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ADVISING THE HOUSE OF REPRESENTATIVES THROUGH IMPEACHMENT

SARA FRANKENSTEIN†

My role in the first impeachment proceedings in South Dakota regarding an elected official began in late 2021 with a phone call from Speaker of the House, Spencer Gosch. I had, like most attorneys in South Dakota, followed the matter in the news, but perhaps more than most. Having both a love for politics and having worked for all levels of government, particularly in the realm where employment law meets governmental practices, the issue had my attention. Add that the Attorney General was a law school classmate, that nearly all involved were friends or acquaintances, and that the accident happened after leaving my hometown of Redfield,¹ I followed the news articles and blogs, watching the matter unfold from afar. After the Speaker’s call, I had the unique opportunity to become involved firsthand.

In the House of Representatives, House Resolution 7001 had been passed, establishing a select committee to investigate whether articles of impeachment should issue against the Attorney General of the State of South Dakota.² The resolution also required an attorney to be appointed to advise the select committee regarding proper impeachment procedure and what constitutes an impeachable offense.³ I would be filling that role. My client was first and foremost the Select Committee on Investigation (“Select Committee”), but also the entire House of Representatives, which would become further involved later in the process. Thankfully, I had the very able help from lawyers with the Legislative Research Council (“LRC”), supporting in numerous ways. Much of my experience is covered by the attorney-client privilege and will not be discussed herein. I can,

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¹ Hunter Duntman, Timelines: How Did a Fatal Crash Evolve into South Dakota’s Historic Impeachment of Jason Ravnsborg?, MITCHELL REPUBLIC (Apr. 30, 2022, 9:00 AM), https://perma.cc/J6XR-NTHU.
³ Id.
however, include references to the report and recommendations, which I authored with help from an associate in my office at Gunderson, Palmer, Nelson, & Ashmore, LRC, and the Select Committee. That report and recommendation was ultimately published as the Majority Report of the House Select Committee on Investigation ("Majority Report"). The following material references important portions of that report.

The Select Committee provided the report and recommendation to the full House of Representatives pursuant to House Resolution 7001 regarding whether articles of impeachment should issue. The report included the findings of fact, summarizing the work that the Select Committee and I engaged in before issuing the report. Subpoenas duces tecum were issued to the North Dakota Bureau of Criminal Investigation, John Daily of Jackson Hole Scientific Investigations, Inc., the Hyde County States Attorney, and Secretary of South Dakota Department of Public Safety Craig Price. Subpoenas for live testimony were issued to Craig Price, Secretary of South Dakota Department of Public Safety; Trooper John Berndt, South Dakota Highway Patrol; Jeramie Quam, North Dakota Bureau of Criminal Investigation; John Daily, Jackson Hole Scientific Investigation, Inc.; Joe Arenz, North Dakota Bureau of Criminal Investigation; Emily Sovell, Hyde County State’s Attorney; Timothy Bormann, South Dakota Attorney General’s Office; David Natvig, Division of Criminal Investigation; and Michael Moore, Beadle County State’s Attorney. The Select Committee also obtained other various written documents.

The Select Committee also “submitted numerous requests, both formal and informal, to Attorney General Ravnsborg and his legal team seeking his participation in the impeachment process. The Committee offered the Attorney General an opportunity to testify and/or to submit any factual or legal argument.” All that was provided on Attorney General Ravnsborg’s behalf, however, was a letter penned by his attorney, Attorney Ross Garber.

Additionally, Attorney General Ravnsborg and his legal counsel were given notice from the Select Committee that it intended to release a redacted version of the investigative file. Attorney General Ravnsborg and his legal team had months to review the redacted file and provide any feedback. The Select Committee received no objection from Attorney General Ravnsborg or his legal

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7. Id. at 1-2.
8. Id. at 2.
9. Id. at 2-3.
10. Id. at 3.
11. Id.
12. Id.
13. Id.
team to the release of the redacted full investigative file, unlike in the criminal case.14

On January 18, January 19, and February 24, 2022, the Select Committee held evidentiary hearings.15 The Majority Report contained an extensive written description of what the evidence presented at those hearings reflected.16 The report also included lengthy legal analysis, even though there was a dearth of legal authority in South Dakota on the subject.17

The legal analysis started with relevant South Dakota constitutional provisions.18 The report then adopted a clear and convincing standard of proof and went on to provide definitions of terms as well as citations to relevant statutory provisions and caselaw, from both within and beyond South Dakota.19 Next, the report explained South Dakota’s history of impeachment.20

The report then included the findings of the Select Committee.21 Ultimately, the Select Committee recommended under a clear and convincing standard that Attorney General Ravnsporg did not commit an impeachable offense in his conduct surrounding the death of Joe Boever.22 The Select Committee recommended that articles of impeachment not issue.23

The Select Committee was justifiably concerned with the Governor’s attempt to participate in the process. The Select Committee decided to express that concern in an addendum, which I also authored.24 The addendum provided a description of the Executive Branch’s interference in both the criminal proceedings and the impeachment process.25

My work for governmental bodies, officials, and candidates often involves a mix of law and politics. This matter’s political ramifications exceeded those in my previous experiences, as every move the Select Committee or I made was covered heavily by the media and subject to constant comment and opinions by governmental officials and members of the public. Having had this experience, it becomes all the more clear why judges are allowed to shield jurors from media coverage and public commentary while sitting on a jury. The legal system benefits from jurors focused on the law and the facts of a case, neither subject to the

14. Id.
17. Id. at 5-10.
18. Id. at 5 (citing S.D. CONST. art. XVI, §§ 3-4).
19. Id. at 5-9.
20. Id. at 9-10.
21. Id. at 10-15.
22. Id. at 15.
23. Id.
25. Id.
pressures and criticism of those not hearing the law and the facts themselves, nor bound to decide the matter only on those permissible considerations. An impeachment proceeding blurs those principles. While I hope our state finds no occasion to utilize the impeachment process again, I was privileged to serve in this one.