Facts, Law, and Politics: My Account of the House Select Committee to Investigate the Impeachment of Attorney General Jason Ravnsborg

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INTRODUCTION

Attorney General Jason Ravnsborg killed Joseph Boever on September 12, 2020. If you are reading this issue of the South Dakota Law Review, you are likely familiar with that story. This article is my part in it.

During the 2021 legislative session, Representative Will Mortensen, with the support of Governor Noem and the House Majority and Minority Leaders, issued articles of impeachment against Attorney General Jason Ravnsborg. Even before the articles were issued, I was told that a select committee of legislators would be formed, and as the House Democratic Representative with a law degree, I would be on the committee. There was nothing I could do about it. The sense of the legislature at the time was that this was something that was going to happen quickly and resolutely. The criminal case was still pending in circuit court. People were frustrated.

On February 25, 2021, Judge John Brown issued an order prohibiting any state employee from publicly releasing any information from the investigation while the criminal matter was pending. This was in response to the South Dakota Department of Public Safety’s release of the interrogation videos of the Attorney General. The Speaker of the House and leadership decided that this meant the select committee could not, or at least should not, form until the criminal matter was resolved. So, like the rest of the state, I waited and wondered. Nearly a year after the select committee was announced, we would start our meetings.

Throughout the proceedings, I kept thinking of that old, dumb saying: If you have bad facts, argue the law. If you have bad law, argue the facts. If you have bad facts and bad law, scream and yell.

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DAY ONE – DECEMBER 28, 2021

When the House Select Committee on Investigation first met on December 28, 2021, we were greeted with a plethora of law. A legal memo from our counsel was on each of our desks, providing an in-depth analysis of impeachment law throughout the nation. Shortly afterwards, we were handed an even longer memo on the history of impeachment from the Attorney General’s legal team.

We spent close to an hour combing through these legal memos. My conclusion at the time was that the law was not a very helpful guide. There were times when impeachment happened and did not happen. Facts, with a healthy dose of political will, seemed to determine the ultimate result.

Once the legal memos were pushed aside, an even larger pile of paperwork containing the facts was put in front of us. Like the rest of the state and country, I was really interested in those facts. What was the Attorney General doing when he struck Joseph Boever? How could he not see him? How fast was he actually going? Where did it occur?

I would eventually get answers to those questions, but after reviewing the law, the crash reconstruction analysis, and reports, the thing I most strongly remember of the first day was the image of Mr. Boever’s right foot and shin, with his boot still on, in the ditch many yards from his body. After that, I decided I did not need to see the autopsy photos, which were described as gruesome. The photos of Mr. Boever were the only evidence that I knew I did not want released to the public.

Much of the first and second days of the committee were spent debating exactly when the public had a right to see and review the documentation in the investigation file. I was strongly in favor of releasing the file, with restrictions on personal information and photos of Mr. Boever, from the beginning. I held this position for several reasons. First, there was nothing in the file that needed to be kept private while we conducted our investigation. In fact, I was surprised that the press already had more or less correctly reported on the key takeaways from the investigation. Second, the criminal proceeding was over.6 Third, I thought members of the public might have valuable input that we would otherwise not be able to get on our own because of time constraints. There were only a few of us really willing to consider publicly releasing the information at that time. The committee eventually released the information alongside the reports.7

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DAY TWO – DECEMBER 29, 2021

After we went into executive session, December 29, 2021, started with a call to one of the Attorney General’s lawyers, Michael Butler. The committee was curious if he or his client had any response to the State’s report. He did not. He then asked if he could listen to the committee deliberate. We said “goodbye” shortly thereafter.

I was not surprised that Mr. Butler did not have anything to say at that time, but I was surprised that the defense team apparently did not have any information to weigh against the State’s report. In litigation, it is common for each side to have their own experts with differing opinions, but here, it seemed the only expert analysis was going to come from the State.

The morning focused on the legal questions. In my notes, I wrote the following questions raised during discussion:

Is there a crime?
Did he use his position to influence the outcome?
What does “in office” mean?

We debated those topics with veracity. Mr. Ravnsborg was attending a political event in his personal car. Point for out-of-office. But he was only at the event because he was the Attorney General, and the first thing he said to anyone after the accident was that he was the Attorney General of South Dakota. Point for in-office. He was technically off-the-clock, but he told investigators that he was thinking and preparing about upcoming cases. No points? We went down a lot of rabbit holes that did not seem to lead us to any sort of consensus.

We debated what the words “drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office” meant. We argued about comma placement. I wrote the lyric to one of my favorite songs: “Who gives a fuck about an Oxford comma?” I do not know if I do.

Personally, I was frustrated by these legal debates. The factual file was so large and voluminous that I did not feel I could form a solid legal opinion until I had fully grasped the facts. After this extensive legal debate, we eventually turned more vigorously to the case file.

The factual discussion started with skid marks. There were some skid marks and even blood on the road near the scene. Was this connected? The State’s report concluded no. The Attorney General’s Ford Taurus had a working anti-

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8. S.D. CONST. art. XVI, § 3 (specifying an offense must be “in office” to be impeachable).
10. Dunteman, supra note 1.
12. S.D. CONST. art. XVI, § 3 (listing offenses for which state officers can be impeached).
13. VAMPIRE WEEKEND, Oxford Comma, on VAMPIRE WEEKEND (XL Recordings 2008).
locking braking system. The car could not produce skid marks. The blood was not human.

Next, Joseph Boever’s flashlight. The next day after the collision, the investigators found a flashlight that was on. Several witnesses reported that they had seen a man with a flashlight walking on the side of the road shortly before the collision. If these witnesses saw it, how come the Attorney General did not? The report concluded that he had to have been distracted. In their re-creations, the driver could always see a person with a flashlight walking regardless of speed or type of lights.

But not all the members of the committee were ready to accept the State’s findings. While some were skeptical of the above, particularly the blood on the highway, many committee members, at this time, were testing the theory that Mr. Boever was actually in the roadway, but other vehicles and the elements moved vehicle debris to the shoulder so that it looked like the impact occurred on the shoulder.

I was always skeptical of this theory. The crime scene was unattended for at least eight hours. At least one piece of debris, the right front fender, was very large. If there had been significant debris in the middle of the road at some point, you would think that another driver would have either hit the debris or called law enforcement to report it.

The day ended on the Attorney General’s cell phone use. The State’s report showed at 10:22:48 the phone locks off, and the phone screen turns back on at 10:23:56. It is believed that the collision occurred during this long one minute and eight seconds of time. Ten seconds later, at 10:24:06, the phone is unlocked, and sixteen seconds later, the Attorney General calls 911 at 10:24:22. It is strange how the phone’s GPS can both capture and fail to explain how one life was lost and one was tragically changed in a one minute thirty-four second moment in time.

That was my capital T truth moment of December 29, 2021.

The first two days were long. I noted that a majority of the committee members went to lunch together at the Pizza Ranch Buffet in Fort Pierre on the second day, which I thought was odd and strangely comforting at the same time. The search for answers and disagreements over issues was not stopping the committee from sharing a meal together.

15. Transcript of Proceedings, supra note 11, at 66.
16. Id. at 67.
18. Transcript of Proceedings, supra note 11, at 92.
19. Id.
21. Jan. 18-19 Minutes, supra note 14, at 6, 8-9, 23.
23. See Jan. 18-19 Minutes, supra note 14, at 22.
24. Id.
The day ended with the committee reviewing the statements of Attorney General Chief of Staff Tim Bormann and Division of Criminal Investigations (“DCI”) Chief David Natvig. I was particularly interested in these reports because we had learned that the Attorney General had texted both of them shortly after the collision with a photo of the damage to the bumper. Mr. Natvig immediately asked how the deer was, assuming a deer caused the damage.25 The Attorney General’s response was curious to me. He responded that he did not know what he hit.26 A few days later, on his official letterhead, he would claim that he thought he hit a deer when it happened.27

Before the committee adjourned, we announced we were issuing subpoenas for documents and testimony.

DAY THREE – JANUARY 17, 2022

After our first two meetings, we announced that we would be taking testimony on January 18, 2022. We met the day before, mostly to go over the process and address any issues that might be out there.28 Each person provided an update on their current thoughts on the matter and the potential questions they may ask the following day.

Our counsel also provided an update on our discovery requests. None of our subpoena requests produced any new information from any party. I was again surprised that the only piece of evidence out there seemed to consist of the State’s reports and files. How does a criminal trial produce no additional evidence from any relevant party?

DAY FOUR – JANUARY 18, 2022

Our first public examination was South Dakota Highway Patrol and North Dakota Bureau of Criminal Investigation law enforcement. South Dakota Highway Patrol Sergeants Price, Kinney, and Miller had a PowerPoint presentation they wanted to present to the committee in public.29 The committee decided beforehand that the committee would not hear the PowerPoint presentation. Instead, we would get our questions answered, and not much else. This set the stage for a tug of war between the Chair and the testifiers with the testifiers trying to work in the PowerPoint presentation during every answer.

26. See id.
27. Huber, supra note 22.
29. See generally Jan. 18-19 Minutes, supra note 14, at 1-7 (containing testimony from Sergeants Price, Kinney, and Miller).
By the end of their testimony, I think all or nearly all of the PowerPoint presentation was shared at some point.

These examinations were all public, so I will not go into the line-by-line review of the information presented. My primary observation at the end of this examination was that the State produced a very thorough and comprehensive report. At prior meetings, I could not believe there was no other report, but after hearing the presentations that night, I began to think that a counter report did not exist simply because this report was not refutable.

I also learned a good lesson during these examinations. Like any good lawyer at a deposition, I had my topics and questions prepared beforehand. My questions were geared towards resolving or confirming evidence in the file without necessarily getting to the heart of the matter—the Attorney General’s honesty. My thought was to check the boxes on my list and point to the testimony in internal committee discussions. The committee format, however, was not like a deposition, and I did not think it went very well. In contrast, my good friend, Representative Jamie Smith, a realtor by trade, asked North Dakota Bureau of Criminal Investigation Agent Arenz what I thought turned out to be the best question of the night: “Was the Attorney General lying to you?”

Arenz hesitated, but then he proceeded to state all the times and ways he felt the Attorney General was not being truthful. Representative Smith got everything out of Arenz with one question that I was trying to pull out of him with multiple “yes” or “no” questions, and that moment would serve as the basis for the minority report’s conclusions.

DAY FIVE – FEBRUARY 24, 2022

The last set of testifiers on our list were the two state’s attorneys who prosecuted Ravnsborg in Sully County—Emily Sovell and Michael Moore, Attorney General Chief of Staff Tim Bormann, and Department of Criminal Investigations Chief David Natvig. I was particularly interested in Mr. Natvig’s testimony. Few people knew at the time that the Attorney General had asked a DCI agent questions about how cell phone data and investigations worked before his second interrogation, but I knew it because the DCI agent documented it in a written report.

But Mr. Natvig downplayed the interaction as some form of water cooler talk or a passing conversation in the hallway. The DCI agent’s report, however, indicated that he was brought into Mr. Natvig’s office where the Attorney General privately asked him several questions about cell phone and data forensics.

30. Id. at 26.
31. Id.
32. Id. at 1-19.
33. Id. at 10.
We learned from Mr. Natvig that the DCI agent’s report was not a standard practice of the department, meaning the DCI agent felt it necessary to do something above or outside of protocol. Both Mr. Natvig’s downplaying of events and that this was out of protocol seemed important, and at the Senate trial, this piece of evidence would prove important.

A last interesting tidbit from Mr. Bormann’s testimony concerned deceased Sheriff Michael Votek. During his private interview with BCI agents, Mr. Bormann harshly criticized Sheriff Votek for doing a terrible job that night. It was a fair criticism. I asked him about it. For whatever reason, under oath, he publicly stated the sheriff did not do anything wrong. I pressed him on his prior statements, and he refused to confirm them, eventually stating that he did not want to speak ill of the dead. Later, as I weighed his testimony, this exchange diminished his credibility in my eyes.

The testimony from state’s attorneys Sovell and Moore did not make me question their credibility, but I also did not find it particularly insightful. I am not a prosecutor, but even I could see there was enough in the file to raise the issue of recklessness. Because they did not know, and apparently could not find out, what the Attorney General was doing at the time of exact impact, they felt they could only charge misdemeanor traffic violations. So, I understood their testimony to be more of an explanation for why they were so lenient in charging more so than resolving any issues before our committee.

DAY SIX – MARCH 10, 2022

We determined we did not want to interview any more witnesses. By this time, the normal legislative session was in full swing. We were left with our thoughts and the files before a final meeting where we would discuss the drafting of the final report. This meeting was shorter but eventful. In prior meetings, we could keep an open mind, but now, each of us had to make a commitment.

Before the vote, I believed there were at least two Republicans on the committee who I thought would recommend impeachment with me and Representative Smith, the two Democrats, and I was surprised that this private vote produced a partisan split with all of the Republicans voting to recommend against impeachment.

The debate before the vote was the most intense moment of the committee. A Republican representative and I argued through the evidence. My points and

34. Id. at 9.
37. Id.
38. Id.
39. Id. at 12-13.
counterpoints were three-fold: (1) The states’ attorneys decisions to only charge the Attorney General with misdemeanors was not relevant to the question of impeachment; (2) The analysis on whether he was “in office” while driving was too technical a caveat to do away with some other pretty damaging evidence; (3) The Attorney General did not seem truthful to law enforcement or the public.

The third point was the most important to me. From the beginning, I struggled with the Attorney General’s first press release that he released less than two days after the accident. The Attorney General represented that his statement was a “full and factual account” of what happened, despite the fact that his statement includes several misleading or false statements meant to sway or confuse the public.

For instance, the statement says he believed he hit a large animal (likely a deer); although, immediately after the crash, he would only text that he hit something to Mr. Bormann and Mr. Natvig. He does not disclose in this letter that he was on his cell phone approximately one minute before the accident or that he was on the shoulder of the road at the time of the accident. In fact, he says he was in the middle of the road despite ultimately pleading guilty to a lane violation.

But we stayed in our partisan camps. We left the meeting with instructions to our counsel to draft a majority report and minority report.

DAY SEVEN – MARCH 28, 2022

We met one last time as a committee to finalize the reports and release the file to the public. I ended up re-writing the minority report significantly that day. I ultimately chose to keep the minority report short and concise for two primary reasons: (1) While I disagreed with the conclusions of the majority report, the factual summaries were a fair representation of the evidence; (2) This was not going to be some long opinion that got digested by interested parties. The media and the public were going to consume it quickly and briefly before the next story needed to be consumed. I felt a short and concise report would get more coverage because it was easier to find the conclusion. I think that bore true. Immediately after our committee adjourned, the press rushed to Representative Smith and me.

DAY EIGHT – APRIL 12, 2022

The select committee’s work was done. The only thing left was the big moment for all the Representatives to be on the record on the issue.

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41. Huber, supra note 22.
42. Dunteman, supra note 1.
43. Compare Huber, supra note 22 with Feb. 24 Minutes, supra note 36, at 13; Transcript of Proceedings, supra note 11, at 16.
44. See Judgment and Conviction of Sentence, supra note 3.
On my drive to the Capitol, a Republican colleague called to tell me that the vote would be close, and that the Democrats would likely decide it. I did not believe him. The committee had been a party line vote. I expected some Republicans to vote for impeachment, but I figured most would stand behind the majority’s report. My colleague was right though. By one vote, the House recommended impeachment and for a Senate trial.45

Only two people gave actual speeches on the House floor. Representative Will Mortensen laid out the case for why the Attorney General should be impeached for committing crimes in office.46 I followed with my argument that the Attorney General should be impeached for malfeasance in office, essentially for lying and abusing his position.47

I did not know it at the time, but this would be my last speech as a state representative thanks to a close election loss in 2022.48 What a note to go out on. By that time, I had given plenty of speeches on the House floor, but I stood up with the same nervousness of my first one.

We are not allowed to use props or signs when giving our speeches, but we can distribute papers. For this speech, I decided to treat it like a trial presentation by distributing exhibits that I would specifically reference in my speech. I finished, and then to my surprise, we voted. There was no speech defending the Attorney General.49

We vote with buttons. Green is for “yes,” and red is for “no.” I walked to the back of the floor to watch the buttons light up. I watched one representative toggle between the yes and no button. The representative stopped on no, and then, approximately five seconds later, pushed the yes button. Shortly after, the vote tally showed that the impeachment resolutions had been adopted by just one vote.50

My part in the saga was over.

CONCLUSION

I am still in shock that the House voted to recommend impeachment, and to be honest, I have not really made sense of it. My best guess is that enough elected officials felt pressure from their districts to vote for impeachment. That’s my best guess, and I’m probably wrong. For what it’s worth, I can conclude that the law and precedent did not matter.

45. Dunteman, supra note 1.
47. See id.
50. Id. at 33.
Six hundred and thirteen feet from impact to zero miles per hour.\textsuperscript{51} Mr. Boever’s glasses on the floor and in the backseat.\textsuperscript{52} Cell phone data indicating Ravnsborg walked right past Mr. Boever’s bright white naked body.\textsuperscript{53} And a foot and shin over fifty feet from his body.\textsuperscript{54} No explanation.

We screamed. We yelled. We debated commas and the meaning of words written over 100 years ago. But facts are facts. In politics, facts can be a stubborn thing to grasp, but every now and then, the facts cannot be missed, like a shining light through a dark South Dakota night sky.

\textsuperscript{51} Transcript of Proceedings, supra note 11, at 67.
\textsuperscript{52} Id. at 15.
\textsuperscript{53} See Dunteman, supra note 1.
\textsuperscript{54} See Transcript of Proceedings, supra note 11, at 15, 57; see also Dunteman, supra note 1 (mentioning Mr. Boever’s severed leg).