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THE IMPEACHMENT INVESTIGATION
OF GOVERNOR ROBERT BENTLEY

PRE-HEARING SUBMISSION OF SPECIAL COUNSEL

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EXECUTIVE SUMMARY

On April 28, 2016, twenty-three Members of the Alabama House of Representatives introduced HR367, which proposed two articles of impeachment against Governor Robert Bentley: (1) “Willful Neglect of Duty” and (2) “Corruption in Office.” By operation of House Rule 79.1, those proposed articles of impeachment were referred to the House Judiciary Committee (“the Committee”), which has been directed to investigate those allegations and to make a recommendation to the House of Representatives as to whether cause exists to impeach Governor Bentley.

The Committee then retained Jack Sharman of Lightfoot, Franklin & White, LLC to serve as Special Counsel. According to this Committee’s Amended Rule 13(b), Special Counsel and his staff “shall conduct the investigation, shall assist the Chair in the conducting of hearings as required, and shall draft the report required from the Committee pursuant to House Rule 79.1.” This submission contains the results of Special Counsel’s investigation. As a guide to the reader, we have prepared this Executive Summary, which highlights portions of the submission but is not a substitute for the entire document.

Despite Governor Bentley’s obstructive tactics, the investigation has been objective and thorough. This Committee directed Special Counsel to gather *any* evidence relevant to the articles of impeachment – not just evidence tending to establish cause to impeach. Operating under that directive, Special Counsel approached this investigation with neutrality. To that end, Special Counsel and his staff have interviewed more than 20 witnesses – many of whom are current and former law enforcement officers and public servants – and have reviewed more than 10,000 pages of documents.

Although many witnesses have been candid and forthcoming, Governor Bentley and his associates, including Rebekah Mason, refused to cooperate in any meaningful sense and, indeed, obstructed this investigation. When confronted with official demands for documents from the Committee, Governor Bentley refused to recognize the Legislature’s prerogative to investigate official misconduct. The Office of the Governor selectively produced just a few thousand pages of documents and improperly limited the scope of the requests. Governor Bentley personally and his campaign committee, Bentley for Governor, Inc., produced nothing. To the extent that there remain investigative uncertainties, those uncertainties are the result of Governor Bentley’s refusal to produce copies of documents that belong, not to him, but to the State of Alabama and its citizens. This Committee is under no obligation – constitutional, political, or otherwise – to reward Governor Bentley’s efforts to hold responsive information hostage or to rebuff questions regarding his activities in office. The Committee may consider the Governor’s non-cooperation as an independent ground for impeachment.

Impeachment is a remedy, not a punishment. Impeachment is the people's check against political excess. Although impeachments of some officials in Alabama constitute a criminal proceeding, an impeachment investigation of a governor is not one. The criminal standard of proof ("beyond a reasonable doubt") does not apply. Impeachable offenses may include but are not limited to crimes. Impeachment is not punitive as to an individual; rather, it is a remedy for the State. The purpose of impeachment is to rid the government of a chief executive whose past misconduct demonstrates his unfitness to continue in office. An impeachment investigation has a constitutional and legal mandate different from that of the criminal justice system.

Governor Bentley's due process objections are meritless. Rather than cooperate in the investigation, Governor Bentley has chosen to object. Setting aside that Governor Bentley has no constitutional standing to demand that the Legislature discharge its constitutional duties according to his wishes, he has complained generally and repetitively to the Committee that he has been denied due process. Governor Bentley is wrong. Governor Bentley has enjoyed more procedural safeguards than the average citizen who is the target of a grand jury investigation. Unlike a grand jury investigation, the Committee process grants Governor Bentley notice of hearings and permits him to receive evidence; to cross-examine testifying witnesses; and to submit written commentaries on Special Counsel's investigative report. These protections are unavailable to a target of a grand jury investigation facing significantly more severe consequences than Governor Bentley is here. The Committee should be mindful that any decision by the House could result in Governor Bentley's temporary suspension. Equally important, though, is that neither the United States Constitution nor the Alabama Constitution demands that a governor receive more due process protection than the average citizen facing potentially worse consequences than a temporary suspension from public office.

Governor Bentley directed law enforcement to advance his personal interests and, in a process characterized by increasing obsession and paranoia, subjected career law enforcement officers to tasks intended to protect his reputation. Witnesses and documents have confirmed that an inappropriate relationship developed between Governor Bentley and his chief advisor, Rebekah Mason. Within his inner political circle, Governor Bentley made little effort to mask the relationship. When his wife, with technical assistance from her chief of staff, covertly recorded Governor Bentley speaking provocatively to Mason, Governor Bentley's loyalty shifted from the State of Alabama to himself.

Concerned that those recordings could become public, Governor Bentley directed law enforcement officers to perform tasks that had no law enforcement justification. For example, Governor Bentley directed law enforcement officers to

(1) end his relationship with Mason on his behalf; (2) drive to Tuscaloosa to recover a copy of the recordings from his son; (3) drive to Greenville to confront a longtime public servant about whether she had a copy of the recordings; and (4) investigate who had a copy of the recordings and identify potential crimes with which they could be charged. To ensure the silence of his staff, Governor Bentley encouraged an atmosphere of intimidation. Concern over the recordings appears to have become an obsession. Meanwhile, Mason enjoyed a favored spot among his staff, exercising extraordinary policy authority while receiving hundreds of thousands of dollars from Governor Bentley's campaign account and from an apparently lawful but shadowy non-profit.

By early 2016, Governor Bentley's paranoia escalated. After directing Secretary of Alabama Law Enforcement Spencer Collier not to provide an affidavit to the Alabama Attorney General's Office, Governor Bentley terminated Secretary Collier for his refusal to follow his order. As a potentially-disgruntled former employee, Secretary Collier posed a threat to the continued suppression from public knowledge of Governor Bentley's relationship with Mason. Governor Bentley prematurely and publicly accused Secretary Collier of criminal conduct and, during the course of this investigation, publicly released an incomplete investigative report. The likely purpose of the report was to further demonize Secretary Collier, who first publicly confirmed the existence of a relationship between Governor Bentley and Mason. Since the release of that report, the Alabama Attorney General's Office has cleared Secretary Collier of any wrongdoing associated with Governor Bentley's accusations.

Campaign funds. We note, without drawing further conclusions, that the Alabama Ethics Commission found probable cause to believe that Governor Bentley violated the Alabama Ethics Act and the Fair Campaign Practices Act ("FCPA"). Governor Bentley has denied any violations took place. Each of the matters referred is potentially a Class B felony under Alabama law.

THE IMPEACHMENT RESOLUTION, HOUSE RULE 79.1, AND THE COMMITTEE RULES

On April 28, 2016, twenty-three members of the House introduced HR367 proposing two articles of impeachment against Governor Bentley. Proposed Article I, “Willful Neglect of Duty,” states that Governor Bentley has “willfully neglected his duty as Governor by failing to faithfully execute the laws of this state and by refusing to perform his constitutional and statutory duties.”¹ Proposed Article II, “Corruption in Office,” states that Governor Bentley has “unlawfully misused state property, misappropriated state resources, and consistently acted in violation of law to promote his own personal agenda.”²

Pursuant to House Rule 79.1,³ upon the filing of the proposed articles of impeachment, they were “referred to the House Judiciary Committee” for two express purposes:

- (1) To investigate the allegations asserted in the Articles of Impeachment, as provided in Section 173 of the Constitution of Alabama of 1901.
- (2) To make a recommendation to the body as to whether cause exists to impeach the official.⁴

Upon referral of proposed articles, House Rule 79.1 further instructs the Committee to:

- “adopt rules to govern the proceedings before it in order to ensure due process, fundamental fairness, and a thorough investigation,”⁵
- “gather information ... relating to the question of whether cause exists to impeach the official,” including testimony if desired,⁶ and
- after its investigation, “submit its report and recommendation regarding impeachment to the Clerk of the House for consideration by the body,” including amendments to the proposed articles of

¹ HR367 at 2.

² *Id.*

³ House Rule 79.1 was adopted on April 26, 2016, two days before HR367 was proposed. Three weeks earlier, on April 5, 2016, eleven members of the House had proposed HR226 setting forth four proposed articles of impeachment, including, in addition to those in HR367, Incompetency and Offenses of Moral Turpitude. House Rule 79.1(a), however, requires that “at least 21 members” co-sponsor articles of impeachment in order to refer them to the Committee.

⁴ House Rule 79.1(a)(1), (2).

⁵ *Id.* 79.1(c).

⁶ *Id.* 79.1(d). The Committee “may hear testimony” but is not instructed to do so by Rule 79.1. *Id.*

impeachment, if any.⁷ Rule 79.1 also expressly instructs that the minority prepare a report to accompany the Committee Report.

The Committee has carried out its obligations under Rule 79.1. The Committee promptly adopted rules to govern the impeachment investigation. On June 15, 2016, the Committee adopted the Committee Rules of the House Judiciary Committee for the Impeachment Investigation of Governor Robert Bentley. On September 27, 2016, the Committee adopted the Amended Committee Rules of the House Judiciary Committee for the Impeachment Investigation of Governor Robert Bentley (“the Committee Rules”).

The Committee Rules meet the requirements of Rule 79.1. They require that all hearings must be open to the public and that Governor Bentley shall receive at least 24-hours’ notice. As discussed further below, the Committee Rules provide ample procedural protections to Governor Bentley, including, at Governor Bentley’s request, the right to cross-examine witnesses at hearings and to request that the Committee receive testimony or other evidence. The Committee Rules instruct that Governor Bentley shall be given access to any interviews under oath taken by Special Counsel during the course of the investigation. The Committee Rules also expressly allow Governor Bentley to respond to Special Counsel’s presentation of evidence after any hearing.

The Committee Rules authorize the Committee to retain Special Counsel to aid in the Committee’s investigation, including to interview witnesses and gather documentary evidence pursuant to subpoena or otherwise. On July 15, 2016, after a search process, the Committee retained Jack Sharman with Lightfoot, Franklin & White, LLC in Birmingham, Alabama, to serve as its Special Counsel.

As House Rule 79.1 and the Committee’s Rules make clear, the Committee’s role is *investigatory and advisory only*. The outcome of the Committee’s process is “a report and recommendation,” proposed amended articles of impeachment, if any, and a minority report. The Committee is not impeaching Governor Bentley. As discussed below, the House as a whole is constitutionally charged with preferring articles of impeachment. Neither House Rule 79.1 nor the Committees Rules usurp or interfere with that power.⁸

⁷ *Id.* 79.1(f).

⁸ *See* Mason’s Manual of Legislative Procedure (National Conference of State Legislators: Denver and Washington, D.C. 2010) (“Mason’s”) § 518 at 354 (“The power of any Legislative body to . . . take final action requiring the use of discretion cannot be delegated to a minority, to a committee, to officers or members, or to another body.”).

THE INVESTIGATION

I. PRELIMINARY CONSIDERATIONS

A. No Preconceptions.

Special Counsel and his staff brought no preconceptions to the investigation of Governor Bentley, an approach that was endorsed by the Chairman and by the Committee as a whole. Despite the heated and sometimes ill-considered discussion in the media or the public about Governor Bentley and a variety of issues, the Committee's investigators took a thorough, skeptical approach. The Committee's investigation, like the Committee's hearings, is not bound by the rules of evidence that govern in Alabama state courts or in federal court. On the other hand, the Committee's investigatory staff made customary evidentiary judgments both about witness statements and about documents.

B. No Time or Subject-Matter Limits.

Given the important constitutional issues at stake, the Committee instructed Special Counsel to proceed with diligence but did not impose any particular deadlines, nor did the Committee declare any subject matter off-limits.⁹ In an impeachment investigation, no other approach is constitutionally robust or logistically possible. Unlike a criminal investigation that involves specific statutes or detailed regulations sitting atop a body of well-developed case law, impeachment does not require a specific violation of law, nor is there a neatly defined set of doctrines applicable to every impeachment investigation. Indeed, as here, articles of impeachment can be drawn broadly, and the Committee's approach must not be rigid: "As the factual investigation progresses, it will become possible to state more specifically the constitutional, legal and conceptual framework within which the staff and the committee work."¹⁰ In addition, "impeachable offenses cannot be defined in advance of full investigation of the facts."¹¹ Indeed, "specific charges are

⁹ Investigatory Powers of the Committee of the Judiciary With Respect to Its Impeachment Inquiry, Report, Together With Additional and Dissenting Views, 2d Sess., 105th Cong., House Committee Print, at 4 (October 7, 1998) [hereinafter, the "Clinton Investigatory Powers Report"] ("[T]he Committee determined not to establish a deadline for its final action. The Committee concluded that it is not now possible to predict the course and duration of its inquiry and that establishment of dates would be artificial and unrealistic and thus misleading.").

¹⁰ Constitutional Grounds for Presidential Impeachment, Report by the Staff of the Impeachment Inquiry, 2d Sess., 93rd Cong., House Committee Print, at 2 (February 22, 1974) [hereinafter the "Nixon Constitutional Grounds Report"]. The Nixon Constitutional Grounds Report was prepared by the staff of the House Judiciary Committee as the Committee conducted its inquiry into the impeachment of President Nixon.

¹¹ Clinton Investigatory Powers Report, *supra* note 9, at 27; *see also* Impeachment of William Jefferson Clinton, President of the United States, Report of the Committee on the Judiciary, House of Representatives, 2d Sess., 105th Cong., House Committee Print (December 16, 1998) [hereinafter, the "Hyde Report"]. The Hyde Report was named for the Chairman of the House Judiciary Committee, the late Henry Hyde (R-Ill.)

not formulated until the conclusion of an impeachment inquiry (and then only if impeachment is recommended).”¹²

C. The Committee Is Not A Court.

Throughout the Committee’s investigation, there was much public discussion and argument about the nature of the Committee’s role. In these discussions and arguments, observers and advocates reached for analogies. Some of the analogies are more helpful than others, but none of them adequately explains the role of the Committee as it sits to consider the possible impeachment of Governor Bentley. Several concepts seem clear, however.

First, the House charged the Committee with two tasks: (1) to conduct an impeachment investigation and (2) to make a recommendation to the full House as concerning impeachment.¹³

Second, an “impeachment” is not an adjudication of anything; rather, in the Alabama constitutional system, as in the federal, the question of whether the chief executive should in fact be removed from office is left to the outcome of a Senate trial.¹⁴ For that reason, an “impeachment” is more akin to an accusatory charging document such as an indictment that might issue from a grand jury.

Third, the Committee is not a court. It does not perform an adjudicative function. It is not authorized by the Alabama Constitution nor by House Rule to vest itself with the superstructure of rules, customs, case law, and appeals that one expects to see in a judicial body. Rather, under the Alabama constitutional system, as under the federal, an adjudication of the House’s impeachment decision would come through trial in the Senate. As a noted commentator on the impeachment of President Richard Nixon has observed:

The division of accusatory and adjudicative functions between the House and Senate implies nothing, as a matter of constitutional law, about how the accusatory function is to be performed. It does provide a practical and rather compelling argument in support of the proposition that the House would be ill-advised to conduct a trial-like investigation in a case (especially one involving a [Governor]) where impeachment is a likely outcome.¹⁵

¹² John R. Labovitz, *Presidential Impeachment* (Yale Univ. Press: New Haven and London 1978) at 187 (discussing the impeachment of President Richard Nixon).

¹³ House Rule 79.1(a)(1)-(2).

¹⁴ Ala. Const. Section 173.

¹⁵ Labovitz, *supra* note 12, at 186 n.23.

If the full House is “ill-advised to conduct a trial-like investigation,” the Committee should be even more prudent with regard to its role: it is to investigate and it is to recommend. It is not to conduct a trial.

D. The Committee Retained Professional, Disinterested Staff To Conduct the Investigation: The Role of Special Counsel.

To discharge its duties, and as contemplated by Committee Rules, the Committee hired counsel.¹⁶ The Committee retained a professional, nonpartisan Special Counsel and his staff to conduct the investigation. It may be fairly said of the Committee’s staffing approach what was said of the approach of the Nixon impeachment committee:

[The Committee] sought to insure thoroughness, expedition, and fairness in its inquiry by hiring a special counsel and a staff pledged to conduct a professional, objective sifting of the evidence for presentation to the committee. . . . [A] number of attributes of the inquiry staff helped to assure that it would gather and present evidence in an impartial manner. Members of the staff were hired on this understanding of their function. The staff was bipartisan, so that there were built in checks against bias in one direction or the other. The staff was isolated from committee members, the press, and the public, so that its professional obligations were constantly reinforced. Finally, the staff was hired for, and committed to, the impeachment inquiry and not the general work of the committee or the House. As a result, it had an organizational single-mindedness not found in previous impeachment inquiries or most congressional investigations.¹⁷

With the exception of the fact that Special Counsel at times was made available to the media, these notes from decades ago accurately describe the current Committee’s investigators.

The Committee’s Special Counsel is not “some private lawyer in Birmingham,” as Governor Bentley and his counsel claimed throughout the investigation (any more than Governor Bentley’s counsel is “some private lawyer in Washington, D.C.”). The rules of the Committee for this proceeding expressly contemplate the retention of a Special Counsel to guide the Committee through the process. Special Counsel and his staff were retained for that purpose. They are

¹⁶ Rule 13, Amended Committee Rules of the House Judiciary Committee for the Impeachment Investigation of Governor Robert Bentley.

¹⁷ Labovitz *supra* note 12, at 186.

instruments of the Committee in the discharge of its constitutional duties. They have been and remain accountable to the Committee.

E. Institutional Limitations on Legislative Investigations.

The legislature's authority to investigate is plenary, and the House's authority to conduct an impeachment investigation is constitutionally anchored in that chamber. The expression of that authority is not without limits, however, especially in terms of the practical execution of an investigation. To a degree, some of those limits had an impact on Special Counsel's efforts and thus on this submission to the Committee.

First, Special Counsel and his staff are not criminal prosecutors and did not have the benefit of a grand jury. A grand jury allows an investigation to be conducted in secret and is not subject to meaningful external decision-making. For all practical purposes, there is no time limit on a grand jury, unless the prosecutor runs into statute-of-limitations problems. Remedies for an overbroad use of a grand jury are limited. Judicial oversight is slight. All of these factors conspire to make the grand jury an investigative tool without peer – and one that was not available to the Committee.

Second, while mindful of its constitutional prerogatives, the Committee has been sensitive to the needs of the parallel criminal investigation of Governor Bentley, up to and including suspending, at the request of the then-Attorney General, the Committee investigation for more than 100 days.

Third, certain witnesses – including Governor Bentley – disputed the Committee's subpoena authority and essentially acted as contemnors.¹⁸

Although Special Counsel was able to conduct a fruitful investigation and to assemble a robust record for the Committee's consideration, the record could have been different had different tools been available and had all witnesses, including Governor Bentley, cooperated.

II. DUE PROCESS CONSIDERATIONS

During this investigation, Governor Bentley has criticized the Committee and its Special Counsel for allegedly failing to provide him with "due process." As recently as March 30, 2017, Governor Bentley's counsel held a press conference, during which he stated that this Committee's investigation has "gone off the rails."¹⁹ Governor Bentley's repeated criticism is a red herring.

¹⁸ The witnesses who did not comply with the Committee's subpoenas are identified at pages 26 to 29. The Committee's subpoena power is addressed below at pages 20 to 26.

¹⁹ Mike Cason, *Gov. Robert Bentley denied due process in impeachment, attorney says*, The Birmingham News, March 30, 2017, available at http://www.al.com/news/montgomery/index.ssf/2017/03/gov_robert_bentley_attorney_im.html.

“Due process” is generally defined as the “protection of the individual against arbitrary action of government.”²⁰ It is well-settled, however, that “due process” carries no one-size-fits-all meaning. As the United States Supreme Court recognized many years ago, “due process is flexible and calls for such procedural protections as the particular situation demands.”²¹

In our country, though, the maximum protections are afforded to citizens who are criminally prosecuted and thus are menaced with the most serious penalties available: capital punishment or imprisonment. Given the gravity of those penalties, the accused is entitled to the greatest procedural rights: to remain silent; to be represented by an attorney; to be presumed innocent; to face and to cross-examine accusers; and to be convicted only upon proof beyond a reasonable doubt. Those safeguards are enshrined in the Alabama Constitution,²² the United States Constitution,²³ and the applicable case law.²⁴ In contrast, when ratifying our Constitution, the citizens of Alabama chose not to include any safeguards for a governor subject to impeachment by the Alabama House of Representatives. The citizens’ silence on the matter speaks volumes.

Moreover, the safeguards for the criminally-accused are applicable only post-indictment. During a criminal investigation, which typically commences with a grand jury’s collection and assessment of the evidence, the target enjoys minimal, if any, protections. For example, while being investigated by a grand jury, the target has no right to participate in the proceedings, nor does the target have a right to cross-examine a grand jury’s witnesses or present any evidence whatsoever to the grand jury, as the grand jury is charged to investigate – not to determine guilt or innocence.²⁵ In fact, a prosecutor is not even constitutionally required to present exculpatory evidence to the grand jury.²⁶ A grand jury is not bound by the rules of evidence.²⁷ And, perhaps most significant, the target may be indicted and charged with a serious felony upon evidence establishing mere probable cause that a crime has been committed.²⁸

In contrast, whatever the outcome here, at worst, the House may vote to impeach Governor Bentley, which would result in his temporary suspension from

²⁰ *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974).

²¹ *Mathews v. Eldredge*, 424 U.S. 319, 334 (1976) (quoting *Morrisey v. Brewer*, 408 U.S. 471, 481 (1972)).

²² *See, e.g.*, Ala. Const. § 6.

²³ *See, e.g.*, U.S. Const. amends. V, VI.

²⁴ *See, e.g.*, *Coffin v. United States*, 156 U.S. 432, 453 (1895).

²⁵ *United States v. Calandra*, 414 U.S. 338, 343-44 (1974).

²⁶ *United States v. Williams*, 504 U.S. 36 (1992) (holding that a prosecutor is not constitutionally required to present exculpatory evidence to a grand jury).

²⁷ *See* Ala. R. Evid. 1101(b)(2).

²⁸ *See, e.g.*, *Ex parte Walker*, 972 So. 2d 737, 752 (Ala. 2007).

elected office pending the outcome of a Senate trial on the impeachment charges. A temporary suspension from elected office is a penalty in stark contrast to the penalty facing an individual being criminally investigated for potentially felonious conduct. Nevertheless, Governor Bentley has been invited to participate, personally and through counsel, and in a manner more involved than a criminally-accused citizen would be permitted to participate in a grand jury's investigation. Indeed, by simply being allowed to participate, already Governor Bentley has received more due process than a citizen facing decidedly dire consequences during a grand jury's investigation.

Yet Governor Bentley still claims that his rights are being trampled and, in effect, is demanding more protections during this investigation than the protections to which the average citizen is entitled during a criminal investigation. By extension, Governor Bentley's lawyers have taken the extraordinary position that due process demands more for Governor Bentley than for a citizen who faces, not the loss of an elected position, but the loss of life or liberty. Governor Bentley's criticisms ring hollow.

Rule 79.1 requires the Committee to "adopt rules to govern the proceedings before it in order to ensure due process, fundamental fairness, and a thorough investigation." The requirements of due process vary based on the circumstances of the proceeding involved, and it must be remembered that the Committee's role is simply to investigate and make a recommendation to the House. In any proceeding, the essence of due process are notice and an opportunity to be heard.²⁹ The Committee's Rules and its process to date more than fairly meet these requirements in many ways.

A. Governor Bentley Has Had Fair Notice.

The impeachment investigation began nearly one year ago with a publicly-filed House resolution by 23 legislators clearly stating two proposed articles of impeachment against Governor Bentley. The Committee has acted publicly in all respects. Ultimately, the Committee's process will include public hearings where the results of Special Counsel's investigation will be presented and Governor Bentley and the Office of the Governor will be allowed to respond.

Governor Bentley has attempted to thwart the Committee's public process by proposing a private meeting with the Committee. In his October 27, 2016, letter proposing the private meeting, Governor Bentley wrote to each Committee member: "It is important to me that you as an elected Representative and Judiciary Committee member have the opportunity to talk directly with me about the issue of impeachment."³⁰ He further stated: "It is my intention to have an open and frank

²⁹ *Mathews v. Eldridge*, 424 U.S. 319, 348 (U.S. 1976).

³⁰ See Letter from Governor Bentley to Committee Members (October 27, 2016). (Ex. 6-AA).

discussion with you and your colleagues. I will open myself up to every thought or question you may have for me.”³¹ Presumably, when Governor Bentley offered to openly and frankly – but privately – discuss “the issue of impeachment” with the Committee and to address “every thought or question” the Committee members had, he knew the matters of interest to the Committee.

Throughout this investigation, the matters under investigation have clearly been disclosed to Governor Bentley, through his personal counsel and counsel for the Office of the Governor. The document requests to Governor Bentley and the Office of the Governor and subpoena to the Office of the Governor set forth not only documents of interest but also topics of interest in the investigation. On September 14, 2016, Special Counsel, at Governor Bentley’s counsel’s request, sent “a list of subject matter topics” of interest, including, among other things: Governor Bentley’s relationship with Rebekah Mason; Mason’s compensation; Mason’s use of State property and assets, including aircraft; personnel decisions by the Office of Governor Bentley influenced either directly or indirectly by Mason or Governor Bentley’s relationship with her; communications with Alabama Law Enforcement Agency (“ALEA”) concerning Governor Bentley’s relationship with Mason; Governor Bentley’s involvement in the Attorney General Office’s request for an affidavit from Secretary of Law Enforcement Spencer Collier concerning the Mike Hubbard grand jury investigation; and any investigation of Collier.

As reported in detail below, these are all matters pertinent to the investigation. Governor Bentley has been on notice of them for months.

With respect to any hearing, the Committee’s Rules require advance notice to Governor Bentley.³² On March 23, 2017, Special Counsel wrote counsel for Governor Bentley and Office of the Governor advising them that the Committee’s tentative schedule was to hold hearings beginning on April 10, 2017 – weeks in advance.³³ That was sufficient time for Governor Bentley’s state-funded legal team to prepare and hold a press conference on March 30, 2017, and insist on a Committee hearing before the hearings actually planned by the Committee. This submission detailing the factual matters under investigation is being published two days before the anticipated April 10 hearing.

Under these circumstances, Governor Bentley has been provided more than adequate notice of the charges against him, the matters under investigation, and the Committee hearing.

³¹ *See id.*

³² Comm. R. 2(b).

³³ *See* Letter From Jack Sharman to Ross Garber and David Byrne (March 23, 2017). (Ex. 6-JJ).

B. Governor Bentley Will Have the Opportunity To Be Heard by the Committee.

The Committee's Rules provide numerous opportunities for Governor Bentley to be heard. Governor Bentley, his personal counsel, and counsel for the Office of the Governor may attend any hearing.³⁴ After Special Counsel makes his presentation to the Committee, counsel for Governor Bentley and the Office of the Governor "shall be invited to respond ... orally or in writing."³⁵ The Committee Rules provide that counsel for Governor Bentley and the Office of the Governor may be given the opportunity to submit written summaries of what they would propose to show to the Committee, and "the Committee shall determine whether the suggested evidence is necessary is desirable to a full and fair record in the inquiry."³⁶

The Committee has honored all of these requirements. The Committee has invited counsel for Governor Bentley and the Office of the Governor to respond to Special Counsel's presentation the following day.³⁷ Even though Governor Bentley refused to be interviewed under oath by Special Counsel, the Committee intends to allow Governor Bentley to testify at the hearing if he so chooses and after being advised of his rights. After Special Counsel submits his final report, counsel for Governor Bentley and the Office of the Governor will be allowed to respond in writing.

All of these opportunities for Governor Bentley to be heard will come before the Committee votes on whether to recommend impeachment and any vote by the House on articles of impeachment. There is simply no basis for any claim that Governor Bentley has not received due process by the Committee.

C. Federal Constitutional Concerns Are Without Merit.

As set forth above, Rule 79.1 requires that Governor Bentley receive due process in the Committee's investigatory proceedings, and ample due process has been afforded. Nonetheless, throughout these proceedings, counsel for the Office of the Governor has strenuously argued that Governor Bentley is entitled to due process under the federal Constitution, essentially arguing that the Committee must provide all the requirements of a jury trial before it may make any recommendation to the House. These arguments are without merit.

As an initial matter, the Alabama Constitution vests in the Senate the power to try impeachment. It specifies that the Senate sits as "a court of impeachment." The House does not have that constitutional power, much less the Committee. The

³⁴ Comm. R. 2(e), (g).

³⁵ Comm. R. 2(i)(2).

³⁶ Comm. R. 2(i)(3).

³⁷ See Letter from Jack Sharman to Ross Garber and David Byrne, *supra* note 33.

Committee's role under Rule 79.1 is expressly limited to investigating the proposed articles of impeachment and making a report and recommendation. The House, in adopting that rule, did not dictate any procedures to the Committee, much less require the Committee to conduct itself like a trial court. In short, Governor Bentley's insistence that the Committee conduct what amounts to a full criminal trial before carrying out its limited function of making a recommendation to the House conflicts with the Alabama Constitution and Rule 79.1.

A full criminal trial before the Committee also is not required by federal law.

1. The Office of Governor is not private property.

By insisting that Governor Bentley is entitled to due process under the federal Constitution, he implicitly asserts that he owns the Office of the Governor of the State of Alabama and that his suspension or removal from office is a deprivation of his property. This is wrong.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that no State may "deprive any person of life, liberty, or property, without due process of law[.]"³⁸ In the typical case, the threshold issues are (1) whether there has been a deprivation (2) of "interests encompassed by the Fourteenth Amendment's protection of liberty and property."³⁹ Whether a person has a protectable property interest is determined by State law.⁴⁰

Although the Governor is *suspended* from office upon impeachment by the House until he or she is acquitted by the Senate,⁴¹ only the Senate has the power to *remove* him or her from office.⁴² Moreover, Section 176 of the Alabama Constitution limits the remedy that the Senate may impose to removal from office and disqualification from holding office during the remainder of the officeholder's term. This means two things for any constitutional due process analysis. First, whatever is at stake, it is as a result of the Senate's trial of articles preferred by the House, if any. No protectable interest is at stake as a result of the Committee's proceedings. Second, clearly neither Governor Bentley's life nor his liberty (imprisonment) is at stake as a result of the entire process under Section 173.

Thus, in arguing for protections under the Due Process Clause, Governor Bentley necessarily contends that he possesses a *private property* interest in holding the highest elected *public office* in Alabama. This notion has been roundly rejected by the United States Supreme Court for more than a century.

³⁸ U.S. Const. art. XIV, § 1.

³⁹ *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972).

⁴⁰ See *Board of Regents*, *supra*, at 577.

⁴¹ Ala. Const., art. V, § 127.

⁴² Ala. Const., art. VII, § 173.

In *Taylor v. Beckham*, decided in 1900, the Supreme Court held that it lacked jurisdiction even to consider the merits of a challenge to an allegedly stolen Kentucky gubernatorial election because the due process clause does not apply to public office: “The decisions are numerous to the effect that public offices are mere agencies or trusts, and not property as such.... [T]he nature of the relation of a public officer to the public is inconsistent with either a property or a contract right.”⁴³ In 1944, the Supreme Court affirmed that holding: “More than forty years ago, this Court determined that an unlawful denial by state action of a right to state political office is not a denial of a right to property or of liberty secured by the due process clause.”⁴⁴ In the decades since, these principles have been applied by courts nationwide to reject federal due process claims arising from alleged improper denial of, or removal from, a variety of elected offices.⁴⁵

The Alabama Supreme Court has expressly held that a legislatively-created public office is not the property of the officeholder.⁴⁶ Furthermore, holding such a public office under Alabama law never becomes a vested right “as against the right of the state to remove him.”⁴⁷ “The fact that the Constitution throws a mantle of protection around a public officer, such as a limit on the power of the legislature to abolish the office, that does not change the character of the office or make it property.”⁴⁸

There is no reason to believe that these same pronouncements by the Alabama Supreme Court do not apply with full force to constitutional offices such as the Governor. To the contrary, as a creation of the Alabama Constitution, which derives its force “from the people themselves,”⁴⁹ the Governor’s office is even further

⁴³ 178 U.S. 548, 577 (1900).

⁴⁴ *Snowden v. Hughes*, 321 U.S. 1, 6 (1944).

⁴⁵ *E.g.*, *Wilson v. Birnberg*, 667 F.3d 591, 597-98 (5th Cir. 2012) *cert. denied*, 133 S.Ct. 32 (2012) (Texas county commission); *LaPointe v. Winchester Bd. of Educ.*, 366 Fed. App’x 256, 257-58 (2nd Cir. 2010) (Connecticut local board of education); *Velez v. Levy*, 401 F.3d 75, 86 (2nd Cir. 2005) (New York City community school board); *D’Agostino v. Delgadillo*, 111 Fed. App’x 885, 886 (9th Cir. 2004) (Los Angeles city attorney); *Parks Miller v. Centre County*, No. 4:15-cv-1754, 2016 WL 2752645, at *17 (M.D. Pa. May 11, 2016) (Pennsylvania district attorney); *Jennerjahn v. City of Los Angeles*, No. 2:15-cv-263, 2016 WL 1358950, at *12 (C.D. Cal. March 15, 2016) (Los Angeles neighborhood council); *Copeland v. City of Union, Missouri*, No. 4:15-cv-554, 2016 WL 259379, at *3 (E.D. Miss. Jan. 20, 2016) (Missouri city tax collector); *Ford v. Donovan*, 891 F. Supp. 2d 60, 66 (D.D.C. 2012) (District of Columbia public housing council president); *Board of Educ. of Shelby County, Tenn. v. Memphis City Bd. of Educ.*, No. 11-2101, 2011 WL 3444059, at *56 (W.D. Tenn. 2011) (Tennessee local board of education); *but see Abrahamson v. Neitzel*, 120 F. Supp. 3d 905, 920-23 (W.D. Wis. 2015) (acknowledging *Taylor* and *Snowden* but determining that “even if” plaintiff “has a constitutionally protected interest in the position of [Wisconsin] chief justice,” she received “all the process that was due” with respect to constitutional amendment changing method of selecting chief justice).

⁴⁶ *Moore v. Watson*, 429 So. 2d 1036, 1038 (Ala. 1983).

⁴⁷ *Id.*

⁴⁸ *City of Birmingham v. Graffeo*, 551 So. 2d 357, 363 (Ala. 1989) (citing *Taylor*, *supra*).

⁴⁹ *Opinion of the Justices No. 148*, 81 So. 2d 881, 885 (Ala. 1955) (quotation marks and citation omitted).

removed from the concept of a private property interest than a local office created by the legislative enactment.

In summary, Governor Bentley's due process claim, apparently based on his conception of the Office of the Governor of Alabama as his personal private property, is wrong under Alabama and federal law.

2. By any standard, the Committee has afforded Governor Bentley due process.

In support of his due process arguments, Governor Bentley's counsel has cited numerous authorities concerning due process requirements for criminal investigations by federal and state commissions. These authorities are distinguishable because the investigations at issue expressly concerned violations of criminal law and therefore risked deprivation of liberty, which clearly is a protected interest under the Due Process Clause. While some of the matters disclosed herein may constitute crimes, the purpose of the Committee's investigation, with Special Counsel's assistance, is not to determine whether probable cause exists to indict Governor Bentley for a crime and arrest him. Rather, the House is exercising its constitutional power to investigate before it considers whether to prefer articles of impeachment.

One case in particular warrants further discussion. In *Hunt v. Anderson*, former Alabama Governor Guy Hunt filed suit in federal court claiming that proceedings before the Alabama Ethics Commission denied him procedural due process.⁵⁰ The Due Process Clause's guarantees applied to those proceedings because the Commission made a publicized finding of probable cause that Hunt had violated the Alabama Ethics Law, which exposed him to criminal prosecution and potentially deprivation of his liberty.⁵¹ Additionally, the Ethics Law itself expressly required due process.⁵²

Reviewing the Ethics Commission's procedures, the court found that Hunt was afforded procedural due process. Those procedures are entirely consistent with the procedures employed by the House and the Committee to date:

- *Notice:* The Ethics Commission wrote Hunt a letter advising him of complaints filed by citizens alleged violations of the Ethics Law. The letter generally alleged the nature of the alleged violations and when they occurred. The specific statutory provision was cited. Hunt also was told who would be conducting the investigation and was invited to contact them. The court held this was sufficient notice.⁵³

⁵⁰ 794 F. Supp. 1557 (M.D. Ala. 1992).

⁵¹ *Id.* at 1566.

⁵² *Id.* at 1564.

⁵³ *Id.* at 1566-67.

- *Cross-examination:* Governor Hunt was not allowed the opportunity to cross-examine witnesses. The court found no denial of due process because there were no live witnesses at the Commission’s hearing, and Hunt had been told who the complainants were before the hearing.⁵⁴
- *Opportunity to present:* The court found that Hunt had received “a full opportunity to present his side of the controversy” where (1) his legal advisor wrote to the Commission, (2) his outside attorneys wrote to the Commission, (3) he was invited to attend the hearing (but did not), and (4) his attorneys “did attend and made a presentation of the Governor’s case to the Commission.”⁵⁵

The arguments back and forth before the Committee are reminiscent of those broached in the impeachment investigation of President Nixon:

While fairness was built into the impeachment inquiry, President Nixon and his counsel argued that this was not sufficient. James St. Clair [President Nixon’s lawyer] contended that he had a right to represent the president in the committee’s inquiry – to receive notice of the charges against the president, to cross examine witnesses, and to present evidence on the President’s behalf.⁵⁶

Like the Committee here, the Nixon “Committee ultimately adopted procedural rules that permitted St. Clair to participate in its evidentiary hearings. . . [H]is participation was a privilege conferred by the Committee, and not a right, and was subject to limitations included in the procedural rules and to the control of the Committee.”⁵⁷ The Committee’s rules regarding Governor Bentley’s counsel before the House Judiciary Committee are remarkably similar to the participation rules for President Nixon’s counsel before the Rodino Committee.⁵⁸

⁵⁴ *Id.* at 1567.

⁵⁵ *Id.*

⁵⁶ Labovitz *supra* note 12, at 187 (footnote omitted).

⁵⁷ *Id.* at 189 (footnote omitted).

⁵⁸ *See id.* at 189-190 (attendance by President Nixon’s lawyer; presentation by impeachment counsel; response and supplementation by President Nixon’s lawyer; committee to determine witnesses, if any, after the presentations; President Nixon’s lawyer was allowed to propose witnesses and could question all witnesses; and the President’s lawyer could deliver an oral summation on President Nixon’s behalf). Compare Amended Committee Rules at 2(e) (attendance by Governor Bentley’s lawyers); 2(g) (questioning of witnesses by Governor Bentley’s lawyers); 2(i)(2) (response and supplementation by Governor Bentley’s lawyers); 2(i)(3) (Governor Bentley’s lawyers allowed to propose witnesses); Letter from Jack Sharman to Ross Garber and David Byrne, *supra* note 33 (setting out the Committee’s proposed schedule and structure of hearings).

The parallels are obvious such that they need no further explanation. By even the federal constitutional standard and the procedures of the Nixon impeachment, Governor Bentley has received due process.

III. THE COMMITTEE'S SUBPOENA AUTHORITY

A. Why Subpoenas Were Necessary.

From the outset of this investigation, Governor Bentley assured the House, the Committee, and the people of Alabama that he would cooperate with the Committee in its investigation: "It is my intention to fully work with the House Judiciary Committee during this procedure . . . I will cooperate throughout this process."⁵⁹ Governor Bentley's counsel also assured cooperation: "I look forward to working collaborative with the members and staff of the House Judiciary Committee."⁶⁰ A friendly and cooperative investigation was welcomed by Special Counsel, who was hopeful that Governor Bentley would stand by his word to encourage a full, fair, and deliberate investigation to confirm his assertions of no wrongdoing.

In August and September 2016, Special Counsel sent document requests to Governor Bentley, Rebekah Mason, Jon Mason, RCM Communications, Inc. (Rebekah Mason's company) ("RCM Communications"), and a number of other potential witnesses seeking documents pertinent to the investigation. In a letter dated August 17, 2016, Governor Bentley objected to the production of these documents on various grounds, asserting, *inter alia*, that the requests were "premature," "overbroad," "unduly burdensome," and "harassing." In brief letters on August 23 and August 29, 2016, Rebekah Mason and RCM Communications likewise "decline[d] to produce any documents."

With key witnesses unwilling to voluntarily cooperate, including Governor Bentley, the Committee found it necessary to rely on its subpoena authority to carry out its investigation. To that end, the Committee issued subpoenas in August and September 2016, including subpoenas to the Office of the Governor, Rebekah Mason, Jon Mason, and RCM Communications. In all, the Committee issued a total of 24 subpoenas.⁶¹

In response to the subpoena, Governor Bentley publically sought to undermine this constitutional process and, in particular, the subpoena authority of the Committee. He also objected wholesale to every one of the document requests and submitted to the Committee a "Motion to Quash" the subpoena. In an attempt

⁵⁹ Press Release, The Office of the Governor, *The Office of the Governor Retains Experienced Attorney to Assist Legal Team* (July 15, 2016).

⁶⁰ *See id.*

⁶¹ Details of the Committee's document requests and subpoenas, and the lack of cooperation by the Governor and certain other witnesses, are set out at pages 26 to 41.

to appear cooperative, however, Governor Bentley produced over 12,000 documents, a point that he repeatedly emphasized to the media.⁶² Unfortunately, the vast majority of these documents were nonresponsive and self-serving. Governor Bentley's modest responsive production, coupled with his broad objections, only underscored his intention to obstruct and impede the investigation by every means possible.

Mr. and Mrs. Mason and RCM likewise objected to the Committee's subpoena and submitted "Motions to Quash." Like Governor Bentley, the Masons took the position that "Committee, its Chair, its subcommittee, [and] its special counsel" lacked the authority to issue subpoenas. In addition, the Masons asserted, without specificity as to which requests, that the subpoenas were overbroad, unduly burdensome, harassing, unnecessarily intrusive, and a violation of her due process rights. To date, neither Mrs. Mason nor her husband or company, RCM, has produced any documents.

B. The Committee Has Subpoena Power.

The Committee has inherent, constitutional authority to issue subpoenas pursuant to its investigative powers. The investigative power of the legislature and, by extension, legislative committees, have been further derived from its broad legislative power. This precedent, though it does not directly discuss legislative subpoenas, clarifies the broad powers enjoyed by the Alabama Legislature while showing great deference to the Legislature's enactments. Further, an extensive list of other states that have addressed the issue of legislative subpoenas has unanimously endorsed such an ability, with no court finding that its state's legislature lacks this power.

1. This Committee has broad power to investigate.

"The Legislature is laden with a broad form of governmental power which is plenary in character, and subject only to those *express limitations* appearing in the Constitution."⁶³ This authority is "absolute or exclusive."⁶⁴ The Legislature's plenary power is not, as has been suggested by Governor Bentley throughout this investigation, derived from either the State or Federal constitutions; to the contrary, these documents serve as the only limitations upon the Legislature's power.⁶⁵ "Apart from limitations imposed by these fundamental charters of

⁶² See, e.g., Kim Chandler, *Bentley objects to subpoenas but turns over 10,000 pages*, The Tuscaloosa News, October 11, 2016, available at <http://www.tuscaloosanews.com/news/20161011/bentley-objects-to-subpoenas-but-turns-over-10000-pages>.

⁶³ *Ex parte Alabama Senate*, 466 So. 2d 914, 917 (Ala. 1985) (quoting *Hart v. deGraffenried*, 388 So. 2d 1196, 1197 (Ala. 1980)) (emphasis in *Ex parte Alabama Senate*).

⁶⁴ *Id.* at 918.

⁶⁵ *In re Opinion of the Justices No. 71*, 29 So. 2d 10, 12 (Ala. 1947).

government, the power of the [Alabama] Legislature has no bounds and is as plenary as that of the British Parliament.”⁶⁶

Inherent in the power to legislate is the power to investigate. In *McGrain v. Daugherty*, the United States Supreme Court held that “[t]he power to legislate carries with it by necessary implication ample authority to obtain information needed in the rightful exercise of that power, and to employ compulsory process for that purpose.”⁶⁷ Relying on this precedent, the Alabama Supreme Court also has held that “the power to legislate necessarily presupposes necessity for investigation by members of each House.”⁶⁸ This “inquiry power” is sweepingly broad.⁶⁹ It encompasses not only the authority to investigate into the propriety of existing and proposed laws but also into the departments of the government “to expose corruption, inefficiency or waste.”⁷⁰ Indeed, the United States Supreme Court has recognized that “Congress’s investigative power is at its peak when the subject is alleged waste, fraud, abuse, or maladministration within a government department.”⁷¹ States, too, have recognized that the legislature “is acting at the height of its powers” during an impeachment process.⁷² So long as it is “related to, and in furtherance of, a legitimate task” of the legislature, the inquiry falls within the permissible bounds of legislative investigation.⁷³

The federal constitution does not give Congress subpoena power, but the United States Supreme Court has repeatedly held that the power to obtain information through compulsion has long been treated as “an attribute of the power to legislate.”⁷⁴ “[W]here the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it.”⁷⁵ And while “[i]t is unquestionably the duty of all citizens to cooperate with Congress in its efforts to obtain the facts needed for intelligent legislative action,”⁷⁶ “[e]xperience has taught that mere requests for such

⁶⁶ *Id.* (citing *Alabama State Federation of Labor v. McAdory*, 18 So.2d 810 (Ala. 1944)).

⁶⁷ *McGrain v. Daugherty*, 273 U.S. 135, 165 (1927); see also Mason’s § 795(5) at 562 (the legislature has “the power in proper cases to compel the attendance of witnesses and the production of books and papers by means of legal process”).

⁶⁸ See *In re Opinion of the Justices No. 71*, 29 So. 2d at 13 (citing *McGrain*, 273 U.S. 135); see also Mason’s § 795(2) at 561 (“The legislature has the power to investigate any subject regarding which it may desire information in connection with the proper discharge of its function . . . to perform any other act delegated to it by the constitution.”).

⁶⁹ See *Watkins v. United States*, 354 U.S. 178, 187 (1957) (“The power of the Congress to conduct investigation is inherent in the legislative process. That power is broad.”).

⁷⁰ See *id.*

⁷¹ Todd Garvey, *Congress’s Contempt Power and The Enforcement of Congressional Subpoenas: A Sketch*, Congressional Research Service, April 10, 2014, at 3 (citing *Watkins*, 354 U.S. at 187).

⁷² *Office of Governor v. Select Comm. of Inquiry*, 858 A.2d 709, 738 (Conn. 2004).

⁷³ See *Watkins*, 354 U.S. at 187.

⁷⁴ *McGrain*, 273 U.S. at 161; see also, e.g., *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 504 (1975).

⁷⁵ *McGrain*, 273 U.S. at 175.

⁷⁶ *Watkins*, 354 U.S. at 187.

information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed.”⁷⁷ Thus, a necessary component of the power of investigation is a process to enforce it.⁷⁸

Like the federal courts, the majority of state courts “quite generally have held that the power to legislate carries with it by necessary implication ample authority to obtain information needed in the rightful exercise of that power, and to employ compulsory process for that purpose.”⁷⁹ Relying on *McGrain* and general notions of the plenary authority of the legislature, courts across the country have upheld the constitutionality of legislative subpoenas as inherent in the broad legislative authority afforded to state legislatures.⁸⁰

2. This Committee has been provided by the House full investigative authority to investigate the impeachment charges.

A necessary function of the investigative authority of the Legislature is the authority to appoint legislative committees so “that the functioning of lawmaking may be effectively exercised.”⁸¹ These committees are not a separate body from the legislature that empowers them; rather, they act as an arm of the legislature, fulfilling an integral role in the legislative process.⁸² Accordingly, the Supreme Court has repeatedly held that the “the subpoena power may be exercised by a committee acting . . . on behalf of one of the Houses.”⁸³

To be sure, a legislative committee does not enjoy the same plenary authority as the legislative body as a whole. It is limited to investigating matters that are within the legislative purpose to which it has been assigned. This limitation, however, goes to the *subject matter* of the investigation, not the *means* for carrying

⁷⁷ *McGrain*, 273 U.S. at 174.

⁷⁸ *See id.* (“The power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.”); *Eastland*, 421 U.S. at 491 (“[I]ssuance of subpoenas . . . has long been held to be a legitimate use by Congress of its power to investigate.”).

⁷⁹ *See McGrain*, 273 U.S. at 165.

⁸⁰ *See, e.g., Conn. Indem. Co. v. Superior Court*, 3 P. 3d 868 (Cal. 2000); *Garner v. Cherberg*, 765 P. 2d 1284 (Wash. 1988); *In re Shain*, 457 A. 2d 828 (N.J. 1982); *Commonwealth ex rel. Caraci v. Brandamore*, 327 A. 2d 1 (Pa. 1974); *Maine Sugar Industries, Inc. v. Maine Industrial Bldg. Authority*, 264 A. 2d 1 (Maine 1970); *Chesek v. Jones*, 959 A. 2d 795 (Md. 2008); *Sheridan v. Gardner*, 196 N.E. 2d 303 (Mass. 1964); *Gibson v. Florida Legislative Investigation Committee*, 108 So. 2d 729, 736 (Fla. 1958); *State ex rel. Fatzer v. Anderson*, 299 P. 2d 1078 (Kan. 1956); *Du Bois v. Gibbons*, 118 N.E. 2d 295 (Ill. 1954); *Nelson v. Wyman*, 105 A. 2d 756 (N.H. 1954); *In re Joint Legislative Committee, etc.*, 32 N.E. 2d 769 (N.Y. 1941); *Terrell v. King*, 14 S.W. 2d 786 (Tex. 1929).

⁸¹ *In re Opinion of the Justices No. 71*, 29 So. 2d at 13 (citing *McGrain*, 273 U.S. at 135).

⁸² Mason’s § 615 at 429 (“Committees are instruments or agencies of the body appointing them, and their function is to carry out the will of the body.”).

⁸³ *See Eastland*, 421 U.S. at 505 (citing *McGrain*, 273 U.S. at 158 (“the subpoenas which the committee issued and the witness refused to obey are to be treated as if issued by the Senate”)).

it out. Indeed, the entire purpose of the legislative committee is to “act as the eyes and ears” of the legislature in gathering facts upon which the full legislature can act.⁸⁴ “To carry out this mission, committees and subcommittees, sometimes one Congressman, are endowed with the full power of the Congress to compel testimony.”⁸⁵ Thus, “it is the responsibility of [the legislature], in the first instance, to insure that the compulsory process is used only in furtherance of a legislative purpose” by specifically delineating the committee’s “jurisdiction and purpose.”⁸⁶ Upon delegation of that authority, it is the Committee’s duty to fully and effectively investigate those matters “with the full power” of the legislature.⁸⁷

Here, the House provided investigative authority to the Committee to “investigate the allegations asserted in the Articles of Impeachment” and to “make a recommendation to the body as to whether cause exists to impeach the official.”⁸⁸ To effectively carry out that task, the House specifically contemplated that the Committee would be empowered to “gather information and [] hear testimony relating to the question of whether cause exists to impeach the official,”⁸⁹ and left to the Committee the authority to adopt its own rules to govern the proceedings to ensure “due process, fundamental fairness, and a *thorough investigation*.”⁹⁰ Pursuant to the House’s directive, the Committee adopted rules and has fully carried out its obligations under Rule 79.1.

3. The fact that the subpoena is directed at the Executive does not lessen its force.

“[F]ederal precedent dating back as far as 1807 contemplates that even the Executive is bound to comply with duly issued subpoenas,” and since that time, the United States Supreme Court has “emphatically reaffirmed that proposition.”⁹¹ In *United States v. Nixon*, for example, the United States Supreme Court held that “neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances.”⁹²

This same rationale applies with equal, if not greater, force in the context of a congressional inquiry. The United States Supreme Court has emphasized that “[i]t

⁸⁴ *Watkins*, 354 U.S. at 200.

⁸⁵ *Id.* at 200-01.

⁸⁶ *Id.* at 201.

⁸⁷ *See id.*

⁸⁸ House Rule 79.1(a).

⁸⁹ *Id.* 79.1(d).

⁹⁰ *Id.* 79.1(c) (emphasis added).

⁹¹ *Comm. On the Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53, 72 (D.D.C. 2008) (citing *United States v. Nixon*, 418 U.S. 683 (1974); *Clinton v. Jones*, 520 U.S. 681, 696 n. 23, (1997)).

⁹² *United States v. Nixon*, 418 U.S. at 706.

is unquestionably the duty of *all citizens* to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action.”⁹³ Regardless of status or position, “[i]t is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees and to testify fully with respect to matters within the province of proper investigation.”⁹⁴

State courts have also refused to insulate the Executive from the investigative authority of the legislature. For example, in *Office of Governor v. Select Committee of Inquiry*, the Supreme Court of Connecticut rejected a governor’s assertion of executive immunity from being subpoenaed to testify before the committee investigating him for possible impeachment.⁹⁵ The court noted that “[i]t would be constitutionally peculiar if the legislature, engaged in the impeachment process in order to vindicate the separation of powers, were categorically barred by that very provision from securing the testimony” of the target of that investigation.⁹⁶ “Allowing the chief executive officer to withhold information from the [committee] on the basis of the separation of powers doctrine undercuts that goal by hindering the only constitutionally authorized process by which the legislature may hold him accountable for his alleged misconduct.”⁹⁷

C. Whether Styled a “Subpoena” or Otherwise, the House Can Demand Documents in the Discharge of its Constitutional Duties.

“[T]he power of impeachment ‘certainly implie[s] a right to inspect every paper and transaction in any department, otherwise, it could never be exercised with any effect.’”⁹⁸ More to the point, the power of impeachment “implies a congressional power to inquire about [Executive] wrongdoing,” and, simultaneously, imposes “a corresponding obligation on the part of the [Executive] to respond to such inquiries.”⁹⁹

The very purpose of impeachment – to protect the public from an abusive official – would be undermined if the Executive were shielded from the full reach of the Committee’s investigative authority in this circumstance. Thus, the “alleged misconduct of a chief executive that is sufficient to warrant an impeachment inquiry should not, as the [Governor’s] contention suggests, present a reason for exempting him from accountability; rather it should have the opposite effect.”¹⁰⁰

⁹³ *Watkins*, 354 U.S. at 187-88 (1957) (emphasis added).

⁹⁴ *Id.*

⁹⁵ *Select Comm. of Inquiry*, 858 A. 2d at 731-40.

⁹⁶ *Id.* at 733

⁹⁷ *Id.* at 736.

⁹⁸ Labovitz, p. 211, quoting 4 Annals of Cong., p. 601.

⁹⁹ Frank Bowman, III & Stephen Sepinuck, *‘High Crimes & Misdemeanors’: Defining the Constitutional Limits on Presidential Impeachment*, 72 S. Cal. L. Rev. 1517, 1539 (1999).

¹⁰⁰ *Select Comm. of Inquiry*, 858 A.2d at 738 (citing, *inter alia*, Michael Gerhardt, *The Constitutional Limits on Presidential Impeachment and its Alternatives*, 68 Tex. L. Rev. 1, 93 (1989) (“the

The Executive, as the target of the impeachment process, is “undoubtedly . . . the best source of information regarding the alleged conduct that gave rise to the impeachment process.”¹⁰¹

The gravity of the Committee’s task – to investigate the allegations of impeachment and make a recommendation to the full House – underscores the importance of the Committee’s ability to gather “all of the relevant information, not just from third parties, but from the governor whose conduct and intentions are under scrutiny.”¹⁰² Indeed, “[i]t would be difficult to conceive of a more compelling need than that of this [state] for an unswervingly fair inquiry based on all the pertinent information.”¹⁰³ Governor Bentley, the Committee, and the citizens of Alabama are best served by thorough and defensible investigation based on all relevant information. Thus, in the exercise of its constitutional duty, the Committee has the authority to demand from *any* individual or entity, including and, perhaps most importantly, Governor Bentley, all the documents and testimony necessary to make a full and accurate recommendation to the House.

IV. THE COMMITTEE’S INVESTIGATION: DOCUMENTS AND WITNESSES

Acting through Special Counsel and his staff, the Committee sent document-preservation letters to potential witnesses; document requests to witnesses; and subpoenas. It also conducted informal interviews and transcribed interviews under oath.

A. Preservation Letters.

To make certain that no evidence was lost, inadvertently or otherwise, the Committee sent document-preservation letters to the following persons and entities in July and August 2016. The preservation letters requested that specific materials be preserved; provided instructions for preservation; and attached a copy of the Articles of Impeachment Against Governor Bentley (HR367):

Alabama Council for Excellent Government
Ardis, Jennifer
Bentley, Dianne
Bentley, John Mark
Bentley, Luke
Bentley, Matthew
Bentley, Paul

[p]resident is not above the . . . law, there is no sound reason for exempting him from accountability, especially in the impeachment process.”)).

¹⁰¹ *Id.* at 733.

¹⁰² *Id.* at 736.

¹⁰³ *Id.* at 732-33 (citing *In re Report & Recommendation of June 5, 1972 Grand Jury*, 370 F. Supp. 1219, 1230 (D.D. Cir. 2974)) (alterations in *Select Comm. of Inquiry*).

Bentley for Governor, Inc.
Bryant Jr., Paul
Byrne, David – counsel for Office of the Governor
Collier, Spencer
Davis, Marquita
Espy, Joseph
Garber, Ross – counsel for Office of the Governor
Garrett, Heath
Gibson, Camilla
Gray, William – counsel for Rebekah Mason
Hammett, Seth
Hardwich, Elizabeth
Hays, Merritt
Howell, James
Jenkins, J.T.
JRM Enterprises, Inc.
Kelly, Wanda
Lewis, Wendell Ray
Malone, Charles
Mason, Jon
Mendelsohn, Kenneth – counsel for Spencer Collier
Perry, David
Ryan, Clayton
Segall, Robert – counsel for RCM Communications, Inc.
Serve Alabama
Shattuck, Cooper
Stabler, Stan
Stalnaker, Angella
Taylor, John “Hal”
Tynes, Collier
Walker, Rochester Butler
Zeigler, Jim

B. Document Requests.

The Committee hoped to proceed in a cooperative, voluntary fashion with all witnesses, including Governor Bentley. To that end, in August and September 2016 the Committee sent document requests to the following individuals and entities, with a request for a response within twenty-one (21) days:

Alabama Council for Excellent Government
Alabama Law Enforcement Agency
Ardis, Jennifer
Bentley, Paul
Bentley, Governor Robert

Bentley for Governor, Inc.
Collier, Spencer
Echols, Michael
Hammett, Seth
JRM Enterprises, Inc.
Lewis, Ray
Mason, Jon
Mason, Rebekah
Office of the Governor
Perry, David
RCM Communications, Inc.
Ryan, Clayton
Shattuck, Cooper
Stabler, Stan (personally, and in his role as Acting Secretary of Law Enforcement at Alabama Law Enforcement Agency)
Stalnaker, Angella
Tynes, Collier

C. Subpoenas.

In August and September 2016, the Committee sent subpoenas to the following persons and entities, seeking various documents and things:

Bentley, Dianne
Alabama Counsel for Excellent Government
Bentley for Governor, Inc.
Echols, Michael
JRM Enterprises, Inc.
Mason, Jonathan
Mason, Rebekah
Office of the Governor
RCM Communications, Inc.

In October 2016, the Committee sent subpoenas to the following persons and entities, seeking interviews under oath:

Clark, Jack
Culliver, Michael
Frost, Jennifer
Harkins, Reginald
Hines, Christopher
Robinson, Michael
Stabler, Stan
Swann, Jason
Wilson, Jack

In March 2017, the Committee sent subpoenas to the following persons and entities, seeking documents, interviews under oath, or both:

Adams, Linda
Alabama Law Enforcement Agency
Bickhaus, April
Lee, Scott
Stabler, Stan
Wiggins, Gene

D. Transcribed Interviews Under Oath.

On October 24, 2016 the Committee served notices for transcribed interviews under oath upon the following persons:

David Byrne
Governor Robert J. Bentley
Wesley Helton
Zach Lee

None of these witnesses made themselves available for a transcribed interview under oath.

E. Witnesses Who Declined to Provide Information.

The following persons and entities declined to provide documents and/or refused to be interviewed by the Committee's Special Counsel:

Alabama Council for Excellent Government
Bentley, Paul
Bentley, Governor Robert
Bentley for Governor, Inc.
Byrne, David
Davis, Marquita
Echols, Michael
JRM Enterprises, Inc.
Mason, Jon
Mason, Rebekah
Office of the Governor
RCM Communications, Inc.
Shattuck, Cooper
Stalnaker, Angella
Tynes, Collier

V. NON-COOPERATION BY GOVERNOR BENTLEY

Except as identified below, Governor Bentley and the Office of the Governor did not meaningfully cooperate in the Committee's investigation.

A. Refusal to Meaningfully Produce Documents.

As noted above, the Committee sent document requests to Governor Bentley and the Office of the Governor.

B. Refusal to Comply With the Committee's Subpoena.

Having received little cooperation from Governor Bentley with regard to the Committee's document requests, the Committee issued a formal subpoena to Governor Bentley on September 29, 2016. (Ex. 3-Q). The subpoena contained specific, numbered categories of documents relevant to the Articles as referred to the Committee as well as publicly-reported issues that had led to the Committee being charged with its task. The categories of documents sought by the subpoena fell generally in the following topics:

1. Governor Bentley's relationship with Rebekah Mason;
2. Rebekah Mason's compensation for her services, from any source;
3. The establishment, purpose, funding, and operations of the Alabama Council for Excellent Government;
4. Use of State property, equipment, funds, or other assets (including State aircraft), whether directly or indirectly, for the benefit of Rebekah Mason;
5. Use of State property, equipment, funds, or other assets (including State aircraft), whether directly or indirectly, in the furtherance of any personal relationship between Governor Bentley and Rebekah Mason;
6. Changes to State records or in recordkeeping procedures related to any personal relationship between Governor Bentley and Rebekah Mason;
7. Use of campaign property, equipment, funds, or other assets, whether directly or indirectly, for the benefit of Rebekah Mason;
8. Use of campaign property, equipment, or funds in the furtherance of any personal relationship between Governor Bentley and Rebekah Mason;
9. Personnel decisions or actions taken by the Office of the Governor, including but not limited to any temporary or permanent removals, reassignments, replacements, or terminations, that were influenced in any way, whether directly or

indirectly, by Rebekah Mason or the relationship between Governor Bentley and Rebekah Mason;

10. Communications between the Office of the Governor and officials or employees of the Alabama Law Enforcement Agency (ALEA), and any other State personnel, regarding the relationship between Governor Bentley and Rebekah Mason;

11. The request by the Attorney General's office for an affidavit(s) concerning ALEA's investigation into the release of Hubbard grand jury testimony, Spencer Collier's and other ALEA personnel's response thereto (including any draft affidavits reviewed or edited by the Office of the Governor), the instruction to Spencer Collier and other ALEA personnel not to submit an affidavit, and any meetings related to the foregoing;

12. Governor Bentley's placement of Spencer Collier on medical leave and his later termination of Spencer Collier as Secretary of Law Enforcement;

13. The removal, reassignment, or termination of any other ALEA employees in connection with, or around the time of, Spencer Collier's leave and termination;

14. Investigations into ALEA or Spencer Collier while Secretary of Law Enforcement;

15. Undertakings by Governor Bentley or the Office of the Governor to conceal information related to the above topics from public disclosure.

Although Governor Bentley eventually produced 12,448 pages of miscellaneous documents, he produced no documents responsive to the following requests of the Subpoena: 1, 2, 3, 4, 5, 9, 10, 20, 23, 25, 26, 27, 28, 29, 30, 31, 32, 35, 39, 40. In an attempt to secure Governor Bentley's cooperation, Special Counsel followed up on October 24, 2016 with a detailed list of deficiencies in Governor Bentley's response.¹⁰⁴

Some of those deficiencies are set out below.

- **Electronic Calendar**. Item 4 of the subpoena, for example, is a request for Governor Bentley's calendar in native electronic format. Governor Bentley ignored this request and produced instead photocopies of scanned calendar documents that were printed days after the date reflected on them.

¹⁰⁴ Letter from Jack Sharman to Ross Garber and David Byrne (October 24, 2016). (Ex. 6-X). Special Counsel followed up again on November 1, 2016. (Ex. 6-BB).

- **NDA**s. Item 20 is a request for documents related to a nondisclosure agreement (an “NDA”) that members of Governor Bentley’s staff were asked to sign. The existence of this agreement, and of the requirement that staff members sign it, is not disputed by the Office of the Governor and confirmed by witnesses.
- **Stabler and Lewis Emails**. Items 39 and 40 call for communications including emails to or from Stan Stabler and Ray Lewis—two key witnesses in the Committee’s investigation. The Office of the Governor produced no such documents.

1. Governor Bentley asserted privilege in response to the subpoena.

In his submissions to the Committee, Governor Bentley claimed that the Committee’s subpoena “attempts to subvert the attorney client privilege.”¹⁰⁵ As counsel to the Office of the Governor has noted elsewhere, “public sector lawyers should keep in mind that they might someday be subpoenaed to testify about the substance of conversations with their clients.”¹⁰⁶ Looking to the federal courts for guidance, in disputes arising from the Whitewater matter involving President and Mrs. Clinton, government lawyers were obliged to produce what might otherwise be reasonably construed as material protected by the attorney-client privilege. *See In re Lindsey*, 158 F.3d 1263 (D.C.), *cert. denied*, 525 U.S. 996 (1998); *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910 (8th Cir.), *cert. denied*, 521 U.S. 1105 (1997).

Leaving aside for the moment the question of the applicability of that privilege as asserted by a Governor against a co-equal branch of government in an impeachment investigation, Governor Bentley certainly should have produced all *non-privileged* documents responsive to the Committee’s request. In most circumstances, it is the burden of the subpoenaed party to support specific claims of privilege by describing the nature of the documents withheld.¹⁰⁷

In addition, the lessons of Whitewater also warn of the dangers of mixing the chief executive’s personal lawyers with counsel to his office. A meeting on November 5, 1993, was held at the law offices of Williams & Connolly, which had recently been retained by the President and Mrs. Clinton to act as their personal

¹⁰⁵ Office of the Governor, Objection to Subpoena or, in the Alternative, Motion to Quash Subpoena (October 10 2016), Ex. 7-I at 15, [hereinafter “Motion to Quash”].

¹⁰⁶ *See, e.g.*, Ross H. Garber and Shana-Tara Regon, *A Privileged Relationship? Public Lawyers, Take Heed*, ABA Public Lawyer, Number 2, Volume 13 (Summer 2005), available at <http://www.shipmangoodwin.com/a-privileged-relationship-public-lawyers-take-heed>.

¹⁰⁷ *See, e.g.*, Ala. R. Civ. P. 45(d)(2) (“When information subject to a subpoena is withheld on a claim that it is privileged . . . , the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.”).

counsel for Whitewater-related matters. Seven persons attended the meeting, three lawyers in private practice and four White House officials.¹⁰⁸ Eventually, the notes of the Associate Counsel to the President were produced to the Senate Committee.

Given the fact that lawyers have advised Governor Bentley personally and the Office of the Governor upon this investigation, and the fact that lawyers were apparently involved in significant matters (such as the termination of Secretary Collier), the Committee has a duty to inspect any claim of privilege.

2. Blacked-out portions of documents produced.

Governor Bentley heavily “redacted” – blacked out – large portions of key documents without providing any justification for doing so.

a. Timeline created by Governor Bentley and Mason is blacked out.

For example, the document labeled OTG00188-00200 (Ex. 5-O) is a “TIMELINE Re: Spencer Collier” that was authored by Rebekah Mason and edited by Governor Bentley (as evidenced by Exhibit 5-CC at 5004). This document is heavily and arbitrarily blacked out.

b. Text messages between Governor Bentley and ACEGov are blacked out.

Likewise, the documents labeled OTG009349 *et seq.* (Ex. 5-CC), which appear to contain text messages between Governor Bentley and persons related to the formation the Alabama Council for Excellent Government (“ACEGov”), are almost entirely blacked out.

¹⁰⁸ The attendees were David Kendall, a partner at the Washington, D.C. law firm of Williams & Connolly and private counsel to the President and Mrs. Clinton on the Whitewater matter; Stephen Engstrom, a partner at the Little Rock law firm of Wilson, Engstrom, Corum, Dudley & Coulter, who also had been retained by the President and Mrs. Clinton to provide personal legal advice on the Whitewater matter; James Lyons, a lawyer in private practice in Colorado, who had provided legal advice to then-Governor and Mrs. Clinton on the Whitewater matter during the 1992 presidential campaign; then-Counsel to the President Bernard Nussbaum; then-Associate Counsel to the President William Kennedy, who while a partner at the Rose Law Firm provided some legal services to the Clintons in 1990-92 in connection with their investment in Whitewater; then-Associate Counsel to the President Neil Eggleston; and then-Director of White House Personnel Bruce Lindsey. *See generally* S. Rept. 104-191, Refusal Of William H. Kennedy, III, To Produce Notes Subpoenaed By The Special Committee To Investigate Whitewater Development Corporation And Related Matters, 104th Congress (1995-1996), available at <https://www.congress.gov/104/crpt/srpt191/CRPT-104srpt191.pdf>.

c. Emails regarding Mason’s compensation are blacked out.

The same is true with certain email communications with the press regarding Rebekah Mason’s compensation as a member of Governor Bentley’s Staff (Ex. 5-CC at 2139-2142) and between the press and Cooper Shattuck concerning the individuals and entities paid by the ACEGov (Ex. 5-CC at 5290-5291). (Mr. Shattuck is Governor Bentley’s former Chief Legal Adviser and former General Counsel of the University of Alabama System). Similarly, a text message from Governor Bentley to Rebekah Mason labeled OTG009339 (Ex. 5-CC) is redacted in its entirety. Despite requests, Governor Bentley failed to provide the Committee with a log of redactions made to documents produced and failed to offer any justifications for the redactions.

3. Cell phones, state phones, and “burner” phones.

Despite multiple witnesses stating that Governor Bentley has consistently used three cell phones, Governor Bentley provided no documents responsive to the Committee’s request for a list of his cell phones or mobile devices (Item 29). He objected that the request “seeks information outside of the possession, custody or control of the Office of the Governor.”¹⁰⁹ The Committee sought, without success, to determine if Governor Bentley was drawing a distinction between an “Office of the Governor” cell or so-called “burner” phone and a “Robert J. Bentley” cell or burner phone. The Committee noted that the document labeled OTG009338 (Ex. 5-CC) is a cover page for a selection of text messages from a phone that is referred to as “Governor state phone.” At a minimum, Governor Bentley’s “state phone” was in the possession, custody or control of the Office of the Governor.

4. Mason’s state email account.

Governor Bentley has similarly claimed that the Committee’s request for a copy of Rebekah Mason’s email account (Item 28) “seeks production of information that is outside of the possession, custody or control of the Office of the Governor.” However, the documents he produced to the Committee indicate that Rebekah Mason was in fact assigned a State email account. The document labeled OTG012362 (Ex. 5-CC) shows a February 2016 email from Rebekah Mason to a staff member in which she requests:

Can we please list my name on the Governor’s website under Staff?
Please list me under the Executive Office similar to how we list Zach.
Please list me as Rebekah Mason Senior Political Advisor. If an email address is needed, please use: rebekah.mason@governor.alabama.gov.

Rebekah Mason’s State email account is in the possession, custody or control of the Office of the Governor, and responsive emails should have been produced.

¹⁰⁹ Motion to Quash, *supra* note 105, at 17.

5. Governor Bentley's email accounts.

The Committee subpoenaed information related to the email accounts used by Governor Bentley (Item 26). Governor Bentley objected that the request “seeks information outside the possession, custody or control of the Office of the Governor.” He continued: “As has been reported in the press, the Governor does not maintain a State of Alabama email address.”

Governor Bentley's statement appears to be inconsistent with emails that were included in the documents produced. Those emails show that Governor Bentley routinely used his “[comcast.net](#)” email address to send and receive official State communications, including emails marked “Law Enforcement Sensitive.” This portion of the investigation is relevant to the Committee's inquiry. As illustrated by the FBI investigation of former Secretary of State Clinton during the recent presidential campaign, the use by senior executive branch officials of private or undisclosed email accounts for official or sensitive information can raise significant concerns.¹¹⁰ Governor Bentley's email accounts should have been identified and responsive emails produced.

6. Visitor Logs to the Governor's Mansion.

The Committee subpoenaed information related to Rebekah Mason's visits to the Governor's Mansion or to Wynfield Estates (Items 9, 10). Governor Bentley objected that this request is “overly broad, unduly burdensome and harassing.” However, a simple electronic search of the access logs for those facilities would easily yield the requested documents and information.

7. Mason's compensation information.

The Committee subpoenaed documents related to compensation paid to Rebekah Mason or RCM Communications, Inc. (Item 19). Governor Bentley provided invoices from RCM Communications, Inc. to Bentley for Governor, Inc. for only five months: January, February, and December 2015, and January and March 2016. Public records show that Bentley for Governor, Inc. paid Mason throughout 2015, after the campaign was over. In addition, Mason has stated publicly that she was paid by ACEGov in 2015.¹¹¹ The Committee sought, without success, (1) the complete set of invoices for the period of time requested and (2) all other documents related to Mason's compensation.

¹¹⁰ See Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton's Use of a Personal E-Mail System, July 5, 2016, available at <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b-comey-on-the-investigation-of-secretary-hillary-clinton2019s-use-of-a-personal-e-mail-system>.

¹¹¹ See Tim Lockette, *Mason claims getting \$15,000 from governor's nonprofit*, The Anniston Star, March 25, 2016, available at http://www.annistonstar.com/news/mason-claims-getting-from-governor-s-nonprofit/article_70faab00-f2d2-11e5-bb30-abe8a84b962c.html.

8. Unedited State aircraft records.

The Committee subpoenaed documents related to the use of State aircraft (Item 7). Governor Bentley produced the publicly available “State Aircraft Usage” documents for January 2015 through August 2016. However, he has also produced a chain of internal emails labeled OTG005615-005620 (Ex. 5-CC) that indicates that members of Governor Bentley’s staff routinely review and amend “flight log records” before they are “post[ed] to the Governor’s website.” In fact, the documents labeled OTG005667-005672 (Ex. 5-CC) show after-the-fact red-line edits that were made to the State Aircraft Usage document for the Fourth Quarter of 2015 before it was made public. Such documents and communications were clearly comprehended by the Committee’s request but were not provided.

9. Refusal to testify under oath.

On October 24, 2016, the Committee, through Special Counsel and pursuant to Amended Committee Rule 6, sent to the Office of the Governor notices for the transcribed testimony under oath of Governor Robert J. Bentley, Zach Lee, Wesley Helton and David Byrne. Despite follow-up requests, the noticed persons have declined to testify.¹¹²

C. Governor Bentley’s Candor Towards the Committee.

There are significant questions regarding Governor Bentley’s candor toward this Committee’s investigative efforts. Indeed, it appears likely that Governor Bentley has refused to produce relevant material in response to Special Counsel’s informal requests as well as in response to this Committee’s subpoena. For example, in the subpoena issued by this Committee to the Office of the Governor, the Committee demanded the following:

33. Any and all documents, electronic data, and information evidencing or relating to any communications, including but expressly not limited to letters, notes, emails, text messages, and voice messages, between Governor Robert Bentley and Rebekah Mason, including any attorney or person acting for or on behalf of either of them.

In response to that request, the Office of the Governor produced to the Committee a series of text messages labeled OTG009258-9398 (Ex. 5-CC) by and to Governor Bentley as well as by and to Mason. The text messages, generally speaking, are innocuous and concern routine matters.

¹¹² See Letters from Jack Sharman to Ross Garber and David Byrne of October 24, 2016, *supra* note 104; November 1, 2016, *supra* note 104; and March 17, 2017 (Ex. 6-GG). In the Office of the Governor, Mr. Lee is the Director of Federal & Local Government Affairs; Mr. Byrne is the Chief Legal Adviser; and Mr. Helton is the Director of Legislative Affairs.

But during this investigation, Special Counsel obtained copies of another set of text messages between Governor Bentley and Mason, and the Office of the Governor did not produce that set to the Committee. Instead, Special Counsel received that set of text messages from Governor Bentley's ex-wife, Dianne Bentley.

On July 31, 2016, the Committee issued a subpoena to Ms. Bentley requesting, among other items, “[a]ny and all documents or electronic records reflecting or relating to any communications, including, but expressly not limited to, text messages and emails, between Robert Bentley and Rebekah Caldwell Mason.” (Ex. 3-E at 4). Ms. Bentley complied with that subpoena and produced dozens of text messages labeled Bentley Impeachment Investigation 000005-000011, Bentley, Dianne; Bentley Impeachment Investigation 000017-000040, Bentley, Dianne between Governor Bentley and Mason, captured by Ms. Bentley from Governor Bentley's State-issued iPad, which was synched to his State-issued iPhone and, therefore, received the same messages as the iPad. (Ex. 5-C). Inexplicably, the Office of the Governor produced none of these text messages to the Committee in response to its Subpoena, yet a review of them reveals their clear significance to the matters under investigation.

D. Governor Bentley's Written Submissions to the Committee.

Governor Bentley submitted motions and other documents to the Committee, much as though the Committee were a court. These submissions were ill-taken procedurally (only a Member of the Committee can make a “motion” before the Committee) and substantively. Governor Bentley's arguments fell into three categories.

First, Governor Bentley argued that he was entitled to due process during the Committee's investigation and that he was not being afforded due process. Central to this argument was Governor Bentley's belief that the Committee's *investigation* was the same thing as a criminal *trial*.

Second, Governor Bentley claimed that the articles of impeachment drafted by the House and referred to the Committee were insufficient, unconstitutionally vague, and overbroad.

Third, Governor Bentley claimed that the investigation needed to be suspended until his complaints were met.

This report discusses in detail elsewhere the due process arguments and other claims by Governor Bentley. An impeachment investigation is not a criminal proceeding. The criminal standard of proof (“beyond a reasonable doubt”) does not apply. Impeachable offenses may include but are not limited to “crimes.” There is no legislative equivalent to a grand jury's secrecy.

As a leading impeachment scholar notes, “the starting point . . . is that impeachment is ‘a proceeding purely of a political nature. It is not so much designed to punish an offender as to secure the state against gross official misdemeanors. It touches neither his person nor his property, but simply divests him of his political capacity,’ that is it disqualifies him to hold office.”¹¹³ Impeachment is not punitive as to an individual; rather, it is remedial for the State:

The major purpose of impeachment . . . is to rid the government of a chief executive whose past misconduct demonstrates his unfitness to continue in office. Impeachment is a prospective remedy for the benefit of the people, not a retributive sanction against the offending officer.”¹¹⁴

Even at the federal level, where the Constitution provides that a President may be impeached for “high Crimes and Misdemeanors,” U.S. Const. Art. II §4, the overwhelming authority is that impeachment is not limited to “crimes” in our common, modern, statutory understanding of that term.¹¹⁵ This “non-criminal” understanding is confirmed in the text of the provisions of the Alabama Constitution that address the grounds for impeachment of a governor.¹¹⁶ Thus, the rules of the House are the rules that govern, rather than cognates to the federal or Alabama Rules of Criminal Procedure. Should Governor Bentley be menaced with state or federal prosecution, of course, the full array of federal and state criminal law standards – constitutional, procedural and substantive – would kick in. A legislative impeachment investigation – indeed, any legislative investigation – has a constitutional and legal mandate different from that of the criminal justice system.¹¹⁷ This mandate also modifies the scope of information that an impeachment investigation can properly seek: “The Committee’s duty is different from the duty of a prosecutor, a grand jury or a trial jury, whose task is to determine whether specific criminal statutes have been violated. What may be

¹¹³ Raoul Berger, *Impeachment: The Constitutional Problems* (Cambridge: Harvard Univ. Press, 1973) at 79 (quoting Joseph Story, *Commentaries On The Constitution of the United States*, 5th ed. 2 vols. (Boston: Little, Brown, 1905) §803).

¹¹⁴ Labovitz *supra* note 12, at 199 (footnote omitted).

¹¹⁵ See generally Constitutional Grounds for Presidential Impeachment, Report by the Staff of the Impeachment Inquiry, 2nd Sess., 93rd Cong., House Committee Print, at 22-25 (February 22, 1974) [hereinafter “Nixon Constitutional Grounds Report”]. The Nixon Constitutional Grounds Report was prepared by the staff of the House Judiciary Committee as the Committee conducted its inquiry into the impeachment of President Nixon.

¹¹⁶ “The governor . . . may be removed from office for willful neglect of duty, corruption in office, incompetency, or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties, or for any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith . . .” Ala. Const. art. VII, § 173.

¹¹⁷ For a more detailed discussion, see pages 42 to 45 below.

relevant or necessary for [a] criminal trial would not necessarily coincide with what is relevant and necessary for this inquiry.”¹¹⁸

Governor Bentley’s persistent attempted “litigation” before the Committee is further evidence, however, of his lack of cooperation.¹¹⁹

E. Lack of Cooperation as a Potential Ground For Impeachment.

Governor Bentley's failure to cooperate with the Committee’s investigation is potentially an independent ground for his impeachment. The Legislature is a co-equal branch of government. The executive branch cannot ignore or treat in a cavalier fashion its constitutional duties, one of which is to participate fully and in good faith with the discharge of the Legislature’s constitutional duties. In this context, a “failure to cooperate” can either be direct – as in Governor Bentley’s refusal to respond to the authorized document requests of Special Counsel, to the Committee’s subpoena or for requests for testimony – or it can be indirect, as by using litigation tactics to delay and frustrate the Committee’s attempts to get the facts.

Special Counsel was clear from early in the investigation that non-cooperation by Governor Bentley in the Committee’s discharge of its constitutional mandate could constitute independent grounds for impeachment.¹²⁰ Such grounds should be approached with care, but they are not without precedent. In the impeachment investigation of President Richard Nixon, for example, the committee found that “[t]he refusal of the President to comply with the subpoenas was an interference by him with the efforts of the Committee and the House of Representatives to fulfill their constitutional responsibilities.”¹²¹ The President’s defiance of the committee caused the committee to refer an additional article of impeachment, Article III, based solely upon the President’s refusal to comply with the subpoena.

Unlike Governor Bentley, President Nixon invoked the doctrine of “executive privilege” in refusing to comply with the subpoena. Rather, Governor Bentley has declined to comply with the subpoena on the grounds that the Committee lacks authority to issue them, or that the subpoena is procedurally or substantively unfair to him, or both. The “Nixon case made it clear that the claim of executive privilege by a president in an impeachment investigation should be viewed with

¹¹⁸ Impeachment of Richard M. Nixon President of the United States, Report of the Committee on the Judiciary, House of Representatives, 2nd Sess., 93rd Cong., House Report No. 93-1305, at 189 (August 20 22, 1974) [hereinafter, the “Rodino Report”]. The Rodino Report was named for the Chairman of the House Judiciary Committee, the late Peter Rodino (D-NJ).

¹¹⁹ For a detailed discussion of the Governor’s legal and constitutional claims, including his due process concerns, see pages 8 to 16.

¹²⁰ Letter from Jack Sharman to Joe Espy, Ross Garber and David Byrne (August 25, 2016). (Ex. 6-F at 3-4).

¹²¹ Rodino Report, *supra* note 118, at 188.

extreme skepticism.”¹²² Where the Committee has authority to issue subpoenas, and where the House investigation follows appropriate safeguards established both by House rule and common sense, a Governor’s refusal to comply without even a fig leaf of a privilege claim should be met with skepticism.

As noted above, although the House’s authority is plenary, there are limits on any legislative investigation, even an impeachment investigation. In the Nixon investigation, an inference of bad faith “could be drawn about the Watergate subpoenas issued by the committee for the impeachment inquiry because refusal to comply was part and parcel of the ‘course of conduct or plan’ to obstruct investigations ultimately alleged in Article I.”¹²³

The Committee, like the Nixon impeachment committee, did not seek judicial enforcement of its subpoena to Governor Bentley (or to any other recipients of its subpoenas). Other recipients, such as the Alabama Law Enforcement Agency (“ALEA”), raised questions about the subpoena but were still cooperative.¹²⁴ There are multiple concerns, including separation of powers issues and questions of justiciability, that counsel against an impeachment committee seeking the aid of the courts to help the committee force the executive officer to fulfill his constitutional responsibilities.¹²⁵ Ultimately, the Committee must move forward on its own constitutional two legs, so to speak. Where necessary, it must consider whether or not noncompliance by Governor Bentley is a sufficient ground for impeachment:

Unless noncompliance is a ground for impeachment, there is no practical way to compel the President to produce the evidence that is necessary for an impeachment inquiry into his conduct, nor any means of assuring that the extent of the House’s power of inquiry in an impeachment proceeding may be adjudicated and clarified. In the unique case of subpoenas directed to an incumbent President, a House adjudication of contempt would be an empty and inappropriate formality.¹²⁶

¹²² Labovitz, *supra* note 12, at 248.

¹²³ Labovitz *supra* note 12, at 290.

¹²⁴ Although ALEA members were generally cooperative throughout the investigation, they, understandably, expressed reluctance to provide testimony under oath or to testify at a hearing in light of the ongoing grand jury investigation. They were advised that their statements and documents would be included in the Report; notwithstanding, none recanted his or her statements to Special Counsel.

¹²⁵ Rodino Report, *supra* note 118, at 210-212.

¹²⁶ Rodino Report, *supra* note 118, at 212 (footnote omitted but noting that President Nixon “was put on notice of the possible consequences of his failure to comply with committee subpoenas . . .”)

VI. THE ALABAMA ETHICS COMMISSION

On Wednesday, April 5, 2017, apparently after hearing testimony from Governor Bentley, the Alabama Ethics Commission found probable cause to believe that he violated the Alabama Ethics Act and the Fair Campaign Practices Act (“FCPA”). Governor Bentley has denied any violations took place. Four matters have been referred to the Montgomery County District Attorney:

1. Whether Governor Bentley violated the Alabama Ethics Act by using public resources, including subordinate personnel under his control, for personal gain (3-1 vote)¹²⁷;
2. Whether Governor Bentley violated the FCPA by receiving a campaign contribution more than 120 days after his election (4-0 vote);
3. Whether Governor Bentley violated the FCPA by making a loan to his campaign account more than 120 days after his election (3-1 vote); and
4. Whether Governor Bentley violated the FCPA by using campaign funds to pay legal fees for Rebekah Mason (4-0 vote).

Each of the above is potentially a Class B felony under Alabama law. Here, we address conduct potentially relevant to the alleged FCPA violations.

As background, the FCPA allows a candidate to solicit and accept campaign contributions for 120 days after the candidate’s election “but only to the extent of any campaign debt of the candidate or principal campaign committee of the candidate as indicated on the campaign financial disclosure form.”¹²⁸ Just before the November 2014 election, Governor Bentley loaned \$500,000 to Bentley for Governor, Inc.¹²⁹ The Campaign’s 2014 Annual Campaign Finance Report reflects a December 31, 2014, cash balance of \$559,259.95 and debt of \$500,000.¹³⁰ After the election, Bentley for Governor, Inc. received \$439,611.18 in cash contributions through March 4, 2015, the end of the 120-day window.¹³¹ The bulk of these contributions were made by political action committees, and most came in the last permissible week. Bentley for Governor, Inc. reported no additional cash contributions in 2015.¹³²

¹²⁷ One commissioner abstained.

¹²⁸ Ala. Code § 17-5-7(b)(3).

¹²⁹ Bentley Campaign Contribution ID No. 149659.

¹³⁰ Bentley Campaign 2014 Annual Campaign Finance Report.

¹³¹ Bentley Campaign 2014 and 2015 Annual Campaign Finance Reports.

¹³² Bentley Campaign 2015 Annual Campaign Finance Report.

On March 6, 2015, the Campaign repaid the loan from Governor Bentley in the amount of \$509,722.22.¹³³ After repaying Governor Bentley and paying Mason's company, RCM Communications, a total of \$76,830.70, and other expenses, Bentley for Governor, Inc. had a cash balance of \$346,905.90 as of December 31, 2015.

In 2016, there were just two cash contributions. On March 22, 2016, the Republican Governor's Association ("RGA") contributed \$11,641.36, which is noted as "Other (Itemized)." According to documents produced by the Office of the Governor, the RGA contribution was intended as a reimbursement for Governor Bentley's travel to the RGA Winter Meeting in Las Vegas in November 2014. On March 24, 2016, two days after the RGA contribution was made, Bentley for Governor, Inc. paid the same amount to the Alabama State General Fund for "Transportation."

The second contribution last year was on November 15, 2016, when Governor Bentley made a \$50,000 loan to the Campaign. This was one day after Bentley for Governor, Inc. paid the same amount to Waller Lansden Dortch & Davis LLP, which began representing Governor Bentley at that time.

On January 3, 2016, Bentley for Governor, Inc. paid \$8,912.40 to the law firm of Copeland, Franco, Screws & Gill, P.A, for Mason's legal fees. Of note, Bobby Segall, a partner at that firm, represented Mason in connection with this investigation, and declined on her behalf to produce documents or to be interviewed during this investigation. On February 3, 2017, Waller Lansden partner Bill Athanas wrote the Ethics Commission stating Governor Bentley and Bentley for Governor, Inc.'s position was that the expenditure on Mason's behalf was legal under the FCPA because it allows the use of excess campaign funds for "expenditures that are reasonably related to performing the duties of the office held," including "[l]egal fees and costs associated with an civil action, criminal prosecution, or investigation related to conduct reasonably related to performing the duties of the office held."¹³⁴

THE LAW OF IMPEACHMENT

I. IMPEACHMENT IS THE PEOPLE'S CHECK AGAINST POLITICAL EXCESS

The roots of impeachment under American law, as with much of our system of government, are in Great Britain during the centuries before the Founding. "Parliament developed the impeachment process as a means to exercise some measure of control over the power of the King."¹³⁵ Because the monarch could not

¹³³ The difference may include interest, although on his 2015 federal tax return, Governor Bentley reported interest income of just \$2.00.

¹³⁴ See Ala. Code §§ 17-5-7(a)(2), (a)(7).

¹³⁵ Nixon Constitutional Grounds Report, *supra* note 115, at 4. See also *Kinsella v. Jaekle*, 475 A.2d 243, 251 (Conn. 1984) ("it was used to curb the power of the crown").

be impeached, British impeachment efforts focused on “the King’s ministers and favorites”¹³⁶ and concerned “offenses, as perceived by Parliament, against the system of government,” particularly “in devising means of expanding royal power” to the detriment of Parliament itself.¹³⁷

In British practice, the charges included “treason,” “high treason,” “misdemeanors,” and “high crimes and misdemeanors,” although the nature of conduct Parliament considered impeachable varied.¹³⁸ Generally speaking, “the particular allegations of misconduct alleged damage to the state in such forms as misapplication of funds, abuse of official power, neglect of duty, encroachment on Parliament’s prerogatives, corruption, and betrayal of trust.”¹³⁹

Having just thrown off the yoke of the British crown, the framers of the federal Constitution naturally were concerned with a too-powerful executive and specifically sought to avoid it.¹⁴⁰ They feared that “a strong executive might move toward monarchism by usurping the power that the people had reserved to themselves or vested with the legislature...”¹⁴¹ As a result, the impeachment remedy was “unanimously adopted” at the Constitutional Convention “even before it was decided that the executive would be a single person.”¹⁴²

The public debates about ratification of the Constitution and during the first congressional session after ratification show that the “framers intended impeachment to be a constitutional safeguard of the public trust” and that “the scope of impeachment was not viewed narrowly.”¹⁴³ Most notably, Alexander Hamilton, in *The Federalist Papers, No. 65*, described impeachable offenses as “those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.”¹⁴⁴ The scope of impeachment he described as “a NATIONAL INQUEST into the conduct of public men.”¹⁴⁵ Because of this nature and scope, Hamilton argued, the body capable of carrying out this task was the national legislature, not the courts.¹⁴⁶

¹³⁶ Nixon Constitutional Grounds Report, *supra* note 115, at 4.

¹³⁷ *Id.* at 5.

¹³⁸ *Id.*

¹³⁹ *Id.* at 7.

¹⁴⁰ *Id.* at 8.

¹⁴¹ *Kinsella*, 475 A.2d at 252.

¹⁴² Nixon Constitutional Grounds Report, *supra* note 115, at 10.

¹⁴³ *Id.* at 8, 16.

¹⁴⁴ Hamilton, Alexander, *The Federalist Papers, No. 65* (Penguin Group, First Mentor Printing, April 1961), at 396 (capitalization in original).

¹⁴⁵ *Id.* at 397 (capitalization in original).

¹⁴⁶ *See id.*; *see also Mechem v. Gordon*, 751 P.2d 957, 961 (Ariz. 1988).

Commentators since that time have reiterated the political nature of impeachment. In 1833, United States Supreme Court Justice Joseph Story wrote that impeachment “reaches[] what are aptly termed political offenses, growing out of personal misconduct or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office.”¹⁴⁷ Writing against the backdrop of the investigation into President Richard M. Nixon, noted constitutional scholar Charles L. Black, Jr. suggested that impeachment under the federal Constitution concerns “offenses which are rather obviously wrong, whether or not ‘criminal,’ and which ... seriously threaten the order of political society” such that the wrongdoer should not continue in power.¹⁴⁸

The Watergate Staff Report reviewed thirteen impeachments in the United States House of Representatives before 1974 and concluded that each “involved charges of misconduct incompatible with the official position of the officeholder.”¹⁴⁹ The Watergate Staff Report further identified three general categories of impeachable conduct: “(1) exceeding the constitutional bounds of the powers of the office in derogation of the powers of another branch of government; (2) behaving in a manner grossly incompatible with the proper function and purpose of the office; and (3) employing the power of the office for an improper purpose or for personal gain.”¹⁵⁰

Because it is a political redress for political misconduct, impeachment is not strictly concerned with criminal conduct, although criminal conduct may (or may not) form the basis for impeachment.¹⁵¹ The Illinois House of Representatives Special Investigative Committee investigating then-Governor Rod Blagojevich concluded: “It would, in fact, be unreasonable to limit impeachable offenses to criminal conduct. An impeachment inquiry is not a criminal proceeding and its purpose is not punitive. Rather, impeachment is a remedial proceeding to protect the public from an officer who has abused his position of trust.”¹⁵²

In addition to the broad scope of non-criminal conduct that may give rise to impeachment, the distinctly political nature of impeachment is shown by the fact that, under the federal system and in most states, an impeached and removed officer remains liable for criminal punishment through the justice system. As Hamilton put it: “After having been sentenced to perpetual ostracism from the esteem and confidence and honors and emoluments of his country, he will still be

¹⁴⁷ Story, Joseph, *Commentaries on the Constitution of the United States*, at 559 (5th ed. 1905) (quoted in Nixon Constitutional Grounds Report, *supra* note 115, at 16).

¹⁴⁸ Black, Charles L., Jr., *Impeachment: A Handbook*, at 39-40 (Yale University Press 1974).

¹⁴⁹ Nixon Constitutional Grounds Report, *supra* note 115, at 17.

¹⁵⁰ *Id.* at 18.

¹⁵¹ See State of Illinois House of Representatives, 95th General Assembly, Special Investigative Committee, *Final Report of Special Investigative Committee*, at 4 (Jan. 8, 2009) [hereinafter “Illinois Final Report”].

¹⁵² *Id.*

liable to prosecution and punishment in the ordinary course of law.”¹⁵³ Alabama adopts this same view: Section 176 of our Constitution limits the penalties for impeachment to removal and disqualification from holding office but also expressly preserves “indictment and punishment as prescribed by law.”

Fundamentally, impeachment and criminal prosecution serve different societal aims. For example, the Texas Supreme Court explained as follows:

The Constitution, in relation to impeachment, has in mind the protection of the people from official delinquencies or malfeasances. The Penal Code, on the other hand, has in mind an offender merely as a member of society who should be punished for his individual wrongdoing. The primary purpose of an impeachment is to protect the State, not to punish the offender. True, he suffers, as he may lose his office and be disqualified from holding another; but these are only incidents of a remedy necessary for the public protection.¹⁵⁴

From these and many other authorities, we offer the following general propositions concerning impeachment:

1. Impeachment is a political power to protect society from misconduct by public officeholders before their terms expire or they may be voted out of office in the ordinary political process.
2. Impeachment is reserved for serious offenses or breaches of the public trust that are incompatible with our political system, such as abuse of power, gross neglect of duty, and corruption, which may or may not be criminal as well.
3. Impeachment is not for unpopular policies or otherwise legitimate exercises of the power of the office unaccompanied by serious misconduct.
4. Impeachment operates separately from the criminal justice system.

With that general background, we proceed to analyzing Alabama’s impeachment scheme.

¹⁵³ Hamilton, *Federalist No. 65*, *supra* note 144, at 399.

¹⁵⁴ *Ferguson v. Maddox*, 263 S.W. 888, 892 (Tex. 1924).

II. IMPEACHMENT UNDER THE ALABAMA CONSTITUTION

Since Alabama became a state in 1819, each of its several constitutions has provided for impeachment of the Governor and other state officers. Like the federal system, this power principally has been vested in the Legislature. It also has been further divided between the House, which has the power to prefer articles of impeachment against statewide elected officials, and the Senate, which has the power to organize as a court of impeachment and try the articles preferred by the House.

The Alabama Constitution of 1901 expressly provides five grounds for impeachment: willful neglect of duty, corruption in office, incompetency, intemperance in the use of liquor or narcotics, and “any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith.” It provides almost no guidance, however, and much less any mandates, as to how either house of the Legislature must conduct its respective part of the process.

A. Separation of Powers: The Legislature Has Exclusive, Non-Reviewable Power to Impeach and Remove from Office.

“In Alabama, separation of powers is not merely an implicit ‘doctrine’ but rather an express command; a command stated with a forcefulness rivaled by few, if any, similar provisions in constitutions of other sovereigns.”¹⁵⁵ Because of this constitutional command, a discussion of the impeachment and removal power vested in the Legislature by Section 173 of our Constitution must begin with an understanding of Alabama’s doctrine of separation of powers and how the Constitution provides for impeachment and removal.

Our Constitution expressly divides the government’s powers “into three distinct departments” – legislative, executive, and judicial – “each of which shall be confided to a separate body.”¹⁵⁶ It further expressly prohibits each department from exercising powers of the other two departments except where “expressly directed or permitted.”¹⁵⁷ Decisions of the Alabama Supreme Court interpreting these constitutional directives reveal two coordinate principles: (1) the division of Alabama governmental powers is nearly absolute, such that “all acts expressly or impliedly assigned to a department by the constitution must be performed by that department, and the power to perform them cannot be conferred elsewhere”¹⁵⁸ and (2) “[w]ithin their respective spheres each branch of government is supreme.”¹⁵⁹

¹⁵⁵ *Ex parte James*, 836 So. 2d 813, 815 (Ala. 2002).

¹⁵⁶ Ala. Const., art. III, § 42; *State ex rel. King v. Morton*, 955 So. 2d 1012, 1019 (Ala. 2006).

¹⁵⁷ Ala. Const., art. III, § 43.

¹⁵⁸ *Fox v. McDonald*, 13 So. 416, 417 (Ala. 1893).

¹⁵⁹ *Morgan County Commission v. Powell*, 293 So. 2d 830, 834 (Ala. 1974).

The power to impeach and remove “all civil officers” originally resided exclusively with the Legislature.¹⁶⁰ Due to concerns about the efficiency of trying impeachments of lower-level officials in the Senate, the Constitution of 1875 distributed the impeachment and removal power among the legislative and judicial departments, preserving unto the Legislature the power to impeach and remove statewide officers but providing for impeachment and removal of lower-level officers by the courts.¹⁶¹

This allocation of impeachment and removal power was carried forward in our current Constitution of 1901. Section 173 vests in the Legislature the power to impeach and remove from office all state-wide executive officers, including the Governor, as well as justices of the Supreme Court and judges of the Courts of Appeal (by way of Section 158¹⁶²). The power to impeach other elected officials is vested in the judiciary. Section 174 provides that sheriffs, district attorneys, and circuit and probate judges may be impeached by direct action in the Supreme Court, without a trial by jury.¹⁶³ Section 175 provides for the impeachment of county and municipal officers by jury trial in circuit or other county courts.

Section 173 further defines the roles of the two Houses of the Legislature: “The governor ... may be removed from office ... by the senate sitting as a court of impeachment, under oath or affirmation, on articles or charges preferred by the house of representatives.” Once organized as a court of impeachment, with the Chief Justice or, “if absent or disqualified,” an Associate Justice presiding, the Senate “shall hear and try such articles of impeachment against the governor ... as may be preferred by the house of representatives.”

With respect to how the House and Senate carry out their respective roles, the Constitution provides no guidance. However, what it does not say is informative. Specifically:

- Section 173 imposes no procedural requirements on either body.
- It guarantees the officer subject to impeachment no procedural protections.
- There is no judicial review of impeachment by the House or removal by the Senate under Section 173.

¹⁶⁰ Ala. Const. of 1819, art. VI, §§ 2, 3.

¹⁶¹ See McMillan, Malcolm Cook, *Constitutional Development in Alabama, 1798-1901*, at 198 (The University of North Carolina Press 1955) (citing Skinner, Thomas E., *Alabama Constitution Annotated*, at 650 (1938)).

¹⁶² As amended in 1973.

¹⁶³ The absence of a jury trial in impeachment proceedings in the Supreme Court “caused some lawyers and judges to oppose the constitution [of 1875] who might otherwise have supported it.” McMillan, *supra* note 161, at 215.

In the absence of any such constitutional constraints, and consistent with the doctrine of separation of powers, the Legislature’s power with respect to impeachment and removal is absolute, exclusive, and supreme. Just as with the Legislature’s other powers, its power under Section 173 necessarily is plenary, “derived from the people, as elected representatives thereof,”¹⁶⁴ and “has no bounds,”¹⁶⁵ subject to any rules it may seem fit to adopt for the purpose of carrying out its power.¹⁶⁶

In that regard, Section 53 of the Alabama Constitution expressly provides that “[e]ach house [of the Legislature] shall have power to determine the rules of its proceedings....” The Alabama Supreme Court has repeatedly held that the Legislature’s power to adopt its rules “is unlimited except as controlled by other provisions of our Constitution.”¹⁶⁷ Even “[t]he Courts cannot look to the wisdom or folly, the advantages or disadvantages, of the rules which a legislative body adopts to govern its own proceedings.”¹⁶⁸ The Legislature’s self-governing power “extends to the determination of the propriety and effect of any action taken by the body as it proceeds in the exercise of any power, in the transaction of any business, or in the performance of any duty conferred upon it by the Constitution.”¹⁶⁹

The Legislature’s unlimited self-governing power necessarily extends to any rules adopted or proceedings conducted by either House’s exercise of its powers under Section 173.¹⁷⁰ The Alabama Supreme Court recognized in 1895 that the Senate, when sitting as a court of impeachment, may adopt rules of procedure unlike the judicial rules of procedure.¹⁷¹

In summary, under the Alabama Constitution:

¹⁶⁴ *Grantham v. Denke*, 359 So. 2d 785, 786 (Ala. 1978).

¹⁶⁵ *Alabama State Federation of Labor v. McAdory*, 18 So.2d 810, 815 (Ala. 1944); *see also Sheppard v. Dowling*, 28 So. 791 (Ala. 1900).

¹⁶⁶ *See* Mason’s § 3(3) (“A state constitution is a limitation rather than a grant of legislative power. If not withheld expressly or by implication, the whole legislative power of the state is committed to the legislature, which may enact any law not forbidden by the constitution or delegated to the federal government or prohibited to the states.”).

¹⁶⁷ *Opinion of the Justices No. 185*, 179 So. 2d 155, 158 (Ala. 1965).

¹⁶⁸ *Opinion of the Justices No. 265*, 381 So. 2d 183, 185 (Ala. 1980).

¹⁶⁹ *Opinion of the Justices No. 95*, 40 So. 2d 623, 626 (Ala. 1949).

¹⁷⁰ Sections 174 and 175 provide for impeachments in the courts “under such regulations as may be prescribed by law.” The Legislature has enacted statutes to govern such proceedings, *see* Ala. Code §§ 36-11-1 *et seq.* For instance, most impeachments under Sections 174 and 175 must initiate with an investigation by a county grand jury. If the grand jury finds cause to impeach, it must issue a report “setting forth the facts” to be “entered on the minutes of the court,” after which the matter is referred to the Attorney General for matters under Section 174 or the district attorney for matters under Section 175 “to institute proceedings ... and prosecute.”

¹⁷¹ *See State v. Robinson*, 111 Ala. 482, 484 (1895), abrogated on other grounds by Ala. Const. of 1901, art. VII, § 173.

1. The House has absolute and exclusive authority to impeach the Governor subject to any rules of procedure it deems appropriate.
2. When sitting as a court of impeachment, the Senate has absolute and exclusive authority to remove an impeached state officer such as the Governor, pursuant to any rules of procedure it deems appropriate.
3. There are no procedural requirements or guarantees concerning impeachment of the Governor.
4. There is no basis for judicial review of either the process or outcome of the House's or the Senate's respective impeachment and removal roles.

B. Grounds for Impeachment.

Section 173 of the Alabama Constitution of 1901 specifies five grounds for impeachment of the Governor and other State constitutional officers: “[1] willful neglect of duty, [2] corruption in office, [3] incompetency, or [4] intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties, or for [5] any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith[.]” These five grounds were largely unchanged from the Constitution of 1875, in which the intemperance ground was stated only as “habitual drunkenness.” In earlier constitutions, the only articulated basis for impeachment was “for any misdemeanor in office.”¹⁷²

The Journal of the Alabama Constitutional Conventions of 1875 and 1901 provide no clarity as to why the grounds were not more specifically stated or what the framers of those documents believed them to mean. The Alabama Supreme Court has interpreted the grounds in cases involving judicial impeachments under Sections 174 and 175 (or their predecessors). Because these authorities do not arise from Section 173, they are not binding upon the Legislature in the exercise of its impeachment power under Section 173, but they may be considered as persuasive authority.

For the same reasons, there is no force to the claim that Governor Bentley cannot be impeached for conduct prior to his re-election. Any argument in support of this claim can only be drawn from decisions of the Supreme Court interpreting judicial impeachments under Sections 174 and 175, not legislative impeachments under Section 173.¹⁷³ More importantly, even those inapplicable decisions allow the

¹⁷² *E.g.*, Ala. Const. of 1819, art. V, Impeachments, § 3. The Constitution of 1865 articulated no specific ground for impeachment.

¹⁷³ The legislature has invoked Section 173 only once, in the 1915 matter of John Purifoy, in which the House of Representatives declined to impeach. The issue then was whether the Secretary of State could be impeached for actions he committed before he assumed office. A majority of this

court to consider an officer's acts or omissions from a previous term "as evidential facts, in so far as they are connected with or bear upon the [officer's] general course of conduct during the second term, for the limited purpose of inquiring into the motive and intent of the [officer] as to the acts and omissions charged to him during the second term."¹⁷⁴

The Supreme Court's interpretation of the grounds may be summarized as follows¹⁷⁵:

- *Willful neglect of duty.* Willful neglect of duty is "more than the merely intentional omission of an act of public duty."¹⁷⁶ Rather, it is "an 'intentional failure or omission of an officer to perform a plain and manifest duty which he is able to perform when he omits to do so.'"¹⁷⁷ "[T]o justify removal from office, it must appear that the incumbent is morally or mentally unfit" to hold public office.¹⁷⁸
- *Corruption in office.* Corruption in office equates to "official misconduct" and includes the "corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance."¹⁷⁹ This includes a wide variety of official wrongs, including misuse or misappropriation of public funds¹⁸⁰ and bribery.¹⁸¹ It also may include "any unlawful behavior by a public officer in relation to the duties of his office, willful in character."¹⁸²

Committee found pre-election conduct could be the basis for impeachment if it was committed "under color [of]" or "connected [with]" the office. The rationale of the 1915 House of Representatives in ultimately declining to impeach is unknown. What is known is that the only time a committee of the House of Representatives has considered the issue, it found pre-election conduct can be grounds for impeachment.

¹⁷⁴ *Parker v. State*, 333 So. 2d 806, 808 (Ala. 1976) (quoting *State ex rel. Mullis v. Mathews*, 66 So. 2d 105, 118 (Ala. 1953)).

¹⁷⁵ We have omitted the intemperance ground.

¹⁷⁶ *Lewis v. State*, 387 So. 2d 795, 803 (Ala. 1980) (quoting *Bowen v. State*, 93 So. 412, 414 (Ala. 1922), in turn quoting *Nelson v. State*, 62 So. 189, 193 (Ala. 1913)).

¹⁷⁷ *State v. Clark*, No. 1151021, --- So. 3d ---, 2016 WL 4044903, at *3 (Ala. 2016) (quoting *State v. Martin*, 61 So. 491, 492 (Ala. 1913)).

¹⁷⁸ *Lewis*, 387 So. 2d at 803.

¹⁷⁹ *Clark*, 2016 WL 4044903, at *3. Malfeasance is any "wrongdoing or misconduct by a public official." *Id.* at *3, n.3 (quoting Black's Law Dictionary at 1100 (10th ed. 2014)). Misfeasance is lawful conduct but "performed in a wrongful manner." *Id.* at *3, n. 4 (quoting Black's, *supra*, at 1151). Nonfeasance is the "failure to act when a duty to act exists." *Id.* at *3, n. 5 (quoting Black's, *supra*, at 1216).

¹⁸⁰ *Lewis*, 387 So. 2d at 803.

¹⁸¹ *State v. McPeters*, 56 So. 2d 102 (Ala. 1951).

¹⁸² See *In re Emmet*, 300 So. 2d 435, 438 (Ala. 1974) (discussing "[m]isconduct in office" in the context of Ala. Const., art. IV, § 157(a)).

- *Incompetency.* This refers to “a state of physical or mental disability” that is “continuous in some degree.”¹⁸³ Thus, this ground is not necessarily incompetence in the performance of the duties of the office, which, if rising to the level of an intentional failure to carry out such duties, would be subsumed under by willful neglect.
- *Offenses involving moral turpitude.* “Moral turpitude” typically describes “a crime involving grave infringement of the moral sentiment of the community.”¹⁸⁴ As used in our Constitution, however, it is not “restricted to statutory offenses” but “includes offenses at common law.”¹⁸⁵ Crimes involving moral turpitude are not just serious bodily offenses. For example, they include forgery, conspiracy to commit fraud, transporting stolen vehicles across state lines, and bigamy.¹⁸⁶ Examples of common law offenses include fraud, any “crime in which an intent to defraud is an essential element,” and “the related group of offenses involving intentional dishonesty for purposes of personal gain.”¹⁸⁷

More generally, our Supreme Court has stated: “The Constitution, in providing for the removal of unfit officers, proceeds to ends more in accord with the dictate of natural justice and along broader and more liberal lines than do strict and often harsh criminal statutes which prescribe punishment for every transgression of the law.”¹⁸⁸ The specific grounds for impeachment “all tend, more or less, to reflect upon the dignity of the office, to generate disrespect for the law, through the want of worth, moral or intellectual, in the officer, to create dissatisfaction among the people with their government, and to thus seriously cripple the administration of justice in all its departments.”¹⁸⁹

These conceptions of impeachment perfectly align with the historical perspective set out above: the purpose of impeachment is to protect society from political offenses by an unfit officeholder.

C. Burden of Proof.

The Alabama Constitution does not define the burden of proof either for the House in considering articles of impeachment or the Senate as a court of

¹⁸³ See *State v. Hasty*, 63 So. 559, 563 (Ala. 1913); *State v. Martin*, 61 So. 491 (Ala. 1913) (McClellan, J., concurring) (quoting *State v. Lowe* (unpublished)).

¹⁸⁴ *Lewis*, 387 So. 2d at 804 (quoting *People v. Ferguson*, 286 N.Y.S.2d 976, 981 (1967)).

¹⁸⁵ *Id.*

¹⁸⁶ *Chapman v. Gooden*, 974 So. 2d 972, 977 (Ala. 2007) (collecting numerous examples).

¹⁸⁷ *Irvin v. State*, 203 So. 2d 283, 287-88 (Ala. Civ. App. 1967) (quoting *In re Hallinan*, 272 P.2d 768, 771 (Cal. 1954)).

¹⁸⁸ *Nelson v. State*, 62 So. 189, 193 (Ala. 1913).

¹⁸⁹ *Nelson*, 62 So. at 192 (quoting *State v. Savage*, 7 So. 183, 184 (1890)).

impeachment trying articles preferred by the House. The same is true for the federal Constitution.

A report by the Congressional Research Service in 1999 concluded that “an examination of the constitutional language, history and the work of legal scholars provides no definitive answer to the question of what standard is to be applied.”¹⁹⁰ Historically the standard of proof is left up to legislators “guided by their own consciences.”¹⁹¹ Despite the absence of a definitive answer, there is no shortage of opinions on what standard(s) ought to apply. To provide some context to these opinions, it is first helpful to understand what legal standards have been recognized by the courts.

1. Four standards of proof: probable cause; reasonable satisfaction/preponderance of the evidence; clear and convincing evidence; and beyond a reasonable doubt.

Courts apply different standards of proof depending on the nature of the case and proceeding. In criminal proceedings, there typically are two burdens of proof. First, grand juries apply the lowest burden of proof in determining whether there is “probable cause for arrest,” which requires “[o]nly a probability, not a prima facie showing, of criminal activity.”¹⁹² As a mere probability, probable cause does not require proof of even a 50% likelihood of guilt.¹⁹³ At a criminal trial, however, the State must meet the highest burden of proof applied by courts: “beyond a reasonable doubt.”¹⁹⁴ This standard “has been described as proof rising above the 95% level of certainty.”¹⁹⁵

In civil matters, the burden of proof is typically described as the “preponderance of the evidence.”¹⁹⁶ This has been equated to “proof rising to the 51% level of certainty.”¹⁹⁷ In Alabama, however, the preponderance standard has not been adopted. The Alabama Pattern Jury Instructions state that a civil plaintiff “must prove to [the jury’s] reasonable satisfaction from the evidence” that he or she is entitled to relief.¹⁹⁸ The Alabama Supreme Court historically has disapproved of connecting the “reasonable satisfaction” standard to the “preponderance of the evidence” as potentially misleading, implying that a preponderance of evidence, in

¹⁹⁰ Thomas B. Ripy, *Standard of Proof in Senate Impeachment Proceedings*, CRS Report for Congress, January 7, 1999, at 1.

¹⁹¹ *Id.*

¹⁹² *Dixon v. State*, 588 So. 2d 903, 906 (Ala. 1991).

¹⁹³ Special Counsel to the Connecticut Select Committee of Inquiry, *Standards for Impeachment under the Connecticut Constitution*, March 5, 2004, at 20 [hereafter “Connecticut Standards Report”].

¹⁹⁴ *Ex parte Kirby*, 643 So. 2d 587, 588 (Ala. 1994).

¹⁹⁵ Connecticut Standards Report, *supra* note 193, at 19.

¹⁹⁶ *Herman & MacLean v. Huddleston*, 459 U.S. 375, 387 (1983).

¹⁹⁷ Connecticut Standards Report, *supra* note 193, at 19.

¹⁹⁸ Ala. Pattern Jury Instruction 8.00; *see also Ex parte Gradford*, 699 So. 2d 149, 151 (Ala. 1997).

some cases, may not be sufficient to reasonably satisfy a jury that the plaintiff has proved his or her case.¹⁹⁹ In practice in Alabama civil trials, the plaintiff's burden of proof is typically understood, and argued to juries, as "more likely than not."

A higher standard used in some aspects of civil trials is proof by "clear and convincing evidence." For instance, "[u]nder Alabama law, an award of punitive damages requires proof 'by clear and convincing evidence that the defendant consciously or deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiff.'"²⁰⁰ In the Worker's Compensation Act, the Legislature has statutorily defined "clear and convincing" as "evidence that, when weighed against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion."²⁰¹ The clear and convincing standard has been described as "requiring a 75% level of certainty."²⁰²

2. What standard should apply to impeachment?

The absence of defined guidance on that question has led many Legislatures to conclude that "the burden of proof a House member employs" is "left to the individual judgment of the member."²⁰³ As part of its impeachment investigation into then-Governor Blagojevich, the Special Investigative Committee of the Illinois House of Representatives offered the following summary:

As already explained, the Illinois Constitution places no constraints on a House member's determination of whether "cause" exists to justify impeachment. The question of the burden of proof a House member employs, not answered by the Constitution, is thus left to the individual judgment of the member. In fact, if anything is clear on this issue, it is that the "appropriate" standard for proof is left to an individual member's determination.

.....

Whatever level of proof is necessary to satisfy a member that "cause" exists to impeach is a personal determination. Each member may consider all of the evidence, attach whatever weight he or she deems appropriate to that evidence, and

¹⁹⁹ *McCaa v. Thomas*, 92 So. 414, 417 (Ala. 1922) (quotation marks, emphasis, and citation omitted).

²⁰⁰ *Guyoungtech USA, Inc. v. Dees*, 156 So. 3d 374, 387 (Ala. 2014) (quoting Ala. Code § 6-11-20(e)).

²⁰¹ Ala. Code § 25-5-81(c).

²⁰² Connecticut Standards Report, *supra* note 193, at 19.

²⁰³ Illinois Final Report, *supra* note 151, at 7 (rejecting an argument that a "clear and convincing" standard should apply because a ten-member committee in a prior impeachment inquiry had settled on that standard).

ultimately reach a conclusion according to the member's individual judgment and conscience.²⁰⁴

Likewise, the Congressional Research Service ("CRS") analyzed which standard of proof should guide the Senate in determining whether the evidence justified removal from office. It is likely that the decision to remove should require a more rigorous standard of proof than the decision to impeach – as the former is merely accusatory and temporary whereas the latter is adjudicatory and permanent²⁰⁵ – yet the CRS noted that "the Senate has traditionally left the choice of the applicable standard of proof to each individual Senator."²⁰⁶ The CRS reached that conclusion based on historical precedent as well as the writings of Professor Charles L. Black, Jr., who offered the following observation in anticipation of a potential impeachment trial against President Nixon: "Of course each Senator must find his own standard in his own conscience, as advised by reflection."²⁰⁷

Although we concur that each Member must select the appropriate standard of proof to apply, there are prudential reasons for a Member to apply a more rigorous standard of proof than probable cause or even simple preponderance. In Alabama, the Governor is suspended from office upon impeachment by the House until he or she is acquitted by the Senate.²⁰⁸ Impeachment, therefore, effectively overrides electoral judgment, even if temporarily, which counsels in favor of a higher standard of proof. The State of Connecticut has a similar constitutional provision whereby impeachment results in suspension pending the Senate's adjudication. Given that potential consequence, while investigating then-Governor John G. Rowland, the Special Counsel to the Select Committee of Inquiry of the Connecticut House of Representatives recommended application of the "clear and convincing evidence" standard of proof:

Under our analysis, "preponderance of the evidence" and "clear and convincing evidence" are the two burdens of proof that the Committee should consider applying, and we believe it would be within the discretion of the Select Committee to apply either. While we think both burdens have something to recommend, we suggest that the Committee adopt the higher burden of proof for these proceedings.

.....

²⁰⁴ *Id.* at 7-8.

²⁰⁵ A parallel to the criminal justice system confirms that conclusion. An indictment, which is analogous in manner to articles of impeachment but carries with it penalties significantly more severe, may issue based simply on probable cause, but in order to convict and, consequently, deprive a citizen of his life, liberty, or property, the State must establish guilt beyond a reasonable doubt.

²⁰⁶ Ripy, *supra* note 190, at 6.

²⁰⁷ *Id.* (quoting Charles L. Black, Jr., *Impeachment: A Handbook* 17-18 (1974)).

²⁰⁸ Ala. Const., art. V, § 127.

[A] “clear and convincing” evidence burden of proof, which would require a conclusion that the facts supporting an article of impeachment are “highly probable true,” has the advantage of being more protective of the separation between the Executive and Legislative Branches of government. . . . We also believe that a requirement of clear and convincing proof is justified by the fact that, upon impeachment, the Governor must relinquish the powers of his office pending trial in the Senate. In the end, while the issue is not free from doubt, we find these concerns to be persuasive and recommend the Special Committee require clear and convincing proof.²⁰⁹

Notwithstanding that recommendation, Connecticut’s Special Counsel concluded: “[W]e must repeat that the matter lies in the sole discretion of the Select Committee’s members and that requiring a lesser standard of proof” – such as, for example, preponderance of the evidence – “would fall comfortably within Connecticut’s constitutional traditions.”²¹⁰ In its Final Report, which issued after Governor Rowland resigned but before a vote could be taken on impeachment, the Select Committee of Inquiry endorsed the Special Counsel’s approach: (1) the standard of proof should be determined by each Member’s conscience and (2) the appropriate standard of proof – even if impeachment results in the Governor’s temporary suspension – is, at most, “clear and convincing evidence” but perhaps even some less-demanding standard, such as simple “preponderance of the evidence.”²¹¹

In contrast, Governor Bentley urges the House to evaluate the evidence against the “beyond a reasonable doubt” standard when determining whether to impeach. Like Governor Bentley, other governors subject to impeachment investigations have made similar pleas. We are unaware of any Legislature, however, formally adopting the “beyond a reasonable doubt” standard at this stage of the process. Indeed, other Legislatures have expressly rejected it. For example, in Connecticut, the Select Committee of Inquiry’s Special Counsel observed that “application of the ‘beyond a reasonable doubt’ standard in these proceedings quickly can be dismissed” because “[t]hat is the burden applicable at the guilt or innocence phase of a criminal trial, and we see little justification for applying the most exacting burden in law at what can be equated to the ‘charging’ stage of the this inquiry.”²¹² Connecticut’s Select Committee of Inquiry concurred.²¹³ Similarly, in Illinois, although the Special Investigative Committee entrusted the appropriate standard of proof to the judgment of each Member of the House, the Committee did

²⁰⁹ Connecticut Standards Report, *supra* note 193, at 20-21.

²¹⁰ *Id.* at 21.

²¹¹ Connecticut Final Report Final, *supra* note 193, at 6-7.

²¹² Connecticut Standards Report, *supra* note 193, at 20.

²¹³ *Id.* at 6-7

note that, “[h]owever unfavorable it may be to be impeached,” “[a]n impeached official in Illinois does not lose his life or liberty.”²¹⁴

Thus, the standard is an open one. Each member of the Committee must determine, individually, what constitutes “cause” for Governor Bentley to be impeached. That said, like Connecticut’s Special Counsel, we recommend that the Members of the Committee in their referral decision and, if necessary, the Members of the House in an impeachment decision, consider whether there exists “clear and convincing” evidence that warrants impeachment of Governor Bentley. That standard balances (1) the presumption against overriding voter judgment and (2) the House’s constitutional obligation to safeguard against abuses of office by a governor.

On the other hand, and also like Connecticut’s Special Counsel, we agree that application of a less demanding burden of proof, including “preponderance of the evidence” or “reasonable satisfaction,” would also properly strike that balance and discharge the Member’s constitutional duties. Indeed, were one to view the House’s function as roughly analogous to that of a grand jury, even a “probable cause” standard would be defensible, though perhaps less sensitive to the Alabama constitutional regime of the suspension from office upon impeachment.

THE FACTUAL RECORD

I. THE ORGANIZATIONAL STRUCTURE OF THE OFFICE OF THE GOVERNOR

The organization of the Office of the Governor (“the Office” or “Governor’s Office”) outlined here is not meant to be comprehensive of Governor Bentley’s entire time in office. Rather, we focus on the roles of key staff and personnel most relevant to the Committee’s consideration of the Impeachment Resolution passed by the House. For the same reason, we focus on events that occurred between the fall of 2013 and the fall of 2016. Governor Bentley’s initial election and the majority of his first term, though important for the introduction of key individuals and facts, will not be dealt with in exhaustive detail. The structural overview set out below traces the evolution of the Office’s structure and operations from the first term to the second, but delves into significantly more detail from the fall of 2013 onward.

A. The First Term.

Throughout Governor Bentley’s two terms, the Office has operated with a chief of staff managing day-to-day operations through key personnel, who in turn has management responsibility for the Office’s various policy and administrative functions. After Governor Bentley’s inauguration in 2011, Chuck Malone served as Chief of Staff until Governor Bentley appointed him to fill a vacancy on the

²¹⁴ Illinois Final Report, *supra* note 151, at 7.

Alabama Supreme Court in August 2011. David Perry took over as Chief of Staff and served in that capacity until he resigned in May 2014. Governor Bentley then selected former Alabama Speaker of the House Seth Hammett as “interim Chief of Staff.” The organizational structure of the Office is reflected in the chart provided as Exhibit 5-H at 3.

Rebekah Caldwell Mason served as the Press Secretary for Governor Bentley’s first campaign. She then joined the Administration as the Director of Communications immediately after the inauguration and served through July 2013, according to publicly-available State payroll records. At that time, she left to handle communications for the Bentley for Governor, Inc. re-election campaign through her company, RCM Communications. Jennifer Ardis, a holdover from the Administration of Governor Bob Riley, worked under Mason as Governor Bentley’s press secretary and succeeded Mason as Governor Bentley’s Director of Communications.

Other key personnel during Governor Bentley’s first term included: Chief Legal Adviser David Byrne, the former general counsel of Colonial Bank; Governor Bentley’s Executive Assistant Wanda Kelly, who had worked for Governor Bentley in his medical practice in Tuscaloosa; and Director of Scheduling Linda Adams, who had worked in the offices of several Alabama elected officials during the previous two decades. Wesley Helton and Zach Lee were young staffers who have been with the Bentley operation from the inception of his Republican Primary bid in 2010. Both joined his Administration in 2011. Lee left the Administration to work on Governor Bentley’s re-election campaign throughout 2013 and 2014 and rejoined for the second term. Both Helton and Lee have ascended through the ranks, and now Helton serves as Director of Legislative Affairs and Lee is Director of Federal & Local Government Affairs.

First Lady Dianne Bentley maintained a small staff throughout her time as First Lady. Her primary assistant for the majority of that time was Heather Hannah, who served in the roles of Executive Assistant and then Director of Mansion Operations and First Lady Affairs (effectively, Chief of Staff) until June 2014. During Hannah’s tenure with Ms. Bentley, Collier Tynes was hired as the First Lady’s Initiatives Coordinator and then became the First Lady’s Chief of Staff after Hannah left. Tynes served in that capacity until the time of the Bentleys’ divorce, which concluded Dianne Bentley’s term as First Lady, in approximately September 2015. Hannah and Tynes worked for Ms. Bentley in the Governor’s Mansion.

B. The Second Term.

1. Key changes to staff and structure.

There were a number of key staff changes that occurred at the end of Governor Bentley's first term and during the course of his re-election campaign. Most of the staff who came on board during this time served in the Office of the Governor well into the second term. The most significant change in the structure of the Office resulted from Governor Bentley's decision to replace David Perry as Chief of Staff with former Speaker of the Alabama House of Representatives Seth Hammett in May 2014.

Hammett restructured the office, narrowed the chain of command, and limited the number of personnel who had access to information. After Hammett assumed the role of Chief of Staff, he managed the Office's operations through two Deputy Chiefs of Staff who reported directly to him. Those deputies were John Barganier and Blake Hardwich. Beginning in June 2014, Barganier served as the Deputy of Chief of Staff for Policy, and in July 2014 Blake Hardwich began serving as Deputy Chief of Staff for Administration. David Byrne, who remained as Governor Bentley's Chief Legal Adviser, reported directly to Governor Bentley. The organizational structure of the Office during the second term is reflected in the chart at Exhibit 5-H at 2.

Barganier and Hardwich oversaw all personnel who fell within their areas of responsibility. Broadly, Barganier's responsibilities included supervision of the policy and legislative functions of the Office. In her role, Hardwich oversaw the day-to-day administrative operations of the Office, and she also oversaw appointments to state offices by Governor Bentley. The personnel within Hardwich's supervisory function included, among others, Linda Adams and Collier Tynes.

In addition to implementing the deputy chief of staff reporting chain, Hammett changed the way meetings were conducted in the Office. Previously, meetings had been conducted as general staff meetings and attended by a large number of personnel. Attendees had included all staff in the position of director or above, policy advisors, the entire legal team, the entire legislative team, and Rebekah Mason. Early in the second term, the staff-meeting model was replaced with "Leadership Team" meetings, which Hardwich was responsible for organizing. The Leadership Team included Hammett, Barganier, Hardwich, Byrne, Lee, Director of Legislative Affairs Ross Gunnells, and Mason. These meetings did grow to include additional staff but remained a much smaller collection of personnel.

2. Confidentiality agreements.

Shortly after Hammett joined the Bentley Administration, he required all personnel within the Office of the Governor to sign confidentiality agreements. The agreements began: “You are appointed and serve in your position at the pleasure of the Governor. At all times during and after the date hereof, Appointee shall keep in confidence and trust all non-public information which may have been communicated to, acquired, or learned by Appointee in the course of or as a result of his/her employment with the Office of the Governor.” A copy of the confidentiality agreement signed by Seth Hammett is at Exhibit 10-A. The agreements required, in essence, that all personnel in the Office of the Governor treat all information or documents that they received during the course of their employment as confidential. The agreements further required that personnel not disclose any such confidential information or property without prior written consent.

A number of law enforcement personnel and other staff members we interviewed were suspicious that the confidentiality agreements were designed to conceal the Bentley-Mason relationship. On the other hand, Seth Hammett maintains that the agreements were not intended for that purpose and resulted entirely from his concern that the Office of the Governor did not adequately control who attended meetings, or the flow of information in those meetings. Hammett was concerned that this lack of information control could result in the leak of sensitive information from the Office. He claims the agreements were specifically designed to address that concern. Information security was a consistent theme of the changes Hammett made after he took over as chief of staff, and according to him, such concerns were his primary motivation for the structural changes he implemented in the Office.

Hammett left the Administration in October 2015, at which time Barganier and Hardwich served essentially as co-chiefs of staff, maintaining their pre-existing roles and responsibilities. Hardwich and Barganier continued to manage the office through the structural model established by Hammett. Hardwich left the Administration in July 2016. Barganier took on sole responsibility for the role of Chief of Staff at that time, and he is still serving in that position.

C. Rebekah Mason’s Employment and Compensation.

As noted above, Rebekah Mason joined Governor Bentley’s 2010 campaign and then transitioned into his Administration, first as Communications Director and later as Communications Advisor. Beginning February 2011, she was paid a salary of approximately \$98,000 per year, which was reduced after March 2012 to approximately \$48,000 per year.

In July 2013, Mason left formal employment with the Office of the Governor to begin work on Governor Bentley's re-election campaign, although she was at the Capitol in Governor Bentley's office on a regular basis, having maintained a parking space and keycard access. While working on the campaign, Mason was paid through her company, RCM Communications, Inc., which was incorporated on July 19, 2013. A review of publicly-available campaign finance records reveal that RCM Communications received money from Bentley for Governor, Inc., and was not paid by any other political candidate in Alabama. Bentley for Governor, Inc.'s publicly-available filings reflect that RCM Communications was paid monthly for "Consultants/Polling" and received reimbursement for transportation, lodging, food, and administrative expenses. From July 31, 2013, through November 13, 2014, Bentley for Governor, Inc. paid RCM Communications \$426,978.43, which included \$184,515.00 for "Consultants/Polling" and \$220,346.00 for "Advertising."

It is clear from several Bentley affiliates we interviewed that plans were made in late 2014 for Mason to return to the Bentley Administration in the second term. In November or December 2014, Governor Bentley presented Blake Hardwich with a handwritten job description of roles and responsibilities for Mason. In the typed version, the job title is "Senior Political Advisor" with the assigned "mission" "to advise the Governor on a wide range of issues" and to "provide the Governor with the most effective options for decision-making." The detailed listing of responsibilities included:

- Assist and interact with Policy Advisors on new ideas and projects, i.e., Healthcare
- Outline and moderate new projects as directed by the Governor
- Writing major speeches, including the State of the State and the Inaugural Address
- Advising the Governor on political ramifications of Legislative issues during Legislative Sessions.
- Spokesperson on political issues at staff meetings.

(Ex. 5-Z).

At the first staff meeting after the second inauguration, Mason was present, and Governor Bentley announced that she was rejoining his staff as Senior Political Advisor. She was given an office in the lower level of the Capitol. She was not, however, put back on the State payroll. Instead, in March 2015, Bentley for Governor, Inc. resumed paying RCM Communications for "Consultants/Polling" at the rate of \$5,000 per month, which was increased to \$8,000 per month for January through April 2016, plus lodging and transportation reimbursements.²¹⁵ After significant media interest in her compensation, on March 25, 2016, Mason publicly

²¹⁵ There also was one payment of \$6,450 on January 5, 2015.

disclosed that she also had been paid \$15,000 in 2015 by the Alabama Council for Excellent Government (“ACEGov”).²¹⁶

At around the same time that Governor Bentley was outlining Mason’s new position in his Administration, he devised the idea of a nonprofit to support his agenda, something he had learned about from other governors. He turned to Cooper Shattuck, his former legal adviser, to form the entity and personally recruited Marquita Davis, the former State Finance Director, and R.B. Walker, an Alabama Power lobbyist who planned Governor Bentley’s second inauguration, to be involved with the new entity. Governor Bentley said that this new entity would focus on (1) rural healthcare, (2) economic development, (3) small businesses, and (4) foster care, an issue important to Dianne Bentley.

On February 15, 2015, ACEGov was incorporated with Shattuck, Davis, and Walker listed as the board of directors. Two days earlier, ACEGov’s attorney, Greg Butrus of Balch & Bingham LLP, sent a letter to the Alabama Ethics Commission asking whether the entity was “adopting the appropriate measures and safeguards to ensure that it operates in a manner that is consistent with the Ethics Act.” (Ex. 5-X). On February 26, 2015, “based on the facts as provided” by Butrus, Hugh R. Evans, III – General Counsel for the Alabama Ethics Commission – responded that he was “very comfortable with the way Governor Bentley plan[ned] to establish this non-profit,” but he cautioned that his letter was “merely [his] informal opinion,” which “does not carry the weight of law a formal opinion rendered by the Commission carries.” (Ex. 5-W). In response to this Committee’s request, the Office of the Governor produced approximately six pages of text messages between Governor Bentley and Butrus, presumably concerning ACEGov. (Ex. 5-CC at 009349-009355). Those text messages, however, have been heavily redacted by the Office of the Governor, and their substance is unknown.

Shortly after ACEGov was formed, Governor Bentley revealed that Mason was going to be involved in it. One Bentley staff member reported that Mason said, “I will be running ACEGov.” Available information supports her statement. In July and August 2015, ACEGov conducted polls that Mason provided to Governor Bentley’s staff for review and dissemination to the Legislature. Mason recruited members of Governor Bentley’s staff to attend events supported with ACEGov funds. Although ACEGov’s website, www.acegov.com, was pulled down in early 2016, its webpage content remained accessible via Squarespace, a website development and management platform, through a URL associated with Mason.²¹⁷

²¹⁶ Tim Lockette, *Mason claims getting \$15,000 from governor’s nonprofit*, The Anniston Star, March 25, 2016, available at http://www.annistonstar.com/news/mason-claims-getting-from-governor-s-nonprofit/article_70faab00-f2d2-11e5-bb30-abe8a84b962c.html.

²¹⁷ <https://rebekah-mason-ed3r.squarespace.com>.

ACEGov is tax-exempt under Internal Revenue Code § 501(c)(4)²¹⁸ and by law is not required to identify its donors. We requested information from ACEGov, including the identity of the donors and attempted to serve ACEGov through its counsel but service was refused. We were advised through counsel for ACEGov that its president, Cooper Shattuck, asked the donors if they would voluntarily consent to a disclosure of their identity and contribution information, and was provided with no such authorization. ACEGov’s counsel asserted Constitutional protections of the identity of its donors on First Amendment grounds, and a concern that disclosure could expose ACEGov and its board members to civil liability to those donors. Also through counsel ACEGov stated the following:

[E]ven though we believe that Mr. Sharman is without the authority to issue subpoenas (and no subpoena has been formally served), I have provided answers to the questions propounded a few weeks ago, confirming that there is no correspondence between ACEGov and any public official; there were no payments made by ACEGov to or on behalf of any public official; there were no funds received by ACEGov from or on behalf of any public official; ACEGov did no business with the State of Alabama and received no state funds; and ACEGov has no documents relevant to the impeachment of Governor Bentley.

It is known that ACEGov’s 2015 tax return reported \$90,600 in contributions. It is known that ACEGov’s 2015 tax return reported \$90,600 in contributions.²¹⁹ The Office of the Governor produced a “Suggested ACEGov Call List” that Randy Wilhelm, one of Governor Bentley’s chief fundraisers, emailed on July 19, 2015, to Governor Bentley (at his personal email address), Mason, Shattuck, Davis, and Walker. (Ex. 5-CC at 5221-22). Wilhelm described it as “a list of solid prospects who can provide \$100,000 to ACEGov.” It identifies eleven contacts and some of their associated companies.²²⁰ It is important to note that our investigation has found no evidence to indicate that any of these individuals or associated entities made any donations to ACEGov or agreed to do so.

²¹⁸ 26 U.S.C. § 501(c)(4).

²¹⁹ ACEGov also reported \$63,574 in expenses on its 2015 tax return, including \$22,500 for “Web development, social media content & consulting”; \$28,000 for “Polling and surveys”; and \$10,099 for “Fundraising.” The Alabama Electronic Campaign Practices Act Reporting System reflects a contribution of \$2,500 by ACEGov to the Alabama Executive Committee in August 2015. Payments to Mason are not broken out on the tax return.

²²⁰ Angus Cooper; Rob Burton; Abe Mitchell; Jim Wilson/Will Wilson; Jim Proctor – McWane Industries; Garry Neil Drummond; Clay Ryan – Maynard Cooper & Gale; Eason Balch, Jr.; and Grayson Hall/Jeff Rabren – Regions Bank. It further states that Cooper and Burton had “pledged \$10,000” and instructs to ask the others for \$10,000. We have been provided no evidence that any of these individuals or companies were contacted on behalf of ACEGov or that they made any contribution to ACEGov.

D. Other Relevant Bentley Associates.

As is the case with many governors, the Bentley Administration maintained relationships with advisers who did not occupy formal positions within state government. Two such individuals in the orbit of the Bentley Administration were Clay Ryan and Cooper Shattuck, both of whom are well-known attorneys in Alabama.

Ryan's role in the Administration was always on a volunteer basis. During the campaign and into the first term he provided legal and political advice, but worked under the title of "Special Counsel." In that role, he served as Governor Bentley's transition coordinator in the first term and also served as counsel for Governor Bentley's relief fund in the aftermath of the 2011 tornado outbreak in the state. However, according to individuals we interviewed, Ryan remained relevant to the Bentley operation, and as described below, played a role in the Bentley-Mason relationship once it became known within the Administration and to the Bentley family in 2014.

Shattuck began his service in the Office of the Governor as Governor Bentley's first Chief Legal Advisor. He left that position in 2012 when he was hired as the General Counsel for the University of Alabama System. While serving in the latter capacity, Shattuck continued to work on matters for the State of Alabama. From 2012 to 2016, he served as Special Counsel to Governor Bentley and for the Deepwater Horizon/BP Oil Spill Matters for the State of Alabama. Shattuck also served as the Executive Director of the University of Alabama System Gulf State Park Project from 2014 to 2016. As noted above, Shattuck also played a key role as incorporator and director of ACEGov.

II. THE ALABAMA LAW ENFORCEMENT AGENCY

In 2013, the Legislature voted to combine twelve state law enforcement agencies into one department, and set January 1, 2015, as the deadline for implementation. Governor Bentley announced that his Homeland Security Director Spencer Collier would be appointed to the new position of Secretary of Law Enforcement. Collier was a former state trooper and state representative from Mobile County who served with Bentley in the House of Representatives. The Bentley administration set an internal deadline of October 1, 2014, for implementation, and achieved that goal.

A. Secretary Collier's Leadership Team.

Collier asked his retiring Homeland Security deputy J.T. Jenkins to return to Montgomery to become Collier's point-man in the ALEA consolidation effort. For much of 2015, Jenkins remained on task, trouble-shooting implementation problems and serving as Secretary Collier's "facilitator." Collier appointed Hal Taylor as

ALEA Chief of Staff. Taylor had worked on Governor Bob Riley's security detail as his "body man" and later had been a captain with the Alcoholic Beverage Control Board.

B. Dignitary Protection.

The new ALEA structure moved the Chief of Dignitary Protection Services to report directly to the Secretary of Law Enforcement. Dignitary Protection Services, also known as the "Dignitary Protection Unit" or "DPU," was responsible for the Capitol Police, as well as dignitary protection for five statutory dignitaries: Governor Bentley, the Lieutenant Governor, the Speaker of the House of Representatives, the President *pro tem* of the Senate, and the Attorney General.

Governor Bentley's dignitary protection detail leader had been Wendell Ray Lewis since Election Day 2010. Lewis started his career in law enforcement as a State Trooper Cadet in 1989 and advanced through a variety of leadership roles within State law enforcement agencies. In the fall of 2010, he was the Sergeant in charge of the Alabama Bureau of Investigation in Tuscaloosa. Lewis had served as the protective detail leader for the Chancellor and President of the University of Alabama and spent the football season of 2010 protecting Coach Nick Saban.

Lewis had never met the dermatologist from Tuscaloosa who was on the verge of becoming Governor that November, but he accepted an offer from the commander of the DPU to serve as Dr. Bentley's protective detail leader should he be elected Governor. Lewis met Dr. Bentley and his family on Election Day and was immediately impressed. Lewis saw Dr. Bentley as a family man and recalled that "he just expected us to handle things above board, to be responsible in what we did. And, you know . . . he was a religious man. He was a Christian, and he had that reputation already so you knew that you had to toe the line when you were around him." (Ex. 9-B).

After Robert Bentley was elected Governor, the relationship between the two men grew close. Lewis recalls: "[T]he governor was like a father figure to me when we first started. We're very close. We would talk about anything."

As Governor Bentley's affair with Mason evolved, Lewis noticed that Governor Bentley "started to change." Lewis's relationship with Governor Bentley soured, and Lewis ultimately came to distrust Governor Bentley. He noted: "I knew that if the governor would betray his own family, there's nothing to stop him from coming at me."

During the ALEA consolidation process, Governor Bentley appointed Lewis to the additional role of Chief of Dignitary Protection Services. Lewis held both roles—DPU Chief and Governor Bentley's Detail Leader—until August 2014, when he relinquished his Detail Leader position and served solely as DPU Chief. Lewis retired on March 31, 2015, and was succeeded by Stan Stabler, who had also

replaced Lewis as Governor Bentley's Detail Leader. Both of Stabler's promotions—from Governor Bentley's "body man" and driver to his Detail Leader, and from Detail Leader to Chief of DPU—were preceded by brief two-to-three-month periods of service by another appointee. Billy Ervin served as Detail Leader briefly before Stabler was promoted to that role; and Jack Clark served as Chief of DPU briefly before Stabler succeeded to that office.

III. THE EVOLUTION OF THE BENTLEY-MASON RELATIONSHIP

A. Alabama's Unlikely Governor

The genesis of Governor Bentley's rise to Alabama's highest office has modest, and indeed wholesome, roots. The campaign was initially run out of the Bentleys' kitchen with Dianne Bentley baking cookies for the group of college students and volunteers who made up the entirety of the campaign staff. This group of volunteers included individuals such as Heather Hannah, Zach Lee, and Wesley Helton, who would go on to play important roles in the Administration of Governor Bentley. At the time, however, they were a group of political novices managing every conceivable task for the fledgling campaign. Despite the considerable odds, Bentley's team pushed him to a surprising performance in the June 2010 Republican Primary and managed to force a runoff with frontrunner Bradley Byrne.

As the runoff approached, Dr. Bentley believed he needed to develop a more sophisticated operation and to add someone to his campaign with experience dealing with the news media. At the same time, one of the married couples in the Sunday School class he taught at First Baptist Church Tuscaloosa included a former news reporter named Rebekah Mason, who was looking for work. Mason was not an immediately obvious choice for a position on the campaign. She once expressed her doubts about Dr. Bentley's gubernatorial prospects directly to him during a ride on the church elevator. Her reported comments to Dr. Bentley were that he had "no chance" of being elected and she only hoped he did not "embarrass the City of Tuscaloosa." Putting her skepticism aside, Mason interviewed for the position of press secretary and was hired to fill that role for the remainder of the first campaign.

After the first inauguration in January 2011, Mason transitioned from press secretary for the campaign to the Director of Communications in Office of the Governor. She worked closely with Governor Bentley while serving in that capacity, but neither Governor Bentley's staff nor his family members appeared to have had any concerns over the nature of their relationship at that time. In June 2013, Bentley for Governor, Inc. began to raise money for Governor Bentley's re-election campaign and had amassed a war chest of over \$2 million by August. Mason was by then serving as Governor Bentley's primary spokesperson for the re-election campaign.

B. Rebekah Mason's Ascent and Development of the Bentley-Mason Relationship.

1. Ms. Bentley's suspicions.

By all accounts, the Bentleys brought with them to Montgomery a love for one another and a bond forged by their decades of marriage and shared faith. In addition to Governor Bentley's past as a Sunday School teacher, Ms. Bentley conducted daily devotions and scripture readings, and she wrote her daily prayer requests for her husband on sticky notes that she kept in her personal devotional. Ms. Bentley's staff recalled that in the early years of the Administration, Governor Bentley frequently displayed outward signs of affection toward his wife. He would walk into to the Mansion after work and announce loudly and excitedly, "I'm home!" They also remember him gushing about the benefits of marriage to the younger staff and specifically telling male staff members that they would be lucky to marry a woman like Ms. Bentley. However, as Governor Bentley's re-election campaign progressed throughout 2013, so did his relationship with Rebekah Mason, and the outward signs of affection between the Bentleys began to dissipate.

By September 2013, First Lady Dianne Bentley began to have concerns about Mason. At that time, Rebekah Mason's family was still living in Tuscaloosa, so she was spending her nights in the pool house at the Governor's Mansion.²²¹ Ms. Bentley's worries, however, arose from her perception that Mason was frequently texting her husband on weekends with unnecessary "emergencies" or simply about football games. In October 2013, Ms. Bentley's Chief of Staff, Heather Hannah, had what was, for her, the first "red flag" in the Bentley-Mason relationship. Mason was at the Mansion working on a speech with Governor Bentley when Hannah walked into the room. They seemed to jump at Hannah's presence as if they were uncomfortable with someone seeing them.

Ms. Bentley had a similar experience at around the same time when Governor Bentley was at their home in Tuscaloosa recovering from hernia surgery. Ms. Bentley returned from a trip to the grocery store to find Mason sitting with Governor Bentley, and the pair reacted awkwardly when Ms. Bentley came into her home.

Over the next few months, Ms. Bentley and others on her staff and within the Administration observed that the Bentley-Mason relationship was becoming much closer. Staffers noticed that Mason had supplanted other "insiders" within the Office of the Governor. Heather Hannah had noticed that Governor Bentley was leaving the Mansion earlier in the mornings and returning later, and she recalls a

²²¹ The pool house and garage on the grounds of the Mansion served as guest quarters for the Bentley Administration at various times.

particular day when Governor Bentley had makeup on his shirt when he came home. Around the same time, Ms. Bentley had begun to record in her journal the absence of affection from her husband. She noted there was no physical affection, no suggestions of intimacy, and that he had not so much as said “I love you” in quite some time.

By the time of the State of the State address in January 2014, the Bentley-Mason relationship had blossomed to the point that Mason was dictating the seating arrangements at the event. Ms. Bentley’s staff made known to their boss their suspicions of an affair. The tipping point was Mason’s failure to seat one of the Bentley children near Ms. Bentley during the speech and Governor Bentley’s defense of Mason when it was brought to his attention. Shortly thereafter, Ms. Bentley directly confronted her husband about Mason. He denied an inappropriate relationship.

Despite Governor Bentley’s denial, more signs emerged when a large contingent from the Administration traveled to Washington, D.C. in February 2014 for the National Governor’s Association (NGA) meeting. The majority of the entourage, including both Mason and Ms. Bentley, attended a dinner at the Old Ebbitt Grill, a well-known local restaurant. Throughout the dinner, Ms. Bentley was able to read text messages being exchanged between Governor Bentley and Mason, who was seated directly across from the Bentleys. Those text exchanges included Governor Bentley stating, “I can’t take my eyes off of you.” Later that evening at a D.C. bar, Mason bragged that Governor Bentley had called and told her that he had opened his hotel room door to hotel staff while clad in boxers, believing Mason was on the other side.

After the NGA trip, signs that the Bentley-Mason relationship had become romantic in nature occurred with greater frequency. There were less obvious incidents such as Ms. Bentley finding towels in the dryer of the couple’s beach house when it was supposedly unoccupied, or Governor Bentley’s refusal to hold his wife’s hand as they descended the steps of the State Capitol for the National Day of Prayer.²²² Then there were more glaring indicators, many of which came from Bentley-Mason text exchanges: for example, in the spring 2014, Governor Bentley mistakenly sent to Ms. Bentley a text message that stated, “I love you Rebekah” and was accompanied by a red-rose emoji.

On other occasions, Ms. Bentley was able to read text messages sent by her husband to Mason because he had given Ms. Bentley his state-issued iPad, not

²²² According to Ray Lewis, Governor Bentley’s refusal to hold his wife’s hand was a significant departure from the obvious signs of affection he saw from them when he became then Dr. Bentley’s detail leader on Election Day in 2010. He testified that they often held hands in public at that time. He also testified to an occasion when Governor Bentley advised him that he was no longer going to hold his wife’s hand in public because it “made him look weak.”

understanding that it shared the same “cloud” as his state-issued iPhone and granted equal access to all message functions. It was through such text messages that other members of the Bentley family first learned of the affair.²²³

If Governor Bentley meant to hide his affair from his wife, he did not do it well. On one occasion Governor Bentley’s scheduler, Linda Adams, was interrupted from a meeting and told that Ms. Bentley was in Adams’s office. Adams left the meeting and found the Ms. Bentley descending the stairwell from an upper floor holding her cell phone. Ms. Bentley told Adams that she had gone up to “take a picture of the love bench.” The “love bench,” as Capitol employees had taken to calling it, was a bench in a courtyard garden in a corner of the grounds, in full view of office windows, where Governor Bentley and Mason would sit together.

Adams replied to the troubling comment from Ms. Bentley: “oh, Ms. Bentley.” Ms. Bentley confided in Adams “how she was praying that God would prick his heart to change his mind to get him back to his senses.” Adams continued:

And I tried to talk to her. And she said I didn’t want anybody to know I was here. Somebody saw me there. I said that’s fine, Ms. Bentley. I said do you want to go back up to my office because she got loud. She was getting very emotional. And she said no, no, no. She said I’ve got to go. I don’t want him to know I’m here.

(Ex. 9-C).

On August 28, 2015, Ms. Bentley filed for divorce. Although it seems to have been without prior notice, Linda Adams was not alone in expressing that “[i]t happened much later than I thought it should have.”

On September 19, 2015, ten days before the divorce was finalized, Mason sent Governor Bentley an email attaching a draft “Bentley Joint Statement,” apparently meant to be released on the occasion of Ms. Bentley’s departure as First Lady. (Ex. 5-CC at 5199, 5201). According to Mason’s draft, Ms. Bentley would announce her gratitude to “the kind and good-hearted people of Alabama” for allowing her to serve as their First Lady and then pronounce that

²²³ It has been widely reported that Governor Bentley purchased multiple pre-paid cell phones, or “burner” phones, in 2015. This fact was corroborated by two employees at the Best Buy in Tuscaloosa, each of whom told the media they had sold Governor Bentley such a phone in the reported timeframe. Pre-paid cell phones are not connected to a “cloud” with other phones, and are designed for temporary use. Thus, they provide greater security and leave less of a digital footprint for typical cell phone data such as text messages, call history, and phone records. It is surmised by many that Governor Bentley began purchasing cell phones once he discovered that his wife and others were aware of his communications with Mason.

The erroneous and unsubstantiated media reports of the last few weeks have been very hurtful to our family and to [the Caldwell and Mason Families] [others families] as well. We ask for your continued prayers in the days and weeks to come. It has been an honor to serve this great state as your First Lady.

Ms. Bentley never delivered that statement.

2. The suspicions of Governor Bentley's staff.

Over time, the nature of the Bentley-Mason relationship also became more obvious to the Governor's staff. Zach Lee reported to Heather Hannah during the re-election campaign that Governor Bentley had begun to call Rebekah Mason "baby" in meetings and that Governor Bentley and Mason frequently went to lunch together by themselves. Similar reports came to Linda Adams from members of the press office.

Adams, who controlled Governor Bentley's calendar, related that throughout 2014, Governor Bentley personally set aside large blocks of time on his calendar as "hold." Adams and others within the office became aware that these hours-at-a-time were spent by Governor Bentley and Mason in his office. Eventually, Governor Bentley began restricting access to his calendar to limit who could see how he used his time. In particular, Ms. Bentley and her staff were denied all access to Governor Bentley's calendar by mid-2014.

The staff frequently observed Mason go into Governor Bentley's office and shut the door where they would remain for long periods of time. Ray Lewis, the leader of Governor Bentley's security detail, had an office in the same area and once observed Mason leaving Governor Bentley's office with tousled hair and making adjustments to her wardrobe.

Mason also often came into Governor Bentley's office without the staff's knowledge. It is believed this occurred because she was allowed to maintain keycard access to the capitol even though she was no longer a State employee. It was also reported that she was able to arrive in Governor Bentley's office through an unobserved elevator that moved directly between Governor Bentley's personal office on the first floor of the capitol and the press office in the basement. (Ex. 5-I at 3-4). This elevator was put in by Governor George Wallace after he was shot and is referred to as the "Wallace Elevator."

One day in late 2013, Governor Bentley told his Executive Assistant, Wanda Kelly, that Mason was coming to his office and that he was going to "lock the door" because he did not want Chief of Staff David Perry to bother them. Kelly responded that she did not think that was a good idea and that there were other ways to keep

Perry out of the office. Governor Bentley shut the door and locked it. Kelly later voiced concerns to DPU Chief Ray Lewis due to the security implications.

Days later, Governor Bentley called Linda Adams at home on a Saturday morning and said he was going to “fire Wanda.” He referenced Mason, saying that Kelly did not understand that Mason was “like a daughter” to him. Adams pleaded with him and suggested that he instead move Kelly, whose desk was in the anteroom outside his office, to a desk in the larger reception area off the main hallway. Governor Bentley relented and had Kelly moved. Soon thereafter, Governor Bentley instructed Ray Lewis to address Kelly, Adams, and another woman in his office suite, Julie Lindsey, about what he described as their gossiping. This event is described further below concerning Governor Bentley’s use of law enforcement in connection with his relationship with Mason.

The import of all of these events for Kelly, Adams, Lewis, and others was that Governor Bentley’s relationship with Mason was taking center stage in his Administration and that he intended to suppress speculation and discussion about the relationship. Many of them felt uneasy during this time period and describe a difficult work environment. The common refrain was that they would just “keep their head down.” Ultimately, Kelly determined she could no longer work for Governor Bentley and voluntarily resigned in July 2014. Around the same time, Adams was asked to move upstairs, out of the Governor’s suite of offices where she had been for more than three years. And, as discussed further below, Lewis was forced to give up his role as head of Governor Bentley’s security detail and later decided to retire.

3. The effect of the Bentley-Mason Relationship on the operations of Governor Bentley’s Office.

Multiple witnesses reported that the growth in intimacy of the Bentley-Mason relationship coincided with her increasing influence upon, and at times control over, Governor Bentley’s decision-making. Seth Hammett related that this dynamic made his job of managing the Office difficult. Although Hammett had implemented changes to tighten the chain of command, he complained that Mason’s individual access to Governor Bentley frequently upended his efforts to impose discipline on the Office’s operations. Hammett stated that Governor Bentley tended to make decisions in the morning, and those decisions often changed overnight from where the discussion had ended the previous day. The only person in the Administration with regular access to Governor Bentley after hours was Mason. Similarly, Jennifer Ardis, who had succeeded Mason as Governor Bentley’s press secretary, stated that the Bentley-Mason relationship evolved to the point that nothing could be done in the Office without Mason’s sign-off. She stated that Governor Bentley’s typical reaction to any advice given without Mason present was, “What does Rebekah think about it?”

A stark example of Mason's control was her role in State budget negotiations in 2015. Spencer Collier told us that in years past, the budget process was initiated by a meeting with State Finance Director Bill Newton and his staff. At the conclusion of that meeting, Collier would meet with Governor Bentley to discuss strategies for addressing any potential cuts. However, in 2015, ALEA was required to meet with Mason and Jennifer Ardis to set budget priorities.

As instructed, Collier and the senior leadership at ALEA subsequently met with Mason and Ardis. Collier reported that Mason proposed closing multiple driver's license offices throughout the State and asked ALEA to put together a plan. It was Collier's understanding that Mason intended the plan to be rolled out in a way that had limited impact on Governor Bentley's political allies. Collier claims he reported this to the Attorney General's office because he was concerned about a Voting Rights Act violation.

Collier ultimately assented to the closure plan, but through the use of an objective metric based on processed transactions per year to determine which offices to close. Collier estimated the ultimate savings to have been just \$200,000, which is consistent with media reports. We were told that Governor Bentley approved this approach except that he wanted the office in Senator Gerald Dial's district to be removed from the closure list. Ultimately, the decision to close the offices was reversed, in part, after the state litigated the issue with the U.S. Department of Transportation, which had claimed that the closures had a disproportionate impact on minority communities.

4. The Second Inauguration: Contingency plans.

Planning for Governor Bentley's second inauguration began months in advance of the November 2014 election. Mason was the liaison between Bentley for Governor, Inc. and the Governor Bentley Inaugural Foundation. After Governor Bentley was re-elected and details of the second inauguration were being finalized, however, Mason removed herself from the process. During this time, Governor Bentley was in negotiations with Ms. Bentley and his family about whether they would attend the event at all. Ms. Bentley had essentially moved out of the Governor's Mansion months earlier. She threatened not to attend. Governor Bentley pleaded with her to attend and assured her that Mason would not be involved in his second term.

In light of these uncertainties, the inauguration planning team developed contingency plans based on whether Ms. Bentley and the family would attend – which was not known with certainty until the day of the event. These included details such as seating arrangements and who would hold the Alabama State Bible. The DPU team also developed alternate plans, including a plan to extricate Ms.

Bentley and her family in the midst of the festivities if they decided to leave. On the morning of the inauguration, Ms. Bentley confirmed that she and the family would attend.

IV. THE BENTLEY-MASON RECORDINGS

A. The Creation of the Recordings.

While the Bentley-Mason relationship was causing problems within the Bentley Administration, the public was largely unaware that anything was amiss. Yet, there was another secret that even those witnessing the daily dissolution of the Bentleys' marriage and the upheaval in the Office of the Governor did not know. As of March 2014, Ms. Bentley had made recordings that captured her husband, Governor Bentley, expressing both his passionate love for Mason and describing in detail the pleasure he drew from fondling her breasts.

The recording came about through Ms. Bentley's collaboration with her chief of staff Heather Hannah. Ms. Bentley had asked Hannah to help her make a recording that she could use to "catch" her husband and Mason in their affair. They had discussed various options, including ordering a miniature recording device over the Internet. That thought was dismissed, primarily due to concerns with having the device securely delivered to Ms. Bentley. Ultimately, Ms. Bentley came up with the idea to use her cell phone's recording feature but asked Hannah to show her how to operate it.

Ms. Bentley made several efforts to capture Governor Bentley on the phone with Mason at the Mansion, but those efforts failed. The successful recordings were made during the Bentleys' trip to their beach house in March 2014.²²⁴ Ms. Bentley captured the first of two recordings by turning on the phone's recording device, placing it in her purse on the sofa, and then announcing to her husband that she was taking a long walk on the beach. Promptly upon her departure—within approximately 59 seconds—Governor Bentley was on the phone with Mason.²²⁵

The conversation begins with discussions of the weather but quickly moves to capturing Governor Bentley agreeing to extended commentary by Mason. Of particular note, prior to the conversation becoming more intimate in nature, is an extensive discussion about moving Wanda Kelly's desk and rearranging the office. About halfway through the conversation, Governor Bentley engages in the now-infamous monologue about how much he enjoys feeling Mason's breasts and their need to lock the door to his office when engaging in certain activities.

²²⁴ Where the second of the two recordings was made is not known, exactly. The first recording, which received the most attention, was clearly recorded during the March 2014 beach trip. The content of the second recording indicates it may have been made during the same trip, but some of the media reports indicate it was recorded shortly after the Bentleys returned from the beach.

²²⁵ Transcripts of the two recordings are at Exhibits 9-A at Exhibit 4.

It is the above recording that led to the controversy that now surrounds Governor Bentley, but, as indicated, this was only one of two recordings made by Ms. Bentley. The second conversation was captured in the same timeframe as the first, and is far less salacious (and far less reported on), but still relevant for the Committee's purposes here. The general tenor of the conversation is that Governor Bentley is attempting to pacify Mason regarding the amount of time they are spending together. To achieve that end, Bentley expresses annoyance that his official duties are preventing him from spending time with her. Specifically, Bentley complains that his upcoming calendar includes an hour of time devoted to his legal staff and a discussion of bills he needs to sign.

After Ms. Bentley successfully made the recordings, she enlisted Heather Hannah's help to extract them from her phone. Hannah did so by transferring the recordings to a laptop and burning them onto a disc. She made a copy of the disc to keep for her own protection and gave the original to Ms. Bentley. Ms. Bentley played the disc for her son Paul and his wife Melissa, but this was not the first time that Paul and Melissa Bentley had seen evidence of an affair between Mason and their children's grandfather. They had first learned of the romantic nature of the Bentley-Mason relationship after Melissa observed Ms. Bentley become emotionally distraught during a shopping trip. The cause of that emotion was Ms. Bentley's interception of one of the red-rose text messages intended for Mason that were common in the Bentley-Mason exchanges.

Throughout the relationship, Paul Bentley was the primary spokesman for the Bentley family. He had reportedly confronted his father earlier in 2014 about Mason, but was met with a flat denial. Heather Hannah told us that in the late Spring of 2014, Paul traveled to Montgomery and forced his father to listen to the recordings that had been captured by Ms. Bentley.²²⁶ At that point, Governor Bentley stopped denying the relationship to his family. He also, for the first time, showed signs of contrition, as related through Ray Lewis's interaction with Governor Bentley, which is set out in detail below. It was also reported to us that Paul Bentley later had a separate conversation with Mason, during which she also admitted to an affair with Governor Bentley.²²⁷

It is our understanding that the remainder of the family found out about their father's relationship with Mason piecemeal. Reportedly, the family's instinct

²²⁶ The exact sequence and manner of Governor Bentley becoming aware of the recordings and their content is unknown. Ray Lewis advised that Paul Bentley had told him that he had not listened to the entire recording because he could not bear to hear the things his father was saying. However, from Ray Lewis's deposition testimony, there is evidence to indicate that as of May 7, 2014, Governor Bentley knew two things about the recordings: 1 – they existed; and 2 – Paul Bentley had them.

²²⁷ We have been advised that this conversation was recorded by Paul Bentley, but we have been unable to obtain it. All requests by Special Counsel to conduct interviews of the Bentley family members have been refused.

was to surround Ms. Bentley with protection, but several witnesses also told us that there was a belief among the Bentley children that their father may have been suffering dementia or other health problems. Witnesses also told us that there was an effort by the Bentley children to have their father evaluated by medical specialists outside of Alabama. Such a medical intervention never came to fruition.

B. Governor Bentley's Reaction to the Recordings.

Governor Bentley's knowledge of the recordings was a watershed moment. Seemingly, it was the recordings—the “tapes” as they were often called—that took away Governor Bentley's ability to deny the affair to his family and served as a pointed demonstration that the image he portrayed to the people of Alabama was untrue. It was the tapes that led to the moments of contrition by Governor Bentley. Most relevant to the Committee's consideration of the proposed Articles of Impeachment, however, is the fact that Governor Bentley became obsessed with the existence of the tapes and a desire to prevent them from becoming public.

1. Heather Hannah.

The first evidence of this obsession occurred in the Spring of 2014 and involved Heather Hannah. At the time the recordings were made, Hannah was just a few months shy of her departure from Ms. Bentley's staff, which occurred after the Republican Primary in June. As Hannah describes it, Governor Bentley blamed Hannah for the existence of the tapes because he believed there was no possible way Ms. Bentley could have made them without her help. As the existence of the recordings became known, Hannah began to hear through other staff members and officials that Governor Bentley perceived her as problematic due to the existence of the recordings.

a. The Kitchen Confrontation.

Hannah testified that Governor Bentley's suspicion of her was so great that he personally confronted her on two occasions at the Governor's Mansion. One confrontation took place in front of a wall of refrigerators in the kitchen of the Mansion. Governor Bentley pointed his finger in Hannah's face and threatened, “You will never work in the State of Alabama again if you tell anyone about this (the affair).” Hannah relates that she was not intimidated by this encounter but believes intimidation was Governor Bentley's intent. She described his demeanor as angry and that he was speaking to her in a loud tone of voice.

b. The Parking Lot Confrontation.

The second Bentley confrontation of Hannah occurred shortly thereafter when she came face-to-face with Governor Bentley in the parking lot of the Mansion. Then, Governor Bentley confronted her about his suspicion that she had

bugged his office to listen to conversations between him and Mason. Hannah relates that Governor Bentley warned her to “watch herself,” that she “did not know what she was getting into,” and that because he was the governor, people “bow to his throne.”

c. Unexplained Vandalism of Heather Hannah’s Vehicle and House.

In June 2016, Heather Hannah provided deposition testimony to the Alabama Ethics Commission regarding her knowledge of the Bentley-Mason relationship. In that same month, she was the victim of two separate incidents of vandalism at her residence. She related that the first incident occurred before her testimony to the ethics commission and the second occurred shortly thereafter. Both incidents were reported to law enforcement after the second incident and are described in detail below. (Ex. 9-A at 232-235, Police Report)

i. The Vehicle Incident.

Within a few days of Hannah’s deposition, she believes on or about June 6, 2016, Hannah was outside of her new home watering plants when she heard what sounded like her bushes rustling. Unsure of the source of the noise, she walked to the front of her house where she noticed “scribbles” on the windows of her vehicle. She stated that at the time she could tell the scribbles were some sort of writing, but she had difficulty reading it. She took photographs of the writing on her windows, and it showed up much clearer in the pictures. Hannah provided the two pictures to Special Counsel, which are attached to this report and contained in Exhibit 9A at 217-218. The first photograph is of writing on what appears to be the driver side windows of her vehicle, and it appears to read, “Bitch Die.” The second photograph is of writing on the windshield, and it appears to read, “You will fucking die.”

ii. The House Incident.

On June 15, 2016, Hannah was at her home preparing for bed. She turned off the light in her kitchen and was walking to the back of her house when she heard the sound of breaking glass. She walked back to her kitchen where she believed the sound originated and saw a rock lying on the floor. She also observed a broken panel in a large window on the front of her house. Hannah immediately called the police, who came to her home and took a police report at twenty minutes after midnight. At that time, Hannah also advised the officers of the vandalism of her vehicle. The police report reflects that Hannah told the officers at the time that she believed both incidents were related to her recent deposition.

Hannah testified during her deposition by Special Counsel that she believed both incidents were related to her testimony before the Alabama Ethics

Commission. She based that belief on two facts. First, she could recall no personal or business conflicts outside of her service in the Office of the Governor. Second, her residence was located in a Birmingham suburb with an exceptionally low crime rate. It is also important to note that she had recently moved to the residence, and to her knowledge, her address had not been officially changed. However, she had sent a text message to a number of friends, updating her address. She stated that the distribution list of her text would have included friends with “pretty strong connections to the capital.”

2. Ray Lewis.

Like so many others caught in the web of the Bentley-Mason affair at this time, Hannah also had a conversation with Ray Lewis. The conversation occurred at the Republican Primary victory party, which was held at Bryant-Denny Stadium in Tuscaloosa on June 3, 2014.²²⁸ This conversation occurred on the same evening that Lewis told Governor Bentley that Hannah was “his [Governor Bentley’s] problem” in relation to the recordings. Ray Lewis told us that the precise moment of this warning to the Governor was fortuitously captured in the below media photo taken during coverage of Governor Bentley’s primary victory party that night.



²²⁸ The details of the conversation related by Hannah are on page 85. Ray Lewis does not specifically recall a conversation with Hannah on this occasion, but he does not deny that one occurred.

This was, of course, not the only time that Lewis was used by Governor Bentley in an effort to control the fallout of his relationship with Mason. As alluded to above, Lewis, following Governor Bentley's orders, once admonished Governor Bentley's support staff not to discuss what they saw in the office. However, the acute cause of this instruction from Lewis was concerns by Wanda Kelly that Governor Bentley and Mason should not be in his office with the door locked. Lewis described this meeting as "with the ladies," a group that included Linda Adams, Julie Lindsey, Wanda Kelly, and Wes Helton. Lewis instructed the staff that "what happens in the Governor's office stays in the Governor's office."

Wanda Kelly described the atmosphere of this meeting as "uncomfortable," believing it to have been in response to her report to Lewis about Governor Bentley and Mason spending time behind locked doors. Linda Adams believes that Ray Lewis was an honorable person and that he conducted this meeting out of his duty to follow orders, but she also believes Governor Bentley's intent was to use Lewis to intimidate the staff.

Lewis related that at the time he genuinely believed the meeting was necessary to squelch the spread of gossip, and that he reminded them that people would believe them because they work in the Governor's office. Lewis testified that he was professional, but stern, during this meeting. He further testified that, in hindsight, he believes Governor Bentley took advantage of him on this occasion and used him in an effort to intimidate staff members discussing his relationship with Mason. Governor Bentley relocated Kelly²²⁹ after this incident, and she retired soon thereafter.

V. THE USE OF LAW ENFORCEMENT AS A TOOL IN THE BENTLEY-MASON AFFAIR

As Governor Bentley's affair with Rebekah Mason evolved and grew, and especially after he learned that the recordings existed and were at large, he repeatedly exercised his influence and control of the law enforcement officers who were closest to him to prevent and contain any possibly personal and political damage. Notably, Governor Bentley:

- Directed DPU Chief Lewis to confront the female staff in Governor Bentley's office whom Governor Bentley believed were gossiping about his relationship with Mason;
- Directed DPU Chief Lewis, twice, to break off the relationship with Mason;

²²⁹ "Wanda's desk," of course, became an object of media speculation and intrigue due to its discussion in the Bentley-Mason recordings. Those recordings capture Bentley discussing the need to move the desk to cure Wanda Kelly's proximity to his office and strongly suggest the reason was to alleviate interference with his interactions with Mason. However, Seth Hammett told us that he was responsible for relocating Kelly and the purpose was to increase the security of information within the Office of the Governor.

- Ordered DPU Chief Lewis to travel to Tuscaloosa to attempt to convince Governor Bentley's son, Paul Bentley, to turn over the recordings;
- Marginalized DPU Chief Lewis after he tried to manage Governor Bentley's use of state assets for facilitating his relationship with Mason;
- Ordered Secretary Collier to research criminal law and to be prepared to arrest Heather Hannah, whom Governor Bentley believed had made the recordings and possessed copies;
- Ordered Secretary Collier, on election night 2014, to travel to Greenville to question Director of Scheduling Linda Adams about whether she knew about the recordings;
- Attempted to use "special investigators" to conduct investigations into various "threats" against Mason and into whether Hannah possessed the tapes.

A. Governor Bentley's Misuses of Ray Lewis.

1. Governor Bentley asks Ray Lewis to break up with Rebekah Mason for him.

On May 4, Ray Lewis flew with Governor Bentley, Ms. Bentley, and their son Paul Bentley to Talladega Superspeedway where Governor Bentley was to serve as grand marshal. Paul sat next to Lewis on the plane and said he needed to talk to him when he had some time. Paul said his mother was "seeing ghosts" and believed that her husband was having an affair with Rebekah Mason. Lewis had come to know Paul well during Lewis's service under Governor Bentley and was surprised by this encounter.

Three days later, on the morning of May 7, 2014, Lewis stopped by Governor Bentley's office as he normally did to start his day. Governor Bentley seemed shaken and told Lewis that he had some problems and that he might ask Lewis to come back later. At about 11:00 a.m., another member of Governor Bentley's protective detail hurried from the Capitol to ALEA headquarters and interrupted a meeting to retrieve Lewis. Lewis had left his cell phone on his desk and had missed multiple calls from Governor Bentley. Lewis was told that Governor Bentley needed to see him right away, and there was no time even for Lewis to get in his own vehicle.

When Lewis arrived at the Capitol, Governor Bentley met him at the door to his office and seemed to Lewis to have been crying. Lewis went into the office with Governor Bentley to see Rebekah Mason, who also seemed to have been crying. Governor Bentley told Lewis that Ms. Bentley thought he and Mason were having an affair and that someone had made an audio recording of him and Mason talking on the phone. Governor Bentley thought his son, Paul, had the recording. Governor Bentley asked Lewis to go to Tuscaloosa to meet with Paul and to try to get Paul to hand it over.

Lewis recalls that he responded to Governor Bentley: “[A]re you telling me this is true, the affair is true?” Governor Bentley admitted the affair to Lewis and told him there were things on the recording he would not want anyone to hear.²³⁰

Governor Bentley then sent Mason out of the room and asked her to wait in the Lieutenant Governor’s conference room on the second floor of the Capitol. With Mason out of the room, Governor Bentley and Lewis discussed the situation. Lewis says he expressed to Governor Bentley that the affair was wrong and had to end. Lewis says he told Governor Bentley that the affair would be an embarrassment to him, his family, and the State of Alabama. Governor Bentley agreed with Lewis. Lewis was disappointed and “shocked” by the realization that Governor Bentley had had an affair with Mason. Governor Bentley was embarrassed and asked Lewis to go upstairs to meet with Mason and end the relationship.

Lewis did as he was told and went to meet with Mason in the conference room upstairs. He describes an emotional meeting alone with Mason, lasting around an hour, in which he expressed to her that the affair needed to end, and that Governor Bentley wanted it to end. Mason agreed, and they both thought that the timing was perfect since she would be leaving the next day to go to the beach at Gulf Shores with her family. Before Lewis left Mason, however, Governor Bentley walked into the conference room. Lewis recalls that Governor Bentley tried to comfort Mason, touching her shoulders and hair and telling her “it’s alright, baby. It’s going to be alright.” Lewis recalls thinking at that point that his efforts to end the affair were out the window.

2. Ray Lewis attempts to retrieve the tapes.

Lewis left the Lieutenant Governor’s conference room and immediately drove to Tuscaloosa, on Governor Bentley’s orders, in his state vehicle, to try to retrieve the tapes from Governor Bentley’s son, Paul Bentley. Lewis called ahead, and Paul invited him to his office. When Lewis arrived, he asked Paul if he had the tapes. Paul replied: “Yes, and you ain’t getting it.” Paul told Lewis that he could not bring himself to listen to the full recording, but that his wife Melissa had a copy.

Lewis reported the results of his Tuscaloosa mission to Governor Bentley over the phone and told him that the tapes existed.

3. Governor Bentley directs Ray Lewis to visit Mason in Gulf Shores.

In that same phone conversation, Governor Bentley told Lewis that Rebekah Mason was just not getting it and directed Lewis to drive to Gulf Shores in the morning to break up with her again. He instructed Lewis to leave early so that he could reach Mason before her husband arrived. Lewis prepared to depart on the mission in his state vehicle the next morning, but Governor Bentley called him and

²³⁰ Lewis does not know whether Governor Bentley had actually heard the tapes at this point.

told him not to go. Lewis cannot remember for certain whether he had already departed on the mission when Governor Bentley called him off.

4. Requests for surveillance sweeps of Mason's vehicle.

Heather Hannah testified that Paul Bentley, after learning of the affair and hearing the tapes, met alone with Rebekah Mason in a car. Hannah says that Paul placed his phone on the dashboard, told Mason he was recording their conversation, and then confronted her about the affair. According to Hannah, Paul said that Mason admitted to the affair in tears and admitted that it was wrong. Hannah believes that Paul Bentley played this recording for his father while Governor Bentley was at the beach. She believes that Paul and Melissa Bentley extracted the recording from Paul's phone and retained it.²³¹

Corporal Nance Bishop of ALEA recalls that relatively early in the re-election campaign of 2014, he was asked to perform a sweep of Rebekah Mason's personal vehicle for bugs or listening devices. Bishop could not recall specifically who made the request, except that it came from a group of Governor Bentley's officers that included Collier and Stabler. Bishop refused the request because it was campaign-related and not related to government work.

Ray Lewis says that Bishop told him about this request soon after it was made. Lewis said he discussed this request with Bishop because, at the time, "everybody was concerned about what was going on" with Rebekah Mason.

5. Governor Bentley demands that Rebekah Mason travel on state transports.

Rebekah Mason ceased to be an employee of the Office of the Governor in July 2013 when she began working for Governor Bentley's re-election campaign. She did not surrender her security credentials for access to the Capitol, however, as other staff members were required to do upon transitioning to the campaign. Ray Lewis testified that he is not aware of any other staff member who was permitted to retain security access in this way.

Furthermore, it was Lewis's understanding that Mason, after leaving the employ of the State, could not accompany Governor Bentley on official transportation, including flights on State planes or movements in State vehicles. Lewis frequently found himself in the awkward position of addressing this with Governor Bentley.

Lewis says he told Governor Bentley several times of the need to keep Mason's movements separate from Governor Bentley's official movements, and that

²³¹ Hannah testified that she discussed this recording, and the circumstances surrounding it, with Paul and Melissa Bentley, together with Ms. Bentley, at the Bentleys' home in Tuscaloosa.

he could not provide security services to non-state personnel. Lewis testified that Governor Bentley indicated that he knew and understood this. In fact, Lewis testified, this rule was consistently applied to others, like Zach Lee, who had left the Office of the Governor for the campaign.

Lewis believed that keeping the campaign separate from state assets and movements was a legal requirement. Furthermore, based on his years of experience in dignitary protection, he believed it was a necessity. Lewis explained that, in the event of an emergency situation, the presence of non-official personnel could impede his primary duty of protecting Governor Bentley. In reference to Mason, Lewis related that he once told Governor Bentley: “Sir, she can be in the street screaming, if there’s a situation, I will leave her.”

Nonetheless, on multiple occasions, and with a frequency that increased as the relationship between Governor Bentley and Mason grew, Lewis found himself overruled by Governor Bentley. Lewis recalls one occasion when he instructed Governor Bentley’s Director of Scheduling Linda Adams, while planning for a trip, not to put Mason on the State plane. Later that day, Governor Bentley called Lewis and ordered him to put Mason on the flight. Lewis recalls telling Governor Bentley: “Sir, I disagree with that, but you’re the governor and I will respect your wishes.” Lewis believes this conversation was the beginning of the deterioration of his relationship with Governor Bentley.

On another occasion, Governor Bentley travelled by state helicopter to Wilcox County for a plant grand opening. When Governor Bentley and Lewis arrived at Patterson Field in Montgomery to board the state helicopter, Mason was there waiting. Lewis reminded Governor Bentley that Mason should not board the helicopter. Governor Bentley overruled Lewis, and Mason flew with Governor Bentley. As Lewis recalls, Governor Bentley’s Director of Communications Jennifer Ardis, a state employee, drove to the event. Governor Bentley’s publicly-available flight logs indicate this trip was on May 28, 2014. After that date, Mason’s name does not appear on the flight logs for the remainder of 2014.

In 2014, Bentley for Governor, Inc. leased a plane from a company based near Atlanta. Lewis testified that Governor Bentley told him that he had leased the plane so that Mason could travel on it. The company used private pilots, and Lewis was limited in his ability to vet them. For State recordkeeping purposes, Linda Adams attempted to find out and document basic information about flights that Governor Bentley took on the leased campaign plane. Governor Bentley has not made any of these records available.

On August 4, 2014, the day before Lewis and Collier confronted Governor Bentley about the tapes (described in detail below), Governor Bentley told Lewis and other staff members that he wanted Mason on the leased plane with him.

Lewis recalls Governor Bentley telling him: “She’s needs to be able to do her job, so she will be on the airplane.”

Lewis was becoming increasingly worried during this period that he would lose his job because of Rebekah Mason. He looked back with the benefit of hindsight on the occasion when Governor Bentley had asked him to confront the female staff in Governor Bentley’s office for gossiping about an affair that (Lewis now knew) had actually been happening. Lewis realized that Governor Bentley had used him as a tool and that he could not trust Governor Bentley. Lewis said: “[A]fter seeing how the governor was dealing with his family situation and he really didn’t care what Ms. Bentley thought or anybody else thought, I knew that if I were putting people on the plane like Ms. Mason, that I felt like he wouldn’t take responsibility for it. He would simply say I didn’t do that, Ray Lewis did it.” Lewis testified that it was for this reason that he began making a record of daily events in his personal calendar. (Ex. 9-B).

B. Law Enforcement’s Intervention with Governor Bentley: “From Contrite to Angry” Again.

During the month of August 2014, Governor Bentley’s protectors attempted to intervene and put an end to the Bentley-Mason relationship. The intervention was brought about generally by the increasing evidence of the inappropriate nature of the relationship and specifically by Spencer Collier’s knowledge of the Bentley-Mason recordings. As the evidence increased, however, Governor Bentley’s attitude changed from contrition to anger. Ray Lewis’s impression about Governor Bentley’s attitude during the spring and summer was typical. Lewis said: “I believe that the governor wanted to intimidate anybody that had that recording because he would say that what they did was wrong and that it was a violation of the law.”

Collier and Lewis, who had been Governor Bentley’s most trusted law enforcement advisors, led the intervention, and it initially showed signs of bearing fruit. However, Governor Bentley again swiftly shifted from initial contrition to a posture of reactionary anger, and his relationships with both Lewis and Collier deteriorated to the point of enmity.

1. Ray Lewis reports suspicious text messages to Spencer Collier.

In the first few days of August, Lewis reported to Collier that Mason was inappropriately text-messaging Governor Bentley. Stan Stabler, who served as a “body man” for Governor Bentley on Lewis’s detail, says he began to notice that Governor Bentley was developing new text-messaging habits. He would frequently see in passing, or reflected on Governor Bentley’s passenger window in the vehicle, emojis in Governor Bentley’s text messages. He thought this strange behavior for a gentleman in his seventies. He says he probably saw a couple of these, and recalls language like: “I’m glad you’re my friend” or “you’re handsome.” He says he

assumed these were communications with Rebekah Mason because of their timing in relation to phone calls between Mason and Governor Bentley, but he never actually saw Mason's name associated with these texts.

Stabler recalls that Lewis would frequently ask his detail members about Mason and Governor Bentley, and that Stabler told Lewis about the text message in the course of one of those discussions. Stabler denies, however, that his communication with Lewis was a "report," which, he says, would have been documented in a memorandum to Lewis.

Lewis reported to Collier in early August that Stabler had reported to Lewis seeing a text message from Mason to Bentley that said: "Thank you for being my special friend, I love you."

2. Spencer Collier's knowledge of the recordings.

In early August 2014, Ray Lewis began to notice that Governor Bentley's attitude about the tapes was changing. In addition to wanting to intimidate whoever might have the tapes, Governor Bentley was also behaving to Lewis as though the tapes did not exist. Ray Lewis called Paul Bentley, and the two agreed that Governor Bentley should be confronted with the tapes so that he could no longer deny their existence. As a result of their agreement, Paul's wife Melissa emailed portions of the recordings to Lewis. When Lewis got the audio files by email, he reported to Collier's office at ALEA headquarters.

Lewis walked into Collier's office holding a laptop computer in one hand and his phone to his ear in the other. Collier remembers that Melissa and perhaps another member of the Bentley family were on the line with Lewis. Lewis played portions of the audio for Collier. Collier then told Lewis to thank the family members on the line and let them go. Collier and Lewis discussed what to do next.

3. Intervention and renewed contrition.

Governor Bentley was scheduled to travel to Greenville that afternoon for a campaign event. Collier dismissed Governor Bentley's security detail so that he and Lewis could personally drive Governor Bentley to Greenville. Collier and Lewis discussed whether they should read Governor Bentley his *Miranda* rights, but they decided against it.

On the drive to Greenville, Collier and Lewis, two men who personally cared greatly for Governor Bentley and who also had official responsibilities to his office, sought to convince him to end his affair with Mason for his own good, his family's, and the State's. Collier did most of the talking and addressed Governor Bentley both from the perspective of a friend and that of an officer of the State.

He told Governor Bentley that he had heard the tapes. Collier says he basically told Governor Bentley: “I love you, and I view you like a father. But what you’re doing with Rebekah Mason is completely improper.” Governor Bentley hung his head and said with emotion “I don’t know how to stop.” Then Collier addressed him as an officer. Collier told Governor Bentley that it would be illegal if he were using state resources or campaign funds to facilitate the relationship. Governor Bentley told Collier that he understood that and that he was doing neither. Collier asked Governor Bentley if he was leasing a plane so that he could get around the state manifest laws.²³² Governor Bentley denied this as well, saying he leased the plane to save money. Collier says he told Governor Bentley: “There’s nothing I won’t do for you except lie to a grand jury.”

Governor Bentley responded to the intervention with contrition, and asked for advice on ending his affair. By the time the three arrived in Greenville, Governor Bentley said he was determined to stop. He told Lewis and Collier: “I’m gonna fix this tonight.”

Collier recalls that when he spoke with Governor Bentley early the next morning by phone, Governor Bentley told him that he had changed his mind. He said he could not go through with ending his affair with Mason.

C. Governor Bentley Uses Law Enforcement to Find the Tapes.

Collier and Lewis recall that fairly swiftly after they confronted Governor Bentley on August 5, 2014, Governor Bentley “went from contrite to angry” regarding his knowledge of the tapes and what to do about them. Lewis says that Governor Bentley became “adamant” about defending his affair. Lewis recalls that, on one occasion, “[Governor Bentley] said if people don’t stop looking at Rebekah like she’s some kind of . . . [Governor Bentley stopped short of using a word], I remember him saying he’ll fire their asses.” Lewis felt that Governor Bentley was directing the threat to him.

In the Fall of 2014, Governor Bentley undertook significant efforts to locate the tapes, with State law enforcement resources as his primary tool. The best evidence of these efforts is the way such resources were brought to bear on two individual members of his staff: Heather Hannah and Linda Adams.

²³² Ray Lewis had expressed his concerns to the Governor about Mason riding on state aircraft. As recently as the day before—August 4, 2014—Governor Bentley directly instructed his staff that he wanted Mason on the plane and that she had to be able to “do her job.” Lewis believes the Governor leased the plane so that he could put Mason on it, and to deprive Lewis of the authority to “call the shots” on travel arrangements.

1. Governor Bentley's suspicion of Heather Hannah.

As described above, about two months before the August intervention, on June 3, 2014, Ray Lewis told Governor Bentley that Heather Hannah was Governor Bentley's "problem." At the time, Lewis himself believed that Hannah had the recordings. Hannah testified that Lewis confronted her that night in the parking lot of Bryant-Denny Stadium. She describes the nature of that conversation in this way: "I was told that if I had access to [the tapes] to destroy them, get rid of them, make sure they weren't on my computer, make sure I had no access to them because I could ultimately be in trouble and be punished for having those. . . . They²³³ confronted me on a personal safety matter. They felt that I was going to be harmed, if I had it. However, as the conversation progressed, I felt that it was more out of protection and loyalty to the governor and less out of protection and concern for me."

Lewis says his reason for telling Governor Bentley on that day that Hannah was his problem was a hope that it would "snap the governor out of this wanting to . . . I was hoping he would just do the right thing."

Shortly after the August 5 intervention, Governor Bentley told Secretary Collier that he believed Heather Hannah had been responsible for making the recordings. He ordered Collier to find out whether there were criminal statutes that applied to Hannah's suspected activity. He told Collier to be prepared to arrest Hannah if the tapes were released publicly.

Collier went to his ALEA counsel, Deputy Attorney General Jason Swann, gave him a factual hypothetical about covert recording, and asked him to research the law to determine the applicability of any criminal statutes to the hypothetical. Swann provided Collier with copies of the relevant eavesdropping statute and discussed the law with him. Sometime later, Collier confided to Swann that the research he had asked him to do related to Governor Bentley and said "we're looking into it."

On August 6, 2014, the day after Collier and Lewis confronted Governor Bentley, Clay Ryan called Ray Lewis and asked to meet with him about the recording and who had it. The two met in a coffee shop across from the Renaissance Hotel in Montgomery. Lewis told Ryan that he thought Hannah might have the tapes.

Clay Ryan met with Heather Hannah soon after at a Panera Bread restaurant in Birmingham. At some point after the meeting, Clay Ryan called

²³³ Hannah was describing the nature of conversations she had had with both Lewis and Michael Echols, a CPA in Tuscaloosa associated with the Bentleys. The conversation she was referring to with Lewis was the one at Bryant-Denny Stadium.

Collier and told him that he believed that Hannah had the tapes. Ray Lewis was in Collier's office when Collier spoke with Ryan on the phone. Collier told Ryan to stay out of official law enforcement business. Collier said that he told Governor Bentley to leave Heather Hannah alone. Collier says that Governor Bentley denied asking Ryan to meet with Hannah.

2. Governor Bentley sends Collier to confront Linda Adams.

On election night 2014 Governor Bentley, his family, his campaign staff, including Mason, and other supporters were at the Renaissance Hotel awaiting election returns. Early in the evening, someone connected to the campaign of Governor Bentley's Democratic challenger Parker Griffith told Collier that he or she had the tapes and would release them to the public that night.

Collier called Governor Bentley's Detail Leader, Stan Stabler, and told him he needed to speak to Governor Bentley right away. When Collier arrived at Governor Bentley's suite at the Renaissance, Stabler noted the tension in the discussion between Bentley and Collier, though he was not a part of it. Governor Bentley told Collier that he suspected that his Director of Scheduling, Linda Adams, had leaked the tapes to the Griffith campaign. Governor Bentley suspected Adams because she had previously worked for Lt. Gov. Jim Folsom, Jr., and was friends with some of his staff, including Folsom's press secretary Chip Hill.

Governor Bentley directed Collier to drive immediately to Linda Adams's home in Greenville and, as Collier recalls the directive, "find out what you find out."

According to Linda Adams, Collier called her at about 5:45 or 6:00 that evening and asked if she was at the Renaissance. Adams told Collier she was at home in Greenville, and Collier asked her for her address. Adams asked Collier why their meeting could not wait until the morning when she would be at work at the Capitol. Collier insisted that he must talk with her in person that night. Adams asked her daughter to come over to look after Adams's infirm mother, who lived with her, so that she could receive Collier when he arrived. Adams recalls that Collier arrived at her home within an hour. Adams thought Collier was coming to fire her.

Inside Adams's home in Greenville, Collier said he needed to know what she knew about a tape recording. Adams had no idea what Collier was talking about. Collier then asked: "When is the last time you talked with Chip Hill?" She told Collier that she and Hill were friends, and had spoken just last week. Collier asked: "When was the last time you talked with Heather Hannah?" She gave Collier a similar answer. Collier asked: "When was the last time you talked with Wanda Kelly?" Again, Adams said she had spoken to her friend Wanda Kelly fairly recently.

Adams says she was “shook up,” felt harassed by Collier’s questioning, and was becoming a “nervous wreck.” She offered to let Collier look at her phone for himself. Collier declined and told Adams he was convinced she did not know anything.

Collier believes that his visit embarrassed Adams, who felt that her loyalty to Governor Bentley was called into question. He reported to Governor Bentley that he believed that Linda Adams did not know anything about the tapes.

Ray Lewis remembers that as Governor Bentley left the Renaissance that evening, he said “these people had better stay out of my business or I’m going to fire them all.” Lewis notes that two days after Collier’s report to Governor Bentley about Adams, Governor Bentley asked Lewis if he trusted Spencer Collier.

About a week later, on routine business in Governor Bentley’s office, Governor Bentley asked Adams if Collier had come to see her on election night. She replied: “Yes, sir, he did, and I don’t appreciate it.” Governor Bentley said: “I sent him.” Adams asked Governor Bentley: “Do you not trust me?” Governor Bentley replied: “Oh, no, no, no Linda, it’s nothing like that.” Adams says that Governor Bentley told her that his family was turning against him and that Paul Bryant, Clay Ryan, and Bill O’Connor were “using” him. Adams ended the conversation by telling Governor Bentley, “Governor, there are a lot of people using you.”

Stan Stabler recalls that Adams reported Collier’s visit to him as well. He says Adams raised the incident with him during a routine scheduling discussion and was upset that Collier had come to her home that evening. Stabler says this was the first he had heard of the tapes. He said Adams felt intimidated and that he was shocked and “floored” that it had happened. He spoke with Governor Bentley about it, and Governor Bentley told him about the tapes. Governor Bentley told Stabler that Lewis and Collier had listened to the tapes but would not tell him what was on them, except to say that they were bad.

D. Governor Bentley’s “Special Investigations.”

In September 2014, the month after Collier and Lewis’s confrontation with Governor Bentley about the tapes, Special Agent Jack Wilson of the State Bureau of Investigations (“SBI”) Major Crimes Division in Mobile got a phone call from his superior, Sgt. James Rigby, who had been assisting Secretary Collier’s “number two man” J.T. Jenkins with operations leading up to the ALEA consolidation. Rigby explained to Wilson that Secretary Collier wanted to have a law enforcement officer who would answer directly to him and who could conduct “investigations of a sensitive nature” on a full time basis. Wilson told Rigby that he was interested in filling the position but that he was about to be called to Guantanamo Bay, Cuba on military orders for a year. Wilson left for Cuba and did not return until September 2015.

1. Scott Lee.

In the late summer of 2015, about the time that Ms. Bentley filed for divorce, and while Wilson was deployed to Cuba, SBI Director Gene Wiggins called Special Agent Scott Lee of the SBI Agricultural and Rural Crimes Unit (ARCU) about conducting “special investigations” for Secretary Collier on an as-needed basis. Wiggins explained that Lee would continue to submit his paperwork to his supervisor but would answer to Secretary Collier and J.T. Jenkins.

Lee recalls that Wiggins expressed doubts to him in their initial discussion over the phone about the necessity of this novel position. Wiggins opined to Lee that there were already investigative resources within ALEA—both administrative and criminal—that could handle any investigations that might be required, special or otherwise. Lee learned from Wiggins that Secretary Collier had originally wanted to have a full-time special investigator assigned to him but that Wiggins had “nipped that in the bud.” Lee agreed to do the job, but once he saw for himself what the job entailed, he too was doubtful of its necessity and propriety.

a. Governor Bentley initiates investigation into letter to Mason.

Shortly after Lee agreed to serve as an on-call special investigator for Collier and Jenkins, he received another call from Wiggins about a letter that was said to be threatening to Governor Bentley. The letter, Wiggins told Lee, was at ALEA headquarters and was suspected to have been sent either by Montgomery attorney (and staunch critic of Governor Bentley) Donald Watkins, or by Michael Echols, a Tuscaloosa accountant and long-time friend of the Bentleys. The Mason-Bentley “TIMELINE”²³⁴ claims that “Governor Bentley had severed personal and professional ties with Echols in March 2015 because of Echols’s known involvement in Governor Bentley’s personal and private matters pertaining to his family. Echols was also involved in assisting Dianne Bentley in her filing for divorce from Governor Bentley in 2015.”

When Lee arrived in Montgomery to investigate, he discovered that the letter had actually been addressed to Rebekah Mason at her home in Tuscaloosa. Prior to Lee’s involvement, either Director Wiggins or Secretary Collier had pulled fingerprints from the letter and had taken comparator prints from Mason and her husband. After Lee arrived, he contacted the postal service for surveillance video,

²³⁴ The Mason-Bentley “TIMELINE Re: Spencer Collier” was a document created by Rebekah Mason on or about April 20, 2016 (the day after Collier filed his civil lawsuit against Robert Bentley in Montgomery County) and emailed to Governor Bentley under the subject line: Timeline – January-March 2016. (*See* Ex. 5-CC at 5004). In the email, Mason wrote to Governor Bentley: “Here is the timeline, as I recall. . . . You may want to add your own recollections and thoughts as you share this with others. It might be helpful if you print this off to add your own notes.” *Id.* The printed-off timeline was produced to the Committee as Exhibit 5-O and, though heavily redacted, contained Governor Bentley’s marginal marks and notes adding his recollections and affirming various portions of Mason’s text with underlines.

(which was unavailable), and interviewed Rebekah Mason. Mason told Lee that she suspected the letter was authored by Echols. She said that Echols thought she was having an affair with Governor Bentley and was threatening to go public with the accusation. One reason Mason gave for her suspicion, Lee recalls, was that Echols had tried to “trick” Governor Bentley into boarding a plane for the purpose of being tested for dementia.

Secretary Collier says that around the same time, he presented the situation to his ALEA attorney Jason Swann by giving him a factual hypothetical and asked him to research whether there were any criminal laws related to harassing communications that could apply to the actions of the author of the letter. Lee came to the conclusion that the letter expressed no clear threat and that it represented, at most, the commission by the author of a “borderline misdemeanor.” Lee summarized his findings and reported to Director Wiggins, and Wiggins and Lee went to see Collier. Collier pushed back against Lee’s finding and argued for the significance of the harassing communication.

b. Governor Bentley asks Special Agent Lee to investigate Heather Hannah.

During their meeting about the letter to Mason, Collier told Lee that there actually did exist, as the letter to Mason had seemed to indicate, a recorded conversation between Governor Bentley and Mason. Collier told Lee to go with him to a meeting that with Governor Bentley to discuss the findings of Lee’s investigation into the letter and to explore with Governor Bentley the possibility of a subsequent investigation related to the tapes.

On the drive to the Capitol, Lee expressed his concerns to Collier about conducting any investigation into the tapes for Governor Bentley’s personal reasons rather than for a legitimate law enforcement purpose. Lee confirmed the accuracy of the following statements attributed to him in the ALEA Integrity Unit’s Case Report (the Case Report is described in detail in subsequent sections):

And I said, you know, at this point, I don’t know what the details are, but I just want you to understand that there have been politicians, as well as governors that have been prosecuted for using state police for personal reasons. I told him and the Governor, I won’t be used as a threat; I won’t be used as a harassment tool, that if I open a criminal investigation, then I work it to the end. There is no gray area.

During the meeting with Governor Bentley, Lee says that Governor Bentley pulled out the envelope that had contained the letter to Mason and was somewhat emotional about the issue. Ultimately, however, Lee recalls that Governor Bentley

accepted his findings and did not ask him to press the matter further. The discussion then turned to the tape.

Governor Bentley and Secretary Collier told Lee that the person they suspected had planted the recording device was a young woman who had served as Dianne Bentley's assistant.²³⁵ They suspected that the young woman, as well as members of Governor Bentley's family, might be in possession of the tapes. They also mentioned that Collier had paid a visit to a woman about the tapes on the night of the election.²³⁶ Bentley and Collier wanted Lee's opinions about opening an investigation into the matter.

Lee told Governor Bentley that possession of materials illegally obtained was a misdemeanor. Lee's intent in the meeting, he says, was to communicate to Governor Bentley that Lee would not alter the investigation, once begun, if Lee determined that members of Governor Bentley's family had committed crimes. He confirmed the accuracy of his statement to the Integrity Unit:

I made it clear that a criminal investigation is one thing, but just looking at this trying to find out who got the recordings and for them not to release them, there's a gray area there that we don't need to cross.

After Lee told Bentley and Collier that he would insist on seeing any investigation through to its conclusions, he was not asked to proceed with the investigation.

Lee was bothered by what he called the "you may want to look at . . ." nature of the proposed assignment. The objective, he felt, was not to solve a crime, but to determine who had the tapes. This, in his opinion, was "skirting the line." Lee asked Collier to return him to his previous post, and he departed Montgomery in late 2015, as Jack Wilson took over as the Secretary's special investigator. Lee continued to assist occasionally with investigations during the transition with Wilson.

2. Jack Wilson.

In September 2015, Special Agent Jack Wilson returned from Cuba and got another phone call from Sgt. Rigby. Rigby reminded Wilson of their conversation a year earlier, and Wilson agreed to meet with J.T. Jenkins to discuss the terms of the full-time special investigations assignment. Wilson accepted the position, and reported to Montgomery the same week. His understanding was that, unlike Lee, whose involvement had been more of a collateral duty, Wilson would conduct the "intelligence" role full-time. He began work towards the end of November 2015.

²³⁵ Lee could not remember Heather Hannah's name or whether her name was specifically mentioned in the meeting.

²³⁶ Lee could not remember whether Linda Adams's name was specifically mentioned in the meeting.

On January 6, 2016, Governor Bentley called a meeting with Secretary Collier, Jack Wilson, and Scott Lee (who was continuing to assist as needed) to discuss a new concern. The Bentleys' long-time friend and accountant Michael Echols had emailed Governor Bentley, attaching images of text messages between Bentley and Mason. The text messages were intimate in nature, and the implication of the email, as Lee recalls, was "there's more where these came from."

On the same date, Rebekah Mason sent an email to staff members in the Office of the Governor, asking them to do some research for her. The email said:

Good Morning –

Doing some research on the cyber bullying/harassment/stalking statutes in Alabama and what they do and do not cover.

Do any of you recall March 2015 Defamation Legislation that was introduced?

Can we find out:

1. What this legislation did 2. Who sponsored it. 3. Can that bill be retooled and/or reintroduced this year? I feel sure Gov would throw his strong support.

Thanks,

RCM

(Ex. 5-CC at 9444).

In the meeting with Governor Bentley that day, Secretary Collier expressed doubts to Governor Bentley that the email and attachments were criminal. Lee recalls that Governor Bentley countered that Echols had stolen money from the campaign account, but then Collier replied that Echols had had permission to write checks from the account. Lee stepped out of the meeting at some point prior to its conclusion.

When he saw Secretary Collier afterwards, Collier told him: "We're good. Sometimes you've kind of got to talk him off the ledge." Collier told Lee that after Lee left the meeting, the discussion had turned to the fact that the text messages had likely come from an iPad that had been issued to Governor Bentley and that Governor Bentley had given to his wife for her use. Governor Bentley had been unaware that the iPad was synced to his cellular phone and text message account, and Ms. Bentley had had access to his text messages with Mason. It is presumed that Echols got the text messages from Ms. Bentley.

3. Other discussions with law enforcement related to the affair.

Also in January 2016, Governor Bentley called Collier to report a disturbing text message he had received from his daughter-in-law Melissa Bentley. Governor Bentley told Collier the message read, in essence: “If you don’t stop lying, we’re going to start telling the truth.” The message from Melissa Bentley followed an interview Governor Bentley gave to Chuck Dean of the *Birmingham News* in which he said “The rumors [of the affair with Rebekah Mason] were not true.” Collier says Governor Bentley wanted him to drive to Jackson, Mississippi to confront Melissa, but Collier declined to do so. Collier says he shared the text message with Scott Lee shortly thereafter, and Lee agreed that the message was not a threat or a crime.

Two weeks after the text message from Melissa Bentley, Governor Bentley informed Collier that Mason had received a threatening letter that included language to the effect of: “you’re a lying no-good whore, leave a man’s husband alone.” Scott Lee accompanied Collier to Governor Bentley’s office again and, again, convinced Governor Bentley that it was not a credible threat.

4. Acting Secretary Stan Stabler eliminates the function of “Special Investigator.”

Stan Stabler eliminated the “special investigations” function on February 29, 2016 after he was appointed Acting Secretary of Law Enforcement, and sent Special Agent Wilson back to his SBI station in Mobile. Stabler did not believe that having special investigators under the Office of the Secretary was a good way to do business. Wilson had come to be dubbed “the rumor police” behind his back within ALEA, Stabler noted. Michael Robinson discussed this issue with Stabler, and Stabler told him that even “sensitive” investigations should go through SBI according to the normal process, though perhaps with different protocols.

Stabler believes that it was inappropriate for Secretary Collier to utilize law enforcement in that way. He added that the blame belonged to Collier (who, Stabler says, gave the directions to the special investigators) and not to Governor Bentley. He agreed, however, that had Governor Bentley given the direction to the investigators, that would have been inappropriate. (He made a distinction between “direction” on the one hand, and Governor Bentley just saying “I have this or that concern”—which Stabler said is common practice—on the other).

VI. GOVERNOR BENTLEY’S REORDERING OF STATE LAW ENFORCEMENT PERSONNEL.

Governor Bentley’s involvement in personnel decisions related to his protective detail indicate an interest by Governor Bentley in controlling who would be close to him and who would have personal knowledge about his own affairs.

A. Ray Lewis's Demise.

On August 14, 2014, just over a week after Lewis and Collier confronted Governor Bentley on the road to Greenville, Governor Bentley's Chief of Staff Seth Hammett called Lewis into his office. Hammett told Lewis: "the shit's fixing to hit the fan about your overtime." Hammett told Lewis he could no longer serve both as the Chief of the DPU and as Governor Bentley's Detail Leader and would have to choose between the two. Lewis says he told Hammett "I don't have a damn thing to do with that." Hammett said he understood but told Lewis to make his decision.

The matter "fixing to hit the fan" was a media story about Lewis, ultimately published three days later, claiming that:

The head of the governor's security detail—a state trooper—has made so much overtime watching after Bentley that he raked in more money last year than Col. Hugh McCall, then the director of the Alabama Department of Public Safety.²³⁷

The reason Lewis believed he didn't "have a damn thing to do with that" was because Governor Bentley had specifically directed that Lewis be paid hour for hour in overtime for his services to Governor Bentley.

Lewis was paid for his overtime work protecting Governor Bentley, rather than receiving "compensatory time," which would have entitled him only to time off in lieu of additional pay. When Lewis started working for Governor Bentley in 2010, he was not paid overtime, but compensatory time for his often nearly around-the-clock duties alongside Governor Bentley.

This changed one day when Lewis informed Governor Bentley that he would have to take days off in order to keep his accumulated days. Governor Bentley responded by calling a meeting with Chief of Staff Charles Malone, Angi Smith, and Zach Lee, and making clear that he needed Lewis with him at all times and that his staff was to make it happen. Lewis says that Malone wrote a letter to the Department of Public Safety to request that Lewis be paid hour for hour in overtime, rather than compensatory time.²³⁸

Collier also recalls that the directive to pay Lewis overtime came from Governor Bentley and says that a high-ranking official from the Department of Public Safety came to see him about it. The official told Collier that he had been given a direct order from Governor Bentley to pay Lewis overtime, and that he had also gone to see Governor Bentley, who had confirmed the order.

²³⁷ John Archibald, *Alabama Gov. Robert Bentley soars across the globe, and so do collateral costs*, The Birmingham News, August 17, 2014, available at http://www.al.com/opinion/index.ssf/2014/08/bentley_soars_across_the_globe.html.

²³⁸ This letter was not provided.

Lewis left his August 14 meeting with Hammett and went to see Governor Bentley at his campaign headquarters. He says Governor Bentley knew about his meeting with Hammett. Governor Bentley was emotional about the situation, told Lewis that Lewis had done nothing wrong, and hugged him. Lewis reminded Governor Bentley of the specific request Governor Bentley had made for Lewis to be compensated for his overtime and of the letter that his staff had sent to the Department of Public Safety. Governor Bentley told Lewis he did not recall the discussions and that he couldn't remember making that decision. Lewis did not believe that Governor Bentley was being honest with him and further believed that Mason was behind the decision to reduce his role on Governor Bentley's protective staff. After the meeting, he learned that she had also been behind the door, literally.

When Lewis left the meeting with Governor Bentley, his phone had a text message from campaign staff member Zach Lee that Lee sent during Lewis's meeting with Governor Bentley. Lewis says the text message said: "Rebekah Mason is outside listening to every word you and the governor are saying."

The next month, at a campaign event, Governor Bentley was questioned by reporters about whether he had given the directive for Lewis's compensation. Governor Bentley replied: "I have never had anything to do with overtime. I've never had anything to do with anyone's salary. Honestly I don't have time to deal with things like that. I didn't know who was making overtime and who wasn't making overtime. I really didn't."²³⁹

As a result of the August 14, 2014 meeting between Ray Lewis and Seth Hammett about the public problems related to his compensation, Lewis decided to step down as Governor Bentley's Detail Leader and serve solely as DPU Chief.

B. Governor Bentley promotes Stan Stabler.

1. Detail Leader.

Upon Ray Lewis's departure as Detail Leader, there ensued a quick succession of ALEA personnel in that position. According to Ray Lewis, on the day he informed Collier that he would relinquish the role of Detail Leader, Collier immediately told him Governor Bentley wanted Billy Ervin to replace him. Lewis believes that Ervin was Mason's choice.

Ervin served in that capacity for only about two months. Stan Stabler, who served as a member of the Detail at the time, recalls that Lewis had recommended to Ervin that Mason not be allowed to "ride" with Governor Bentley. Stabler recalls

²³⁹ Charles J. Dean, *Governor Bentley maintains he played no part in overtime payments or promotion of trooper*, The Birmingham News, September 15, 2014, available at http://www.al.com/news/index.ssf/2014/09/gov_bentley_maintains_he_playe.html.

that Ervin replied to Lewis that he would allow individuals to ride with the protectee (Governor Bentley) if that was what the protectee wanted. Lewis says that he did not feel he could press the issue further because Ervin was expressing Governor Bentley's wishes.

Shortly into Ervin's tenure, Lewis got a complaint from a member of Governor Bentley's Detail about Ervin and Mason. The report was that Ervin had ordered Governor Bentley's "body man" out of Governor Bentley's vehicle so that Mason and a media crew could ride with Governor Bentley. Lewis believed this was a serious breach of DPU's standard operating procedures that created a substantial security risk to Governor Bentley.

For reasons unrelated to his permissiveness with Mason, but seemingly related to his problems with other members of Governor Bentley's detail, Ervin was removed from his position as Detail Leader around the time of the 2014 election. On Election Day, Lewis got a call from Paul Bentley who told him that Mason was angry with him for removing Ervin from the detail.

Governor Bentley replaced Ervin as Detail Leader with Stabler. Stabler had begun his service in the DPU in March 2014. Initially, Stabler was primarily responsible for picking up Governor Bentley and dropping him off between the Mansion and the Capitol. While on duty, Stabler spent his time stationed in a garage apartment on the Mansion grounds. His duties included driving Governor Bentley, and sometimes Ms. Bentley, when they needed to travel around Montgomery. Stabler's station at the Mansion grounds was near Heather Hannah's office, and Stabler recalls that he would sometimes discuss matters generally with her.

Hannah testified that Stabler would "feed Ms. Bentley information about the affair and the whereabouts and how they were communicating and where they were going. And even if it wasn't listed on a flight log, Stan would still tell us what was going on." Hannah, who left in June 2014, says: "Soon after I left I did talk to Stan Stabler on several occasions when he would be expressing concern about Governor Bentley's whereabouts with Rebekah Mason. Sometimes he would share that with me I guess because he couldn't get in touch with Ms. Bentley sometimes out of concern for her and just keeping me aware of what was going on." Specifically, Hannah recalled that Stabler had reported to her and to Ms. Bentley that Governor Bentley and Mason had requested to be left alone together at the Blount House.²⁴⁰

²⁴⁰ Collier recalls this event as well. According to Collier's recollection, a trooper was asked by Governor Bentley to leave his post when the Governor was there alone with Mason. Stabler admitted to remembering this occasion as well, but said that, as far as he knows, the trooper was not dismissed from his post. The Blount House is a mansion in Montgomery County that was donated to the State during the administration of Governor Riley and is used by the Office of the Governor.

Stabler denies that he ever called or text messaged Heather Hannah about Governor Bentley and Mason, although he admitted that Ms. Bentley would confide in him at times when they were together, and that he received text messages from Ms. Bentley on occasion. He knew, for example, that Ms. Bentley had concerns about attending the January 2015 inauguration. (*See, e.g.*, Ex. 5-C at 12-16).

Stabler recalls one such confidential communication with Ms. Bentley after he became Governor Bentley's Detail Leader. Ms. Bentley texted and then called him while he was with Governor Bentley touring a Coca-Cola plant. She told him that she was planning to attend the inauguration but did not want Stabler to tell her husband. She asked Stabler to keep Mason away from Governor Bentley and the Bentley family during the ceremonies.

Stabler called Ray Lewis for advice on how to handle this situation. He told Lewis he did not want to get between Governor Bentley and Ms. Bentley but that he felt obligated to tell Governor Bentley that his wife had called him. When Governor Bentley and Stabler arrived back in the office that evening, Stabler told Governor Bentley what Ms. Bentley had said. He told Governor Bentley that, although he did not want to betray Ms. Bentley's trust, "I work for you."

2. Chief of Dignitary Protection Services.

On April 1, 2015, Ray Lewis retired from public service and Jack Clark was appointed Chief of Protective Services. Clark had been a law enforcement officer for more than thirty years and, during his career, had served in executive security roles for about six years. At the time of his appointment, Clark was the second in command of the Department of Public Safety.

Clark began to make immediate changes to the DPU, and to Governor Bentley's detail. Clark told us that these moves were made, in part, to improve the training and efficiency of the unit but also because Spencer Collier asked him to reduce the size of Governor Bentley's detail.

Stabler recalls that Clark's changes resulted in the movement of detail members who were liked by Governor Bentley. Clark met with Stabler about which detail members would be moved. When Stabler went to Governor Bentley about this, Governor Bentley was not pleased and told Stabler that if there were to be changes to his detail, he should be addressed about it. Governor Bentley told Stabler that he needed a new Chief of Protective Services because he wasn't happy about Clark's changes and asked Stabler if he would take the position. Stabler had told Governor Bentley that he was going to retire in August, but he agreed to take Clark's position, and he withdrew his retirement paperwork.

Collier called Clark into his office after Clark had been DPU Chief for about two and a half months and told him that Governor Bentley wanted to replace him

with Stan Stabler. Collier told Clark that Governor Bentley had characterized it to him as “a trust issue.”

Under Stabler, Governor Bentley’s protective detail was restored to its former strength, and the detail members who were moved under Clark were returned to their former posts. Stabler served as DPU Chief until February 2016, when he was made Acting Secretary of Law Enforcement.

VII. THE ALEA INTEGRITY UNIT INVESTIGATION

In early 2016, events arising out of the criminal trial of Speaker Hubbard set Governor Bentley and Collier on a collision course. After Governor Bentley placed Collier on medical leave, concerns within ALEA gave rise to an internal administrative investigation into Collier’s expense practices. Governor Bentley used the internal investigation as a tool to discredit Collier. There is no doubt that Collier, prior to his medical leave, was aware of the tape recordings and of the other actions by Governor Bentley, detailed above. There is also no doubt that Governor Bentley’s prior misuses of law enforcement had been motivated by Governor Bentley’s paranoia surrounding the existence of those tapes. Because Governor Bentley refused to be interviewed, the question whether that same concern motivated his efforts to discredit Spencer Collier by turning an internal administrative investigation into a smear campaign are yet to be asked and answered.

What is known is that Governor Bentley used an incomplete draft of the investigation report as his reason to fire Collier, claiming in a press release that “the ALEA Integrity Unit found a number of issues, including possible misuse of state funds.” The Attorney General’s Office, however, found no evidence of criminal wrongdoing by Collier. In connection with the House Judiciary Committee’s proceedings, Governor Bentley publicly disclosed the draft and reports to the press without redacting any sensitive witness statements by ALEA employees or protecting the identities of law enforcement and lay personnel, who had no expectation that their interviews, given in the course of an internal administrative investigation, would be made public.

A. The Background: Governor Bentley Grows Suspicious of Collier.

In January 2016, before Stabler eliminated the function of “Special Investigator,” Collier directed Special Agent Jack Wilson to open an investigation into allegations of prosecutorial misconduct on the part of Deputy Attorney General Matt Hart.²⁴¹ Collier briefed Governor Bentley on the investigation. Wilson met

²⁴¹ Hart is the Division Chief of the Special Prosecutions Division in the Alabama Attorney General’s Office. The Special Prosecutions Division investigates and prosecutes public corruption and other white-collar crimes. Hart was the lead prosecutor in the trial of former Speaker of the House Mike Hubbard.

with the accuser, attorney and radio personality Baron Coleman, on two occasions and determined that Coleman's allegations were unsupported. Wilson then concluded the investigation. Hart asked Collier and Wilson to sign affidavits for Hart's use in court, in which Collier and Wilson would assert that the investigation was closed.

On February 8, 2016, Governor Bentley called Collier, Wilson, and Swann to a meeting with himself and David Byrne at the Capitol to discuss the Coleman investigation. Collier says he told Governor Bentley that the investigation was concluded and that Matt Hart had asked for an affidavit saying so. Governor Bentley told Collier that he did not want them to execute the affidavits and suggested to Collier that he tell Hart the investigation was ongoing.²⁴² According to those present, Governor Bentley also indicated that, as the chief magistrate of Alabama, he needed to remain neutral.

In spite of Governor Bentley's instructions, Collier and Wilson executed the affidavits the next day and provided them to Matt Hart, apparently due to a miscommunication involving David Byrne. On February 16, Governor Bentley called a meeting at the Capitol with Collier and other ALEA personnel who were involved in providing the affidavits. Present at the meeting, in addition to Governor Bentley, were David Byrne, Joe Espy, Rebekah Mason, Jennifer Ardis, Spencer Collier, J.T. Jenkins, Hal Taylor, Jack Wilson, and Jason Swann. The attendees from ALEA were struck by the presence at the meeting of Governor Bentley's personal attorney Joe Espy. Collier, in particular, recalled that it was the only meeting he had ever attended where Governor Bentley's personal attorney was present.²⁴³ Collier later complained publicly that it was inappropriate for Espy, Mason, and Ardis to be present for a meeting involving law enforcement sensitive matters.

Before the meeting began, Collier asked Governor Bentley if he could speak privately with him and Mason. Governor Bentley dismissed everyone else from the

²⁴² Collier and Wilson both recall Governor Bentley giving this instruction. Wilson says that the Governor suggested they leave the case open and tell Hart the investigation was not complete so that it would be impossible to sign the affidavits. Wilson later responded more affirmatively that Governor Bentley instructed them to leave the case open. Collier likewise said Governor Bentley instructed him to tell Hart that ALEA was still investigating and that Collier looked at Jason Swann as if to suggest "I am not lying to Matt Hart," but also noted that Governor Bentley used the language or tone of a "suggestion." Swann's recollection is somewhat different. He recalls that there was an open question in the meeting: whether ALEA contacted Coleman or Coleman contacted ALEA. He says that either Governor Bentley or David Byrne commented that without the answer to that question, the affidavits could not be provided as requested. Swann does not recall, however, whether any efforts were made between the meeting and the execution of the affidavits to determine the answer to that question.

²⁴³ Collier later said that he had also seen Espy leaving the Governor's office on the day Dianne Bentley filed for divorce. This is corroborated by Governor Bentley's schedule for August 28, 2015. (Ex. 5-CC at 1185).

room. In the conference room, Collier says that he informed Bentley and Mason that he believed they were under investigation. The Mason-Bentley “TIMELINE” relates the following concerning the private meeting between Collier and Bentley and Mason:

Collier told Governor Bentley he had something he needed to share. Collier told Governor Bentley and Mason that he had recently had a conversation with Matt Hart. Collier told the Governor that Hart thought he was a good man, whose heart was in the right place. Collier said Hart told him that Governor Bentley was good, he believed, but there were people working with the Governor who had committed felonies. Collier looked at Mason and said, “And Rebekah he was talking about you.” Collier said he told Hart that he had done background checks on employees and would know if someone had a prior conviction. Collier said Hart told him these were people who had not yet been convicted. Again, Spencer told Mason “I believe he was talking about you, Rebekah.” Mason did not respond.

Governor Bentley asked Collier to explain what he meant. Collier told Governor Bentley he wasn’t sure what Hart meant by the statement, but he and his wife Melissa had discussed it and prayed about it the night before and decided Collier needed to tell Governor Bentley and Mason what Hart said.

After Governor Bentley called the others back into the conference room, the meeting progressed in essentially the following manner:²⁴⁴

Governor Bentley: [To Collier] I don’t know why you signed that affidavit. I told you not to. I didn’t want to get in the middle of this trial, and now I’m in the middle of it.

Secretary Collier: Governor, there’s no investigation going on and that’s what the affidavits said.

Governor Bentley: I don’t care . . .

Secretary Collier: Jason and David Byrne talked, and I thought they had it worked out.

David Byrne: [Begins to speak]

²⁴⁴ This recounting is based upon interviews with meeting attendees Collier, Jenkins, Taylor, Wilson and Swann, and is not to be taken as a verbatim account.

Governor Bentley: [To Byrne] I'll deal with you later. [To Collier] I told you "do not sign the affidavit with the Attorney General's Office." And you did.

Secretary Collier: I did.

Governor Bentley: Why did you do it when I told you not to?

Secretary Collier: I thought it was okay. I didn't mean to get you involved.

Rebekah Mason: [Angrily] Well, you did, and now he's in the middle of it.

After the meeting, J.T. Jenkins described the ALEA contingent as "stunned." Jenkins said that in three decades of government service he had never seen someone as mad as Mason was during the meeting.

B. Governor Bentley Punishes Spencer Collier.

The next morning at 7:58 a.m. by Stan Stabler's watch, Stabler received a phone call from an unknown identification.²⁴⁵ It was Governor Bentley, and he was calling to ask Stabler his whereabouts. Stabler replied that he was in Robertsdale. Governor Bentley asked him to begin driving back to Montgomery. Stabler recalls Governor Bentley told him, in essence: "I'm fixing to place Spencer Collier on medical leave, and I need you to run ALEA." Governor Bentley told Stabler that he was promoting him over more senior ALEA officers because he trusted Stabler. Governor Bentley told Stabler that Collier's medical leave would last for ninety days.

Then Governor Bentley called Collier into his office. Governor Bentley mentioned Collier's scheduled back surgery and told him, as Collier recalls: "I haven't let you heal properly. Take ninety days and get healed." Collier suggested that Governor Bentley name Jack Clark as Acting Secretary of Law Enforcement during his medical leave. Governor Bentley replied that he had already decided upon Stan Stabler, his DPU Chief and former protective Detail Leader.

Governor Bentley told Collier that he had spoken to reporter Charles Dean that morning and would be giving him an exclusive interview. In his exclusive with

²⁴⁵ Multiple witnesses spoke about Governor Bentley's increasing use of phones that would appear on call recognition as "unknown identification." Heather Hannah testified, for example, that the Governor would send aides from his office to purchase these "burner phones," and would repay them with cash. In an undated text message between Mason and Bentley, as another example, Mason refers to Governor Bentley's "Private Rebekah phone," and he refers to it as "our phone." (Ex. 5-C at 8).

Dean that was published that day, Governor Bentley said, in reference to Collier's explanation of why he signed an affidavit against Governor Bentley's orders: "I don't find [it] acceptable. I don't accept the fact they did what I asked them not to do. So I will be dealing with that."²⁴⁶

Collier called a staff meeting when he returned to his office and announced that Governor Bentley had placed him on medical leave and that Stabler would be Acting Secretary of Law Enforcement for ninety days. Hal Taylor recalls that Collier seemed sure that he would return. Collier also told Jason Swann that he was absolutely coming back. Additionally, when Collier called Stabler earlier in the day, he told him he could be back before the expiration of the ninety days.

Stabler had not heard about the Coleman affidavits until after Dean's article was published. That afternoon, while Stabler waited to meet with Governor Bentley, he heard rumors around Governor Bentley's office from his dignitary protection fellows (one of whom overheard it from Jennifer Ardis) that Governor Bentley was displeased with Collier's handling of the Coleman affidavits.

C. The Integrity Unit Investigation.

The month between February 17 and March 22, 2016, saw a flurry of activity within Acting Secretary of Law Enforcement Stan Stabler's ALEA. After briefing Governor Bentley, Stabler launched an internal investigation into Spencer Collier and others in Collier's ALEA administration. Governor Bentley later asked to be updated on the progress of the investigation, his office managed the publishing of press releases by ALEA, and Governor Bentley ultimately cited to the ALEA investigation in his announcement of Collier's termination on March 22. The internal investigation was never internally completed and directly result in no personnel actions within ALEA. It did result in the referral of potential criminal wrongdoing to the Attorney General's Office, which publicly reported in October 2016 that its investigation had found no "credible basis for the initiation of a criminal inquiry in the first place."

1. ALEA accounting complaints.

Stabler stated that soon after he was made Acting Secretary, he was approached from several directions with troubling and valid complaints about accounting-related problems within ALEA, specifically related to Spencer Coleman and others in his inner circle. Two accountants at ALEA had been collecting a dossier of purchasing and other documents on Collier and Jenkins and some of their subordinates since Collier had become Director of Homeland Security in 2011. The accountants felt that Collier and Jenkins had ignored or flouted—but in either case

²⁴⁶ Charles J. Dean, *State's top cop placed on leave following failure to follow governor's order*, The Birmingham News, February 17, 2016, available at http://www.al.com/news/index.ssf/2016/02/states_top_cop_placed_on_leave.html.

violated—purchasing procedures in opening purchasing accounts, making purchases, and handling reimbursements and per diem payments. The lead accountant brought her concerns to Stan Stabler immediately upon his appointment as Acting Secretary. At nearly the same time, she brought the same concerns to ALEA executive counsel Michael Robinson.

Michael Robinson had been expecting a phone call from the new Acting Secretary about these complaints, which Robinson had known about for some time. Stabler called Robinson “pretty quick” after he became Acting Secretary, although Robinson does not recall whether or not it was on February 18, Stabler’s first full day. Stabler recalls being told by several people, in essence, “You don’t need to take the fall for something Spencer Collier did.” Robinson recalls Stabler telling him, “I’m gonna need your help. People are telling me I need to watch my back.”

Robinson advised Stabler that the two of them needed to do some preliminary work before launching any investigation. Stabler and Robinson met with the accountants and ALEA’s Chief Financial Officer to discuss the complaints. They determined after those meetings that they needed to open an Integrity Unit investigation.

2. Stabler reports to Governor Bentley.

On Friday, February 26, 2016,²⁴⁷ Stabler met with Governor Bentley in Governor Bentley’s office and told him, as Stabler recalls, “I know I’m only here for ninety days, but we’ve got some problems. I can keep the train on the tracks or I can fix things.” According to the Mason-Bentley “TIMELINE,” Stabler also reported to Governor Bentley that he had terminated several Collier-appointed employees of ALEA. According to Stabler, Governor Bentley replied: “Stan, you run ALEA.”

During the same meeting, according to the Mason-Bentley “TIMELINE,” “Stabler told Governor Bentley he was reassembling the ALEA Integrity Unit, which had been mothballed under Collier, to begin an internal review of ALEA.”²⁴⁸

²⁴⁷ Although Stabler could not recall the timing of this meeting, the Governor’s calendar for February 26, 2016 records a meeting with Stabler and Robinson at 10:00 a.m. (*See Ex. 5-BB at 1467*). The Mason-Bentley “TIMELINE” places this meeting in the “Week of February 22, 2016,” which is consistent with the meeting taking place on Friday, February 26.

²⁴⁸ Since the consolidation of law enforcement agencies into ALEA, the Integrity Unit had reported to the second-in-command of SBI. Robinson says that he had believed this to be problematic, because the Integrity Unit conducted administrative internal investigations, not criminal investigations. In the event an administrative investigation should be referred to SBI for criminal investigation, Robinson believed it should not fall under the same chain of command. Robinson says that Collier had not addressed this issue. Stabler says he immediately determined to move the Integrity Unit from SBI to the Office of the Secretary to solve this problem. Stabler also said that part of the problem was that witness statements given in administrative investigations after *Garrity* warnings could not be shared with the SBI for criminal investigations.

On Monday, February 29, 2016 four ALEA employees, all either merit or appointed employees of ALEA (and all, therefore, employed “at-will”) who were closely associated with Secretary Collier, were terminated by Stan Stabler. In addition to the terminations, Stabler transferred Special Agent Jack Wilson out of the Office of the Secretary and back to his previous duties in Mobile.

3. The Investigation is opened.

a. Assignment.

After Stabler’s meeting with Governor Bentley, Stabler and Robinson scheduled a meeting for February 29, 2016, with Special Agent April Bickhaus of the Integrity Unit.²⁴⁹ In the meeting with Stabler and Robinson, according to the Integrity Unit Case Report drafted by Bickhaus,

Stabler requested that Bickhaus conduct a thorough administrative review of the purchasing processes by Collier to determine if the purchases were made in violation of administrative procedures and to refer any uses of funds that were potentially criminal to an outside agency for further investigation.

Although normally Bickhaus’s supervisor for internal investigations was Deputy Secretary Kevin Wright, Stabler told her that she would report for purposes of this investigation to Stabler and Robinson. Bickhaus was concerned about this reporting arrangement because she was accustomed to having a law enforcement officer supervise her investigations rather than a lawyer, and she expressed her concern to Robinson at some point after the meeting. Robinson believes that there had always been a lawyer who would provide input to investigators and that Bickhaus mistook his advisory involvement as supervision. Bickhaus concluded that because the manual said her assignments should come from the “Secretary or his designee,” it was not a problem to answer to Robinson as Acting Secretary Stabler’s designee. Special Agent Bickhaus briefed Stabler and Robinson frequently throughout the course of her investigation.

In turn, Stabler and Robinson briefed Governor Bentley and David Byrne with updates of the investigation’s progress. Robinson said this was unusual—

²⁴⁹ In addition to reports Stabler received from within ALEA, he also received an email on February 29, 2016, from Blake Hardwich from Governor Bentley’s office. The email forwarded Stabler a letter written by Senator Orr outlining various allegations of administrative faults against Spencer Collier’s ALEA. In her email, Hardwich wrote to Stabler: “We have someone in policy reviewing these items, but I thought you might want to review them as well.” (*See* Ex. 5-P). Senator Orr had raised his complaints about Collier, however, over a month before, and Governor Bentley was made aware of them. In a January 21, 2016 email exchange with Collier about Orr’s complaints, Governor Bentley wrote: “Spencer I support you Gov.” (Ex. 5-CC at 9113).

that Governor Bentley would not normally be briefed on an internal ALEA investigation. Robinson recalls that, in addition to multiple discussions with David Byrne, he and Stabler briefed Governor Bentley “two or three” times with updates to the investigation. Stabler recalls briefing Governor Bentley “three or four” times. Robinson recalls that Stabler would simply approach him and tell him they needed to go see Governor Bentley.

Normally, when potentially criminal conduct is anticipated to be discovered in an administrative investigation, SBI is brought in to conduct a criminal investigation in parallel with any related administrative investigation. The scope of Special Agent Bickhaus’s investigations are administrative, and it is not normally her job to refer matters to the Attorney General’s Office. Nonetheless, because this investigation appeared to include high-ranking officials in ALEA and because the SBI Director would be a potential witness, Stabler and Robinson determined to initiate an administrative investigation through the Integrity Unit and then to refer any criminal issues to the Attorney General’s Office.

Stabler, Robinson, and Bickhaus all agree that referral of the investigation’s findings to a criminal agency was contemplated from the outset. Bickhaus said that she understood from the beginning that her information would go to the Attorney General’s Office. Robinson told her to let him know about potential criminal violations “as you discover them.” Stabler also believed that the conduct being investigated might be criminal and that the plan was to move towards a referral.

Bickhaus confirmed the accuracy of her account in the Case Report that Robinson advised Bickhaus from the outset not to interview or contact Spencer Collier, as that “may impact the potential criminal investigation.” Spencer Collier confirms that he was never interviewed or approached for an interview in connection with the investigation.

As Special Agent Bickhaus proceeded with investigative interviews of ALEA employees, she realized that many of them were concerned or even “scared” because they thought Spencer Collier would find out they had spoken against him. Bickhaus provided her interviewees with *Garrity* Warning forms, disclosing that the interview was part of an internal administrative investigation and that no disciplinary action could be taken against them for refusal to provide a statement or answer questions.²⁵⁰

b. The Office of the Governor coordinates a press release.

On March 1, 2016, the day after the initial meeting between Stabler, Robinson, and Bickhaus, Stabler and Robinson went to meet with Governor Bentley, David Byrne, Jennifer Ardis, and Rebekah Mason, who joined by phone.

²⁵⁰ Copies of ALEA’s *Garrity* forms were requested but not provided.

The Mason-Bentley “TIMELINE” also indicates that Joe Espy, Governor Bentley’s personal lawyer, and Blake Hardwich were present. Governor Bentley’s calendar, however, does not list Espy as an attendee, but lists Jon Barganier instead.

The Mason-Bentley “TIMELINE” indicates Ardis worked with ALEA’s Public Information Officer to draft a public statement after the meeting. The resulting press release, attributed to Stabler, was published later that evening by Charles Dean of the Birmingham News²⁵¹:

Last week, as Acting Secretary of the Alabama Law Enforcement Agency, I ordered a thorough internal review of the operations, policies and procedures at ALEA. ALEA's Integrity Unit, comprised of seasoned law enforcement investigators, is currently conducting the review. We will work to complete the review as soon as possible, and will deliver any findings to the appropriate authorities if warranted. . . . Effective Feb. 29, two non-merit positions and two retired state employee positions have been eliminated.

Internal emails between members of Governor Bentley’s staff show that Mason edited the press release as well. Specifically, she suggested the addition of the words “Last week” to the opening. (Ex. 5-CC at 1690). The clause is incorrect, as Stabler’s initial meeting with Special Agent Bickhaus was on Monday, February 29, 2016, the day before the press release.

c. Governor Bentley requests a briefing.

On March 7, 2016, Stabler and Robinson told Bickhaus that Governor Bentley wanted to be briefed on the progress of her internal investigation into Spencer Collier the next day. Bickhaus recalls scrambling to prepare for the meeting with Governor Bentley. She said the report at that stage was “not even a first draft.”

Bickhaus told Robinson that she had concerns about the meeting because she normally did not talk with the supervisor of the subject of an investigation (i.e., Governor Bentley as Collier’s supervisor) because the supervisor also could be implicated for a failure to supervise. She told Robinson “this does not need to go to the Governor.” Robinson assured her that because Governor Bentley was Collier’s supervisor and Collier was a member of Governor Bentley’s cabinet, Governor Bentley had a right to know the status of the investigation. Bickhaus recalls that Robinson assured her, with respect to the purposes of her

²⁵¹ Charles J. Dean, *State investigates wrongdoing within Alabama Law Enforcement Agency*, The Birmingham News, March 1, 2016, available at http://www.al.com/news/index.ssf/2016/03/post_93.html.

investigation, “This is for ALEA.” Bickhaus ultimately felt comfortable with the meeting because her chain of command was going to be present for it.

Present at the meeting on March 8 with Governor Bentley were David Byrne, Blake Hardwich, Jon Borganier, Stan Stabler, Michael Robinson, and Special Agent Bickhaus. Special Agent Bickhaus recalls that her bullet points for the presentation were: (1) Collier’s gun purchases, (2) Collier’s clothing purchases and allowances, and (3) Collier’s absenteeism. She recalls that Governor Bentley asked her two questions: the first related to substance abuse issues with Collier, and the second related to any symptoms of poor mental health. The latter question struck Special Agent Bickhaus as odd, since having mental health issues was not a policy or procedure violation. Robinson said that ALEA employees’ *Garrity* statements were not directly discussed with Governor Bentley. Bickhaus recalls the meeting lasted between 30 and 45 minutes.

d. Criminal Referral.

At some point after the March 8 meeting, and in compliance with her instructions to let her supervisors know about potential criminal violations as she discovered them, Special Agent Bickhaus reported to Robinson and then to Stabler that she thought there could be potential criminal violations in issue. She came to this conclusion, she recalls, mostly because of the amounts of money involved in the purchasing policy violations and because of the purchases of firearms, which she could not at that time account for (although she noted that the firearms have since been accounted for).

On Monday, March 14, 2016, Governor Bentley’s counsel David Byrne accompanied Robinson and Bickhaus to a meeting with members of the Alabama Ethics Commission, who deferred the investigation to the Attorney General’s Office. The same day, Robinson and Bickhaus met with the Attorney General’s Office to refer the potentially criminal matter for investigation. One of the potential violations cited against Collier in the referral was “Use of Official Position of Office for Personal Gain.”

On April 6, 2016, the day after Articles of Impeachment were first introduced in the House of Representatives, Attorney General Luther Strange requested from ALEA documentation related to the investigation, including a final report excluding all *Garrity* statements. Special Agent Bickhaus read the Attorney General’s request with concern because her investigation was not “final” and, in its present form, it was *nothing but Garrity* statements. Robinson suggested to the Attorney General’s Office that, in lieu of a final report, ALEA would provide a memorandum without any witness statements, to be followed by the final report when it was complete. Bickhaus drafted the memorandum, and assembled her investigation file to turn over to the Attorney General’s Office.

D. The Interim Case Report, and Spencer Collier Fired.

On Friday, March 18, 2016, Jennifer Ardis emailed Governor Bentley to tell him that Charles Dean was asking whether Governor Bentley had received an ALEA report on the investigation and, she wrote, to “give you [Governor Bentley] a heads up that this media story is coming.” (Ex. 5-CC at 5033-34). Ardis told Governor Bentley in the email that “Stan has a statement prepared that will confirm the investigation has been completed and turned over to the proper authorities.” According to the Mason-Bentley “TIMELINE” entry for March 18, Governor Bentley told Mason over the phone “that he believed the ALEA investigation was complete.”

At some point between Thursday, March 17 and Monday, March 21,²⁵² Governor Bentley asked Stan Stabler to send him a copy of Special Agent Bickhaus’s interim draft of the Case Report. Stabler passed the request on to Robinson, and Robinson to Bickhaus, who forwarded her interim draft to Stabler and Robinson. Stabler and Robinson met and discussed Governor Bentley’s request, including whether *Garrity* concerns were implicated by it. Stabler concluded that the request was proper because Governor Bentley was Collier’s supervisor, and he forwarded the draft Case Report to Governor Bentley and David Byrne.

Governor Bentley called a meeting on Monday, March 21, 2016, to discuss the status of the internal investigation at ALEA and the contents of the draft Case Report.²⁵³ Present at the meeting were Governor Bentley, David Byrne, Stan Stabler, and Michael Robinson. It was determined that Stabler would issue a press release. The Mason-Bentley “TIMELINE” relates that Mason and Ardis again worked with the ALEA Public Information Officer to draft the statement. Stabler’s press statement said, in part:

Over the past month, I worked closely with my staff to evaluate all aspects of ALEA, address agency issues, and implement changes which have already resulted in more than \$250,000 in savings.

ALEA’s Integrity Unit conducted a thorough internal review of the operations, policies and procedures of the agency. The

²⁵² This timing estimation is based upon the email of March 18, in which Ardis wrote to Governor Bentley: “Chuck Dean has reached out to ask if you have received an ALEA internal report on the investigation at ALEA. Per our conversation yesterday, I know you have not.” (Ex. 5-CC at 5033-34).

²⁵³ Around 8 o’clock in the evening, on the same day of the meeting with the ALEA leaders about the internal investigation, Mason was forwarded an email from a reporter letting the Governor’s staff know that he would be publishing a story about ALEA’s handling of a different investigation. Mason’s response to her colleagues was: “And what in the world does the Gov’s Office have to do with ALEA cases?” (Ex. 5-CC at 5947).

*Integrity Unit review found a number of concerns including the possible misuse of state funds. Findings of the review have been submitted to the Alabama Attorney General's Office for further action.*²⁵⁴

Spencer Collier's attorney Kenneth Mendelsohn recalls that on the day Stabler's press release was published, David Byrne called Mendelsohn to offer Collier a deal: if Collier would resign, Governor Bentley would promote his wife, Melissa Collier, an administrative assistant in Governor Bentley's office, to a better position to allow the Colliers to retain their health insurance. The same day, Mendelsohn also received from Governor Bentley's office a draft letter of resignation on ALEA letterhead for Collier's signature dated for the next day, March 22, 2016, as well as an additional blank letterhead page for Collier to draft his own letter of resignation if he preferred. With these drafts was a letter from Governor Bentley, similarly dated for the next day, informing Collier that effective immediately, his "services will no longer be needed." Mendelsohn declined Byrne's request on Collier's behalf, and the termination letter from Governor Bentley was delivered to Collier the next day. (Ex. 5-E at 2-4).

On March 22, 2016, Collier called Stan Stabler by telephone and told him that he had the tapes of Bentley and Mason, as well as a video recording of Stabler making racial comments, and would release them to the public. (Ex. 5-M at 55). Later that day, the Office of the Governor issued a press release announcing the termination of Collier as Secretary of Law Enforcement, and the appointment of Stabler, effective immediately. The press release said:

*After placing Spencer on medical leave a few weeks ago to allow him to recover from back surgery, Acting ALEA Secretary Stan Stabler identified several areas of concern in the operations, policies and procedures at ALEA. After an internal review, the ALEA Integrity Unit found a number of issues, including possible misuse of state funds. I am disappointed to learn these facts, and today, I relieved Spencer Collier of his duties as ALEA Secretary.*²⁵⁵

According to the Mason-Bentley "TIMELINE," Collier called Stabler on March 23, 2016, while Stabler was at the Capitol preparing for a joint press conference with Governor Bentley, and told him: "I have the tapes and I'm going to release them in two hours." Spencer Collier called a press conference for 1:00

²⁵⁴ *Acting Head of ALEA Reports Possible Misuse of State Funds*, March 22, 2016, available at <http://www.alabamaneews.net/2016/03/22/acting-head-of-alea-reports-possible-misuse-of-state-funds/>.

²⁵⁵ Governor Bentley Announces Termination of Spencer Collier as Alabama Law Enforcement Agency Secretary, March 22, 2016, available at <http://governor.alabama.gov/newsroom/2016/03/governor-bentley-announces-termination-spencer-collier-alabama-law-enforcement-secretary/>.

p.m. that day at Mendelsohn's office. Towards the end of the press conference, in response to a question from a reporter, Collier said that he had just been told that parts of the tapes had been released by Yellowhammer News.

E. Governor Bentley's Release of the Incomplete Integrity Unit Report.

Robinson advised Special Agent Bickhaus to continue her internal investigation even after the termination of Spencer Collier on March 22. Bickhaus recalls she was told to "run it out" so that nothing would be left to conjecture or speculation. She continued her investigation through the spring and continued to comply with requests for documents and other information from other investigative agencies.

1. Governor Bentley's 11th hour selective compliance with the Committee's Document Request.

On August 12, 2016, Special Counsel forwarded a formal Document Request from the Committee to the Office of the Governor, requesting that Governor Bentley produce responsive documents no later than September 2, 2016. (Ex. 2-N). Governor Bentley refused to comply with the Committee's request for documents and instead "filed" "motions" with the Committee challenging the constitutionality of the impeachment articles. (Exs. 6-C; 7-C through 7-H). On September 14, 2016, after discussions with Governor Bentley's lawyers about the Document Request, Special Counsel sent Governor Bentley's lawyers a list of "subject matter topics . . . for the purpose of facilitating the Office of the Governor's cooperation with the Committee." (Ex. 6-Q). Special Counsel asked that Governor Bentley produce documents by September 30, 2016.

In the meantime, the Committee scheduled a status conference for September 27, 2016. The Committee invited Governor Bentley's lawyers to attend and permitted them to be heard. That morning, the Office of the Governor suddenly produced 1,688 pages of documents to the Committee.²⁵⁶ Included prominently in these documents was Special Agent Bickhaus's Integrity Unit Case Report—both the interim draft report that had been emailed to Governor Bentley in March, as well as an updated revised version. (Exs. 5-L; 5-M). Although the Office of the Governor redacted certain names, identifying information, and government serial numbers from the Case Reports, the identities of most of the witnesses were not redacted, and their statements were not redacted.

²⁵⁶ This hasty production was followed on October 10, 2016, after the issuance by the Committee of a Subpoena for documents, with a document production of over twelve thousand pages from the Office of the Governor.

2. The timing of the conclusion of the Integrity Unit’s internal investigation.

On August 31, 2016, Michael Robinson instructed April Bickhaus to conclude her internal investigation. Bickhaus did not feel that her investigation was complete, however, for at least two reasons. First, Bickhaus was concerned that there were allegations—especially allegations of sexual misconduct—that had not been fully validated. Second, there was more that Bickhaus thought should be investigated. Bickhaus was concerned about concluding her investigation because she was still working on it, and nothing had been “signed off on” by her supervisors.

Stabler agrees that the Case Report of the investigation was not complete on August 31 because it had not been fully corroborated. Robinson says that he instructed Bickhaus to conclude her work on August 31 because the investigation “had completely consumed her.”

Within a couple days before the scheduled September 27 Judiciary Committee status conference, David Byrne requested Bickhaus’s Case Report from Michael Robinson. Robinson says he knew that the Office of the Governor was under a deadline to produce documents to the Committee and believed that the purpose of Byrne’s request was so that Governor Bentley could produce the report to the Committee.

Stabler and Robinson met and discussed Byrne’s request. They specifically discussed the importance of, and the need to, redact witnesses’ names and other sensitive information to protect the ALEA employees who volunteered to be interviewed. Robinson says he also discussed his concern with David Byrne. Ultimately, Robinson heard from a subordinate attorney on Governor Bentley’s staff that the report would be appropriately redacted. Special Agent Bickhaus emailed her Case Report to Stabler and Robinson, and Stabler forwarded it to Byrne.²⁵⁷

²⁵⁷ One of the few significant additions to the Case Report, as compared to the interim draft provided to the Governor in March, was a paragraph about the Department of Public Examiners’ Report of its examination of ALEA. The paragraph included the Report’s caveat that “Our examination did not encompass managerial and operational matters, such as whether the Agency accomplished its mission or its regulatory, enforcement, investigative, or other oversight activities in an efficient, fair, timely, or legal manner.” Of note, a March 25, 2016 social media post by Spencer Collier had been circulated in media reports in which he claimed that “Examiner of Public Accounts’ thorough, apolitical, third party review speaks volumes.” See Paul Gattis, *Audit found no issues with ALEA; Bentley fired director over misuse of funds*, The Birmingham News, March 24, 2016, available at http://www.al.com/news/index.ssf/2016/03/audit_finds_no_issues_with_ale.html.

3. Governor Bentley publicly releases ALEA's internal investigation Case Report.

Two days later, on September 29, 2016, Governor Bentley's Press Secretary received a request from an Associated Press reporter to make public all of the documents that Governor Bentley had produced to the Committee. Governor Bentley gave the documents to the reporter on the same day they were requested, and they were published to the internet the same day.²⁵⁸

Special Agent Bickhaus was in her car that day when her passenger—a colleague—looked up from his iPhone and told Bickhaus that her Case Report was on the internet. Bickhaus immediately pulled to the side of the road and called Michael Robinson, who told her that Governor Bentley's office had released the report. Bickhaus was confused and angry. She was especially concerned about the allegations in the internal report of sexual harassment against Spencer Collier, which she says should have been investigated further to determine their credibility. She says she was "cut off" before she could validate anything. Bickhaus believes that names of witnesses and quotes attributed to them should have been redacted from the released report.

Bickhaus drafted an email to each of the ALEA employees she interviewed and explained to them that what had happened was not normal protocol. (Bickhaus denies that the email was an "apology.")

Just after the Case Report hit the news, Robinson went to Stabler's office. Robinson believes it had been Stabler's intent to protect the identities of the ALEA employees who were interviewed. For his part, Robinson had believed there would be more significant redactions to the report produced to the Committee and says there should have been a more clear understanding with the Office of the Governor about ALEA's expectations of how the report would be handled. He says he would have given his employees a heads up if he had known the report would be made public. He also expressed concerns about employees who had feared retaliation from Collier and were reluctant to be interviewed. Robinson said he was also concerned for Spencer Collier, though he was glad Governor Bentley's office at least caught Collier's un-redacted home addresses at some point between production of the Case Report to the Committee and release to the media.

Stan Stabler was unaware that Governor Bentley would release the Case Report until the day it was to be released. He says Governor Bentley's Press Secretary Yasamie August called him on the morning of September 29 and told

²⁵⁸ Three additional redactions were made between the September 27 production to the Committee and the September 29 release of the Case Report to the media. All three redactions were to Spencer Collier's home addresses.

him the report would be made public later that day. David Byrne later confirmed August's communication, and told Stabler that the Case Report was a public document. Stabler says he had never seen an Integrity Unit report released in this manner.

When asked if he believed the release of the Case Report was “inappropriate,” Stabler replied instead, “I would rather it had not been released.” He believes it should have been redacted to protect the identities of those interviewed by Special Agent Bickhaus under the terms of the *Garrity* warnings. If he had it to do over again, he says he would specifically ask the Office of the Governor that the report not be released publicly, and then tell them more explicitly why he was providing it to them.

Stabler says he was concerned because the public is not accustomed to knowing the differences between an administrative investigation and a criminal investigation. Stabler had believed that, whatever might be made public from a criminal investigation, the administrative investigation would remain in-house.

4. The Results of the Integrity Unit Investigation.

Other than the termination of Spencer Collier on March 22, 2016—three weeks after the investigation was assigned, and over five months before its conclusion—there were no actions taken as a result of the Integrity Unit investigation. Each of the other personnel movements made by Stan Stabler—the terminations of J.T. Jenkins, Jay Howell, Merritt Hayes, and Camilla Gibson, and the transfer of Jack Wilson—Stabler says he would have made with or without an investigation.

On October 20, 2016, the Attorney General's Office released a Statement “Regarding Former ALEA Secretary Spencer Collier.” The Statement announced, in part:

On February 17, Governor Bentley placed then-ALEA Secretary Spencer Collier on sick leave for allegedly disobeying his instructions regarding Collier's interactions with State prosecutors. Shortly after the Governor's action, ALEA initiated a broad internal inquiry into Collier's conduct as ALEA Secretary.

On March 22, Governor Bentley fired Collier, stating publicly that he relied on the ALEA inquiry in doing so. Governor Bentley and ALEA issued public statements that the results of the ALEA investigation indicated possible “misuse of state funds” and were being referred to the Office of Attorney General Luther Strange. . . .

In the course of the [criminal investigation before the Special Grand Jury], no witness provided credible evidence of criminal “misuse of state funds.” No witness provided credible evidence of any other criminal violation on the part of Spencer Collier. Finally, no witness established a credible basis for the initiation of a criminal inquiry in the first place.²⁵⁹

²⁵⁹ Statement of Attorney General Luther Strange Regarding Former ALEA Secretary Spencer Collier, October 20, 2016, available at <http://www.ago.state.al.us/News-936>.

EXHIBIT INDEX

***Special Counsel identified and redacted from these exhibits certain personal identifying information such as social security numbers, addresses and dates of birth. Those redactions are made in red. Other redactions existed in the original production to Special Counsel.

Exhibit #	Bates Range	Date	Description
Preservation Letters			
1-A		07/25/2016	Preservation letter to Alabama Council for Excellent Government
1-B		07/25/2016	Preservation letter to Jennifer Ardis
1-C		07/25/2016	Preservation letter to Dianne Bentley
1-D		07/25/2016	Preservation letter to John Mark Bentley
1-E		07/25/2016	Preservation letter to Luke Bentley
1-F		08/02/2016	Preservation letter to Matthew Bentley
1-G		07/25/2016	Preservation letter to Paul Bentley
1-H		07/25/2016	Preservation letter to Bentley for Governor, Inc.
1-I		08/02/2016	Preservation letter to Paul Bryant, Jr.
1-J		07/25/2016	Preservation letter to David Byrne – Office of the Governor
1-K		07/25/2016	Preservation letter to Spencer Collier
1-L		07/25/2016	Preservation letter to Marquita Davis
1-M		08/02/2016	Preservation letter to Michael Echols
1-N		07/25/2016	Preservation letter to Joseph Espy – Governor Robert Bentley
1-O		07/25/2016	Preservation letter to Ross Garber – Office of the Governor
1-P		08/03/2016	Preservation letter to Heath Garrett
1-Q		07/25/2016	Preservation letter to Camilla Gibson
1-R		07/25/2016	Preservation letter to William Gray – Rebekah Mason
1-S		07/25/2016	Preservation letter to Seth Hammett
1-T		08/05/2016	Preservation letter to Elizabeth Hardwich
1-U		07/25/2016	Preservation letter to Merritt Hays
1-V		07/25/2016	Preservation letter to James Howell
1-W		07/25/2016	Preservation letter to J.T. Jenkins
1-X		08/19/2016	Preservation letter to JRM Enterprises
1-Y		08/03/2016	Preservation letter to Wanda Kelly
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1-DD		07/25/2016	Preservation letter to David Perry
1-EE		08/03/2016	Preservation letter to Clayton Ryan

Exhibit #	Bates Range	Date	Description
1-FF		07/25/2016	Preservation letter to Robert Segall – RCM Communications
1-GG		07/25/2016	Preservation letter to Serve Alabama
1-HH		07/25/2016	Preservation letter to Cooper Shattuck
1-II		07/25/2016	Preservation letter to Stan Stabler
1-JJ		08/03/2016	Preservation letter to Angella Stalnaker
1-KK		07/25/2016	Preservation letter to John “Hal” Taylor
1-LL		07/29/2016	Preservation letter to Collier Tynes
1-MM		07/25/2016	Preservation letter to Rochester Butler Walker
1-NN		07/25/2016	Preservation letter to Jim Zeigler
Document Request Letters			
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2-B		10/04/2016	Document request letter to Alabama Law Enforcement Agency – Michael Robinson
2-C		09/08/2016	Document request letter to Jennifer Ardis
2-D		08/30/2016	Document request letter to Paul Bentley
2-E		08/12/2016	Document request letter to Governor Robert Bentley – Joe Espy
2-F		08/23/2016	Document request letter to Bentley for Governor, Inc. – Joe Espy
2-G		08/17/2016	Document request letter to Spencer Collier
2-H		08/30/2016	Document request letter to Michael Echols
2-I		09/08/2016	Document request letter to Seth Hammett – Tommy Spina
2-J		08/23/2016	Document request letter to JRM Enterprises
2-K		08/30/2016	Document request letter to Wendell Ray Lewis – John Saxon
2-L		08/23/2016	Document request letter to Jonathan Mason
2-M		08/17/2016	Document request letter to Rebekah Mason
2-N		08/12/2016	Document request letter to Office of the Governor – Ross Garber
2-O		09/08/2016	Document request letter to David Perry
2-P		08/23/2016	Document request letter to RCM Communications – Robert Segall
2-Q		09/23/2016	Document request letter to Clayton Ryan
2-R		08/30/2016	Document request letter to Cooper Shattuck
2-S		09/08/2016	Document request letter to Stan Stabler
2-T		09/08/2016	Document request letter to Stan Stabler - ALEA
2-U		09/20/2016	Document request letter to Angella Stalnaker – Joe Hubbard

Exhibit #	Bates Range	Date	Description
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3-A		09/29/2016	Subpoena to Alabama Council for Excellent Government
3-B		03/28/2016	Subpoena to Linda Adams
3-C		03/17/2016	Subpoena to Alabama Law Enforcement Agency
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3-E		08/01/2016	Subpoena to Bentley, Dianne
3-F		03/28/2016	Subpoena to Bickhaus, April
3-G		10/27/2016	Subpoena to Clark, Jack
3-H		10/27/2016	Subpoena to Culliver, Michael
3-I		09/29/2016	Subpoena to Echols, Michael
3-J		10/27/2016	Subpoena to Frost, Jennifer
3-K		10/27/2016	Subpoena to Harkins, Reginald
3-L		10/27/2016	Subpoena to Hines, Christopher
3-M		09/29/2016	Subpoena to JRM Enterprises
3-N		03/28/2016	Subpoena to Lee, Scott
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3-P		09/29/2016	Subpoena to Mason, Rebekah
3-Q		09/29/2016	Subpoena to Office of the Governor
3-R		09/29/2016	Subpoena to RCM Communications
3-S		10/27/2016	Subpoena to Michael Robinson
3-T		10/27/2016	Subpoena to Stan Stabler
3-U		03/28/2016	Subpoena to Stan Stabler
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4-B		10/24/2016	Notice of Transcribed Statement Under Oath to David Byrne
4-C		10/24/2016	Notice of Transcribed Statement Under Oath to Wesley Helton
4-D		10/24/2016	Notice of Transcribed Statement Under Oath to Zach Lee
Responses			
5-A	Bentley Impeachment Investigation 000001-000015, ACEGOV	09/06/2016	Documents received from Alabama Council of Excellent Government

Exhibit #	Bates Range	Date	Description
5-B	Bentley Impeachment Investigation 000001-000580, ALEA	03/20/2017	Documents received from Alabama Law Enforcement Agency (*1,092 pages were produced at a later date)
5-C	Bentley Impeachment Investigation 000001-000038, Bentley, Dianne	08/29/2016	Documents received from Dianne Bentley
5-D	Bentley Impeachment Investigation 000039, Bentley, Dianne	08/29/2016	Audio file received from Dianne Bentley
5-E	Bentley Impeachment Investigation 000001-000028, Collier Spencer	10/03/2016	Documents received from Spencer Collier
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5-G	Bentley Impeachment Investigation 000001-000032	09/21/2016	Documents received from Wendell Ray Lewis
5-H	Bentley Impeachment Investigation 000001-000004	03/16/2017	Documents received from Rochester Butler Walker
5-I	Bentley Impeachment Investigation 000001-000019, Fondon, Cheryl		Documents received from Cheryl Fondon
5-J	OTG00001-00002	04/28/18	Spencer Collier Affidavits (signed and unsigned)
5-K	OTG00005	03/22/2016	Press Release: Governor Bentley Announces Termination of Spencer Collier as Alabama Law Enforcement Agency Secretary
5-L	OTG00006	03/22/2016	Resignation Letter of Spencer Collier (not signed)

Exhibit #	Bates Range	Date	Description
5-M	OTG00007-00067		Alabama Law Enforcement Agency Integrity Unit Case Report Case Agent: April Bickhaus
5-N	OTG000068- OTG000130		Alabama Law Enforcement Agency Integrity Unit Case Report Case Agent: April Bickhaus (2 more pages)
5-O	OGT00188- OTG00200		Timeline Re: Spencer Collier
5-P	OGT00206- OTG00210	02/29/2016	Senator Orr letter, and Stabler-Hardwich emails
5-Q	OTG00768-00772		State Aircraft Usage by Governor Bentley, First Lady Dianne Bentley and Governor's Staff – First Quarter 2015
5-R	OTG00773-00778		State Aircraft Usage by Governor Bentley, First Lady Dianne Bentley and Governor's Staff – Second Quarter 2015
5-S	OTG00779-00784		State Aircraft Usage by Governor Bentley, First Lady Dianne Bentley and Governor's Staff – Third Quarter 2015
5-T	OTG00785-00790		State Aircraft Usage by Governor Bentley, First Lady Dianne Bentley and Governor's Staff – Fourth Quarter 2015
5-U	OTG00791-00795		State Aircraft Usage by Governor Bentley, First Lady Dianne Bentley and Governor's Staff – First Quarter 2016
5-V	OTG00796-00802		State Aircraft Usage by Governor Bentley, First Lady Dianne Bentley and Governor's Staff – Second Quarter 2016
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5-X	OTG00804-00805	02/13/2015	Letter from Gregory P. Butrus of Balch & Bingham to Hugh R. Evans, III, General Counsel for Alabama Ethics Commission re: Alabama Council for Excellent Government
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5-Z	OTG00810		Senior Political Advisor Job Description
5-AA	OTG00811-001395		Governor's Calendar (2015)
5-BB	OTG001396- 001688		Governor's Calendar (Jan to Aug 2016)

Exhibit #	Bates Range	Date	Description
5-CC	OTG001690-001691 OTG001710-001711 OTG001776 OTG001839 OTG001851-001853 OTG001993 OTG002139-002142 OTG002154-002155 OTG005004 OTG005009-005015 OTG005019-005021 OTG005028-005031 OTG005188-005191 OTG005199 OTG005201 OTG005221-005222 OTG005225 OTG005238-005242 OTG005244-005248 OTG005266-005267 OTG005280 OTG005290-005291 OTG005373 OTG005385 OTG005617-005620 OTG005667-005672		Emails and text messages produced by the Office of the Governor

Exhibit #	Bates Range	Date	Description
5-CC (cont.)	OTG005776-005779 OTG005925-005929 OTG005946-005948 OTG005960-005961 OTG009113-009117 OTG009122 OTG009127 OTG009130-009131 OTG009258-009398 OTG009444 OTG009458-009461 OTG009495 OTG009530 OTG009539-009540 OTG010822-010823 OTG011148-011149 OTG011584 OTG011631-011633 OTG011634-011635 OTG012316 OTG012362		
Selected Correspondence			
6-A		08/01/2016	Letter from Jack Sharman to Thomas Hale regarding subpoena to Dianne Bentley
6-B		08/08/2016	Email correspondence with Jack Sharman and Tommy Spina regarding preservation letter sent to Seth Hammett
6-C		08/17/2016	Letter from Ross Garber, David Byrne and Joseph Espy to Jack Sharman regarding document request to Governor Robert Bentley and the Office of the Governor of the State of Alabama

Exhibit #	Bates Range	Date	Description
6-D		08/23/2016	Letter from Bobby Segall to Jack Sharman regarding document request to Rebekah Mason
6-E		08/25/2016	Letter from Jack Sharman to Bobby Segall regarding Rebekah Mason's refusal to cooperate in investigation
6-F		08/25/2016	Letter from Jack Sharman to Ross Garber, David Byrne and Joseph Espy regarding Renewed Motion to Suspend Proceedings and Renewed Motion for Recusal
6-G		08/29/2016	Letter from Bobby Segall to Jack Sharman regarding document request to RCM Communications, Inc.
6-H		08/30/2016	Letter from Kenneth Mendelsohn to Jack Sharman regarding document request to Spencer Collier
6-I		09/06/2016	Letter from Richard Raleigh, Jr. to Jack Sharman regarding response to document request to Alabama Council for Excellent Government
6-J		09/06/2016	Letter from Bobby Segall to Jack Sharman regarding document request to Jon Mason
6-K		09/06/2016	Letter from Bobby Segall to Jack Sharman regarding document request to JRM Enterprises, Inc.
6-L		09/07/2016	Letter from Kenneth Mendelsohn to Jack Sharman regarding document request to Spencer Collier
6-M		09/08/2016	Email from David Perry to Jack Sharman and Wes Gilchrist regarding document request
6-N		09/09/2016	Letter from Bernard Harwood to Jack Sharman regarding document request to Michael Echols
6-O		09/12/2016	Letter from Joe Espy to Jack Sharman regarding document request to Bentley for Governor, Inc.
6-P		09/14/2016	Letter from John Saxon to Jack Sharman regarding document request to Wendell Ray Lewis
6-Q		09/14/2016	Letter from Jack Sharman to Ross Garber and David Byrne regarding document request to Office of the Governor
6-R		09/15/2016	Letter from Steve Wright to Ben Willson regarding enforceable subpoena to Dianne Bentley

Exhibit #	Bates Range	Date	Description
6-S		09/29/2016	Letter from David Byrne to Chairman Jones and Jack Sharman regarding producing documents to Kim Chandler, AP Reporter
6-T		10/10/2016	Letter from Ross Garber and David Byrne to Jack Sharman regarding documents in response to request
6-U		10/10/2016	Letter from Jack Sharman to Steve Wright regarding enforceable subpoena
6-V		10/11/2016	Email from Ben Willson to Michael Robinson regarding interviews of ALEA employees
6-W		10/20/2016	Letter from Joe Hubbard to Wes Gilchrist regarding non-participation of his clients (Collier Tynes and Angella Stalnaker)
6-X		10/24/2016	Letter from Jack Sharman to Ross Garber and David Byrne regarding non-cooperation
6-Y		10/24/2016	Letter from Jack Sharman to Max Pulliam regarding document request to R.B. Walker
6-Z		10/24/2016	Letter from Jack Sharman to Ross Garber and David Byrne regarding notices to transcribe statement under oath of witnesses Governor Robert Bentley, David Byrne, Wesley Helton and Zach Lee
6-AA		10/27/2016	Letter from Governor Robert Bentley to Honorable Mac McCutcheon, Speaker of the House, regarding briefing of last six years as Governor
6-BB		11/01/2016	Letter from Jack Sharman to Ross Garber and David Byrne regarding follow up on notices to take transcribed statements
6-CC		11/01/2016	Letter from Ross Garber and David Byrne to Jack Sharman regarding response to non-cooperation
6-DD		11/01/2016	Letter from David Byrne to Jack Sharman regarding notice to take transcribed statement under oath
6-EE		11/01/2016	Letter from Ross Garber and David Byrne to Jack Sharman regarding notices to take transcribed statements under oath
6-FF		03/15/2017	Letter from Max Pulliam to Wes Gilchrist regarding documents produced by R.B. Walker
6-GG		03/17/2017	Letter from Jack Sharman to Ross Garber and David Byrne regarding resuming impeachment investigation

Exhibit #	Bates Range	Date	Description
6-HH		03/20/2017	Letter from Ross Garber and David Byrne to Chairman Jones regarding white paper on Due Process in Impeachment Proceedings
6-II		03/21/2017	Letter from Ross Garber and David Byrne to Jack Sharman regarding resumption of investigation
6-JJ		03/23/2017	Letter from Jack Sharman to Ross Garber and David Byrne regarding tentative schedule for impeachment proceedings
6-KK		03/27/2017	Letter from Ross Garber and David Byrne to Jack Sharman regarding impeachment proceedings
6-LL		04/04/2017	Letter from Tim McCollum (ALEA) to Brandon Essig regarding document production
Motions, Orders and Other Filings			
7-A		08/02/2016	Standard of Impeachment Statement – Office of the Governor of Alabama
7-B		08/08/2016	Order admitting Susan Murphy <i>pro hac vice</i> for The Office of the Governor of Alabama and Robert Bentley in his official capacity
7-C		08/11/2016	Governor Robert Bentley’s Motion for Recusal of Committee Members
7-D		08/11/2016	Governor Robert Bentley’s Motion to Suspend Proceedings
7-E		08/15/2016	Governor Robert Bentley’s Motion for Recusal of Committee Members - DENIED
7-F		08/15/2016	Governor Robert Bentley’s Motion to Suspend Proceedings - DENIED
7-G		08/16/2016	Governor Bentley’s Renewed Motions to Suspend and For Recusal and Request for Hearing with exhibits
7-H		08/17/2016	Governor Robert Bentley’s Notice of Supplemental Materials in Support of Motion for Recusal of Committee Members
7-I		08/31/2016	Notice – Mike Jones, Chairman Alabama House Judiciary Committee
7-J		10/10/2016	Objection of Jonathan Mason to Subpoena or, in the alternative, Motion to Quash Subpoena
7-K		10/10/2016	Objection of JRM Enterprises, Inc. to Subpoena or, in the alternative, Motion to Quash Subpoena

Exhibit #	Bates Range	Date	Description
7-L		10/10/2016	Objection to “Subpoena” or, in the alternative, Motion to “Quash Subpoena” – Office of the Governor with exhibits
7-M		10/10/2016	Objection to, and Motion to Quash, Subpoena – Michael Echols
7-N		10/10/2016	Objection of RCM Communications, Inc. to Subpoena or, in the alternative, Motion to Quash Subpoena
7-O		10/10/2016	Objection of Rebekah Mason to Subpoena or, in the alternative, Motion to Quash Subpoena
7-P		03/30/2017	Emergency Motion to Afford Due Process Protections – Governor Robert Bentley and Office of the Governor
7-Q		04/04/2017	Proposed Scheduling Order – Governor Robert Bentley and Office of the Governor
House Resolutions			
8-A		03/19/2015	HB336 To repeal existing Article VII of the Constitution of Alabama of 1901, relating to impeachments, and to add a new Article VII, relating to impeachments
8-B		04/05/2016	HR226 Article of Impeachment Against Governor Bentley
8-C		04/26/2016	HR334 Amending House Rules to Provide for Impeachment Procedures
8-D		04/28/2016	HR367 Articles of Impeachment Against Governor Bentley
8-E		08/18/2016	HB57 Bill to provide subpoena power during impeachment
8-F		06/15/2016	Committee Rules of the House of Judiciary Committee for the Impeachment of Governor Robert Bentley
8-G		09/27/2016	Amended Committee Rules of the House Judiciary Committee for the Impeachment Investigation of Governor Robert Bentley
Interviews Under Oath including exhibits			
9-A		08/02/2016	Heather Hannah Transcript with exhibits
9-B		03/31/2017	Wendell Ray Lewis Transcript with exhibits
9-C		04/04/2017	Linda Adams Transcript with exhibits
Miscellaneous Exhibits			
10-A			Seth Hammett Confidentiality Agreement (Exhibit 2 to Exhibit 1 of Heather Hannah transcript)
10-B			Alabama Council for Excellent Government website archives

Exhibit #	Bates Range	Date	Description
10-C			Bentley Campaign Expenditures to RCM Communications
10-D	OTG008024-008029 OTG005259-005265 OTG005281-005285		RCM Communications Invoices to Bentley for Governor
10-E			Payments from Bentley for Governor, Inc. to RCM Communications, Inc. – Summary report
10-F		02/03/2017	Letter from William Athanas to Alabama State Ethics Commission regarding 2016 Annual Report Filing by Bentley For Governor, Inc.
10-G			Statement from Rebekah Mason