

LEGISLATIVE RESEARCH COMMISSION

IN RE: COMMITTEE TO INVESTIGATE  
POSSIBLE IMPEACHMENT OF  
COMMONWEALTH ATTORNEY  
RICHARD BOLING

Pursuant to your letter dated January 17, 2023, (received January 19, 2023) I am providing the following information for the Committee to review. I will try to address the allegation by page number and line.

P. 1 L. 1      I cannot find any historical support for the initiation of an impeachment proceeding based on the issuance of a complaint by the Kentucky Bar Association. There has not been any finality of any findings or conclusions of law, regarding the complaint. The “report” mentioned throughout this document, is nothing more than a recommendation. The findings are not binding on either the Kentucky Bar Association (KBA) Board of Governors, nor the Kentucky Supreme Court. In fact, both of these entities are required to consider the case “de novo”, and make their own, findings and conclusions, based on the evidence provided during the hearing, as well as through oral arguments.

P. 1 L. 5      This statement is true about the KBA issuing a complaint . The “letter” was not seeking a Pardon, but merely a review of the case, including the use of a sexual assault charge, as opposed to an assault charge. The integrity of all parties concerned was an opinion shared by the grandparents of Dayton Jones, that I voiced through the letter. As stated numerous times, the letter was written by me, for the Jones’s in an attempt to portray their feelings to the Governor. I have repeatedly admitted the letter was written in haste and not proofread. I failed to indicate, in the letter, which opinions were mine and which opinions were of the Jones’s. The letter was written, while on the phone with Jackie Jones, on Saturday. When I hung up with Mrs. Jones, I abruptly left my office to go home. The letter was still on my computer screen when I returned to the office on Monday morning. I printed it out,

signed it, scanned it in and emailed it to her. I did not proofread it, nor edit it on Monday, just printed, signed, and scanned it. All this was done on December 9, 2019, which was the Governors last day in office. I was writing the letter for a friend, who's husband was very sick with cancer, and she felt her whole world was falling apart. I was under the impression that she was trying to build a Pardon/Commutation Packet to be submitted that day. I thought that she would be driving to Frankfort, to file it. I truly believed that there was no way that a packet, filed on the last day, would ever make it through all the procedural checks, to actually be considered. To my surprise, I later learned that a packet had been filed in November of 2019.

P. 1 L. 11 This is a true statement. This involved the case of Commonwealth v. Brafman, the case was tried to a jury in 2019.

P. 1 L. 15 This is a true statement. The Kentucky Supreme Court rejected the consensual motion for resolution that was agreed upon by the Kentucky Bar Association and myself.

P. 1 L. 20 This is a true statement. The Kentucky Supreme Court vacated the conviction and remanded for a new trial. The Supreme Court found that the Defendant should have been given an intoxication instruction, thereby negating her criminal responsibility for all intentional conduct. I argued that she was not "intoxicated" and therefore, was criminally responsible for her conduct. The Detective stated, during a private discussion at lunch, between he and I, that she was "methed out" and "out of her f'ing mind". The Clerk of the Court left the courtroom recorder running and the conversation was recorded. I personally believe, that anybody that tries to set a mobile home on fire, at both ends, knowing that the adults are on one end and the young children are on the other end, is out of their mind. Brafman had gone the day before the fire and removed all the smoke alarms from the trailer, while everyone was at work. On the morning of the fire, she went to the trailer at 2:30 a.m. "to borrow a cigarette", something she had never done before. The victims believed that this was done to ensure they were all home. Then at

around 4:30 a.m. the mother of the children woke up to smell smoke. Additionally, the testimony included that the Defendant could not stand still and tried to walk away from officers. There was no dispute she appeared to have been using some type of drug prior to law enforcement showing up. My argument was purely that she did not meet the requirements for an intoxication jury instruction, nor had her defense attorney introduced any evidence during the entire trial, that she was in fact intoxicated. Her attorney did not even question the Detective about any possible intoxication.

**Ironically, the Defendant subsequently, through her new defense attorney and with a Special Prosecutor from the Attorney General's Office, entered a guilty plea to all of the same charges.** Her attorney determined that she was not "intoxicated" and, therefore, she entered a guilty plea to all of the intentional and wanton crimes. She reduced her sentence from Life to 20 years with the new plea agreement.

P.1 L 24      This is a true statement. A second consensual motion for resolution that had been agreed upon by the Kentucky Bar Association and myself, was tendered to the Kentucky Supreme Court.

P. 1 L 27      This is a true statement. The Kentucky Supreme Court rejected the second consensual motion for resolution that was agreed upon by the Kentucky Bar Association and myself.

P. 2 L 3      This is a true statement.

P. 2 L 5      This is a false statement. The hearing was in Hopkinsville, KY on August 16, 2022. There was a zoom hearing on August 22, 2022, for one witness that had COVID-19, on behalf of the Kentucky Bar Association.

P. 2 L 7      This is a true statement, with the exception of "written in the voice of the Commonwealth's Attorney". I wrote the letter and I signed the letter. The information contained in the letter was provided by the Jones's. It was my desire to write a letter, on behalf of the Jones's, reflecting their thoughts and beliefs. I have stated, repeatedly, the letter was hastily written and not proofread before emailing it to Mrs. Jones on December 9, 2019.

- P. 2 L 11 This statement is partially true. I admitted the statements regarding the Judge were false. However, there were other matters in the letter that were explained as true statements, during the hearing. One of these matters, was the issue of using the Attorney General as a special prosecutor. Judge John Atkins testified, during the hearing, that he had never requested the Attorney General's Office be a special prosecutor during his entire tenure as a Commonwealth's Attorney in Christian County. He testified the common practice was to contact a neighboring Commonwealth's Attorney and ask them to be a special prosecutor in a case. If they accepted, you contacted the Attorney General's Office of Special Prosecutions and they would issue an appointment letter to the neighboring Special Prosecutor. I testified consistent to that same practice. This was the common practice of all the Christian County Commonwealth's Attorneys since the early 1980's. This same practice continued through 2006, when I left office as the Commonwealth's Attorney (2000-2006). This was the only case where the Attorney General's Office was the Special Prosecutor from 2007-2018 in Christian County, KY.
- P. 2 L 14 This is a true statement.
- P. 2 L 17 This is a true statement. This Report is merely advisory. Any appeal is done de novo, meaning that the report has no weight, and the reviewing body must make its own findings of facts and law.
- P. 2 L 19 This is a true statement.
- P. 2 L 22 This statement is partially true. The first quote is correct, however, the second quote is not. As discussed previously, the issue about special prosecutors was a true statement, the issue about it being an assault instead of a sexual assault was true, many of the statements, contained information that Dayton Jones had included in post-conviction pleadings. These pleadings were copied to his grandparents and then various items told to me.
- P. 3 L 1 This is a correct quote of the report. However, the statement is not true. The Jury was not misled. The issue of "intoxication" was argued by the Supreme

Court, however, **the Defendant pled guilty with a new attorney and a special prosecutor, to all intentional and wanton charges. Therefore, there was no evidence, either admitted or excluded, that negated the guilt of the accused or mitigated the offense.** Had the Defendant not entered a guilty plea to the intentional acts, then an argument could be made that I excluded mitigating evidence. **THAT WAS NOT THE CASE, SHE PLED GUILTY TO ALL CHARGES, INTENTIONAL AND WANTON.**

P. 3 L 6 This is a correct quote of the report. However, once, again, it is not true. I did not argue against an intoxication instruction. The only thing I said while in the Judge's chambers during the discussion of jury instructions was, "I don't care if you give it (the intoxication jury instruction) or not, she knew what she was doing". I admitted that voluntary intoxication is a defense to an intentional crime, but said that she did not meet the requirements for voluntary intoxication. You must not know what you are doing to be "intoxicated".

P. 3 L 12 This is a correct quote of the report. However, the statement is not true. There was no dishonesty, fraud, deceit or misrepresentation in my closing argument. The Supreme Court opinion specifically states, that I chose my words carefully, and that factually they were true. The Supreme Court made statements that were not supported by the record, such as the Defense Attorney did not question the Detective. The Defense Attorney asked multiple questions of the Detective. The Court made assumptions that are not supported by the record. The Court said that there was an agreement not to discuss intoxication between the Detective and myself. During the recorded lunch discussion, I say, I started to ask a question about how she looked, but I didn't. The Detective said, I didn't want to answer that if you did. This discussion was AFTER the Detective had testified. There was no prep for his testimony, I told the Detective, I would question him based on his report, and that is what I did.

P. 3 L 16 This is a correct quote of the report. However, this statement is not true. I

have not violated any duty owed to the public. There was no intentional misconduct. I did not fail to follow any proper procedure. There was no injury to any party as a result of my actions. I did not make false statements or improperly withhold material information causing "serious injury to a party". Again, she entered a guilty plea to ALL of the charges. None of the charges were amended or dismissed.

P. 3 L 23

This is a correct quote from the report. However, this statement is not true. I did not engage in any conduct **with the intent** to obtain a benefit for myself or another and caused serious injury to the public and the legal system. I wrote a letter on behalf of a friend. I provided, in the letter, the thoughts of the grandparents. There was testimony at the hearing that the content of the letter was consistent with the statements of the Jones's through various emails, as well as, a letter to the Governor, around the time of the eclipse. The report provides I acted "intentionally and knowingly" by writing the letter and by my actions in the trial causing serious injury to the public, the profession, the court system and a criminal defendant. This is not true. The only testimony about the effect of the letter, on the community, was that it had little, if any effect. During voir dire of jury trials in 2020, not one juror asked to be excused, based on the letter or because I was involved in the proceeding. The Judge, specifically asked jurors, if they felt uncomfortable serving on a jury with me being involved. Not one juror requested to be excused, then or recently. Not one single juror has asked to be excused from a trial jury or Grand Jury, because of my conduct. The attorneys, in court and around the courthouse, did not shun me, but instead met me with words of encouragement. There was no evidence of injury or damage to the profession. The Defendant, Karen Brafman was not injured, **SHE ENTERED A GUILTY PLEA TO ALL OF THE SAME CHARGES.**

P. 4 L 2

This is a correct quote from the report. The report was appealed to the Kentucky Bar Association Board of Governors. They will have the case briefed, by both sides, hear oral arguments from both sides, then they will

make factual findings and conclusions of law, and render a recommended sanction to the Kentucky Supreme Court. It should be noted that the Kentucky Bar Association, through Bar Counsel, and with approval of the KBA recommended two consensual resolutions. The first resolution contained a probated suspension, while the second resolution contained a sixty (60) day actual suspension along with a probated suspension. There have been elected prosecutors suspended for less than 181 days, that were not subject to impeachment proceedings.

P. 4 L 7

This is a true statement. The Kentucky Supreme Court issued a Show Cause Order, for me, to explain why I should not be immediately suspended. The Supreme Court raised the issue of Commonwealth v. Henderson case, along with the rejection of the consensual resolutions. Through my attorney we showed the Supreme Court that the statement made by Judge Self regarding the false information, was in fact true. Judge Self made a finding that Henderson had never warned them prior to the victim's death. The Defendant, Henderson, had told the victim's boyfriend that the pills were dangerous and not to take too much. This warning came before Corbin Bowling died. That is what I told the Grand Jury. Henderson, after being arrested, admitted in an interview with the detectives that he had warned them about how strong the pills were, about 2 days before her death. This warning was in person and made verbally. The other issue was regarding text messages. The detective met, with me, before presenting the case to the Grand Jury. During this meeting, the Detective summarized the testimony and I took some notes to create a narrative. There is no review, of the entire case file, at this stage. During the interview, the Detective made reference to text messages from Henderson about warning of the pills. The Detective had three (3) phones in evidence, Henderson's, the Victim's and her Boyfriend's. The Detective did not say the date of the text messages or who they were between. I believed the texts to be between Henderson and Victim or her boyfriend, since no other people were mentioned during the meeting. I asked

the question, in Grand Jury, were the text messages between Henderson and the Boyfriend and the Detective responded, "Yes". After Grand Jury, the case was assigned to a specific prosecutor and he/she reviews the file to locate any gaps or possible missing items. This case was ultimately assigned to First Assistant Jerad Smith. (FA Smith represented the Commonwealth during the hearing regarding the Motion to Dismiss). Months later it was learned that the text messages were between Henderson and an unknown person, and the messages were two (2) days after the victim died. FA Smith responded to the Motion to Dismiss and argued that sufficient evidence existed for the issuance of the Indictment without the text messages being considered. He argued that the case, cited by the defense, involved fabrication of evidence, whereas in this case, there was no fabrication of text messages. The messages really existed, there was just confusion of who they were sent to and when they were sent. The Court did not address the issue of probable cause, for the indictment, but instead dismissed the single count indictment for Manslaughter, Second Degree, without prejudice. I requested a Special Prosecutor be appointed. Todd Co./Logan Co. Commonwealth's Attorney, Neil Kerr accepted the appointment, and his office was appointed as the Special Prosecutor. Special Prosecutor, Assistant Commonwealth's Attorney Nate Beard, presented the matter to the Christian County Grand Jury and the Grand Jury returned a two (2) count Indictment against Henderson for Manslaughter 2<sup>nd</sup> Degree and Trafficking in Controlled Substance First Degree, Fentanyl.

P. 4 L 13      This is a true statement of the law.

P. 4 L 16      I believe that the Kentucky Bar Association Disciplinary process should proceed as scheduled, and following the result of any disciplinary action imposed by the Kentucky Supreme Court, a decision may be made to determine if impeachment proceedings are warranted. The Committee is relying on findings that are purely recommendations. Each appellate level will hear the case, de novo, and make their own specific findings and



recommendation. It is only once the matter reaches the Kentucky Supreme Court that the findings and sanction will be final.

I am currently serving as the 3<sup>rd</sup> Judicial Circuit Commonwealth's Attorney and performing my duties on a daily basis. On January 9, 2020, when the media announced and published the letter, I apologized to both Circuit Judges and voluntarily removed myself from both divisions of Circuit Court. The Judges and I then met a few days later, and I was informed, that since a bar complaint was pending, that I should remain outside of the Courtroom, until a later point. I was able to continue to run my office effectively and there was no adverse affects of the Court's docket or trial calendar. I remained out of the courtroom for about fourteen (14) months. On occasion, I would be asked to appear in Court or by zoom, to participate in a hearing, usually regarding a murder case. During this time I negotiated resolutions to cases, and had an Assistant Commonwealth's Attorney handle the entry of the plea and sentencing. I conducted Grand Jury during this entire period, either in the Courthouse or by zoom. I had an Assistant Commonwealth's Attorney go to Judge Atkins Courtroom, to return the indictments, with the Grand Jury until approximately May 2020, when Judge Atkins informed me that he had no objection to me returning the indictments. In the Spring of 2021, I was contacted by the Judges and asked to return to court on a regular basis. Upon my return, I tried, our first jury trial, after the COVID-19 closure of the Trial Courts.

I have tried to a jury or resolved fifteen (15) murder cases since 2019. This does not include, trials such as, the Attempted Murder of Officer Jeremy Davidson. The Defendant received a Life sentence in that case. The Brafman case was tried in 2019. The "letter" was written in 2019. I have had multiple cases and Jury Trials, reviewed and "affirmed" by the Kentucky Supreme Court, as well as, the Kentucky Court of Appeals. There has not been a single case remanded or vacated during my term (2019-2023), other than Brafman.

I have presented well over 6,000 cases to various Christian County Grand Juries, as the Commonwealth's Attorney (2000-2006, 2019-2023). The only case that has ever been affected was the Henderson case, which was presented in July of 2021. Since the Henderson ruling, other cases have been challenged, with the Court finding, that I had performed my duties appropriately, and there was no form of prosecutorial misconduct.

I believe that I have served my community well, as their Commonwealth's Attorney. I apologized to the community for the letter, I apologized to the Judges, I apologized to each of the

six (6) Grand Jury's in 2020 (Grand Juries serve for two month terms in Christian County). I was told by several members of those Grand Juries, that I was forgiven, to not look back, focus on the now and perform the job the citizens elected me to do. I offered jury members the opportunity to be excused, if they felt uncomfortable working with me. They were told they could let the Judge know, when they returned to his courtroom, following orientation. I did not accompany them to his courtroom, so that they could freely speak. Not one person requested to be excused from any of the Grand Juries.

I recently made the decision to tender my resignation effective February 28, 2023. The reason for waiting until the end of February, is to try to resolve several of the pending cases, listed below. Between this date and my last working day, I have the following jury trials scheduled:

01/23-24	Willis Haskins 22-CR-640
01/30-2/3	Deqavion James 16-CR-506 (Murder)
02/09	Kenneth Morris 22-CR-465
02/13-14	Michael Bailey 22-CR-275
02/16-17	Michael McCurdy 22-CR-279
02/20-24	Lance Bowden 22-CR-266 (Murder)
02/23	Jose Mendoza 22-CR-448 (Sexual Assault)
02/27-28	Charles Smalls 21-CR-438 (Arson 1st)

Since the media published that I was under Impeachment proceedings, all of the vacancies in my office are unable to be filled. No one will take a position with the uncertainty of knowing how long they will be employed. My office is purely "at-will" employees, so they are not guaranteed a job, once I am gone. At least one person who has considered applying for the appointment to my position, has rumored that they would "clean house" for a fresh start. Despite the obstacles of hiring personnel, I vow to ensure that my office continues to serve our community, until my last day in office.

I am currently the only prosecutor in my office. My First Assistant Commonwealth's Attorney accepted a position with the County Attorney effective January 16, 2023. My Victim Advocate, gave birth to their new son, on January 17, 2023, and is now out on maternity leave. My Executive Secretary just had surgery on January 20, 2023, and is out for the next two weeks. Thereby leaving a working office staff that consists of one (1) full-time receptionist/secretary, one (1) quarter-

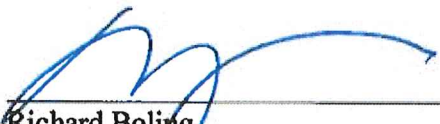
time secretary, one (1) full-time detective and myself.

Our jurisdiction averages over 750 felony cases a year. It is a lot of hard work. In addition to working Monday through Friday, I work weekends and holidays, to keep up with all the office duties. Weekdays are primarily consumed with appearances in Court and handling appointments with grand jury witnesses. I have given my Community and this Commonwealth fourteen (14) years of dedicated service, in the 3<sup>rd</sup> JC Commonwealth's Attorney's Office. This service has included, responding to crime scenes to answer questions, preparing search warrants, at all hours of the night, being available for officers/other prosecutors, and being there for my staff, through the good, the bad, the heartbreaks and the loss of family members. My staff is like a family, we celebrate with each other and hurt for each other.

I tendered my resignation on January 6, 2023 to the Prosecutor's Advisory Council, effective February 28, 2023 at 11:59 p.m.. This was done to allow the Governor sufficient time to appoint an interim Commonwealth's Attorney to begin on March 1, 2023. My hope is that the person will be identified, early, so that I may allow that person to come into the office and familiarize themselves with the caseload and other executive matters. Additionally, once the person is selected I can actually offer that person a position, as well as, positions to the persons that they intend to hire to fill vacancies. This will provide for a smoother transition.

I am about to be sixty-one (61) years old and my time, as an elected official, has become complete. I do not desire to ever seek or hold public office after February 28, 2023. I know I have made some mistakes, some poor judgement has been used as well. I humbly ask that the Committee not recommend that the Impeachment proceedings go forward. I would further request that the record be sealed. Lastly, I would desire to personally appear before the Committee, should the Committee determine that it finds sufficient cause to institute impeachment proceedings in this matter.

Respectfully,

  
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Richard Boling  
Commonwealth Attorney 3<sup>rd</sup> JC

1-23-2023  
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Date