standards Act <input type="checkbox"/> 450 Labor Management Relations <input type="checkbox"/> 460 Railway Labor Act <input type="checkbox"/> 470 Family and Medical Leave Act <input type="checkbox"/> 480 Other Labor Litigation <input type="checkbox"/> 490 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 492 Naturalization Application <input type="checkbox"/> 495 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 U.S.C. 1158 <input type="checkbox"/> 423 Withdrawal 28 U.S.C. 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 850 Unpatented Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 19A (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW (19HW 405g) <input type="checkbox"/> 864 SS10 Title XVI <input type="checkbox"/> 865 RSI (405g)	<input type="checkbox"/> 425 False Claims Act <input type="checkbox"/> 427 Fair Labor (31 U.S.C. 372) etc. <input type="checkbox"/> 430 State Reapportionment <input type="checkbox"/> 435 Antitrust <input type="checkbox"/> 440 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Corporation <input type="checkbox"/> 470 Kicker/tee Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 U.S.C. 1681 et seq.) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable Modem <input type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 860 Other Statutory Actions <input type="checkbox"/> 865 Agricultural Acts <input type="checkbox"/> 868 Environmental Matters <input type="checkbox"/> 868 Freedom of Information Act <input type="checkbox"/> 869 Arbitration <input type="checkbox"/> 870 Administrative Procedure Act Review or Appeal of Agency Decision <input type="checkbox"/> 880 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Eminent Domain <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Easements <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 250 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 445 Amer. w/ Disabilities Employment <input type="checkbox"/> 446 Amer. w/ Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (1-8 Plaintiff) (1-1 Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 U.S.C. 7609	<input type="checkbox"/> 425 False Claims Act <input type="checkbox"/> 427 Fair Labor (31 U.S.C. 372) etc. <input type="checkbox"/> 430 State Reapportionment <input type="checkbox"/> 435 Antitrust <input type="checkbox"/> 440 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Corporation <input type="checkbox"/> 470 Kicker/tee Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 U.S.C. 1681 et seq.) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable Modem <input type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 860 Other Statutory Actions <input type="checkbox"/> 865 Agricultural Acts <input type="checkbox"/> 868 Environmental Matters <input type="checkbox"/> 868 Freedom of Information Act <input type="checkbox"/> 869 Arbitration <input type="checkbox"/> 870 Administrative Procedure Act Review or Appeal of Agency Decision <input type="checkbox"/> 880 Constitutionality of State Statutes	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (specify) _____

6 Multidistrict Litigation - Transfer

8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1981

Brief description of cause:
 This lawsuit arises out of discrimination by Defendants on the basis of race to members of a protected class, in violation of 42 U.S.C. § 1981.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23 F.R.C.P.

DEMAND \$ 1,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions)

UJ DGI _____

DOCKET NUMBER _____

DATE: March 23, 2022

SIGNATURE OF ATTORNEY FOR PLAINTIFF: /s/ Brendan V. Johnson

FOR OFFICE USE ONLY

RECEIVED: _____

APPROVED: _____

FILED: _____

MAIL ROOM: _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. [Click here for Instructions for Suit Nature Codes](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Remstated or Reopened. (4) Check this box for cases remstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

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Argus Leader.

BUSINESS JOURNAL

Minnesota Attorney General opens investigation into Sanford, Fairview Health merger

**Symmone Gauer**

Sioux Falls Argus Leader

Published 10:06 a.m. CT Nov. 18, 2022 | Updated 10:21 a.m. CT Nov. 18, 2022

The Minnesota Attorney General's office announced it will be investigating the merger intent between Sanford Health and Fairview Health Services, a Minneapolis-based non-profit health system. The two healthcare systems publicly announced their effort Tuesday.

"We are aware of the proposed merger between Fairview and Sandford," John Stiles, deputy chief of staff and spokesperson for the Attorney General, said in an emailed statement to the Argus Leader. "We have opened an investigation into the proposed transaction's compliance with charities and nonprofit laws. We are also evaluating any possible effects on competition along with state and federal partners."

The news of the merger came with some pushback from people online as well as opposition from the Minnesota Nurses Association, who released a statement voicing their concerns.

More: Sanford Health announces plans to merge with Minneapolis-based Fairview Health

The Association said the merger "would put corporate expansion above patient care," citing how Fairview closed two hospitals in the middle of a pandemic while the CEO received more than \$3.5 million in annual compensation.

The statement also mentioned that Sanford paid \$49.5 million to its former CEO who the Association alleges spread medical disinformation.

"They [Sanford and Fairview] have repeatedly made clear that their priorities are firmly focused on corporate expansion and their own bottom lines," the statement reads.

"Corporate mergers and healthcare monopolies threaten to increase costs for patients and often result in hospital and clinic closures."

Stiles was unable to share any other information at this time, including whether the investigation is standard procedure or if it was brought on by the Minnesota Nurses Association.

Title 3—

Executive Order 14091 of February 16, 2023

The President

Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. On my first day in office, I signed Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), which charged the Federal Government with advancing equity for all, including communities that have long been underserved, and addressing systemic racism in our Nation's policies and programs. By advancing equity, the Federal Government can support and empower all Americans, including the many communities in America that have been underserved, discriminated against, and adversely affected by persistent poverty and inequality. We can also deliver resources and benefits equitably to the people of the United States and rebuild trust in Government.

Over the past 2 years, through landmark legislation—including the American Rescue Plan Act of 2021 (Public Law 117–2); the bipartisan Infrastructure Investment and Jobs Act (Public Law 117–58) (Bipartisan Infrastructure Law); division A of Public Law 117–167, known as the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022; Public Law 117–169, commonly referred to as the Inflation Reduction Act of 2022; and the Bipartisan Safer Communities Act (Public Law 117–159)—as well as executive action, my Administration has vigorously championed racial equity and has advanced equal opportunity for underserved communities. Executive departments and agencies (agencies) have engaged in historic work assessing how their policies and programs perpetuate barriers for underserved communities and developing strategies for removing those barriers. They have made important progress incorporating an evidence-based approach to equitable policy-making and implementation, and they have crafted new action plans to advance equity. In short, my Administration has embedded a focus on equity into the fabric of Federal policymaking and service delivery. Our work to transform the way the Federal Government serves the American people has been complemented by Executive Order 14035 of June 25, 2021 (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce), which continues to help ensure that my Administration—the most diverse in our Nation's history—reflects the growing diversity of the communities we serve.

My Administration's commitment to equity has produced better decision-making and more equitable outcomes. We have delivered the most equitable economic recovery in memory, and, driven by the expanded Child Tax Credit, we cut child poverty to its lowest rate on record in 2021, including record low Black, Latino, Native American, and rural child poverty. Under my Administration, the economy has created nearly 11 million jobs, and we have brought down unemployment nationwide—in particular for Black and Latino workers, for whom unemployment rates are near 50-year lows. My Administration has provided emergency rental assistance to help millions of families stay in their homes, and we have prohibited Federal contractors from paying people with disabilities subminimum wages. We are rebuilding roads and bridges, replacing the Nation's lead pipes to provide clean drinking water for all, delivering access to affordable high-speed internet to Americans

in both rural and urban communities, investing in public transit, and reconnecting communities previously cut off from economic opportunity by highways, rail lines, or disinvestment. My Administration has provided funding to improve accessibility for passengers with disabilities on rail systems and in airports, expanded health coverage for millions of Americans, and expanded home- and community-based services so more people with disabilities and older adults can live independently. We have secured billions of dollars in direct new investments for Tribal Nations and Native American communities and have directed an increase in the share of Federal Government contract spending awarded to small disadvantaged businesses. My Administration has taken action to strengthen public safety, advance criminal justice reform, correct our country's failed approach to marijuana, protect civil rights, and stand up against rising extremism and hate-fueled violence that threaten the fabric of our democracy. We have taken historic steps to advance full equality for lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) Americans, including by ending the ban on transgender service members in our military; prohibiting discrimination based on sexual orientation, gender identity, and sex characteristics across Federal programs; and signing into law the Respect for Marriage Act (Public Law 117-228) to preserve protections for the rights of same-sex and interracial couples. My Administration is also implementing the first-ever National Strategy on Gender Equity and Equality to ensure that all people, regardless of gender, have the opportunity to realize their full potential.

These transformative achievements have advanced the work of building a more equitable Nation. Yet, members of underserved communities—many of whom have endured generations of discrimination and disinvestment—still confront significant barriers to realizing the full promise of our great Nation, and the Federal Government has a responsibility to remove these barriers. It is imperative to reject the narrow, cramped view of American opportunity as a zero-sum game. When any person or community is denied freedom, dignity, and prosperity, our entire Nation is held back. But when we lift each other up, we are all lifted up. Therefore, my Administration must take additional action across the Federal Government—in collaboration with civil society, the private sector, and State and local government—to continue the work begun with Executive Order 13985 to combat discrimination and advance equal opportunity, including by redressing unfair disparities and removing barriers to Government programs and services. Achieving racial equity and support for underserved communities is not a one-time project. It must be a multi-generational commitment, and it must remain the responsibility of agencies across the Federal Government. It therefore continues to be the policy of my Administration to advance an ambitious, whole-of-government approach to racial equity and support for underserved communities and to continuously embed equity into all aspects of Federal decision-making.

This order builds upon my previous equity-related Executive Orders by extending and strengthening equity-advancing requirements for agencies, and it positions agencies to deliver better outcomes for the American people. In doing so, the Federal Government shall continue to pursue ambitious goals to build a strong, fair, and inclusive workforce and economy; invest in communities where Federal policies have historically impeded equal opportunity—both rural and urban—in ways that mitigate economic displacement, expand access to capital, preserve housing and neighborhood affordability, root out discrimination in the housing market, and build community wealth; advance equity in health, including mental and behavioral health and well-being; deliver an equitable response to the COVID-19 pandemic; deliver environmental justice and implement the Justice40 Initiative; build prosperity in rural communities; ensure equitable procurement practices, including through small disadvantaged businesses contracting and the Buy Indian Act (25 U.S.C. 47); pursue educational equity so that our Nation's schools put every student on a path to success; improve our Nation's criminal justice system to end unjust disparities, strengthen public safety, and ensure

equal justice under law; promote equity in science and root out bias in the design and use of new technologies, such as artificial intelligence; protect the right to vote and realize the promise of our Nation's civil rights laws; and promote equity and human rights around the world through our foreign policy and foreign assistance. By redoubling our efforts, the Federal Government can help bridge the gap between the world we see and the future we seek.

Sec. 2. *Establishing Equity-Focused Leadership Across the Federal Government.*

(a) Establishment of Agency Equity Teams. The Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Energy, the Secretary of Education, the Secretary of Veterans Affairs, the Secretary of Homeland Security, the Administrator of the Small Business Administration, the Commissioner of Social Security, the Administrator of General Services, the Administrator of the United States Agency for International Development, the Administrator of the Environmental Protection Agency, the Administrator of the National Aeronautics and Space Administration, the Director of the National Science Foundation, and the Director of the Office of Personnel Management (agency heads) shall, within 30 days of the date of this order, ensure that they have in place an Agency Equity Team within their respective agencies to coordinate the implementation of equity initiatives and ensure that their respective agencies are delivering equitable outcomes for the American people.

(i) Each Agency Equity Team shall be led by a designated senior official (senior designee) charged with implementing my Administration's equity initiatives, and shall include senior officials from the office of the agency head and the agency's program, policy, civil rights, regulatory, science, technology, service delivery, financial assistance and grants, data, budget, procurement, public engagement, legal, and evaluation offices, as well as the agency's Chief Diversity Officer, to the extent applicable. Agency Equity Teams shall include a combination of competitive service employees, as defined by 5 U.S.C. 2102(a), and appointees, as defined in Executive Order 13989 of January 20, 2021 (Ethics Commitments by Executive Branch Personnel), and, to the extent practicable, shall build upon and coordinate with the agency's existing structures and processes, including with the agency's environmental justice officer designated pursuant to Executive Order 14008 of January 27, 2021 (Tackling the Climate Crisis at Home and Abroad), and with the senior agency official designated to coordinate with the Gender Policy Council pursuant to Executive Order 14020 of March 8, 2021 (Establishment of the White House Gender Policy Council).

(ii) The senior designee at each agency shall be responsible for delivering equitable outcomes, to the extent consistent with applicable law, and shall report to the agency head.

(iii) Each Agency Equity Team shall support continued equity training and equity leadership development for staff across all levels of the agency's workforce.

(iv) Each agency's senior designee shall coordinate with the agency head, agency budget officials, and the Office of Management and Budget (OMB) to ensure that the Agency Equity Team has sufficient resources, including staffing and data collection capacity, to advance the agency's equity goals. Agency heads shall ensure that their respective Agency Equity Teams serve in an advisory and coordination role on priority agency actions.

(b) Establishment of the White House Steering Committee on Equity. There is hereby established a White House Steering Committee on Equity (Steering Committee), which shall be chaired by the Assistant to the President for

Domestic Policy. The Steering Committee shall include senior officials representing policy councils and offices within the Executive Office of the President, as appropriate. The Steering Committee shall:

- (i) coordinate Government-wide efforts to advance equity;
- (ii) coordinate an annual process to consult with agency heads on their respective agencies' Equity Action Plans, established in section 3(a) of this order;
- (iii) coordinate with the leadership of the White House Initiatives created by Executive Order 14031 of May 28, 2021 (Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders); Executive Order 14041 of September 3, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity Through Historically Black Colleges and Universities); Executive Order 14045 of September 13, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics); Executive Order 14049 of October 11, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities); and Executive Order 14050 of October 19, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans);
- (iv) coordinate with the White House Environmental Justice Interagency Council to ensure that equity and environmental justice efforts are consistent and mutually reinforcing;
- (v) coordinate with the White House Gender Policy Council to align efforts to advance gender equity with broader equity efforts; and
- (vi) monitor agencies' activities and promote accountability to ensure that agencies undertake ambitious and measurable steps to deliver equitable outcomes for the American people.

Sec. 3. *Delivering Equitable Outcomes Through Government Policies, Programs, and Activities.* Each agency head shall support ongoing implementation of a comprehensive equity strategy that uses the agency's policy, budgetary, programmatic, service-delivery, procurement, data-collection processes, grantmaking, public engagement, research and evaluation, and regulatory functions to enable the agency's mission and service delivery to yield equitable outcomes for all Americans, including underserved communities.

(a) In September 2023, and on an annual basis thereafter, concurrent with the agencies' submission to OMB for the President's Budget, agency heads shall submit an Equity Action Plan to the Steering Committee. The Equity Action Plan shall include actions to advance equity, including under Executive Order 13985, Executive Order 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation), Executive Order 14008, and Executive Order 14020.

- (b) Each Equity Action Plan, which shall be made public, shall include:
- (i) an update on the progress made by the agency on the actions, performance measures, and milestones highlighted in the preceding year's Equity Action Plan, as well as the agency's performance on the annual Environmental Justice Scorecard established pursuant to section 223 of Executive Order 14008, as applicable;
 - (ii) potential barriers that underserved communities may face in accessing and benefitting from the agency's policies, programs, and activities, including procurement, contracting, and grant opportunities;
 - (iii) strategies, including new or revised policies and programs, to address the barriers described in subsection (b)(ii) of this section and to ensure equitable access and opportunity for underserved communities; and
 - (iv) a description of how the agency intends to meaningfully engage with underserved communities, including through accessible, culturally and

linguistically appropriate outreach, and the incorporation of the perspectives of those with lived experiences into agency policies, programs, and activities.

(c) Starting with formulation of the Fiscal Year 2025 Budget and for each subsequent year, the Director of OMB shall consider how the President's Budget can support the Equity Action Plans described in subsection (a) of this section in order to reinforce agency efforts to meaningfully engage with and invest in underserved communities and advance equitable outcomes.

(d) To ensure effective implementation of Equity Action Plans, and to strengthen the Federal Government's equitable delivery of resources and benefits to all, agency heads shall:

(i) prioritize and incorporate strategies to advance equity—including by pursuing evidence-based approaches, reducing administrative burdens, increasing access to technical assistance, and implementing equitable data practices, consistent with applicable law, into their respective:

(A) agency strategic plans developed pursuant to 5 U.S.C. 306(a);

(B) agency performance plans developed pursuant to 31 U.S.C. 1115 and 1116;

(C) portions of performance plans relating to human and capital resource requirements to achieve performance goals pursuant to 31 U.S.C. 1115(b)(5)(A);

(D) agency priority goals developed pursuant to 31 U.S.C. 1120;

(E) evaluation and evidence-building activities pursuant to the Foundations for Evidence-Based Policymaking Act of 2018 (Public Law 115-435) and section 5 of the Presidential Memorandum of January 27, 2021 (Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking);

(F) customer experience capacity assessments and action plans pursuant to section 280 of OMB Circular A-11 and Executive Order 14058 of December 13, 2021 (Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government);

(G) selection of items for their respective regulatory agendas and plans pursuant to sections 4(b) and (c) of Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended;

(H) individual performance plans for senior executives consistent with 5 U.S.C. 4312, and for other senior employees consistent with 5 U.S.C. 4302; and

(I) as permitted by law, activities, acquisitions, and strategies that the Director of OMB determines to be appropriate to further the implementation of this order;

(ii) identify opportunities, as appropriate and consistent with applicable law, to incorporate into new regulations and to modify their respective agencies' regulations, internal- and public-facing guidance, and other policies to include advancing equity as part of their respective agencies' missions; and

(iii) promote coordination within and among their respective agencies concerning the elements of their respective Equity Action Plans and the recommendations of the Interagency Working Group on Equitable Data established in Executive Order 13985.

Sec. 4. *Embedding Equity into Government-wide Processes.*

(a) The Director of OMB shall consider opportunities to review and update internal processes, directives, and Government-wide guidance (such as OMB Circulars and Memoranda) to support equitable decision-making, promote equitable deployment of financial and technical assistance, and assist agencies in advancing equity, as appropriate and wherever possible.

(b) When designing, developing, acquiring, and using artificial intelligence and automated systems in the Federal Government, agencies shall do so, consistent with applicable law, in a manner that advances equity.

Sec. 5. *Delivering Equitable Outcomes in Partnership with Underserved Communities.* Underserved communities often face significant barriers and legacy exclusions in engaging with agencies and providing input on Federal policies and programs that affect them. Agencies must increase engagement with underserved communities by identifying and applying innovative approaches to improve the quality, frequency, and accessibility of engagement. Agencies shall, consistent with applicable law:

(a) conduct proactive engagement, as appropriate, with members of underserved communities—for example, through culturally and linguistically appropriate listening sessions, outreach events, or requests for information—during development and implementation of agencies' respective annual Equity Action Plans, annual budget submissions, grants and funding opportunities, and other actions, including those outlined in section 3(d) of this order;

(b) collaborate with OMB, as appropriate, to identify and develop tools and methods for engagement with underserved communities, including those related to agency budget development and rulemaking;

(c) create more flexibilities, incentives, and guidelines for recipients of Federal funding and permits to proactively engage with underserved communities as projects are designed and implemented;

(d) identify funding opportunities for community- and faith-based organizations working in and with underserved communities to improve access to benefits and services for members of underserved communities; and

(e) identify and address barriers for individuals with disabilities, as well as older adults, to participate in the engagement process, including barriers to the accessibility of physical spaces, virtual platforms, presentations, systems, training, and documents.

Sec. 6. *Creating Economic Opportunity in Rural America and Advancing Urban Equitable Development.* (a) Agencies shall undertake efforts, to the extent consistent with applicable law, to help rural communities identify and access Federal resources in order to create equitable economic opportunity and advance projects that build community wealth, including by providing or supporting technical assistance; incentivizing the creation of good, high-paying union jobs in rural areas; conducting outreach to and soliciting input from rural community leaders; and contributing new resources and support to interagency programs such as the Rural Partners Network.

(b) Agencies shall undertake efforts, to the extent consistent with applicable law, to strengthen urban equitable development policies and practices, such as advancing community wealth building projects; preventing physical and economic displacement as the result of Federal investments; facilitating equitable flows of private capital, including to underserved communities; and incorporating outcome-based metrics focused on urban equitable development in the design and deployment of Federal programs and policies. To support these efforts, the Assistant to the President for Domestic Policy shall issue a policy memorandum on actions agencies can take to advance urban equitable development.

(c) Executive Order 13946 of August 24, 2020 (Targeting Opportunity Zones and Other Distressed Communities for Federal Site Locations), including the amendments it made to Executive Order 12072 of August 16, 1978 (Federal Space Management), and to Executive Order 13006 of May 21, 1996 (Locating Federal Facilities on Historic Properties in Our Nation's Central Cities), is revoked. Executive Orders 12072 and 13006 are reinstated as they were prior to issuance of Executive Order 13946. Executive Order 13853 of December 12, 2018 (Establishing the White House Opportunity and Revitalization Council), is also revoked. All agencies shall, consistent

with applicable law, including the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), consider taking prompt action to revoke any rules, regulations, guidelines, or policies implementing these Presidential actions that are inconsistent with the provisions of this order. Further, agencies shall ensure that planning for new Federal facilities or new leases includes consideration of neighborhoods and locations that are near existing employment centers and are accessible to a broad range of the region's workforce and population by public transit (where it exists), consistent with Executive Order 12072. Agencies shall identify displacement risks associated with Federal facility siting and development and shall engage with any community that may be affected, along with appropriate regional and local officials, to mitigate those displacement risks.

Sec. 7. *Advancing Equitable Procurement.* (a) The Government-wide goal for Federal procurement dollars awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals (SDBs) shall be 15 percent in Fiscal Year 2025. In furtherance of this goal, OMB shall set a Government-wide SDB goal for Fiscal Year 2024. The Small Business Administration shall, on an annual basis, work with each agency to establish an agency-specific goal that, in aggregate, supports the Government-wide goal. Further, agencies shall undertake efforts to increase contracting opportunities for all other small business concerns as described in the Small Business Act (15 U.S.C. ch. 14A).

(b) Agencies shall expand procurement opportunities for SDBs through Federal financial assistance, consistent with applicable law, under the Bipartisan Infrastructure Law, the Inflation Reduction Act of 2022, and other Federal financial assistance programs.

Sec. 8. *Affirmatively Advancing Civil Rights.* Agencies shall comprehensively use their respective civil rights authorities and offices to prevent and address discrimination and advance equity for all, including to increase the effects of civil rights enforcement and to increase public awareness of civil rights principles, consistent with applicable law. Agencies shall consider opportunities to:

(a) further elevate their respective civil rights offices, including by directing that their most senior civil rights officer report to the agency head;

(b) ensure that their respective civil rights offices are consulted on decisions regarding the design, development, acquisition, and use of artificial intelligence and automated systems;

(c) increase coordination, communication, and engagement with community-based organizations and civil rights organizations;

(d) increase the capacity, including staffing capacity, of their respective civil rights offices, in coordination with OMB;

(e) improve accessibility for people with disabilities and improve language access services to ensure that all communities can engage with agencies' respective civil rights offices, including by fully implementing Executive Order 13166 of August 11, 2000 (Improving Access to Services for Persons with Limited English Proficiency); and

(f) prevent and remedy discrimination, including by protecting the public from algorithmic discrimination.

Sec. 9. *Further Advancing Equitable Data Practices.* The Office of Science and Technology Policy (OSTP) National Science and Technology Council Subcommittee on Equitable Data shall, to the extent consistent with applicable law, coordinate the implementation of relevant recommendations of the Interagency Working Group on Equitable Data established in Executive Order 13985. The Director of OSTP shall provide a report on the Subcommittee's progress to the Steering Committee every January and July.

Sec. 10. *Definitions.* For purposes of this order:

(a) The term "equity" means the consistent and systematic treatment of all individuals in a fair, just, and impartial manner, including individuals who belong to communities that often have been denied such treatment,

such as Black, Latino, Indigenous and Native American, Asian American, Native Hawaiian, and Pacific Islander persons and other persons of color; members of religious minorities; women and girls; LGBTQI+ persons; persons with disabilities; persons who live in rural areas; persons who live in United States Territories; persons otherwise adversely affected by persistent poverty or inequality; and individuals who belong to multiple such communities.

(b) The term “underserved communities” refers to those populations as well as geographic communities that have been systematically denied the opportunity to participate fully in aspects of economic, social, and civic life, as defined in Executive Orders 13985 and 14020.

(c) The term “equitable development” refers to a positive development approach that employs processes, policies, and programs that aim to meet the needs of all communities and community members, with a particular focus on underserved communities and populations.

(d) The term “community wealth building” refers to an approach to economic development that strengthens the capacities of underserved communities by ensuring institutions and local economies have ownership models with greater community participation and control. This results in upgrading skills, growing entrepreneurs, increasing incomes, expanding net asset ownership, and fostering social well-being.

(e) The term “equitable data” refers to data that allow for rigorous assessment of the extent to which Government programs and policies yield consistently fair, just, and impartial treatment of all individuals.

(f) The term “algorithmic discrimination” refers to instances when automated systems contribute to unjustified different treatment or impacts disfavoring people based on their actual or perceived race, color, ethnicity, sex (including based on pregnancy, childbirth, and related conditions; gender identity; intersex status; and sexual orientation), religion, age, national origin, limited English proficiency, disability, veteran status, genetic information, or any other classification protected by law.

Sec. 11. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

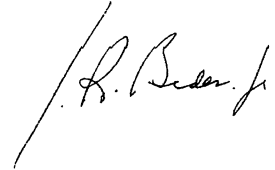
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Agencies not covered by section 2(a) of this order, including independent agencies, are strongly encouraged to comply with the provisions of this order.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
February 16, 2023.

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