

KENTUCKY GENERAL ASSEMBLY
In the House of Representatives

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IN RE: IMPEACHMENT PETITION

RESPONSE OF THE ATTORNEY GENERAL
AND REQUEST FOR DISMISSAL

The Attorney General submits this response to the baseless petition for impeachment filed against him by anonymous persons and a group of political operatives.

INTRODUCTION

In another sign of the times,¹ this special House Impeachment Committee (“Committee”) of the 2021 Regular Session of the General Assembly finds itself with a third petition for impeachment. But impeachment is a grave matter, one that represents a “repeal of the will of the people who have elected an individual to an office of public trust.” *See Impeachment in Kentucky*, Informational Bulletin No. 176, Legislative Research Commission, at 1 (Sept. 1991), attached as Exhibit 1. Because it is so consequential, it has rarely been used in Kentucky, with only a handful of public officials in the history of the Commonwealth having been subjected to the process. *Id.*

Yet today, impeachment has become fashionable. Former President Trump is soon to face a second impeachment trial in the span of one year, barely twenty years

¹ For those reading this decades from now, the years 2020 and, so far, 2021 are extraordinary. We have experienced a once-in-a-century pandemic, political vitriol on all sides, cancel culture, mass unemployment, cities burning, spiking crime, a continued assault on the rule of law, and simply put, difficult circumstances all around.

after former President Clinton faced impeachment. Articles of impeachment were filed against President Biden one day after he took office. State officials throughout the country are facing impeachment petitions. And in Kentucky, the Governor and Attorney General are now subject to petitions for impeachment that have been referred to this Committee.

But referral to this Committee is as far as this petition should go. As explained below, the petition is invalid for its failure to comply with statutory requirements. And even if it somehow crossed that hurdle, the petition fails to allege any impeachable offense. The Committee should dismiss the petition and award the Attorney General his costs pursuant to KRS 63.070(1).

ARGUMENT

The petition makes a mockery of the solemn constitutional process of impeachment. It is so lacking in legal and factual support that it is undeserving of this Committee's consideration and should be summarily dismissed.

I. The petition fails to satisfy the requirements of KRS 63.030 and must be dismissed without hearing or further action by the Committee.

The Committee may easily dispose of the petition by judging it against the requirements of KRS 63.030. Doing so reveals the petition's numerous deficiencies, any of which warrant dismissal without proceeding to the merits.

Impeachment challenges the fitness of an elected official to hold office, and ultimately that official's public and private character. For that reason, Kentucky law does not countenance an impeachment petition submitted in a secret or representative capacity. "Any person may, by written petition to the House of

Representatives, signed by himself, verified by his own affidavit and the affidavits of such others as he deems necessary, and setting forth the facts, pray the impeachment of any officer.” KRS 63.030(1). Thus, the requirements for an impeachment petition are that it be (1) submitted by a “person,” (2) written, (3) signed by the person submitting it, and (4) accompanied by an affidavit setting forth the facts that warrant impeachment. KRS 63.030(1). The petition fails to meet these requirements.

Anna Whites submitted the petition and signed it. But she did not include an affidavit with the petition, which KRS 63.030(1) requires. Accordingly, Whites has not commenced an impeachment proceeding.

Kevin Glogower signed the petition and what is essentially a verification page. Glogower holds himself out as the “Petitioner/Affiant,” but then claims that he signed the petition “on behalf of three (3) unnamed former Grand Jurors on the Breonna Taylor Grand Jury.” KRS 63.030(1) requires the person seeking impeachment to sign the petition and an affidavit “himself.” Glogower did not do so for himself. In a press release, Glogower points to the representational capacity in which he signed the petition. Glogower states that “[a]mong the concerned citizens bringing this matter to the legislature *are three former Grand Jurors* from the Breonna Taylor case (note that their counsel signed for them to protect their identities).” See Press Release, attached as Exhibit 2 (emphasis added). Second, Glogower is quoted in the press release as saying that the “*Grand Jurors* did not choose this battle,”² and he is listed

² This quote is somewhat divorced from reality. A grand juror always has the right to disagree with a prosecutor’s recommendation. Most choose to do that in the grand jury room by asking questions; trying to convince their fellow grand jurors; pushing for no, additional, or different charges;

as “counsel,” not “petitioner,” following the quote. *Id.* (emphasis added). Third, he says that he is “honored and humbled *to serve them.*” *Id.* (emphasis added). Glogower plainly submitted the petition not for himself but for his clients, who remain anonymous. This is wholly inconsistent with the law and plainly fails to meet the requirements of KRS 63.030(1). The petition must be dismissed insofar as it is submitted anonymously.

Beyond Whites and Glogower, we know that Cameron French, Brett Darling, and a purported person with an indecipherable signature submitted their names “in support.” But support is not the same as signing a written petition as required by law. Moreover, neither French, Darling, nor the unidentified person submitted an affidavit. Accordingly, these “supporters” have not commenced an impeachment proceeding.

Which brings us to Jennifer Smith. Although Smith is a person who submitted a signed, written petition, she did not accompany the petition with an affidavit setting forth facts that warrant impeachment. This foundational requirement cannot be overlooked. An affidavit requires a person to swear under oath as to facts. Black’s Law Dictionary 49–50 (8th ed. 2004) (defining “affidavit” as a “voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths, such as a notary public”). This requirement prevents—or at least should prevent—most unfounded petitions for impeachment. After all, a person is

or trying to convince their colleagues to issue a grand jury subpoena. The Attorney General stands by his office’s recommendation and the grand jury’s decision to indict on those charges.

exposing himself or herself not only to paying costs to the targeted official pursuant to KRS 63.070(1), but to criminal penalties for contempt, perjury, or false swearing for making statements that the person does not actually believe. *See, e.g.*, KRS 6.070; KRS 523.020; KRS 523.030; KRS 523.040.

The page signed by Smith states “Article I and II,” and she signed it. It contains a notary acknowledgment. But details and form matter. An affidavit is a document “made on personal knowledge,” setting forth “facts as would be admissible in evidence,” and showing “affirmatively that the affiant is competent to testify to the matters stated therein.” *See* CR 56.05; *see also* CR 43.13. Smith’s signature page fails this test.

What is meant by “Article I and II” on Smith’s signature page? Is Smith swearing, *under oath*, that everything within those articles is true? That she has personal knowledge of all of those assertions? How could she? Although the Attorney General does not personally know the identity of any grand juror, it is not a stretch to eliminate Smith, an apparent resident of McCracken County, from having served on a Jefferson County grand jury. Therefore, Smith cannot swear to personal knowledge of what transpired in the grand jury proceeding because she plainly has no first-hand information. Moreover, it stretches credulity for Smith to swear, *under oath*, to the purported fact (not opinion) that the Attorney General allegedly “permitted and supported” an organization “to recruit, aid and abet persons who went to the Capitol to engage in felonious acts of destruction and violence,” or that he allegedly “supported the efforts to goad, encourage, and fund the attacks on the

Capitol and failed and refused to notify the FBI or other authorities who could have prevented the murders and damage.” (Pet. at 4.) And is Smith asserting as fact, *under oath*, that the Attorney General has “[n]o legitimate reason” for his decision to join an amicus brief when he adopts the same position adopted by three Justices of the Pennsylvania Supreme Court and four Justices of the United States Supreme Court in a case still pending? (Pet. at 5.) Is Smith really swearing, *under oath*, to these alleged facts?

The requirements of KRS 63.030(1) clearly have not been met. What is clear is that the law requires the person submitting such a petition to sign it “by himself” and accompany the petition with “his own affidavit.” KRS 63.030(1). The petitioners’ failure to comply with these foundational requirements mandates dismissal.³

II. Article I fails to demonstrate any impeachable conduct.

A. It is time to set the record straight.

The grand jury, “itself a bulwark of freedom specifically recognized by the United States Constitution, is deeply embedded in the philosophy of human rights, dating back to early English law.” *Branzburg v. Meigs*, 503 S.W.2d 748, 751 (Ky. 1971). It “is an inquisitorial and accusing body.” *Matthews v. Pound*, 403 S.W.2d 7, 9 (Ky. 1966). The grand jury “is not an arm of the police,” but “an instrument of the people, which on one hand insulates citizens from over-zealous prosecution, yet on

³ Should the Committee not dismiss on these grounds, the Attorney General requests factual findings that identify how the requirements of KRS 63.030(1) have been met. Specifically, the Attorney General is entitled to know the identity of the petitioner(s) in this matter and what facts they assert on personal knowledge. Until and unless these statutory and constitutional due process matters are resolved, the Committee has no legal authority to do anything other than dismiss the petition.

the other hand has broad power to investigate criminal activities and other matters detrimental to the public interest.” *Branzburg*, 503 S.W.2d at 751.

So what is it that should be set straight? Plenty. In Kentucky, a person may be held to answer for a felony only upon nine grand jurors voting to indict. *See* Ky. Const. §§ 12, 248. Neither the Attorney General nor a Commonwealth’s Attorney has the power to indict a person. *See* Ky. Const. § 12.

The grand jury is “an agency of neither the court nor the prosecutor, but an independent agency of constitutional origin.” *Hoskins v. Maricle*, 150 S.W.3d 1, 18 (Ky. 2004). The grand jury’s duty is to inquire into every offense that comes to the attention of *any* grand juror and of which *any* grand juror has knowledge. RCr 5.02. The “court shall swear the grand jurors and charge them to inquire into every offense . . . for which an indictment or information has not been filed, *or other offenses which come to their attention or of which any of them has knowledge.*” RCr 5.02 (emphasis added). As a special prosecutor, neither the Attorney General nor anyone representing his office is typically present at the beginning of a grand jury’s term to ensure that the court adequately instructs a grand jury. Rather, we take it on faith that it happens, including here. The rule plainly required a Jefferson Circuit Court Judge to instruct the grand jury of its duties, and no one has ever claimed that the judge did not.

The three anonymous grand jurors and Glogower have continually blamed the Attorney General for perceived shortcomings. But what about the grand jurors’ responsibility—while the grand jury was empaneled and receiving evidence—if they

thought a crime was committed or if they wanted more information? Each grand juror received the *Grand Jury Handbook* that further explains this process, including his or her role.

The Jefferson County *Grand Jury Handbook* makes clear that “[a]fter hearing testimony from the victim, the police or other witnesses, the Grand Jury may decide that there are other witnesses or evidence it needs in coming to a decision. By majority vote, the Grand Jury may request that subpoenas be issued for additional witnesses or evidence.”⁴ *Grand Jury Handbook* at 8, attached as Exhibit 3. Grand jurors are even encouraged to talk with fellow jurors about other evidence that they believe may explain the charges against a subject, and if a majority of the grand jurors agree, they may “have the foreperson notify the Commonwealth’s Attorney to subpoena the necessary person or information.” (*Id.* at 15; *see also* RCr 5.06). Accordingly, any suggestion by the anonymous grand jurors that the grand jury was somehow barred from hearing from any witnesses it wished is contrary to the rules and processes for conducting grand juries throughout the Commonwealth. In fact, the Office’s special prosecutors advised the grand jury that “if you all have something that you want to see, write it down, and then we can address that. So just keep track

⁴ The handbook also makes clear that “[t]he Grand Jury is an independent accusatorial and investigative body,” but that “individual Grand Jurors are not authorized to conduct an investigation; all actions taken by the Grand Jury must be as a group.” *Grand Jury Handbook* at 13. Importantly, because the grand jury acts as a body, “[a]ll jurors have an equal voice in determining whether there is sufficient evidence to believe the accused committed the crime charged.” (*Id.*; *see also* Ky. Const. § 248 (requiring 9 of the 12 to concur in an indictment); KRS 29A.200 (same)). And as important, no one grand juror or minority of the jury, such as those unnamed petitioners here, has the right to speak for the grand jury.

of something that you haven't seen that you want to see." See Grand Jury Recording Sept. 21-3R at 00:14-00:35.

Simply put, the grand jury had the right and the power to ask for more evidence, see RCr 5.06, and ultimately to bring any charge it deemed appropriate.

This is not merely theoretical. The anonymous grand jurors served for weeks before the Attorney General's Office of Special Prosecutions made its presentation. One of the anonymous grand jurors declared that by the time the Taylor case was brought to the grand jury, the group was well-trained and capable of doing the necessary work.

The second grand juror said the Taylor case wasn't the hardest case they saw during their service in September. Because it came later in the month of their grand jury term — Sept. 21-23 — he said they felt prepared to tackle it. "By the time we got to this one, we felt like we could really go in and look at what we had been trained to do and be able to come out of it and give the city and the county what they asked for, as much justice as we could," he said.⁵

The anonymous grand jurors claim that evidence was withheld. What evidence? The presentation in this case was one of the longest grand jury presentations in Kentucky history. Glogower has said that most grand jury presentations take 15 minutes and that this one was an anomaly due to the "plethora" of evidence presented.⁶ Did the three anonymous grand jurors request any subpoenas be issued? Did they review the *Grand Jury Handbook*? Did the grand jurors invoke

⁵ Tessa Duvall and Lucas Aulbach, *2 grand jurors in Breonna Taylor case say charges should have been filed against other Louisville officers*, Courier Journal (Oct. 29, 2020), available at <https://tinyurl.com/yygovefv> (last visited Jan. 23, 2021).

⁶ See Keturah Herron & Kevin Glogower, *My Old Kentucky Podcast*, available at <https://myoldkentuckypodcast.podbean.com/e/keturah-herron-and-kevin-glogower/> (last visited Jan. 28, 2021).

their right to exclude the prosecutors from the room while questioning witnesses? *See* RCr 5.02.

Finally, did the three anonymous grand jurors attempt to convince their fellow grand jurors that additional charges were warranted? The Attorney General does not know. His prosecutors followed the law and excused themselves from the room during deliberations.

The grand jury process has long been protected from disclosure as a matter of public policy and criminal procedure. But in the Taylor case, once discharged, the anonymous grand jurors sought and received an order permitting them to speak freely. They have chosen to do so through Glogower. They may be able to use Glogower as a curtain for purposes of discussing their grand jury experience and expressing their displeasure with the outcome of the Taylor case. But they cannot hide behind Glogower or anyone else to seek impeachment of a duly elected constitutional officer.

B. The allegations regarding the grand jury fail to describe any misdemeanor that would lead to impeachment.

The events that led to the need for a grand jury presentation were tragic. But the Attorney General's job is to look at all cases, even the hard ones, even the tragic ones, with sober vision and follow the law. He did, and his office—through its seasoned career prosecutors—made recommendations to the grand jury accordingly.

As noted, the anonymous persons behind the petition have been on record for months expressing their disagreement, not merely with the way the case against the officers involved in the shooting was presented, but also with the public statements

made by Attorney General Cameron. Because the anonymous grand jurors apparently did not like the result of the proceeding,⁷ and because the Attorney General made statements that they believe were inaccurate, they ask the House of Representatives to impeach him and bar him from ever holding public office. In this way, the three unnamed citizens and their lawyer seek to reverse the choice of the 823,346 Kentuckians who exercised their fundamental right to vote for the Attorney General in 2019. But to do so, they must show impeachable conduct. In Kentucky, that means they must prove a misdemeanor in office. Ky. Const. § 68. This they cannot do.

The petitioners casually reference KRS 522.020(b), the official misconduct statute. They appear to allege in conclusory fashion that the Attorney General refrained from performing some duty, presumably seeking a homicide charge. But this allegation fails as a matter of law.

The reasoned judgment of the more than 100 years of career prosecutorial experience in the grand jury room—supported and approved by the Attorney General—was that it would have been unreasonable and unethical for the prosecution to seek a homicide charge.⁸ The Office of the Attorney General, through its prosecutors and criminal investigators, presented a thorough case to the grand

⁷ Note that none expressed their concerns to the special prosecutors during the presentation.

⁸ Keep in mind, well before any grand jury presentation, a number of Kentucky attorneys and legal experts explained that homicide charges against the police officers were unlikely due to self-defense laws. *See, e.g.,* Andrew Wolfson, *Police officers should not be charged with Breonna Taylor's death, criminal law experts say*, Courier Journal (July 29, 2020), available at <https://tinyurl.com/yyrjrayf> (last visited Jan. 28, 2021); Dylan Love, *Experts: Obstacles to charging police in Breonna Taylor case*, ABC News (Aug. 4, 2020), available at <https://tinyurl.com/y4dkjt4n> (last visited Jan. 28, 2021).

jury. The undisputed fact is that the officers involved did not initiate the shooting in the Taylor residence. They returned fire after Breonna Taylor's boyfriend, Kenneth Walker, opened fire, shooting one officer in the femoral artery. Walker *admitted* that he opened fire first. Kentucky's justification laws were literally read to the grand jury while the statutory language was projected on a wall. As the now-public recordings demonstrate, the grand jury actively listened, asked questions, and performed its duty. Upon completion of the presentation, the Office of the Attorney General made a recommendation to the grand jury, and the grand jury voted to follow that recommendation.

Kentucky, like every other state, recognizes the principle of prosecutorial discretion. *See Flynt v. Commonwealth*, 105 S.W.3d 415, 424 (Ky. 2003) (stating that it is “beyond dispute that the executive branch’s prosecutorial function *includes* ‘the decision whether or not to prosecute, and what charge to file or bring before a grand jury’”) (emphasis in original). The petition asserts that the Attorney General failed to perform a duty that he was allegedly required to perform. Apparently, that duty was to seek a homicide charge. But the allegation is legally wrong. A prosecutor does not have a legal duty to seek a charge that he or she believes is not supported by the facts and law. Therefore, as a matter of law, the petitioners have failed to allege any impeachable conduct. If the petitioners’ theory were given any credence, it would weaken the bulwark of prosecutorial discretion.

Members of the public—including the three grand jurors—may well feel frustration, sorrow, anger, and a range of other emotions about the events that

unfolded on March 13, 2020. They are free to believe that the criminal law should offer more. But the Attorney General enforces the laws passed by the General Assembly.

The Attorney General will continue to stand for the rule of law, and he and his Office will apply it without fear or favor. Even in the face of the death threats the Attorney General receives. Even in the face of the calls that someone is going to burn down the office while we work. Even in the face of the bigots who send emails to the Attorney General calling him the “N” word, Uncle Tom, and Oreo. Even in the face of those who impugn the character of some of the finest career public servants the Commonwealth has ever known, all of whom have had the integrity they built over decades of exemplary professionalism called into question. Even in the face of those who employ fear tactics, like coming to another person’s home and occupying his property in an attempt to intimidate. We will not be swayed by any of this, lest we take our eye off the job Kentuckians elected Attorney General Cameron to do.

On the same day the impeachment petition was filed, the Office of the Attorney General arrested a Scott County man for 100 counts of possession of matter portraying a sexual performance by a minor and 30 counts of use of a minor in a sexual performance under 16 years of age. That is the kind of work this Office and this Attorney General will continue to do, and a frivolous attack like this impeachment petition will not stop us.

III. The petitioner's false allegations related to the tragic events at the Capitol are abhorrent and contemptuous.

Without any factual support, one petitioner states that the Attorney General “permitted and supported” a group of which he is part “to recruit, aid and abet persons” who caused the tragic events at the United States Capitol on January 6, 2021. (Pet. at 4.) The petitioner further alleges that the Attorney General “supported the efforts to goad, encourage, and fund the attacks on the Capitol.” *Id.* This allegation is false, beyond the bounds of decency, and contemptuous. Above all else, it is emblematic of the axiom that while a person may be entitled to her own opinions, she is not entitled to her own facts.⁹

Yes, the Attorney General serves on the executive board of the Republican Attorneys General Association (“RAGA”). The policy arm of RAGA is an organization called the Rule of Law Defense Fund (“RLDF”). Apparently, at some point prior to January 6, 2021, RLDF staff authorized a robocall to encourage individuals to attend a rally at which former President Trump spoke. Media reports indicate that the robocall encouraged individuals to “march to the Capitol building and call on Congress to stop the steal. We’re hoping patriots like you will join us to continue to fight to protect the integrity of our elections.”¹⁰ And that is where the factual accuracy of the Petitioner’s allegations end.

⁹ This portion of the petition closely tracks a press release issued by the Kentucky Democratic Party on January 9, 2021.

¹⁰ Morgan Watkins, *US Capitol riot: Daniel Cameron says he was unaware of robocall linked to GOP AGs group*, Courier Journal (Jan. 11, 2021), available at <https://tinyurl.com/y67b7na4> (last visited Jan. 28, 2021).

Since this robocall came to light, it has been *en vogue* for left-leaning politicians and groups to call for resignations, impeachments, investigations, and disbarments of Republican attorneys general.¹¹ On cue, Smith obliged. But for what reason? Is it the content of the call, which urged individuals to protest in our nation's capital city? That happens every day and is protected under the First Amendment to the United States Constitution. No, it is the political opportunity that results when the robocall is viewed against the terrible events that unfolded that day.¹²

Thankfully, we can set aside any judgment calls and focus on the facts. Before word of the robocall circulated and before the Attorney General even knew of its existence, he had condemned the actions taking place at the Capitol.



Then, as news of the robocall was reported, the former executive director of RAGA issued the following statement:

¹¹ See, e.g., Democratic Attorneys General Association website post (Jan. 22, 2021), available at <https://dems.ag/icymi-gop-ags-under-pressure-regarding-capitol-attack/> (last visited Jan. 28, 2021).

¹² Even The Washington Post agreed that the robocall did not advocate violence or suggest that protestors should storm the Capitol. Meg Kinnard, *Republican AGs group leader quits over call pushing protests*, The Washington Post (Jan. 11, 2021), available at <https://tinyurl.com/y5yqatsy> (last visited Jan. 28, 2021).

The Republican Attorneys General Association and Rule of Law Defense Fund had no involvement in the planning, sponsoring, or the organization of yesterday's rally. *No Republican AG authorized the staff's decision to amplify a colleague speaking at the rally.* Organizationally and individually, we strongly condemn and disavow the events which occurred. Yesterday was a dark day in American history and those involved in the violence and destruction of property must be prosecuted and held accountable.¹³

Moreover, the attorney general who chairs RLDF told a media outlet that the decision to conduct the robocall was made by staff alone and was unauthorized: "I was unaware of unauthorized decisions made by RLDF staff with regard to this week's rally. Despite currently transitioning into my role as the newly elected chairman of RLDF, it is unacceptable that I was neither consulted about nor informed of those decisions."¹⁴

And, most importantly, the Attorney General has flatly stated that he had no knowledge or involvement in the robocall.¹⁵ When asked whether he was aware of the call, the Attorney General replied: "No, I was not aware of those. I think other organizations that were specific to that robocall made it clear that none of the attorneys general were aware of that robocall."¹⁶ Likewise, the Attorney General's

¹³ KVUE Staff, *Report: Republican AGs group sent robocalls urging protesters to the Capitol; officials insist they did not know*, KVUE ABC (Jan. 11, 2021), available at <https://tinyurl.com/y6xmgun3> (last visited Jan. 28, 2021).

¹⁴ Kim Chandler, *Alabama AG asks review of his GOP group's rally involvement*, Fox 10 News (Jan. 9, 2021), available at <https://tinyurl.com/y6dj8796> (last visited Jan. 28, 2021).

¹⁵ Morgan Watkins, *US Capitol riot: Daniel Cameron says he was unaware of robocall linked to GOP AGs group*, Courier-Journal (Jan. 11, 2021), available at <https://tinyurl.com/y67b7na4> (last visited Jan. 28, 2021).

¹⁶ See Press Conference, *Attorney General Daniel Cameron Announcing a New Statewide Human Trafficking Awareness Campaign*, at 30:40, available at <https://tinyurl.com/y59lmmz3> (last visited Jan. 28, 2021).

communications director is on the record as stating that “Attorney General Cameron had no involvement in RLDF’s decision.”¹⁷

The petitioner has not, and cannot, come forward with any evidence that suggests the Attorney General approved, or even knew of, the robocall prior to its issuance, much less that he incited or supported insurrection and violence. The petitioner’s false charges and arguments should be rejected in the strongest possible terms.

IV. Petitioner’s II(B) claim regarding misuse of funds is unintelligible.

Petitioner’s II(B) claim is hard to follow. Somehow, somehow, the allegation goes, taxpayer funds have been misspent. The irony should not be lost in light of this baseless, politically driven petition that is needlessly costing taxpayer funds.

The unintelligible nature of petitioner’s II(B) claim makes it difficult to address with any precision or detail. The petition does not list any particular legal action, brief, or argument. Notwithstanding this, what follows is our attempt to give the Committee the information it needs to dismiss the claim (assuming the Committee decides to address the merits of the petition at all given the procedural defects addressed above). Although the petitioner’s claim is baseless and should be dismissed, the Attorney General welcomes this opportunity to inform the public of the important work done within his Office and the true nature and importance of certain claims raised in the past electoral season.

¹⁷ Morgan Watkins, *US Capitol riot: Daniel Cameron says he was unaware of robocall linked to GOP AGs group*, *Courier-Journal* (Jan. 11, 2021), available at <https://tinyurl.com/y67b7na4> (last visited Jan. 28, 2021).

The Attorney General is the chief law officer of the Commonwealth. KRS 15.020. As such, the Attorney General is charged with representing the Commonwealth before all courts, “in or out of the state,” in matters “in which the Commonwealth has an interest.” *Id.*

One way the Attorney General represents the Commonwealth’s interest is by submitting amicus curiae briefs in cases throughout the nation. The phrase “amicus curiae” means “friend of the court,” and an amicus brief is submitted by a person who is not a party to the case. The practice of submitting an amicus brief goes back at least two hundred years. In fact, it is believed that Kentucky’s own Henry Clay submitted the first amicus brief to the United States Supreme Court in *Green v. Biddle*, 21 U.S. (8 Wheat.) 1 (1823), a matter involving a land dispute between Kentucky and Virginia.

Amicus briefs have been recognized for their value to courts when issuing a decision. Attorneys general often submit amicus briefs, and the Supreme Court “cares deeply about the states’ views.” National Association of Attorneys General, *State Attorneys General Powers and Responsibility* 478 (4th ed. 2018). After all, “United States Supreme Court decisions directly affect attorney general offices’ ability to enforce state laws and defend governmental officials’ conduct.” *Id.* at 476. In fact, amicus briefs from state attorneys general are so central to United States Supreme Court litigation that the Court does not even require attorneys general to seek permission to file the brief. See Supreme Court Rule 37(4).

The Attorney General is not alone among his colleagues in submitting amicus briefs. As explained by the nonpartisan National Association of Attorneys General (“NAAG”), “Attorneys general often submit amicus briefs in a wide range of cases where they have an interest in the outcome, especially when the result of the case could impact their own jurisdiction.”¹⁸ As a member service, NAAG even has a Center for Supreme Court Advocacy, and one of its stated goals is “providing amicus brief support” to attorneys general.¹⁹

This brings us to what we assume is the substance of petitioner’s meritless claim—namely, that taxpayer funds were misspent to create doubt about Pennsylvania’s electoral process this year—and to why the allegation is patently wrong.²⁰ The Attorney General joined two briefs that advocated a simple premise based in law: state legislatures, not the courts, are charged with establishing the rules that govern elections. Surely this body agrees that the Commonwealth has an interest in seeing that the General Assembly’s powers are not eroded and that the federal and state constitutional guarantee of legislative control of elections is worth defending.

Two provisions of the United States Constitution provide state legislatures with exclusive authority over establishing procedures for the election of United States

¹⁸ See NAAG website, available at <https://www.naag.org/issues/antitrust/attorney-general-amicus-briefs/> (last accessed Jan. 28, 2021).

¹⁹ See NAAG website, available at <https://www.naag.org/our-work/naag-center-for-supreme-court-advocacy/> (last accessed Jan. 28, 2021).

²⁰ A quick note on what this petition cannot be about. In December, much was made of a lawsuit brought in the United States Supreme Court by Texas against Pennsylvania, Georgia, Michigan, and Wisconsin. See *Texas v. Pennsylvania*, No. 20O155. The Supreme Court dismissed the action on December 11, 2020. The Attorney General did not join in or file any brief in that case.

President, Senator, and Representative. With respect to the presidential election, the Constitution provides:

Each State shall appoint, in such Manner *as the Legislature* thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

U.S. Const. art. II, sec. 1, cl. 2 (emphasis added).

Second, the Constitution provides that the “Times, Places and Manner of holding Elections for Senators and Representatives *shall be prescribed in each State by the Legislature thereof*; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.” U.S. Const. art. I, sec. 4 (emphasis added).

As these provisions make clear, with only minor exceptions,²¹ the federal Constitution leaves to state legislatures, and only state legislatures, the power to create the laws that govern elections for United States President, Senator, and Representative. The Supreme Court has indicated as much. For example, in *McPherson v. Blacker*, 146 U.S. 1, 27 (1892), the Court wrote that the Constitution “leaves it to the legislature exclusively to define the method” of appointing presidential electors. *See also Bush v. Gore*, 531 U.S. 98, 104 (2000) (recognizing *McPherson*’s statement that “the state legislature’s power to select the manner for appointing electors is plenary”). Proposals to change state legislative control over the

²¹ For example, pursuant to its power granted by the Constitution, Congress has established a nationwide date for the election, but the method of choosing the manner of the election remains with state legislatures. *See* 2 U.S.C. §§ 1, 7; 3 U.S.C. § 1.

method of presidential election have failed in each instance. *See McPherson*, 146 U.S. at 34–35. So, in the disputed 2000 presidential election, the Supreme Court explicitly recognized the “Constitution’s design to leave the selection of the President to the people, through their legislatures.” *Bush*, 531 U.S. at 111.

The Kentucky Constitution also establishes legislative control of election processes. *See, e.g.*, Ky. Const. §§ 147, 148, 150, 153. Section 147 requires the General Assembly to pass laws for the registration of voters and to establish voting procedures for those who are “illiterate, blind, or in any way disabled.” Section 148 allows the General Assembly to set the hours of an election. Section 150 requires the General Assembly to pass laws relating to penalties for voter fraud. Section 153 provides that the “General Assembly shall have power to provide by general law for the manner of voting, for ascertaining the result of elections and making due returns thereof, for issuing certificates or commissions to all persons entitled thereto, and for the trial of contested elections.” The point is that the General Assembly has the exclusive power to establish election laws.²²

The process undertaken in Pennsylvania in 2020 was not in keeping with these constitutional guarantees. In October 2019, the Pennsylvania legislature passed a law allowing vote by mail. *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020). The law unambiguously required that mail-in ballots be received by election boards by 8:00 p.m. on election day, *id.* at 362, and the legislature refused to change the law

²² Kentucky law has been interpreted to permit the General Assembly to delegate some of this function to executive branch agencies and officials, such as the Board of Elections and the Secretary of State.

even after the pandemic struck. Certain elected officials, local election boards, the Pennsylvania Democratic Party, and others challenged the deadline in Pennsylvania state court. Ultimately, the Pennsylvania Supreme Court invalidated the legislatively set deadline and imposed its own judicially manufactured deadline, which was extended to three days post-election. *Id.* at 371-72. Moreover, any ballot received by this extended deadline was presumed to have been submitted by election day, even if there was no postmark. The vote in favor of doing so was 4-3.²³

The disappointed parties filed an application for stay with the United States Supreme Court, which would have reinstated the legislature's election-day deadline. On October 5, 2020, one month before the election, Kentucky and sixteen other states joined an amicus brief authored by Oklahoma that argued the Pennsylvania court's decision should be stayed to permit the legislatively created deadline to govern.

The states have important interests in enforcing the Election Day ballot receipt deadlines created by their legislatures. Amici also all share an interest in preventing courts from upending legislatively-enacted state election laws in this midst of an election. A stay is warranted to prevent last-minute judicial rewriting of state election laws, which sow confusion, chaos, and uncertainty in an already-tense election cycle.²⁴

In other words, the Attorney General stood up for the prerogative of the Kentucky General Assembly to set election laws as mandated by the United States

²³ The Supreme Court stayed the effect of an order by a Wisconsin-based federal judge who had similarly ordered an extended deadline for that state's primary. *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205 (2020).

²⁴ Brief of Amici Curiae of Oklahoma and 17 Other States in Support of Application to Stay the Mandate, available at: https://www.supremecourt.gov/DocketPDF/20/20-542/156786/20201005135718021_2020.10.05%20-%20Brief%20of%20Oklahoma%20et%20al.pdf (last visited Jan. 29, 2021).

Constitution and the Kentucky Constitution. On October 19, 2020, the Supreme Court split equally 4-4 on the stay request, which had the effect of denying it. Four days later, the same parties filed a petition for writ of certiorari with the Supreme Court, which is the technical term for asking the Court to review the case.²⁵ On November 9, 2020, three amicus briefs were submitted by state attorneys general. In total, seventeen attorneys general joined one of the three briefs, including Kentucky.

The brief joined by Kentucky began with its core message: “The Pennsylvania Supreme Court’s decision overstepped its constitutional responsibility, encroached on the authority of the Pennsylvania legislature, and violated the plain language of the Election Clauses.”²⁶ These are straightforward legal arguments. The brief does not contain the names Trump or Biden, and aside from listing the parties, it does not mention Republican or Democrat. In short, the “highly partisan political activities” alleged in the petition are nowhere in the amicus brief.

Common sense also demonstrates that the Attorney General’s decision to join the briefs was proper. The Pennsylvania high court voted 4-3 to extend the ballot-receipt deadline; the United States high court voted 4-4 against staying the decision. Thus, at this juncture, nearly half of the judges who have considered the matter agree with the Attorney General’s position. And, the Supreme Court must still decide

²⁵ Different standards govern the application for stay and the petition for writ of certiorari, and it is common for a losing party to petition for certiorari after a stay has been denied.

²⁶ Brief of the State of Missouri and Nine Other States as Amici Curiae in Support of Petitioners, available at: https://www.supremecourt.gov/DocketPDF/20/20-542/160113/20201109134744257_2020-11-09%20-%20Republican%20Party%20of%20Pa.%20v.%20Boockvar%20-%20Amicus%20Brief%20of%20Missouri%20et%20al.%20-%20Final%20With%20Tables.pdf (last visited Jan. 29, 2021).

whether to grant certiorari in the case (which would not affect the 2020 election but would bring much-needed clarity for future elections). The case has been “relisted” multiple times, which signals that the Supreme Court is seriously considering whether to take the case for review.

While the Supreme Court decides cases for the parties before it, its opinions also govern legal proceedings throughout the nation. Certainly this body wants the Attorney General to argue in favor of protecting its constitutional right to set the laws that govern elections.

V. Consider the source of the petition.

On January 18, 2021, Martin Luther King, Jr. Day no less, the Kentucky Democratic Party issued a statement that attempted to lecture a black man—the first ever elected to statewide office in Kentucky—on race.²⁷ The statement accused the Attorney General—who never personally appeared before the grand jury—of lying to the grand jury. Four days later, Anna Whites, an attorney who has represented the Kentucky Democratic Party, who served as a speaking surrogate for the Attorney General’s opponent, Greg Stumbo, in the 2019 election, and whose husband was once Greg Stumbo’s top political appointee, filed an impeachment petition. The petition is signed by Jennifer Smith, chair of the McCracken County Democratic Party. It is supported by Brett Darling, chair of the Bullitt County Democratic Party, and by

²⁷ The Kentucky Democratic Party should be mindful of the Governor’s recent comments calling certain individuals “terrorists” for showing up at his home, heckling him, making threats, and creating a vile visual image through effigy. He called on all leaders to denounce these individuals. Will the Kentucky Democratic Party denounce those who have shown up at the Attorney General’s home and those who have threatened to burn down his home and his office?

Cameron French, who worked for the Kentucky Democratic Party as a Deputy Field Organizer and was a Joe Biden Digital Field Organizer. The grossly partisan nature of the petition speaks for itself.

And finally, Glogower plods on. Of all people, he should know the importance of an independent special prosecutor.

CONCLUSION

Given the important work that you must confront during this short session, it is unfortunate that you have to waste your time on the petitioners' meritless claims. We respectfully ask that you enter an order of dismissal so that we may get back to doing the work that Kentuckians elected the Attorney General to do.

Respectfully submitted,



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Exhibit

1

IMPEACHMENT IN KENTUCKY

Informational Bulletin No. 176

**LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky**

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* * * * *

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IMPEACHMENT IN KENTUCKY

Prepared by
Anita Taylor

Edited by
Charles Bush

Informational Bulletin No. 176

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky
September, 1991

This report has been prepared by the Legislative Research Commission and paid for from state funds.

FOREWORD

In 1991, the General Assembly met in one of the longest extraordinary sessions in Kentucky history. Among other issues, the legislature faced a task which had not been necessary for nearly a century — the impeachment of a constitutional officer.

Although the General Assembly had conducted impeachments in the past, few records had been maintained, other than entries in the House and Senate Journals. As a result, staff spent months preparing procedural rules, forms, and other materials to assist the General Assembly in determining how to proceed.

This informational bulletin is designed to assist future legislatures in conducting impeachments, and to provide the public with a look into the process itself.

The procedural rules and many of the documents utilized during the 1991 impeachment have been included as Appendices, as a guide for those who may, in the future, find themselves faced with this responsibility.

Vic Hellard, Jr.
Director

The Capitol
Frankfort, Kentucky
September, 1991

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CHAPTER I

THE NATURE OF IMPEACHMENT

The removal of a public official from office through the process of impeachment is a grave matter, as it represents a repeal of the will of the people who have elected an individual to an office of public trust. Because it is a reversal of the inherent power of the people in a democratic society to choose those who govern, it is a power rarely exercised, and one which has fortunately been required in few instances in Kentucky's history.

Because impeachment has been such a rare occurrence in Kentucky, a shroud of mystery envelopes the process itself. There are many procedural questions for which answers are difficult to ascertain, and many constitutional issues which have been the subject of debate among those in government, academia, and the courts. Two of the major questions involved in impeachment relate to the types of conduct which are to be considered "impeachable" and whether the decisions reached by an impeachment tribunal are subject to judicial review.

Kentucky's 1891 Constitution closely mirrors the federal constitution in terms of its impeachment provisions. According to Section 68, the "Governor and all civil officers" are liable to impeachment by the House of Representatives and trial by the Senate. Although statutory provisions have been enacted to establish a mechanism for removing certain officers (See KRS 61.010 and 61.040) it is generally held that if a specific method of removal of a particular officer is prescribed by the Constitution, such as impeachment, that is the sole method of removal which may be utilized.¹

While it is fairly clear who is subject to impeachment, the question of what is impeachable conduct is more complex. Because impeachment is a power vested solely in the legislature, the general rule is that the definition of impeachable conduct is exclusively a matter to be determined by the legislature. The Kentucky Constitution prescribes impeachment as the remedy when a public officer has committed "misdemeanors in office," but that term does not have the same connotation as in the judicial sense. Rather "misdemeanor" in this context has been defined as any activity involving a breach of the public trust, or any act which can be construed as misfeasance or malfeasance.

Usually an officer is impeached as a result of criminal conduct, generally after an indictment has been lodged against the individual. It can be inferred from the language in Section 68 of Kentucky's Constitution that the framers envisioned that impeachment would be associated with some form of criminal conduct, as it provides that "the party convicted [in an impeachment trial] shall, nevertheless, be subject and liable to indictment, trial and punishment by law." (Ky. Const. §68). Thus, it is not necessary that an official charged with impeachable conduct must previously have been convicted or even indicted on a criminal charge.

The issue of whether decisions adjudicated by an impeachment tribunal are subject to judicial review has been one of great debate. It is clear from a review of various treatises and case law from other jurisdictions that the issue continues to resurface at both the state and federal levels. Some argue that the framers of the federal constitution surely did not envision the delegation of the impeachment power to the legislative branch as an absolute exception to the doctrine of judicial review, especially since any impeachment may involve political undercurrents as well as concern for the public good.

One of the more persuasive arguments for judicial review appears in Raoul Berger's *Impeachment: The Constitutional Problems*. In part, his arguments center around the theory that the grant of the impeachment power to the legislative branch does not authorize the expansion of its powers beyond those explicitly provided in the Constitution. Because of the evolving concept of what might constitute impeachable conduct, he argues that the legislative branch has the potential for expanding what the framers intended by determining what types of acts may fall within the realm of an impeachable offense. He also argues that the interests of the public in preserving the integrity of the separation of powers doctrine are best served by strictly observing the "strong American bias in favor of a judicial determination of constitutional and legal issues."²

However, the greater weight of authority appears to hold that there is no basis for judicial review of impeachment proceedings. In *Ritter v. United States*, the Court held that not only should there be no judicial review of the ultimate judgment of the Senate, but also that no judicial determination should be made as to whether particular offenses were "impeachable offenses."³

This issue was most recently considered in connection with the Arizona case of Governor Edwin Mechem. At the time of his impeachment, Mechem had not been tried in the courts. During the impeachment proceedings, Mechem made clear his intention to seek judicial relief, not only in the Arizona Supreme Court, but also in federal court. In *Mechem v. Gordon*,⁴ the Arizona Supreme Court ruled that the Arizona Senate had the power to determine the rules of procedure it would follow during the proceedings, a power emanating from the separation of powers clause of the Arizona Constitution. However, the court did appear to leave open the possibility that if the Senate had violated some constitutional requirement regarding the impeachment process, such as trying Mechem without Articles having been approved by the House of Representatives, the court would have the power to require the body to follow the provisions of the Constitution.

Another possible obstruction to judicial review of impeachment is the political question doctrine, which could preclude judicial determination of whether the legislature had correctly defined the scope of an impeachable offense due to lack of judicial standards. The political question doctrine basically holds that a question which is purely political in nature is nonjusticiable, or a question which courts will refuse to recognize.⁵ The major authority in the area of the political question doctrine appears to be *The Federalist* No. 65, by Alexander Hamilton.

Lastly, an *Arizona Law Review* article indicates that there has been no reported case in American history in which a court has actually reviewed and reversed either a House impeachment or a Senate conviction. In *Ferguson v. Maddox*, the Texas Supreme Court did review an impeachment decision, but it observed that the judgment of a court of impeachment can only be questioned insofar as it might exceed constitutional authority. The Court held that

[s]o long as the Senate acts within its constitutional jurisdiction, its decisions are final. As to impeachment, it is a court of original, exclusive, and final jurisdiction.⁶

CHAPTER II

IMPEACHMENT IN KENTUCKY

Constitutional Provisions

§66 Power of impeachment vested in House.

The House of Representatives shall have the sole power of impeachment.

§67 Trial of impeachments by Senate.

All impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the Senators present.

§68 Civil officers liable to impeachment; judgment; criminal liability.

The Governor and all civil officers shall be liable to impeachment for any misdemeanors in office; but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, trust or profit under this Commonwealth; but the party convicted shall, nevertheless, be subject and liable to indictment, trial and punishment by law.

§77 Power of Governor to remit fines and forfeitures, grant reprieves and pardons; no power to remit fees.

He shall have power to remit fines and forfeitures, commute sentences, grant reprieves and pardons, except in case of impeachment, and he shall file with each application therefor a statement of the reasons for his decision thereon, which application and statement shall always be open to public inspection. In cases of treason, he shall have power to grant reprieves until the end of the next session of the General Assembly, in which the power of pardoning shall be vested; but he shall have no power to remit the fees of the Clerk, Sheriff or Commonwealth's Attorney in penal or criminal cases.

§84 When Lieutenant Governor to act as Governor; not to preside at impeachment of Governor.

Should the Governor be impeached and removed from office, die, refuse to qualify, resign, be absent from the State, or be, from any cause, unable to discharge the duties of his office, the Lieutenant Governor shall exercise all the power and authority appertaining to the office of Governor until another be duly elected and qualified, or the Governor shall return or be able to discharge the duties of his office. On the trial

of the Governor, the Lieutenant Governor shall not act as President of the Senate or take part in the proceedings, but the Chief Justice of the Court of Appeals shall preside during the trial.

The Kentucky Constitution delegates to the General Assembly the authority to remove certain officers from office through impeachment by the House and subsequent conviction by the Senate. According to Section 66, the sole power of impeachment is vested in the House of Representatives, while the power to try impeachments is given to the Senate by Section 67. When sitting as triers of fact in an impeachment case, the Senators are to be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the Senators present (Ky. Const. §67).

Section 68 provides that the Governor and all civil officers shall be liable to impeachment for any misdemeanor in office. However, a judgment in an impeachment extends only to removal from office and disqualification from holding any office of honor, trust or profit under the Commonwealth. An individual removed from office through impeachment may still be subject to indictment, trial, and punishment in a court of law as a result of the conduct resulting in his impeachment. Section 77 of the Constitution prohibits the Governor from issuing a pardon to an impeached officer.

While the authority for the General Assembly to remove public officers from office by means of impeachment is found in the Kentucky Constitution, the more specific guidelines to govern the impeachment process are statutory. As previously discussed, impeachment is a two-part process, and the role of each chamber of the legislature is spelled out in Chapter 63 of the Kentucky Revised Statutes. The following is a procedural guide for conducting impeachments in Kentucky according to current provisions of the Kentucky Revised Statutes.

House of Representatives

KRS 63.020 Impeachment and removal by address.

Proceedings for impeachment or removal by address may be instituted by the House of Representatives without a petition from any person.

KRS 63.030 Petition for impeachment.

(1) Any person may, by written petition to the House of Representatives, signed by himself, verified by his own affidavit and the affidavits of such others as he deems necessary, and setting forth the facts, pray the impeachment of any officer.

(2) The House shall refer the petition to a committee, with power to send for persons and papers, to report thereon.

The House of Representatives has the responsibility for initiating the impeachment process, which may be done either upon receipt of a petition or on its own initiative (KRS 63.020). Any person may, by written petition, request the impeachment of any officer. The petition must be signed by the petitioner, verified by his own affidavit and the affidavits of others if he deems it necessary, and must set out the facts alleging that an impeachable offense has been committed by a public officer (KRS 63.030(1)). If such a petition is received by the House, it is then referred to a committee, which is then considered to have subpoena power, and which is to investigate the matter and report back to the full House (KRS 63.030(2)).

The House Impeachment Committee

The impeachment committee is to review the evidence to determine whether there is sufficient cause to institute formal impeachment proceedings. There are no statutory or constitutional requirements relative to number of members, political party affiliation, or other requirements. In the 1916 impeachment of McCreary County Judge J.E. Williams, a seven-member panel was appointed, and that arrangement was followed in the 1991 proceedings against Agriculture Commissioner Ward "Butch" Burnette.

There are no statutory or constitutional requirements that the proceedings of an impeachment committee be open to the public. While meetings of standing committees of the General Assembly and most other public bodies are required to be held in open session, under the provisions of the Open Meetings Law, there is an express exception allowed for committees of the General Assembly other than standing committees, which permits them to conduct their business in private (KRS 61.810(9)). During the Burnette impeachment, the role of the House Impeachment Committee was viewed as comparable to the function of a grand jury in the court system, and the meetings of that committee were not open to the public. However, the rules of procedure adopted by that committee did allow for the proceedings of the committee to be opened upon a majority vote of the members (See Appendix I). As provided in KRS 63.030(2), the impeachment committee is to have the power to compel witnesses and the production of papers.

The question as to whether the accused is to be allowed to appear before the impeachment committee turns on the case involved and the course the committee determines to follow. There is no statutory or constitutional provision governing this issue, although the statutes governing the Senate trial of an impeachment case require that the accused be summoned to appear by precept, so that he might have the opportunity to confront his accusers. During the 1916 Williams impeachment, the impeachment committee spent several sessions hearing testimony from some 33 witnesses, including the accused. However, in the Burnette case, the impeachment committee did not take testimony from any witnesses, relying instead upon the complete record of Burnette's trial in Franklin Circuit Court. It is important to note that in the Williams case, the impeachment had been initiated by a petition from residents in McCreary County, and he had not been indicted on criminal charges in the courts, so the needs of the impeachment committees in the two situations were somewhat different.

Report of Committee

Once the impeachment committee has completed its investigation, it then issues a report to the full House of Representatives, including a recommendation as to whether Articles of Impeachment should be returned and voted upon by the House. Approval of the report requires a majority vote of committee members, although majority and minority reports may be issued under House Rule 47. The report in the Williams case included a summary of the evidence, and also was in the form of a Majority and Minority Report. Each report was voted on separately by the House, with the majority report recommending impeachment ultimately being approved by the House. Approval of the report requires a majority vote of the House membership.

Preparation of the Articles of Impeachment

KRS 62.035 Articles of impeachment.

(1) If an impeachment is recommended by the committee of the House of Representatives to which it is referred, the committee shall draw up the articles of impeachment in accusation of the officer and submit the articles to the House with the recommendation for impeachment.

(2) The articles of impeachment shall state with reasonable certainty the misdemeanor in office for which impeachment is sought; and if there be more than one (1) misdemeanor, each shall be stated separately and distinctly.

KRS 63.035 governs the preparation of Articles of Impeachment. If the full House votes to adopt a committee report which recommends impeachment, Articles must be drafted. The Burnette impeachment committee offered with its final report House Resolution 40, which contained an Article of Impeachment as an attachment. However, in the Williams case, the Articles were prepared subsequent to the House vote on the committee report, by a group of five. It is interesting to note that in that case, the drafting committee included only two of the seven members of the original impeachment committee.

As required by KRS 63.030(2), the Articles must state with reasonable certainty the misdemeanor for which impeachment is sought, and if there are multiple misdemeanors, each is to be stated separately and distinctly.

Committee to Prosecute

KRS 63.040 Prosecution — Witnesses.

(1) If an impeachment is ordered by the House of Representatives a committee shall be appointed to prosecute it, and the committee chairman shall, within five (5) days, lay the impeachment before the Senate.

(2) The Senate shall appoint a day for hearing the impeachment. The accused shall be summoned by precept, issued by the clerk of the Senate, to appear on that day. The precept shall be served in person, or a copy left at his residence with a member of his family over the age of sixteen (16) years, together with a copy of the impeachment.

(3) The clerk of the Senate shall, at the instance of the chairman of the committee, or of the accused, issue process for the summoning of witnesses, and the production of books, papers, documents or tangible things. Process so issued shall be executed by peace officers or officers specially appointed by the Senate for that purpose in the same manner as similar process of courts. Upon disobedience to the process, the Senate may order the clerk to issue process for arresting the witnesses and seizing the books, papers, documents or tangible things. Disobedience may be punished in the manner provided for other witnesses before the General Assembly.

(4) A witness so summoned shall receive the same compensation, and have the same privilege in going, remaining and returning, as a witness in Circuit Court.

Once the House of Representatives has adopted Articles of Impeachment, the accused stands "impeached." However, that action alone does not remove the person from office, since the vote by the House is merely tantamount to an indictment. While the proceedings move to the Senate for trial, the role of the House is not over. KRS 63.040(1) requires that a committee of Representatives be appointed to go before the Senate to prosecute the Articles on behalf of the House. There is no statutory requirement that the prosecutors be the same individuals who served on the original impeachment committee appointed to conduct the initial investigation. Within five days of appointment of this new committee, the Chairman of the committee is required to lay the Articles of Impeachment before the Senate (KRS 63.040(1)).

The Senate

After the Articles of Impeachment have been laid before the Senate, that body adopts Rules of Procedure to govern the impeachment proceedings. The rules are adopted in the form of a resolution (SR 41 in the Burnette case), requiring approval by a majority of Senators voting. KRS 63.055 requires that the rules specify the amount of time a Senator may be absent before being disqualified from casting a final vote on guilt or innocence of the accused. Also, the Senate sets a date certain for beginning the proceedings, and sends a message to the House to that effect.

KRS 63.040 requires that the accused be summoned by precept, issued by the Clerk of the Senate, to appear on the day designated for the trial to begin. While similar to a summons, a precept is

an order of direction, emanating from authority, to an officer or body of officers, commanding him or them to do some act within the scope of their powers.⁷

The precept is to be served in person, or a copy left at the residence of the accused with a member of his family over the age of 16, along with a copy of the impeachment (KRS 63.040(2)).

Issuance and Service of Process

The Senate Clerk is charged with the duty to issue summons on direction of the chairman of the prosecuting committee or upon request of the accused. Process is to be served by peace officers specially appointed by the Senate for that purpose, in a manner similar to that used by the courts. Upon disobedience of the process, the Senate may order the Clerk to issue process for the arrest of the witness or seizure of the books or papers requested in the subpoena. Disobedience is punishable in the manner provided for other witnesses before the General Assembly (KRS 63.040(3)).

According to KRS 63.030(4), a witness summoned to appear before the Senate shall receive the same compensation, and have the same privileges in going, remaining, and returning as a witness in Circuit Court.

Senate Trial

When the Senate convenes to begin its deliberations, the presiding officer and every Senator present is required by KRS 63.050 to take the following oath or affirmation:

I do solemnly swear (or affirm) that I will faithfully and impartially try the impeachment against _____ and give my decision according to the law and evidence.

The President of the Senate sits as the presiding officer. According to Section 84 of the Kentucky Constitution, the Chief Justice of the Supreme Court presides if the Governor is being impeached.

Upon convening and administration of the oath, the accused is given the opportunity to enter his plea to the Articles of Impeachment, and the parties announce ready for trial. The witnesses for the Commonwealth are sworn, either individually or collectively. The House presents its case by examining each witness, who is then subject to cross-examination by the defense. The defense then presents its case, followed by closing arguments. The details as to time allowed for each phase of the proceedings, as well as other procedural matters may be spelled out in the Rules adopted to govern the impeachment trial.

At the conclusion of the trial, the Senate votes on each Article of Impeachment

separately in a roll call vote. No person shall be convicted absent the concurrence of two-thirds of the Senators present (Ky. *Const.* §67).

Judgment

If the accused is found guilty on any or all Articles, a judgment is entered to that effect. The judgment declares that the officer is removed from office, and may include a declaration that he also be disqualified from holding any office of honor, trust, or profit under the Commonwealth of Kentucky. Costs of the proceedings may be charged to the parties, as provided in KRS 63.070 and 63.075.

CHAPTER III

HISTORICAL OVERVIEW OF KENTUCKY IMPEACHMENTS

1803 — Thomas Jones, Surveyor of Bourbon County

While most historical accounts cite only two impeachments in Kentucky prior to 1991, research has unearthed another impeachment of which little is known. In 1803, Thomas Jones, Surveyor of Bourbon County, was impeached for overcharging the state for work done, for failure to perform his duties, and for surveying the wrong tracts of land.

Although Jones resigned during the Senate trial, the members of the tribunal determined that his resignation did not terminate their authority, and continued the case. Jones was eventually found guilty of five of twenty-two charges and was ordered perpetually excluded from office. He was also ordered to pay the costs of the proceedings. Probably the most significant thing about the Jones impeachment was that the Senate actually empaneled a jury to determine the facts for the Senate. This is the only state impeachment case in which such a jury was summoned.⁸

1888 — "Honest Dick" Tate, State Treasurer

Probably one of the most infamous characters in Kentucky's history is "Honest Dick" Tate, a man who was elected to nine terms as Kentucky's State Treasurer before absconding with most of the funds in the State Treasury in March, 1888. Although he and the money were never found, he was impeached and tried in absentia in 1888 for his actions.

Among other offenses, Tate was charged with leaving and abandoning his office without providing for its administration, refusing to perform his duties, and the theft of more than \$197,964.66 of the state's money. In all, six Articles of Impeachment were returned against him, although two were eventually dropped. Tate was found guilty.

1916 — Judge J.E. Williams

Kentucky's third impeachment, in 1916, was conducted against McCreary County Judge J. E. Williams. The impeachment was instituted against Williams on the basis of a petition from several residents of McCreary County, who charged that he had committed numerous acts of misfeasance and malfeasance as county judge. Some twenty Articles of Impeachment were placed before the Senate, although several were eventually dismissed. Williams was tried on the remaining Articles, but was not removed from office, because the Senate failed to achieve the two-thirds vote required to convict on a single article.

1991 — Commissioner of Agriculture Ward "Butch" Burnette

During the 1991 Extraordinary Session, the House of Representatives initiated impeachment proceedings against Commissioner of Agriculture Ward "Butch" Burnette. While serving as Commissioner, Burnette had been convicted by a Franklin Circuit Court jury of complicity to theft by deception, a felony offense. The charge resulted from Burnette's having signed time sheets for a department employee reflecting that she had worked for the entire month of June, 1988, when, in the opinion of the jurors, she had not worked during that period. He was sentenced to a one-year prison term and fined \$1,500.

A single Article of Impeachment was adopted by the House of Representatives, charging that

the conduct reflected by his conviction resulted in a theft of funds belonging to the Commonwealth of Kentucky and thereby constituted a willful disregard of his oath of office; and pursuant to Section 68 of the Constitution of Kentucky, such conduct is a misdemeanor in office and constitutes an impeachable offense under the Constitution of the Commonwealth of Kentucky.

Just hours before the Senate trial was to begin, Burnette resigned, and the Senate, sitting as a Court of Impeachment, voted to terminate the impeachment proceedings. The Senate subsequently ratified that action with the passage of SR 55. However, the charges against Burnette were not dismissed. The following day, the House passed a resolution (HR 87) concurring in the termination, bringing the fourth impeachment in Kentucky's history to a close.

FOOTNOTES

1. *Commonwealth ex rel. Attorney General v. Howard*, 297 Ky. 488, 180 S.W.2d 415 (1944); *Lowe v. Commonwealth*, 60 Ky. 237 (1860).

2. Raoul Berger, *Impeachment: The Constitutional Problems* (Cambridge: Harvard U. Press, 1973) p. 121, quoting Louis L. Jaffe, "Standing to Secure Judicial Review: Public Actions," 74 Harvard Law Review 1265, (1961), p. 1302.

3. *Ritter v. United States*, 84 Ct.Cl. 293-300 (1936).

4. *Mecham v. Gordon*, 156 Ariz. 297, 751 P.2d 957 (1988).

5. Henry Campbell Black, *Black's Law Dictionary* (5th Edition, St. Paul: West Publishing Co., 1979), p. 1043.

6. *Ferguson v. Maddox*, 114 Tex. 85, 263 S.W. 888 (1924).

7. Black, p. 1059.

8. Professor John Rogers of the U.K. College of Law, who acted as Special Advisor to the House Impeachment Committee in the Burnette case, uncovered the account of the Jones Impeachment in P. Hoffer and N. Hull's *Impeachment in America, 1635-1805*, 72 (1984). Hoffer and Hull supported their account of the case by citing the Kentucky Senate Journal 23, 52-53, 58, 59, 60, 62 (Nov. 22, Dec. 5, 6, 7, 1803) and the [Frankfort] *Palladium*, Dec. 10, 1803: Hoffer and Hull, at 304.

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1916 House Journal.

1991 Senate Journal. (Extraordinary Session)

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Mecham v. Gordon, 156 Ariz. 297, 751 P.2d 957 (1988).

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APPENDICES*

Appendix I.	House Impeachment Committee Rules.
Appendix II.	House Committee on Impeachment - Final Report.
Appendix III.	House Resolution 40 With Article of Impeachment.
Appendix IV.	House Message to Senate.
Appendix V.	Transmittal of Impeachment Committee Records.
Appendix VI.	Receipt for Impeachment Committee Records.
Appendix VII.	Senate Message to House.
Appendix VIII.	Senate Resolution 41 - Rules.
Appendix IX.	Precept.
Appendix X.	Senate Resolution 55 - Termination.
Appendix XI.	House Resolution 87 - Concurrence in Termination.

*All materials included herein are taken from the record of the Burnette Impeachment.

Appendix I

IMPEACHMENT COMMITTEE RULES

1. MEETINGS

All meetings of the committee shall be held in executive session unless the committee determines to proceed upon particular matters in open session.

2. MEDIA COVERAGE

Any portion of the hearings open to the public may be covered by television broadcast, radio broadcast, still photography, or by any of such methods of coverage allowed by the Rules of the House.

3. COUNSEL

The Impeachment Committee may retain special counsel to advise it in all matters pertaining to the performance of its duties.

4. CLERK OF THE IMPEACHMENT COMMITTEE

The Impeachment Committee may appoint a Clerk who shall be the official custodian of all records, evidence, and other materials pertaining to the work of the committee. The Clerk shall maintain one complete set of original documents which shall constitute the record of the committee. The Clerk shall perform such other duties as the committee may direct.

5. SUBPOENAS

The Chair shall direct the issuance of subpoenas upon his own initiative or upon motion of a majority of the committee members.

6. QUORUM

For purposes of hearings held by the committee, a quorum shall consist of four (4) members of the committee.

7. RULES OF CHAIR

The Chair shall, when he deems appropriate, make rulings necessary for the fair and efficient conduct of committee proceedings. Such rulings shall control, unless overruled by a vote of a majority of the members present.

8. OATH OF WITNESSES

Witnesses called to testify before the committee shall, before giving their testimony, swear the following oath or affirmation:

"Do you solemnly swear (or affirm) that the testimony you are about to give in the matter of the impeachment of Ward "Butch" Burnette, shall be the truth, the whole truth, and nothing but the truth."

9. QUESTIONING OF WITNESSES

The Chair or his designee shall commence the questioning of each witness and may question a witness at any point during the appearance of the witness. Any member of the committee may also question a witness at any point during the appearance of the witness.

10. ANNOUNCEMENT OF OPEN MEETINGS

The Chair shall make public announcement of the date, time, place, and subject matter of any committee meeting open to the public as soon as practicable. Announcement on the floor of the House while in session shall constitute sufficient notice.

11. COMMUNICATIONS WITH COMMITTEE

There shall be no contact by the accused or his counsel with the committee members except through written communication directed to the Chair. Any such written communication shall become part of the record. This shall not preclude answers by the accused or his counsel to inquiries of the committee, which shall also be in writing.

12. PROCEDURES FOR HANDLING IMPEACHMENT INQUIRY MATERIALS

a. The Clerk of the committee shall at all times have access to and be responsible for all papers and things received from any source by subpoena or otherwise. Other members of the committee and committee counsel shall have access in accordance with the procedures hereafter set forth.

b. Certified copies of all records of judicial proceedings before the courts of the Commonwealth in the matter of Commonwealth v. Ward "Butch" Burnette, 89 CR 0126-2 and Burnette v. Commonwealth, 90 SC 204, including, but not limited to, pleadings, depositions, orders, video tapes, items of evidence deemed relevant, and documentation of evidence and

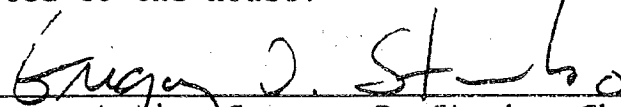
transcripts, appeals, orders, motions, and other evidence appropriate for consideration by the committee shall become subject to committee review upon being filed with the committee.

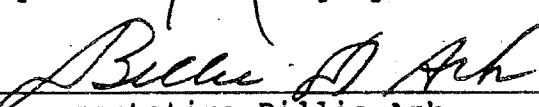
c. All items of evidence requested by the committee or submitted and accepted for review by the committee and any public records may be reviewed at any time by individual members of the committee when not meeting in session, unless the committee has, by majority vote, ruled otherwise with regard to a particular item.

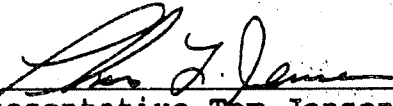
d. All items of evidence shall be directed to the Clerk of the Impeachment Committee or its counsel.

e. Before the committee is called upon to make any disposition with respect to the testimony or papers and things presented to it, the committee members shall have a reasonable opportunity to examine all testimony, papers, and things that have been obtained by the committee staff.

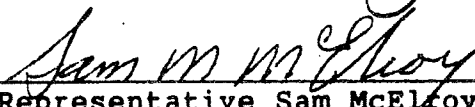
f. Only testimony, papers, or things that are included in the record will be reported to the House.



Representative Gregory D. Stumbo, Chair

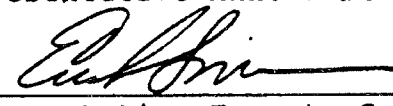

Representative Billie Ark


Representative Tom Jensen


Representative Albert Jones


Representative Sam McElroy


Representative Anne Northup


Representative Ernesto Scorsone

January 17, 1991

Appendix II

HOUSE COMMITTEE ON IMPEACHMENT

FINAL REPORT

On January 15, 1991, the Speaker of the House of Representatives of the General Assembly of the Commonwealth of Kentucky, in Extraordinary Session, appointed a committee of seven to investigate the matter of Commissioner of Agriculture, Ward "Butch" Burnette, and upon completion of its investigation to report its findings and recommendations to the House. The members included: the Gentleman from Larue 26, the Gentleman from McCracken 3, the Gentleman from Laurel 85, the Gentleman from Union 7, the Lady from Jefferson 32, the Gentleman from Fayette 75, and the Gentleman from Floyd 95 who served as Chairman. Upon their appointment, the members stood before the House of Representatives to take the oath of office, swearing to fulfill their duties as charged.

The committee has met from time to time in executive session. The committee adopted Rules of Procedure to govern its proceedings, appointed Professor John M. Rogers, University of Kentucky College of Law, Special Legal Advisor, W. Stephen Wilborn, Counsel, and Anita Taylor, Clerk of the Impeachment Committee, with responsibility of maintaining a record of the committee's actions, the security of evidence received and assisting counsel.

The committee issued subpoenas to Secretary of State Bremer Ehrler and George Russell, Executive Director of the State Board of Elections; John C. Scott, Clerk of the Supreme Court of Kentucky; and Janice Marshall, Franklin Circuit Clerk requesting the following documents:

A copy of the Certificate of Election of Ward "Butch" Burnette to the office of Commissioner of Agriculture and any other relevant information concerning his current status in that office;

A copy of all proceedings before any court of the Commonwealth, including, but not limited to, pleadings, depositions, orders, videotapes, items of evidence, and briefs as would relate to the case of Commonwealth of Kentucky v. Ward Burnette, 90 CR 0126-2 and Burnette v. Commonwealth, 90 SC 204.

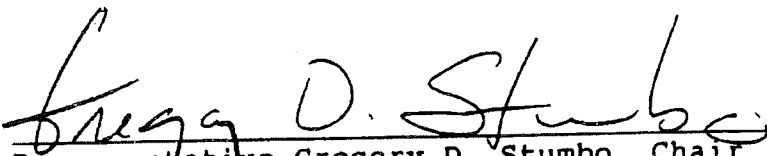
The subpoenas were continuing in nature, applicable to all items becoming available subsequent thereto.

The Committee chose to accept the judicial proceedings and resulting conviction as a valid basis upon which to believe that the conduct alleged did take place and the Committee found that such conduct is a sufficient basis on which to recommend that he be impeached.


Two complete records of the Impeachment Committee's actions, including copies of all evidence received are lodged in the office of the Committee Chairman, Room 306, State Capitol, for review by any member of the House.

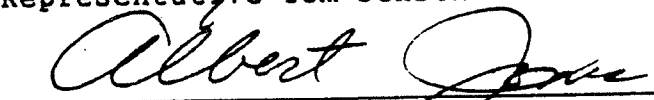
The committee hereby recommends that the House of Representatives of the General Assembly of the Commonwealth of Kentucky, in Extraordinary Session, accept this Final Report of the House Committee on Impeachment, that the Resolution and

Article of Impeachment attached hereto be adopted, and that the Article of Impeachment, accompanied with the original record of the Committee's actions, including the certified copies of all documents received by the Committee be laid before the Senate of the General Assembly of the Commonwealth of Kentucky as provided by law.



Representative Gregory D. Stumbo, Chair



Representative Billie Ark


Representative Tom Jensen


Representative Albert Jones


Representative Sam McElroy


Representative Anne Northup


Representative Ernesto Scorsone

January 23rd, 1991

Appendix III

IN HOUSE

SPECIAL SESSION 1991

HOUSE RESOLUTION NO. 40

WEDNESDAY, JANUARY 23, 1991

Representatives Gregory D. Stumbo, Tom Jensen, Billie D. Ark, Albert Jones, Sam M. McElroy, Anne Meagher Northup, and Ernesto Scorsone introduced the following resolution which was ordered to be printed.

A RESOLUTION laying before the House of Representatives an Article of Impeachment against Agriculture Commissioner Ward "Butch" Burnette.

WHEREAS, Commissioner Ward "Butch" Burnette was tried and convicted by the Franklin Circuit Court for a crime committed during his term as Commissioner, to wit:

Complicity to Theft by Deception over \$100, a felony in contravention of KRS 514.040 and KRS 502.020, in that he in the County of Franklin, Commonwealth of Kentucky, on or about June 20, 1988, and on or about July 16, 1988, with the intention of promoting or facilitating the commission of theft by deception, aided one Linda Campbell in committing the offense of theft by deception when he signed and approved time sheets submitted by Linda Campbell reflecting she had worked with the Department of Agriculture full time for the entire month of June, 1988, when he knew she had not been so employed and the time sheets reflecting such employment were false;

WHEREAS, Commissioner Burnette's conviction has been upheld by the Supreme Court of Kentucky, thereby exhausting his appeals in the Courts of the Commonwealth; and

WHEREAS, Commissioner Burnette's Motion for New Trial has not been granted and he has now begun serving his one-year sentence; and

WHEREAS, the House of Representatives chose not to

institute this impeachment inquiry until after Commissioner Burnette had exhausted his appeals in the Courts of the Commonwealth; and

WHEREAS, the duty of the House Impeachment Committee is to conduct an investigation to determine whether there is reason to believe Commissioner Burnette committed, during his term of office as Commissioner, an act that would warrant recommending that he be impeached; and

WHEREAS, the Committee believes commission of the crime of Complicity to Theft by Deception Over \$100, in contravention of KRS 514.040 and KRS 502.020 during Commissioner Burnette's term of office, is a reasonable basis upon which to recommend that Commissioner Burnette be impeached; and

WHEREAS, the Committee chose to accept the judicial proceedings and the resulting conviction of Commissioner Burnette as a valid basis upon which to believe the conduct alleged did take place;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

1 Section 1. The Article of Impeachment attached
2 hereto is approved as adopted.

3 Section 2. A committee, with appropriate staff,

1 shall be appointed by the Speaker of the House to
2 prosecute this Article before the Senate.

3 Section 3. The Chairman of the committee appointed
4 to prosecute the Article shall lay it before the Senate
5 within five (5) days as required by law, and shall
6 transmit a complete record of the Impeachment Committee
7 proceedings, including the original certified copies of
8 all documents received by the Committee pursuant to the
9 subpoenas issued.

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1 affirmed by the Supreme Court of Kentucky; the conduct
2 reflected by his conviction resulted in a theft of funds
3 belonging to the Commonwealth of Kentucky and thereby
4 constituted a wilful disregard of his oath of office; and
5 pursuant to Section 68 of the Constitution of Kentucky,
6 such conduct is a misdemeanor in office and constitutes an
7 impeachable offense under the Constitution of the
8 Commonwealth of Kentucky.

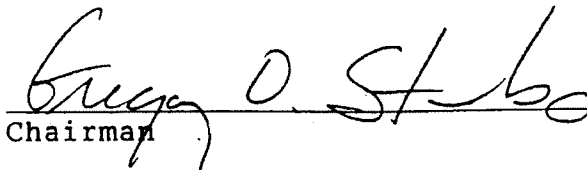
Appendix IV

HOUSE MESSAGE TO SENATE

January 28, 1991

To the Senate of Kentucky, Mister President:

In obedience to House Resolution 40, adopted by the House of Representatives on January 25, 1991, by a vote of 97/0, I appear before you, and in the name of the House of Representatives, and in the name of the Commonwealth of Kentucky, do impeach Ward "Butch" Burnette, Commissioner of Agriculture, of a misdemeanor in office, pursuant to Section 68 of the Kentucky Constitution, and do now present the Article of Impeachment, as approved by the House of Representatives, and in their name we demand that the Senate take order for the appearance of the said Commissioner of Agriculture, Ward "Butch" Burnette to answer said impeachment, and fix a day for the trial thereof. A complete record of the House Impeachment Committee proceedings, including the original certified copies of all documents received by the Committee pursuant to the subpoenas issued, is hereby transmitted to the Clerk of the Senate. The following members of the House of Representatives have been appointed to prosecute this Article before the Senate: Representatives Gregory D. Stumbo, Tom Jensen, Billie D. Ark, Albert Jones, Sam M. McElroy, Anne Meagher Northup, and Ernesto Scorsone.


Chairman

The said Article of Impeachment, as adopted by the House of Representatives, reported and presented on this date to the Senate is in words and figures as follows:

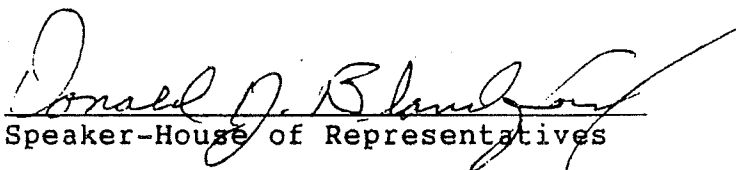
ARTICLE OF IMPEACHMENT

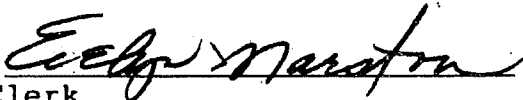
The Commonwealth of Kentucky, by the House of Representatives of the General Assembly, by virtue of the authority vested in it by Section 66 of the Kentucky Constitution and the laws of the Commonwealth, hereby charges Agriculture Commissioner Ward "Butch" Burnette through the following Article of Impeachment, to wit:

ARTICLE I

Ward "Butch" Burnette, was duly elected and qualified as Commissioner of Agriculture for the Commonwealth of Kentucky and continues to serve in that capacity; during his term of office, he engaged in conduct which resulted in his being charged with and convicted by a Franklin Circuit Court jury of Complicity to Theft by Deception over \$100, a felony in contravention of KRS 514.040 and KRS 502.020, in that he in the County of Franklin, Commonwealth of Kentucky, on or about June 20, 1988, and on or about July 16, 1988, with the intention of promoting or facilitating the commission of theft by deception, aided one Linda Campbell in committing the offense of theft by deception when he signed and approved time sheets submitted by Linda Campbell reflecting she had worked with the Department of Agriculture full time for the entire month of June, 1988, when he knew she had not been so employed and the time sheets reflecting such employment were false; thereafter, his

conviction was affirmed by the Supreme Court of Kentucky; the conduct reflected by his conviction resulted in a theft of funds belonging to the Commonwealth of Kentucky and thereby constituted a wilful disregard of his oath of office; and pursuant to Section 68 of the Constitution of Kentucky, such conduct is a misdemeanor in office and constitutes an impeachable offense under the Constitution of the Commonwealth of Kentucky.


Speaker-House of Representatives

Attest: 
Chief Clerk
House of Representatives

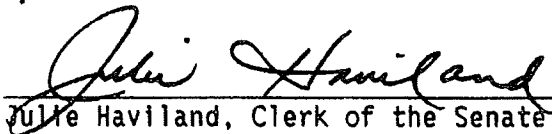
Appendix V

I, Anita Taylor, Clerk of the House Impeachment Committee, have, on this the 28th day of January, 1991, transmitted to the Clerk of the Senate a complete record of proceedings of the Impeachment Committee, including the original certified copies of all documents received pursuant to subpoenas issued by the Committee. These items include: Impeachment Outline; House Impeachment Committee Rules; Appointment of Impeachment Committee Clerk; Subpoena to Secretary of State Bremer Ehrler and George Russell, Executive Director of the State Board of Elections; Subpoena to John C. Scott, Clerk of the Kentucky Supreme Court; Subpoena to Janice Marshall, Franklin Circuit Court Clerk; original certified copies of the Supreme Court records in the matter of Commonwealth v. Burnette, 90 CR 0126-2 with videotapes, and Burnette v. Commonwealth, 90 SC 204; original certified copies of the Franklin Circuit Court records in the matter of Commonwealth of Kentucky v. Burnette, 89 CR 0126-2; original certified copies of documents relating to Ward "Butch" Burnette's election to and current status in the office of Commissioner of Agriculture; correspondence between the Honorable Gail Robinson and the Impeachment Committee; House Impeachment Committee Minutes; Final Report of Committee; materials distributed to the House of Representatives; House Resolution 40 ("B" Copy), with Article of Impeachment attached; and copy of roll call vote on HR 40.


Anita Taylor, Clerk
House Impeachment Committee

Appendix VI

I, Julie Haviland, Clerk of the Senate, have received on this the 28th day of January, 1991, a complete record of proceedings of the Impeachment Committee, including the original certified copies of all documents received pursuant to subpoenas issued by the Committee. These items include: Impeachment Outline; House Impeachment Committee Rules; Appointment of Impeachment Committee Clerk; Subpoena to Secretary of State Bremer Ehrler and George Russell, Executive Director of the State Board of Elections; Subpoena to John C. Scott, Clerk of the Kentucky Supreme Court; Subpoena to Janice Marshall, Franklin Circuit Court Clerk; original certified copies of the Supreme Court records in the matter of Commonwealth v. Burnette, 90 CR 0126-2 with videotapes, and Burnette v. Commonwealth, 90 SC 204; original certified copies of the Franklin Circuit Court records in the matter of Commonwealth of Kentucky v. Burnette, 89 CR 0126-2; original certified copies of documents relating to Ward "Butch" Burnette's election to and current status in the office of Commissioner of Agriculture; correspondence between the Honorable Gail Robinson and the Impeachment Committee; House Impeachment Committee Minutes; Final Report of Committee; materials distributed to the House of Representatives; House Resolution 40 ("B" Copy), with Article of Impeachment attached; and copy of roll call vote on HR 40.


Julie Haviland, Clerk of the Senate

Appendix VII



COMMONWEALTH OF KENTUCKY
STATE SENATE

January 29, 1991

The Honorable Donald J. Blandford
Speaker of the House of Representatives
Capitol
Frankfort, Kentucky 40601

Dear Mr. Speaker:

Pursuant to the Rules of the Senate, the Senate has resolved itself into a Court of Impeachment, and I hereby notify this honorable body that Ward "Butch" Burnette has been summoned by precept to appear on Wednesday, February 6, 1991, at 10 a.m. (EST) in the Senate Chamber for a trial of impeachment. I shall, at the instance of the House Committee Chair and at the instance of the Respondent, issue process for the summoning of witnesses and the production of such books, papers, documents, or tangible things as may be desired by the House Committee or the Respondent.

In accordance with the Rules adopted in Senate Resolution 41, floor privileges will be extended to senators, members of the House Committee and its counsel and staff, personnel of the Court of Impeachment, the Presiding Officer and counsel, the Respondent and counsel, and those with proper identification as issued by the Clerk of the Court of Impeachment.

With regards,

A handwritten signature in cursive script, reading "Julie Haviland".

Julie Haviland
Chief Clerk of the Senate
and Clerk of the Court of
Impeachment

cc: Rep. Greg Stumbo
Rep. Billie Ark
Rep. Tom Jensen
Rep. Albert Jones
Rep. Sam McElroy
Rep. Anne Northrup
Rep. Ernesto Scorsone

STATE CAPITOL

FRANKFORT 40601

Appendix VIII

IN SENATE

SPECIAL SESSION 1991

SENATE RESOLUTION NO. 41

TUESDAY, JANUARY 29, 1991

Senators Michael Moloney and Walter A. Baker introduced the following resolution which was ordered to be printed.

A RESOLUTION resolving the Senate as a Court of Impeachment and providing for the adoption of Rules of Procedure therefor.

WHEREAS, the House of Representatives has, during the present Extraordinary Session of the General Assembly of the Commonwealth of Kentucky, issued an Article of Impeachment against Ward "Butch" Burnette, Commissioner of Agriculture, which determined that he engaged in conduct which resulted in his being charged with and convicted of a felony, and appointed a committee to prosecute the Article of Impeachment before the Senate, the chairman of which did, within five days next after the impeachment was ordered, lay the Article before the Senate; and

WHEREAS, the Senate does now designate the day and hour to commence hearing the impeachment, and the Respondent, Ward "Butch" Burnette, shall be summoned by precept issued by the Clerk of the Senate to appear before the Senate on that date;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky:

1 Section 1. The Senate now resolves itself into a
2 Court of Impeachment for the purpose of hearing the
3 impeachment and designates Wednesday, February 6, 1991, at

1 the hour of 10:00 a.m. (EST) as the day and hour for the
2 hearing, and that the President of the Senate and the
3 members of the Senate shall take the oath prescribed by
4 KRS 63.050, and that the Clerk of the Senate shall make
5 proper record in the Journal of the names of all Senators
6 who take the oath.

7 Section 2. The Clerk of the Senate shall inform the
8 House of Representatives and the committee thereof
9 appointed to prosecute the impeachment, that the Senate
10 has resolved itself into a Court of Impeachment, that the
11 Clerk shall summon the Respondent by precept to appear on
12 that day and hour for the hearing, and that the Clerk
13 shall, at the instance of the committee chair and at the
14 instance of the accused, issue process for the summoning
15 of witnesses and the production of such books, papers,
16 documents, or tangible things as may be desired by the
17 committee or the Respondent.

18 Section 3. For the purpose of governing the
19 procedures at the impeachment hearing, there are hereby
20 adopted by the Senate the following rules:

21 RULES GOVERNING THE SENATE OF THE

22 COMMONWEALTH OF KENTUCKY

23 SITTING AS A COURT OF IMPEACHMENT

24 (1) Rules of Procedure

25 Except as otherwise provided, and when not in
26 conflict with these Rules, the Standing Rules of the

1 Senate shall apply, and the presiding officer shall retain
2 the authority to invoke the Rules of the Senate.

3 (2) Rules of Evidence

4 When not in conflict with these Rules or the Rules of
5 the Senate, the rules of evidence used in courts of
6 general jurisdiction in the Commonwealth shall serve as a
7 guide. However, variation from the rules of evidence may
8 be permitted, and reliable evidence admitted, subject to
9 the same being determined relevant, whenever the interests
10 of justice require.

11 (3) Floor Privileges

12 Senators; members of the House Committee and its
13 counsel and staff; personnel of the Court of Impeachment;
14 the Presiding Officer and counsel; and the Respondent and
15 counsel, and those with proper identification as issued by
16 the Clerk of the Court of Impeachment shall be permitted
17 within the Senate Chambers during the trial.

18 (4) Marshal of Court of Impeachment

19 The Court of Impeachment shall appoint a Marshal, who
20 shall be the Sergeant at Arms of the Senate, and an
21 Assistant Marshal.

22 (5) Clerk of Court of Impeachment

23 The Clerk of the Senate shall serve and be referred
24 to as the Clerk of the Court of Impeachment and shall
25 administer the oath to all witnesses, keep the Journal of
26 the Senate sitting as a Court of Impeachment, and perform

1 all other duties usually performed by the clerk of a court
2 of record in this Commonwealth. An Assistant Clerk may
3 also be appointed.

4 (6) Presiding Officer

5 When the Senate sits as a Court of Impeachment, the
6 President of the Senate shall preside, unless another
7 presiding officer is appointed.

8 (7) Eligibility of Senators

9 Each Senator shall, by virtue of his office, be
10 eligible to participate in the impeachment proceedings,
11 and no Senator shall be subject to disqualification except
12 as provided in Rule 8.

13 (8) Attendance

14 No member shall cast a final vote on the Article of
15 Impeachment on which the member has not heard a
16 substantial portion of the testimony and evidence or
17 reviewed the video tapes of those portions of the
18 testimony and evidence which the member did not hear.

19 (9) General Powers

20 The Senate shall have the power to compel the
21 attendance of witnesses; to enforce obedience to its
22 orders, precepts, summons, and judgments; to preserve
23 order; to punish in the manner prescribed by law contempt
24 of or disobedience of its orders, precepts, summons, or
25 judgments; and to make all lawful orders and rules as it
26 may deem necessary for the performance of its duties as a

1 Court of Impeachment.

2 (10) Immunity

3 The parties, which include the House Committee and
4 Respondent, shall not call Senators, members of the House
5 Committee, its counsel and staff, the Presiding Officer,
6 counsel, or staff of the Court of Impeachment or
7 Legislative Research Commission as witnesses, nor subpoena
8 their personal records or work papers.

9 (11) Representation

10 The House of Representatives shall be represented by
11 an appointed Committee and its counsel and staff. The
12 Respondent shall appear in person or by counsel.

13 (12) Pre-Trial Conference

14 Counsel for the parties may meet with the Presiding
15 Officer on his order or on motion by any party, at a time
16 set by him, to rule on preliminary motions, stipulate to
17 facts and exhibits, and address issues that will expedite
18 trial.

19 (13) Communications From Respondent

20 There shall be no communication, either directly or
21 indirectly, from the Respondent to any Senator unless it
22 is submitted, in writing, by counsel for the Respondent,
23 directly to the Clerk of the Court of Impeachment.
24 Communications shall be restricted to information which
25 would be admissible in a court of law. The Presiding
26 Officer shall rule on the admissibility of the

1 communication.

2 (14) Communications From Individuals

3 At the time the Senate resolves itself into a Court
4 of Impeachment, no individual, except another Senator,
5 shall communicate any information relating to the
6 impeachment to a Senator within the Senate Chambers.
7 Senators shall immediately report any communication
8 prohibited by this Rule to the Presiding Officer.
9 Violation of this Rule may be subject to punishment as
10 provided in Rule 9 and Rule 27.

11 (15) Appearance

12 (a) The Senate shall appoint a day for hearing the
13 impeachment. The day for hearing shall not be less than
14 seven days after the impeachment is received in the
15 Senate. The Respondent shall be summoned by precept,
16 issued by the Clerk of the Court of Impeachment, to appear
17 on that day. The precept shall be served in person along
18 with a copy of the impeachment and a copy of the Senate
19 Resolution adopting these Rules by the Marshal of the
20 Court of Impeachment, the Assistant Marshal, or an officer
21 of the Kentucky State Police. Return of service shall be
22 noted on the precept.

23 (b) The precept shall be issued at least seven days
24 before the day appointed for trial.

25 (16) Subpoenas

26 (a) Subpoenas shall be issued by the Clerk of the

1 Court of Impeachment for the summoning of witnesses and
2 the production of books, papers, documents, or tangible
3 things, on written application of the parties or their
4 counsel. The Clerk may issue subpoenas in blank. A Senator
5 may request a subpoena through the Clerk, which shall
6 issue if either party concurs. If neither party concurs
7 with the request, a subpoena shall be issued on a motion
8 by the Senator, a second to the motion, and a vote of a
9 majority of the Senators present. The Senator may explain
10 the reasons for his request and the vote shall be taken
11 without debate. All requests for subpoenas shall be made
12 and issued at least three days before the witness is
13 scheduled to testify or produce books, papers, documents,
14 or tangible things at the hearing.

15 (b) Service of process for subpoenas shall be by
16 personal service executed by officers appointed by the
17 Court of Impeachment or other officers authorized by law
18 to serve process in the Courts of Justice of the
19 Commonwealth. Return of service shall be noted on the
20 subpoena.

21 (c) Upon disobedience to any process, the Senate may
22 order the Clerk of the Court of Impeachment to issue
23 process for arresting the witness and seizing the books,
24 papers, documents, or tangible things which have been
25 subpoenaed. Disobedience may be punished in the manner
26 provided for other witnesses before the General Assembly.

1 (d) A witnesses shall receive the same compensation,
2 and have the same privileges in going, remaining, and
3 returning, as a witness in circuit court.

4 (17) Initial Appearance by Respondent

5 On the day appointed for the trial of the
6 impeachment, the legislative business of the Senate shall
7 be suspended except as otherwise ordered by the Senate. At
8 the time fixed in the precept for the appearance of the
9 Respondent and on proof of service, the Respondent shall
10 be called to appear and answer the Article of Impeachment.
11 If he appears or counsel appears on his behalf, the
12 appearance shall be recorded. If he does not appear either
13 personally or by counsel, the same shall be recorded and
14 the impeachment proceedings conducted as though he were
15 present and had entered a plea of not guilty.

16 (18) Answer

17 The Respondent shall answer, in writing, the Article
18 of Impeachment prior to the opening of the trial of the
19 impeachment. The answer shall be filed with the Clerk of
20 the Court of Impeachment.

21 (19) Order of Proof

22 After preliminary motions are heard and decided, the
23 House Committee or its counsel may make an opening
24 statement not to exceed thirty minutes. The Respondent or
25 his counsel may then make an opening statement not to
26 exceed thirty minutes. The Presiding Officer shall

1 determine the order of the presentation of evidence.
2 Closing arguments shall follow the presentation of all
3 evidence to the Court of Impeachment and shall not exceed
4 one hour. On motion of either party before closing
5 argument, the time for closing argument may be extended by
6 a vote of a majority of the Senators present. The argument
7 shall be opened and closed by or on behalf of the House
8 Committee.

9 The Senate shall hear all evidence related to the
10 Article of Impeachment before casting the final vote on
11 the Article of Impeachment.

12 (20) Oaths

13 (a) The following oath or affirmation shall be
14 administered to each Senator and the Presiding Officer by
15 the Chief Justice of the Commonwealth or an Associate
16 Justice:

17 "I do solemnly swear or affirm that I will faithfully
18 and impartially try the impeachment against [Insert the
19 name of the Respondent], and give my decision according to
20 the law and the evidence."

21 (b) Before any witness shall give his testimony, the
22 Clerk of the Court of Impeachment shall administer to the
23 witness the following oath or affirmation:

24 "Do you solemnly swear or affirm that the testimony
25 you shall give in the matter of the impeachment of [Insert
26 the name of the Respondent and his or her title], shall be

1 the truth, the whole truth, and nothing but the truth, so
2 help you God?"

3 (21) Witnesses

4 All witnesses shall be examined by the party
5 producing them or its counsel, and then cross-examined by
6 the opposite party or its counsel. Only one attorney for
7 each party may examine each witness. The Presiding Officer
8 may permit re-direct examination and may permit re-cross
9 examination. After completion of questioning by counsel,
10 any Senator desiring to question the witness shall be
11 permitted to do so. If objection to a Senator's question
12 is raised by counsel for either party or by a Senator, the
13 Senator desiring to question the witness may request a
14 vote on the objection by a majority of the Senators
15 present.

16 (22) Motions

17 (a) The Presiding Officer may rule on all
18 objections, motions, pleas, and procedural questions made
19 by the parties or their counsel. The ruling of the
20 Presiding Officer shall be the judgment of the Senate
21 unless any Senator requests the Presiding Officer to
22 submit the question to be decided by a vote of a majority
23 of the Senators present.

24 (b) On motion of any Senator and a vote of a
25 majority of the Senators present, or at the request of the
26 Presiding Officer, the party shall commit the motion,

1 plea, or procedural question to writing.

2 (c) Except as otherwise provided, arguments by
3 parties or their counsel on motions shall be permitted
4 only with a vote of a majority of the Senators present and
5 shall not exceed fifteen minutes, unless further extended
6 by a majority vote.

7 (d) Roll call votes may be requested by a Senator
8 and shall be taken if five additional Senators concur in
9 the request by standing.

10 (23) Verdict, Judgment, and Costs

11 (a) After closing arguments, all qualified Senators
12 shall be required to vote on the question of whether to
13 sustain the Article of Impeachment. A vote to sustain the
14 Article shall be based on clear and convincing evidence
15 that the Article is true and that the Article constitutes
16 an impeachable offense. The vote on whether to sustain
17 shall be taken as a roll call vote.

18 (b) If the Respondent is acquitted on the Article of
19 Impeachment, a judgment of acquittal shall be pronounced
20 and entered on the Journal on the Court of Impeachment.

21 (c) If two-thirds of the Senators present vote to
22 sustain the Article of Impeachment the Court of
23 Impeachment shall, by resolution, pronounce judgment of
24 conviction and removal from office, and disqualifications
25 to hold any office of honor, trust, or profit under the
26 Constitution. The resolution shall be entered upon the

1 Journal of the Court of Impeachment.

2 (d) A copy of the judgment shall be filed in the
3 office of the Secretary of State.

4 (e) In an impeachment proceeding prosecuted before
5 the Senate, if the Respondent is acquitted, the
6 Commonwealth shall pay the costs of the Respondent. If the
7 Respondent is found guilty, he shall pay the Commonwealth
8 the costs incurred in behalf of the prosecution. Costs
9 shall be taxed by the Clerk of the Court of Impeachment.
10 In no event shall costs include attorneys' fees incurred
11 by the Commonwealth or the Respondent.

12 (24) Official Record

13 The transcript of the proceedings of the Senate
14 sitting as a Court of Impeachment shall be the videotapes
15 produced by Kentucky Educational Television.

16 (25) Instruction

17 At any time, on his own motion or on request of a
18 Senator, the Presiding Officer may instruct the Senators
19 on procedural matters.

20 (26) Conferences

21 At any point during the proceedings and on the
22 request of any Senator, there shall be an immediate
23 conference of all the Senators present. Conferences
24 provided for under this Rule may be closed on a vote of a
25 majority of the Senators present.

26 (27) Prohibited Conduct

1 Threats against and interference with the Court of
2 Impeachment may be prosecuted as provided by law.

3 (28) Amendments to Rules

4 These Rules may be suspended or amended by a vote of
5 two-thirds of the Senators present.

Appendix IX

SENATE OF THE COMMONWEALTH OF KENTUCKY SITTING AS A COURT OF IMPEACHMENT

PRECEPT

The Senate of the Commonwealth of Kentucky, sitting as a Court of Impeachment, to Ward "Butch" Burnette:

Whereas, the House of Representatives of the Commonwealth of Kentucky did on the 28th day of January, 1991, deliver to the Senate an Article of Impeachment against you, in the following words:

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. The Article of Impeachment attached hereto is approved as adopted.

Section 2. A committee, with appropriate staff,

shall be appointed by the Speaker of the House to prosecute this Article before the Senate.

Section 3. The Chairman of the committee appointed to prosecute the Article shall lay it before the Senate within five (5) days as required by law, and shall transmit a complete record of the Impeachment Committee proceedings, including the original certified copies of all documents received by the Committee pursuant to the subpoenas issued.

ARTICLE OF IMPEACHMENT

The Commonwealth of Kentucky, by the House of Representatives of the General Assembly, by virtue of the authority vested in it by Section 66 of the Kentucky Constitution and the laws of the Commonwealth, hereby charges Agriculture Commissioner Ward "Butch" Burnette through the following Article of Impeachment, to wit:

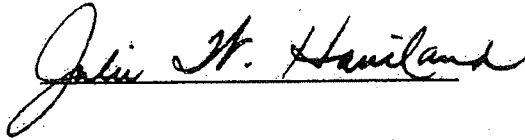
ARTICLE I

Ward "Butch" Burnette, was duly elected and qualified as Commissioner of Agriculture for the Commonwealth of Kentucky and continues to serve in that capacity; during his term of office, he engaged in conduct which resulted in his being charged with and convicted by a Franklin Circuit Court jury of Complicity to Theft by Deception over \$100, a felony in contravention of KRS 514.040 and KRS 502.020, in that he in the County of Franklin, Commonwealth of Kentucky, on or about June 20, 1988, and on or

about July 16, 1988, with the intention of promoting or facilitating the commission of theft by deception, aided one Linda Campbell in committing the offense of theft by deception when he signed and approved time sheets submitted by Linda Campbell reflecting she had worked with the Department of Agriculture full time for the entire month of June, 1988, when he knew she had not been so employed and the time sheets reflecting such employment were false; thereafter, his conviction was affirmed by the Supreme Court of Kentucky; the conduct reflected by his conviction resulted in a theft of funds belonging to the Commonwealth of Kentucky and thereby constituted a wilful disregard of his oath of office; and pursuant to Section 68 of the Constitution of Kentucky, such conduct is a misdemeanor in office and constitutes an impeachable offense under the Constitution of the Commonwealth of Kentucky.

Therefore, you, Ward "Butch" Burnette, are hereby summoned to appear before the Senate of the Commonwealth of Kentucky sitting as a Court of Impeachment, in its Chamber in the City of Frankfort, Kentucky, on Wednesday, the 6th day of February, 1991, at 10:00 a.m. (EST), then and there to abide by, obey, and perform such orders, directions, and judgments as the Senate of the Commonwealth of Kentucky, sitting as a Court of Impeachment, shall make in the premises according to the Constitution of Kentucky, the laws of the Commonwealth of Kentucky, and the Rules of the Court of Impeachment.

Witness, Julie W. Haviland, Chief Clerk of the Senate and Clerk of the Court of Impeachment of the Commonwealth of Kentucky, at Frankfort, this the 29th day of January, 1991.

A handwritten signature in cursive script, reading "Julie W. Haviland". The signature is written in dark ink and is positioned above the printed title.

Chief Clerk of the
Senate and Clerk of the
Court of Impeachment

SENATE OF THE
COMMONWEALTH OF KENTUCKY
SITTING AS A
COURT OF IMPEACHMENT

RETURN OF SERVICE

This is to certify that I have personally served a true and correct copy of this Precept upon the Respondent, Ward "Butch" Burnette, along with a copy of the Senate Resolution adopting Rules of Procedure for the Court of Impeachment, at the hour of 4:30 P.M., this 29th day of January, 1991, pursuant to KRS 63.040(2).

For the Court of Impeachment

By: Hynd C. Anderson

Marshall

RECEIPT OF RETURN OF SERVICE

This is to certify that this Precept has been returned to the Clerk of the Court of Impeachment this 29th day of January, 1991.

John A. Howland
Chief Clerk of the Senate
and Clerk of the Court of
Impeachment

Appendix X

IN SENATE

SPECIAL SESSION 1991

SENATE RESOLUTION NO. 55

THURSDAY, FEBRUARY 7, 1991

Senator Joe Wright introduced the following resolution which was ordered to be printed.

A RESOLUTION recognizing and ratifying the proceedings of the Court of Impeachment of the Senate.

WHEREAS, on January 15, 1991, the Speaker of the House of Representatives of the General Assembly of the Commonwealth of Kentucky, in Extraordinary Session, appointed a committee of seven to investigate the matter of Commissioner of Agriculture, Ward "Butch" Burnette, and upon completion of its investigation to report its findings and recommendations to the House; and

WHEREAS, the committee met from time to time after being appointed to conduct its investigation, chose to accept the judicial proceedings and resulting conviction as a valid basis upon which to believe that the conduct alleged did take place, found that this conduct is a sufficient basis on which to recommend that he be impeached, and recommended to the House that a Resolution and Article of Impeachment be adopted and laid before the Senate of the General Assembly of the Commonwealth of Kentucky; and

WHEREAS, the House of Representatives adopted an Article of Impeachment in House Resolution No. 40 on January 25, 1991, by a vote of 97-0; and

WHEREAS, a committee of the House of Representatives was appointed to prosecute the Article of Impeachment and did lay the Article of Impeachment before the Senate on January 28, 1991, and demanded that the Senate take order

for the appearance of Ward "Butch" Burnette to answer the Article of Impeachment and fix a day for the Trial of Impeachment; and

WHEREAS, the Senate adopted Senate Resolution No. 41 on January 29, 1991, designating the Senate as a Court of Impeachment, adopted rules of procedure for the Trial of Impeachment, and designated Wednesday, February 6, 1991, at the hour of 10:00 a.m. (EST) as the day and hour for the trial; and

WHEREAS, the Clerk of the Court of Impeachment informed the House of Representatives and the committee appointed to prosecute the impeachment on January 29, 1991, that the Senate resolved itself into a Court of Impeachment and summoned the Respondent, Ward "Butch" Burnette, by precept on January 29, 1991, to appear before the Court of Impeachment on Wednesday, February 6, 1991, at the hour of 10:00 a.m. (EST) for a Trial of Impeachment; and

WHEREAS, the Court of Impeachment convened on Wednesday, February 6, 1991, to conduct a Trial of Impeachment of the Respondent Ward "Butch" Burnette; and

WHEREAS, the Court of Impeachment was informed that the Respondent, Ward "Butch" Burnette, tendered his resignation as Commissioner of Agriculture, effective February 5, 1991, to Governor Wallace G. Wilkinson; that Governor Wilkinson accepted the Respondent's resignation

as tendered on February 6, 1991; and that the Respondent's letter of resignation and Governor Wilkinson's acceptance of the resignation were received and filed in the office of the Secretary of State on February 6, 1991, at 10:44 a.m. (EST); and

WHEREAS, the Court of Impeachment approved a motion that it take no further action to proceed in the matter of the impeachment of the Respondent, Ward "Butch" Burnette; and

WHEREAS, counsel for the House Committee, acting on behalf of the House Committee, had no objection to the motion of the Court of Impeachment and will recommend concurrence by the full House of Representatives; and

WHEREAS, the Court of Impeachment then did rise;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky:

1 Section 1. The Senate hereby recognizes and ratifies
2 the proceedings of the Court of Impeachment.

3 Section 2. The Clerk of the Senate is directed to
4 deliver a copy of this resolution to the House of
5 Representatives.

6 Section 3. The Clerk of the Senate is directed to
7 spread the proceedings of the Court of Impeachment upon

1 the Journal at length.

Appendix XI

IN HOUSE

SPECIAL SESSION 1991

HOUSE RESOLUTION NO. 87

THURSDAY, FEBRUARY 7, 1991

Representatives Gregory D. Stumbo, Tom Jensen, Billie D. Ark, Albert Jones, Sam M. McElroy, Anne Meagher Northup, and Ernesto Scorsone introduced the following resolution which was ordered to be printed.

A RESOLUTION concurring in the termination by the Senate of the impeachment proceedings against Ward "Butch" Burnette.

WHEREAS, on January 15, 1991, the Speaker of the House appointed a committee to investigate the matter of Agriculture Commissioner Ward "Butch" Burnette; and

WHEREAS, on January 23, 1991, the Impeachment Committee issued its final report and recommended to the House of Representatives that Burnette be impeached; and

WHEREAS, on January 25, 1991, the House of Representatives passed House Resolution 40 and the Article of Impeachment attached thereto by a vote of ninety-seven yeas and no nays; and

WHEREAS, the Chairman of the House Impeachment Committee laid the Article of impeachment before the Senate on January 28, 1991 as required by law; and

WHEREAS, the Senate scheduled the impeachment trial for Wednesday, February 6, 1991; and

WHEREAS, just before the Senate convened as a Court of Impeachment, Burnette tendered his resignation to the Governor, the resignation was accepted, and the Senate was notified that Burnette had resigned; and

WHEREAS, the Senate, sitting as a Court of Impeachment, voted by thirty-four yeas and no nays that the impeachment proceedings against Burnette should be terminated, although such termination did not constitute

dismissal of the Article of Impeachment lodged against him; and

WHEREAS, the House Impeachment Committee had no objection to the action of the Senate in terminating the proceedings;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

- 1 That the House does concur with the termination by the
- 2 Senate of the impeachment proceedings against Ward "Butch"
- 3 Burnette as being in the interests of the General Assembly
- 4 and the people of the Commonwealth of Kentucky.



Exhibit

2

PRESS RELEASE – FOR IMMEDIATE RELEASE

Contact Anna Whites (502) 352-2373 or Kevin Glogower (502) 435-9079

**Attorney General Daniel Cameron Subject of Impeachment Petition Filed by
Breonna Taylor Grand Jurors and Other Concerned Citizens**

Today concerned Kentucky citizens filed a “Verified Affidavit and Petition for Impeachment” against Kentucky Attorney General Daniel Cameron.

Among the concerned citizens bringing this matter to the legislature are three former Grand Jurors from the Breonna Taylor case (note that their counsel signed for them to protect their identities).

Attorney General Cameron is charged with:

- Incitement of insurrection (for financing, directing, and/or permitting radical robocalls that flooded the United States Capitol with rioters on January 6, 2021)
- Breach of public trust and failure to comply with duties for misrepresenting to the nation the findings of the Grand Jury
- Abuse of office and breach of duties of professional responsibility and ethics

The Impeachment Petitioners seek immediate review by the Impeachment Committee already established by the House. The concerned citizens demand that Cameron be disqualified from holding office of honor, trust or profit in this Commonwealth, and that all costs be charged to him. Petition, p. 6.

“The Grand Jurors did not choose this battle,” said counsel Kevin Glogower. “This battle chose them. These are randomly selected citizens who were compelled to sit on a grand jury and were terribly misused by the most powerful law enforcement official in Kentucky. It is truly a testament to the Kentucky Constitution that they are able to be here today and to expose injustice and demand public accountability. I am honored and humbled to serve them.”

XXXX

Exhibit

3

COMMONWEALTH OF KENTUCKY GRAND JURY HANDBOOK



JEFFERSON COUNTY

OFFICE OF THE COMMONWEALTH'S ATTORNEY

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is crucial for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the various methods and tools used to collect and analyze data. It highlights the need for a systematic approach to data collection and the importance of using reliable sources of information.

3. The third part of the document describes the process of identifying and addressing potential risks and challenges. It stresses the importance of proactive risk management and the need to develop effective strategies to mitigate potential threats.

4. The fourth part of the document discusses the role of communication and collaboration in achieving the organization's goals. It emphasizes the importance of clear communication and the need for all team members to work together effectively.

5. The fifth part of the document provides a summary of the key findings and conclusions of the study. It reiterates the importance of maintaining accurate records and the need for a systematic approach to data collection and analysis.



Welcome to Grand Jury Service Commonwealth of Kentucky

Dear Grand Juror:

The Office of the Commonwealth's Attorney wants to welcome you as a member of the Grand Jury. By being selected for Grand Jury service, you have assumed one of the most important responsibilities in the administration of justice in your community. A properly functioning Grand Jury is responsible for safeguarding individuals from unfounded prosecutions and for protecting the general public from crime and criminals.

This handbook has been prepared to assist you in the administration of your duties. If you have any questions which are not answered in this publication or you want additional information, do not hesitate to ask the Assistant Commonwealth's Attorney assigned to the Grand Jury to assist you.

You may also access our website (louisvilleprosecutor.com) for more information regarding the Jefferson County Office of the Commonwealth's Attorney. I hope you find your Grand Jury experience as rewarding and enriching as other Grand Jurors who have served. You are encouraged to share the knowledge you obtain regarding the criminal justice system with your relatives, neighbors and friends.

Thomas B. Wine
Jefferson County Commonwealth's Attorney



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INTRODUCTION – GRAND JURY SERVICE

The Grand Jury is a body of 12 Citizens who decide whether there is sufficient evidence in a criminal case to warrant further prosecution by the state. No one should stand trial before there has been a demonstration of sufficient evidence to support an indictment, and no one should be required to bear the expense and worry of a defense against a frivolous charge.

In Kentucky, jurors are selected by jury commissioners appointed by the Court or by computer.

If the selection is by jury commissioners, the commissioners take the names of citizens for jury service from Jefferson County voter registration, registered drivers /ID list and persons filing Kentucky individual tax returns. Selected names are placed into a wheel which is delivered to the circuit clerk.

An alternative method of randomly selecting jurors can be elected by the Chief Circuit Judge, who, with the approval of the Chief Justice of the Supreme Court, can request the selection of names of prospective jurors from a computer which contains a list of the county's registered voters, licensed drivers/Kentucky ID card and Kentucky State tax payers. All of the people chosen are summoned to appear in Court and names are drawn by the Circuit Court Clerk at random until twelve qualified and available persons are selected and sworn to serve as Grand Jurors. Those selected as a Jefferson County Grand Juror serve for the month they were selected.

INTRODUCTION – GRAND JURY SERVICE

A prospective juror is disqualified to serve on jury duty if he/she:

- 1) Is not a citizen of the United States; or
- 2) Is not a resident of this County; or
- 3) Is unable to speak and understand the English language; or
- 4) Is incapable, by reason of physical or mental disability, of rendering effective jury service; or
- 5) Has been previously convicted of a felony and has not been pardoned by an authorized person of the jurisdiction in which he was convicted; or
- 6) Is presently under indictment; or
- 7) Has served on a jury within the past twenty-four (24) months.

The authority of any particular Grand Jury exists only during the time in which that Grand Jury is in session. The Grand Jury may, however, recommend to the next Grand Jury that it pursue any business that is not completed.

Service on a Grand Jury has long been considered one of the highest duties of citizenship and a unique opportunity for the individual citizen to participate in the administration of justice. Historically, the function of the Grand Jury has been to protect the innocent from hasty, malicious and oppressive prosecution and to ensure that criminal charges against an individual are founded on sufficient and competent evidence.

WHAT IS A CRIME?

There are basically two kinds of law – civil and criminal. The Grand Jury is only concerned with criminal matters. In order to aid you in the performance of your duties, this section will help you understand the difference between the two.

INTRODUCTION – GRAND JURY SERVICE

Civil law deals with situations where there is a dispute between two or more people. The community itself does not suffer any wrong. For example, Mr. Smith accidentally runs his car into Mr. Jones' truck. If these two individuals cannot agree to settle the damages out of court, a civil suit is filed so that a court and jury can decide who is negligent in the accident and who is responsible for the damages resulting from the accident.

In contrast, if Mr. Smith intentionally shoots Mr. Jones, the act is criminal. Not only is Mr. Jones injured, but society as a whole is injured. Why? Because Mr. Smith's act of shooting someone poses a threat to all of us. We, as a law abiding society, have decided that anyone who acts in this manner should be punished. When this case goes through the criminal justice system, Mr. Smith may be found guilty of a crime and imprisoned. A crime takes place when an injury or wrong occurs not only to an individual but to society as a whole. Society, by enactment of criminal laws, imposes penalties for this type of conduct.

HOW DOES A CASE COME BEFORE THE GRAND JURY?

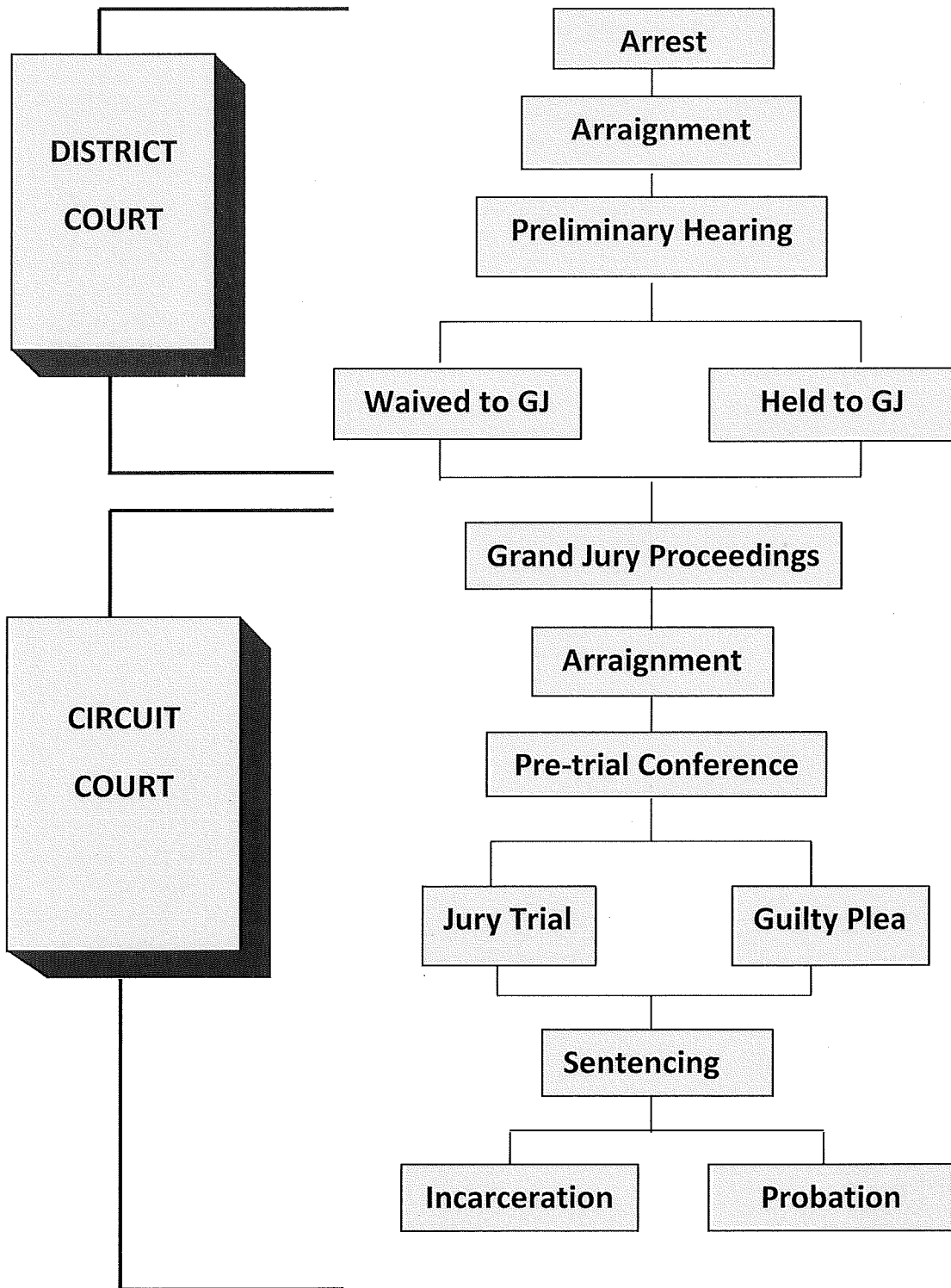
When a crime has been committed it will come to the Grand Jury in one of two ways. First, a private citizen may file a complaint accusing another individual of a criminal act and a Judge may issue a warrant or the police may arrest an individual for committing a criminal act. The person accused will then appear before the District Court and a date will be set for a preliminary hearing. At the preliminary hearing, the judge will determine whether the crime charged is a felony and whether there is probable cause to believe that the accused person committed the crime. If the crime committed is a misdemeanor charge, then it will be adjudicated in District Court. If the District Court Judge determines the crime to be a felony charge, he/she must hold it to the next Grand Jury for consideration. A defense attorney may waive the preliminary hearing and waive the

INTRODUCTION – GRAND JURY SERVICE

case to the Grand Jury. By statute, the District Court cannot convict people of felony charges. Felony charges must first be presented to the Grand Jury, which, as a body, determines whether there is sufficient competent evidence to return an indictment charging the accused. If so, the accused stands trial on the charges in the Circuit Court. The vast majority of cases arrive before the Grand Jury in this manner.

The second way a case comes to the Grand Jury is by direct presentation of a charge or charges. The Grand Jury may hear evidence on cases that have never come through the District Court. These presentations of evidence are called “direct submissions.” They are presented directly to the Grand Jury for various reasons, including the nature of the charges, the urgency of the situation or the necessity of secrecy in the matter for the protection of the victims or witnesses in the matter.

DIAGRAM OF THE CRIMINAL COURT PROCESS



THE GRAND JURY IN ACTION

RETURN OF INDICTMENTS OR DISMISSAL OF CHARGES

The most important duty of a Grand Jury is to evaluate evidence and determine whether there is sufficient competent evidence to believe that a crime has been committed by a specific individual. If the Grand Jury so determines, an indictment will be returned. If however, the Grand Jury determines there is not sufficient evidence to believe the accused committed the crime, or that any crime has been committed, the Grand Jury will dismiss the charge. In this respect, the Grand Jury safeguards the rights of the victim, the accused and society.

In order for an accused to be convicted of a crime, he must be found guilty by a Petit Jury (trial jury) using the standard of “proof beyond a reasonable doubt” after hearing all the evidence in the Circuit Court. The Grand Jury **should not** apply this standard. Your burden of proof is whether there is “sufficient evidence” in the case to require the defendant to stand trial. You do not decide if the defendant is guilty – that is the duty of the trial Petit Jury.

THE GRAND JURY IN ACTION

CRIMES COMMITTED BY A JUVENILE

The Grand Jury may hear evidence of criminal conduct alleged to have been committed by a juvenile. A juvenile is defined by Kentucky law as a person who was under the age of eighteen years when the offense occurred. Normally, all juvenile matters are adjudicated in the juvenile session of Family Court or District Court; however, the Judge of that court may transfer charges to the Grand Jury for consideration by determining that the seriousness of the offense and the circumstances of the offense and the juvenile warrant trying the juvenile as an adult. The Judge of that court may also transfer cases to Circuit Court if the juvenile was over the age of fourteen at the time of the commission of the offense and a felony offense involving the use of a firearm was committed. The Grand Jury may then return an indictment treating the juvenile as an adult, or may direct that the juvenile be transferred back to Juvenile Court or may dismiss the charges if there is insufficient evidence.

WITNESSES AND EVIDENCE BEFORE THE GRAND JURY

Witnesses will appear before the Grand Jury one at a time. Each witness will be sworn by the foreperson of the Grand Jury to tell the truth. The Commonwealth's Attorney or Assistant will then question the witness about their knowledge of the case. Before the witness is excused, each Grand Juror will be given the opportunity to ask pertinent

THE GRAND JURY IN ACTION

questions of the witness. When all the evidence has been presented, the Grand Jury will decide whether that evidence warrants an indictment. At least nine members of a Grand Jury must agree in order to return an indictment. If less than nine members agree to return an indictment, the case will be dismissed; that is called a "No True Bill".

After hearing testimony from the victim, the police or other witnesses, the Grand Jury may decide that there are other witnesses or evidence it needs in coming to a decision. By majority vote, the Grand Jury may request that subpoenas be issued for additional witnesses or evidence. The foreperson should make the Commonwealth's Attorney aware of any such requests by the Grand Jury.

The Fifth Amendment to the United States Constitution and Section 11 of the Kentucky Constitution guarantee people the right against self-incrimination. If a witness refuses to testify or answer questions, the foreperson, with the Commonwealth's Attorney, must appear before the Circuit Court and present the questions that the witness refuses to answer. The Court will then determine whether a response to the question might incriminate the witness. If the Court rules that the answer will not incriminate the witness or that the witness has voluntarily given up his privilege against self-incrimination and the witness still refuses to answer, then the Judge can order the witness to jail for contempt of court.

THE GRAND JURY IN ACTION

The Grand Jury has the right to exclude the attorney for the Commonwealth while questioning witnesses. However, any testimony received in this manner must be recorded as required by the Rules of Criminal Procedure.

Always consider the evidence as objectively as possible. Do not be swayed by emotional appeals to your sympathy. If you return an indictment and the case goes to trial, all relevant circumstances which are admissible will be considered by the Court and Petit Jury. Remember though, the Grand Jury must answer two primary questions:

1. Is there sufficient evidence a crime has been committed in this jurisdiction? and;
2. Is there sufficient evident the accused committed the crime?

HOW THE GRAND JURY FUNCTIONS

THE FOREPERSON

The first order of business for any new Grand Jury is to elect one of its number as the foreperson. The duties of the foreperson are to give an oath to each witness to tell the truth (a card with the oath on it will be provided), to sign all documents that will be issued by the Grand Jury, to present the results to the Commonwealth's Attorney of all jury deliberations and to act as a liaison between the Grand Jury and the Commonwealth's Attorney. The foreperson should also keep the Grand Jury operating in an orderly fashion.

ROLE OF THE COMMONWEALTH'S ATTORNEY OR DESIGNEE:

1. To attend all sessions of the Grand Jury and act as the legal advisor to the Grand Jury.
2. Issue subpoenas for the attendance of witnesses and the production of evidence.
3. Prepare indictments, dismissals or other orders, as needed by the Grand Jury and at the Grand Jury's request.
4. Assist in the preparation of the final report.

HOW THE GRAND JURY FUNCTIONS

SECRECY OF GRAND JURY PROCEEDINGS

The Rules of Criminal Procedure require that all testimony and evidence presented before a Grand Jury must be kept secret unless otherwise ordered by the Court. This admonition applies to the Commonwealth's Attorney or any of his/her Assistants who may be present and all Grand Jurors. No one may examine a Grand Juror on what a witness said, what any other Grand Juror said, or how any Grand Juror voted. No person except the attorney or attorneys for the Commonwealth, the witness under examination, an interpreter if necessary, a parent, guardian or custodian of a minor witness, and the Grand Jurors shall be present while the Grand Jury is in session. Only twelve (12) Grand Jurors shall be present while the Grand Jury is deliberating or voting. Violation of the secrecy admonition or presence of persons other than Grand Jurors while the Grand Jury is deliberating or voting is punishable by contempt of court.

HOW THE GRAND JURY FUNCTIONS

GRAND JURY DELIBERATIONS AND VOTING

After the witnesses and evidence have been presented to the Grand Jury, it is then time for the Grand Jurors to discuss among themselves whether an indictment should be returned, whether the charge should be dismissed, or whether more testimony or evidence is necessary in order to reach a decision. The results of the Grand Jury's deliberation are to be communicated only to the Commonwealth's Attorney or the assigned Assistant Commonwealth's Attorney.

Any indictment returned by the Grand Jury must be endorsed "A True Bill" and signed by the foreperson. The foreperson may not agree with nine or more of the other jurors. All dismissals must be stamped "No True Bill" and endorsed by the foreperson. The names of all witnesses who testified before the Grand Jury must appear on the indictment. The completed indictment or an order of dismissal is then presented to the Court and read by the Circuit Clerk. All twelve jurors must be present while the jury is in session, deliberating or voting, and when returning its finding in open Court.

HOW THE GRAND JURY FUNCTIONS

INDEPENDENCE OF THE GRAND JURY

The Grand Jury is an independent accusatorial and investigative body. However, individual Grand Jurors are not authorized to conduct an investigation; all actions taken by the Grand Jury must be as a group. You are assisted and advised by the Commonwealth's Attorney and his or her staff; however, you are not a part of Office of the Commonwealth's Attorney. The Grand Jury's responsibility is to your fellow citizens and the Court.

SUGGESTIONS TO MAKE YOUR TENURE AS A GRAND JUROR SUCCESSFUL

1. Attend all sessions of the Grand Jury; arrive at the hearing on time. Not only your fellow jurors but the public are depending on you; and all twelve jurors must be present in order to conduct business.
2. Pay close attention to the testimony given and the evidence presented; the reputation or freedom of someone depends on what you will hear and see.
3. Be courteous to the witness and to your fellow jurors; do not try to monopolize the hearings or the deliberations; do not disclose to any witness what the testimony of a prior witness was.
4. The foreperson should administer the oath to a witness in a professional manner that impresses on the witness that the Grand Jury session is a serious judicial hearing and that he or she must tell the truth. The foreperson should raise his or her right hand, direct the witness to raise his or her right hand and forcefully give the oath to tell the truth.
5. Listen to the evidence and the opinions of fellow jurors during deliberations.
6. Be independent but not stubborn; keep an open mind until all has been said by each juror.
7. Be absolutely fair. Because of the secrecy of the hearing no one may inquire into what you have done.
8. All jurors have an equal voice in determining whether there is sufficient evidence to believe the accused committed the crime charged.

SUGGESTIONS TO MAKE YOUR TENURE AS A GRAND JUROR SUCCESSFUL

9. Be convinced of the probable guilt of the accused before voting for an indictment. If you think there is other evidence that may explain the charge against the individual, talk to your fellow jurors about it. If you can convince a majority of the jurors, have the foreperson notify the Commonwealth's Attorney to subpoena the necessary person or information.
10. If you have personal knowledge relating to a charge or witness who testifies, tell your fellow jurors. If you feel that you would be personally biased in a particular case, you may abstain from voting but you are not required to do so.
11. Each juror has the right to direct questions to any witness. Try to keep your questions germane and to the point, refraining from asking about unrelated subjects or sharing personal experiences.
12. If you have personal knowledge of a criminal violation occurring, you should report your information to the Commonwealth's Attorney and the Grand Jury for investigation.
13. If you are contacted by anyone, including but not limited to, news media representatives, about any business you or the Grand Jury has conducted while in session, politely advise the individual you have been sworn by the Court and instructed not to disclose any information in regard to Grand Jury actions; then notify the Commonwealth's Attorney of this contact.

SUGGESTIONS TO MAKE YOUR TENURE AS A GRAND JUROR SUCCESSFUL

14. You will receive \$12.50 each day of attendance as a Grand Juror. The Circuit Clerk, if necessary, will prepare for you an affidavit acknowledging your service and salary.
15. The Jefferson County Grand Jury normally meets at 8:15 a.m. The session continues until business is completed for the day. If other sessions are necessary, you will know in advance so that appropriate arrangements can be made in your schedule.
16. If at any time you have any questions or need explanations, do not hesitate to ask. It is the job of the Commonwealth's Attorney to assist you in any way possible in the performance of your duties as a member of the Grand Jury.

AFTER THE GRAND JURY

After you have finished your term of jury duty, we hope you will consider it as a service to the community and yourself. Hopefully, it will increase your awareness and interest in government and civic affairs. You should have a greater understanding of the nature of crimes and the possible ramifications of the commission of those crimes. Also, you may be able to understand why the maximum penalties are not levied in each and every case and why it is necessary for the prosecution and the Court to use discretion in arriving at the proper outcome in each case. Your tenure as a Grand Juror should impress upon you the obligations each individual has to contribute to fair and impartial law enforcement in your community. If you and other Grand Jurors have done your job well, both our community and government will be improved.

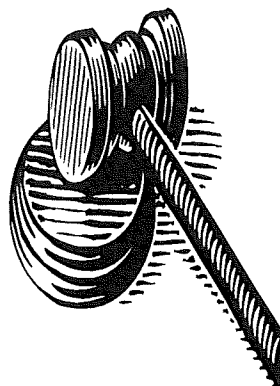
We again urge you to share, without divulging the content of any Grand Jury hearings, your experiences in the criminal justice system with your family, friends and neighbors. Only by educating the entire community about the problems which confront the enforcement of our laws will we be able to best serve each and every individual in the community. You, as a knowledgeable representative, can be of great service in sharing such information.

TERMS TO BE FAMILIAR WITH

BOND - The document, normally backed by money or property, which guarantees that the person charged with a crime will appear before the Court.

CIVIL LAW - The division of law relating to private rights and remedies which involve private individuals, corporations or other entities.

CRIMINAL LAW - The division of law which attempts to prevent harm to society by declaring what conduct is prohibited and by attaching a punishment or penalty for its violation.



DIRECT SUBMISSION - A criminal charge against an individual that comes directly to the Grand Jury for consideration without first being heard in District Court.

INDICTMENT - The written formal charge of a crime returned by the Grand Jury, stating that a particular person has committed some act which has been designated by society as a crime.

TERMS TO BE FAMILIAR WITH

FELONY - Any crime which is punishable by confinement in the penitentiary or reformatory for one year or more. Felonies are divided into four classifications:

CLASS	PUNISHMENT
CAPITAL	DEATH; LIFE WITHOUT PAROLE; LIFE WITHOUT PAROLE FOR A MINIMUM OF 25 YEARS; LIFE; OR 20 YEARS TO 50 YEARS
CLASS A	20 YEARS TO 50 YEARS OF LIFE
CLASS B	10 TO 20 YEARS
CLASS C	5 TO 10 YEARS
CLASS D	1 TO 5 YEARS

Fines may also be imposed upon conviction for any felony. The Circuit Court has exclusive jurisdiction of felonies.

TERMS TO BE FAMILIAR WITH

K.R.S. - Kentucky Revised Statutes. (The codified laws of this state)

MISDEMEANOR - Any crime which is punishable by confinement in the county jail and/or by the imposition of a fine not to exceed \$500. Misdemeanors are divided into three classifications:

CLASS	PUNISHMENT
CLASS A	UP TO 12 MONTHS IN COUNTY JAIL AND/OR UP TO \$500 FINE*
CLASS B	UP TO 90 DAYS IN COUNTY JAIL AND/OR UP TO \$250 FINE
VIOLATION	UP TO \$250 FINE

*Certain misdemeanors may have a maximum fine exceeding \$500

The Grand Jury hears misdemeanor charges when the misdemeanor is joined with a felony offense. If an indictment with only misdemeanors is returned, it is referred back (remanded) to the District Court which has exclusive jurisdiction of misdemeanors.

DISMISSAL – (No True Bill) The decision by a Grand Jury not to indict a person. This decision must be reported to the Court in writing.

TERMS TO BE FAMILIAR WITH

VIOLENT OFFENDER – A violent offender is a person who was convicted of or who pleaded guilty to:

- a) A capital offense;
- b) A Class A Felony;
- c) A Class B felony involving the death of the victim or serious physical injury to a victim;
- d) The commission or attempted commission of a felony sexual offense described in KRS Chapter 510;
- e) Use of a minor in a sexual performance as described in KRS 531.310;
- f) Promoting a sexual performance by minor as described in KRS 531.320;
- g) Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a);
- h) Promoting prostitution in the first degree as described in KRS 529.030(1)(b);
- i) Criminal abuse in the first degree as described in KRS 508.100;
- j) Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010 (first degree assault), 508.020 (second degree assault), 508.032 (domestic violence assault), or 508.060 (first degree wanton endangerment);
- k) Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by 502.040; or
- l) Robbery in the first degree.

TERMS TO BE FAMILIAR WITH

A violent offender who has been convicted of or pleaded guilty to a capital offense (murder or kidnapping where the victim died), a class A felony, or a class B felony, must serve the lesser of 85% of the sentence or 20 years before he/she may be considered for parole by the Parole Board, unless a sentence of life without parole for 25 years or life without parole was imposed. The violent offender statute has been amended several times, and the specific crimes which qualified as violent offenses and the potential parole consequences may be different for crimes committed prior to July 12, 2006.

PAROLE - Early release of a convicted felon from the penitentiary or reformatory with certain conditions, violations of which may result in the felon's return to custody. In Kentucky, the Parole Board, whose members are appointed by the Governor, are responsible for determining whether a prisoner should be released and the conditions of any such release.

TERMS TO BE FAMILIAR WITH

PERJURY - The crime of knowingly, making a material false statement in a judicial proceeding by one who has taken an oath to tell the truth.

PERSISTENT FELONY OFFENDER (PFO) - This is an individual who has previously been convicted of one or more felony offenses. Punishment provided is a penalty enhancement of the underlying charge for which the defendant must be convicted before the PFO statute comes into play.

A **PFO in the First Degree** must be 21 years of age and have been convicted of at least two separate prior felonies.

A **PFO in the Second Degree** must also be 21 years of age but only has one prior felony conviction.

PETIT JURY - The jurors chosen to sit for the trial of a person charged with a crime who make a finding of guilty or not guilty. They must find the defendant guilty "beyond a reasonable doubt." The verdict rendered by them must be unanimous.

PLEA NEGOTIATION - Plea negotiation is an aspect of the criminal justice process which allows speedy disposition of cases without necessity of trial. Under a negotiated plea, a defendant will plead guilty to one or

TERMS TO BE FAMILIAR WITH

more of the charges or to an amended charge and the prosecutor will recommend a penalty to the judge.

PROBABLE CAUSE - Facts found to exist so that a reasonable, intelligent and prudent person could believe that the accused has probably committed the crime charged.

PROBATION - The conditional release of a person who has been convicted of a crime and sentenced to a term of imprisonment. Conditions are attached to the release and, if they are not followed by the defendant, he/she may be required to serve his term of imprisonment.

TRUE BILL - The endorsement made by the Grand Jury that at least nine of the twelve jurors believe the evidence presented supports an indictment against the accused.

NOTES

The Jefferson County Office of the Commonwealth's Attorney does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or in the provision of services and provides, upon request, reasonable accommodation necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.



**JEFFERSON COUNTY JUDICIAL
CENTER**

10TH FLOOR COURTROOM

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Grand Jury Office #

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502-649-8784