STATE OF MINNESOTA

COMMISSION ESTABLISHED BY EXECUTIVE ORDER NO 85-10 CONCERNING KATHLEEN MORRIS, SCOTT COUNTY ATTORNEY

The attached are the Findings of Fact, Conclusions of Law and Recommendation of the Special Commission established by Executive Order 85-10 concerning Kathleen Morris, Scott County Attorney, and represents the unanimous opinion of:

Lynn C. Olson
Special Commissioner

Julius E. Gernes
Assistant Commissioner

Irene F. Scott
Assistant Commissioner

STATE OF MINNESOTA

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REPORT TO GOVERNOR RUDY PERPICH

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PART I: HISTORY

A Petition was presented by Cindy Lee Buchan to the Governor of Minnesota, Rudy Perpich, on March 8, 1985, requesting removal of R. Kathleen Morris from her office as Scott County Attorney. (See Exhibit A attached). That removal power is governed by Minn. Stat. § 351.03:

> The governor may remove from office any clerk of the appellate courts or a district court, judge of probate, judge of any municipal court, court commissioner, sheriff, constable, coroner, auditor, county recorder, county attorney, county commissioner, county treasurer, or any collector, receiver, or custodian of public moneys, when it appears to him by competent evidence, that the officer has been guilty of malfeasance in the performance of his official duties. Prior to removal, he shall give to the officer a copy of the charges against him and an opportunity to be heard in his defense.

On March 25, 1985, Governor Perpich appointed a Special Commissioner, Lynn C. Olson, pursuant to Minn. Stat. § 351.04:

> When charges are made against any such officer, the governor shall appoint a special commissioner to take and report the testimony for and against him to be used on the hearing. Each witness shall subscribe his name to his testimony when the same is reduced to writing.

To assist the Special Commissioner, the Governor also appointed Irene F. Scott and Julius E. Gernes who, together with the Commissioner Olson shall be referred to hereinafter as "the Commission."

A hearing was commenced June 13, 1985. After one day of testimony the hearing was continued for 6 weeks. On July 5, 1985, the counsel appointed by the Attorney General to organize and present evidence to the Commissioner, Kelton F. Gage, restated the Buchan Petition and added further allegations. (See Exhibit B attached). The hearing resumed on August 1, 1985, and was completed on August 19, 1985 after 14 days of testimony and arguments by the attorneys. Neither the petitioner nor any of the former defendants in the Scott County sex abuse cases testified before the Commission. Kathleen Morris was present and did testify before the Commission. She was represented by attorneys Stephen P. Doyle and James T. Martin.

PART II: SUMMARY of ALLEGATIONS FINDINGS and CONCLUSIONS

Thirty-six (36) allegations were brought against Kathleen Morris. Ten of the allegations were either withdrawn or no evidence was presented to the Commission. Fourteen of the allegations were not proved by clear and convincing evidence and, therefore, the Commission made no findings. Twelve of those allegations were either proved by clear and convincing evidence or the Commission found it necessary to make some findings as to those allegations.

When the Commission found that an allegation had been proved then it determined whether or not that act constituted malfeasance.

In order to assist in this determination, the Commission adopted the following definition of malfeasance:

> When an official consciously does an illegal act or a wrongful act which infringes upon the rights of another to his/her damage, and the act is outside the scope of the official's authority, that is malfeasance. (See Exhibit C Legal Memo attached).

The following outline details the allegations and indicates the page number at which the Findings, if any, begin.

PROVED . . . ACT CONSTITUTES MALFEASANCE

PROVED . . . ACT DOES NOT CONSTITUTE MALFEASANCE

2. Kathleen Morris falsely stated in appearances before news media that the children in the sex abuse cases were not subject to dozens of interviews . . . . . p. 28

3. Kathleen Morris falsely stated to the trial judge in the Bentz trial that the defendants had never asked for notes. . . . . p. 30

4. Kathleen Morris did fail to disclose to the trial judge in the Bentz trial that the child witnesses were housed together. . . . . p. 32

5. Kathleen Morris physically and verbally abused employees. . . . . p. 34

NO BASIS FOR ALLEGATIONS

Kathleen Morris falsely stated that the Family Court Judge had been advised that child witnesses were being housed together. . . . . p. 37

NOT PROVED BY CLEAR AND CONVINCING EVIDENCE

1. Kathleen Morris stated she dismissed 21 sex abuse cases because of an ongoing investigation of great magnitude . . . . . p. 38

2. Kathleen Morris stated there were no (sex abuse) notes taken by investigative officers during Bentz the trial. . . . . p. 42

3. Kathleen Morris violated the constitutional rights of certain criminal defendants who were represented by lawyers by arranging for lay persons to contact these defendants and gain incriminating evidence against them in pending prosecution . . . . . p. 44

4. Kathleen Morris made a statement to the news media denouncing the presumption of innocence . . . . . p. 47

5. Kathleen Morris caused suppression of statements by children that they had not been sexually abused. (no findings)

6. Kathleen Morris caused suppression of admission by children that they had lied about sexual abuse. (no findings)

7. Kathleen Morris caused suppression of results of medical exams which did not corroborate allegations of sexual abuse. (no findings)

8. Kathleen Morris caused suppression of statements by children of sexual activities among themselves. (no findings)

9. Kathleen Morris misrepresented her involvement in the investigation of sex abuse cases. (no findings)

10. Kathleen Morris stated her 1984 calendar was lost or destroyed in November of 1984. (no findings)

11. Kathleen Morris stated to news media that medical evidence existed to support charges against Buchans. (no findings)

12. Kathleen Morris charged 23 adults with sex abuse of children relying almost entirely on uncorroborated testimony of children, in the expectation trials would be unnecessary. (no findings)

13. Kathleen Morris caused destruction of her 1984 calendar. (no findings)

14. Kathleen Morris caused Frederick Rgnonti to sign a search warrant application without personal knowledge. (no findings)

15. Kathleen Morris issued a criminal complaint based upon false report she directed Sgt. Rgnonti to prepare. (no findings)

16. Kathleen Morris refused to prosecute meritorious welfare fraud cases. (no findings)

17. Kathleen Morris compelled Sheriff Tietz to transfer Frederick Rgnonti. (no findings)

18. Kathleen Morris threatened a public defender with penalizing a second client unless that public defender abandoned efforts to have another client released earlier than the plea agreement. (no findings)

ALLEGATIONS WITHDRAWN

1. Kathleen Morris misappropriated Public Funds.

2. Kathleen Morris compelled Defendants to suffer public arrest.

NO EVIDENCE PRESENTED

1. Kathleen Morris caused the arrest and issuance of criminal felony complaints against citizens knowing there was insufficient probable cause.

2. Kathleen Morris caused the removal of children from their homes knowing there was not probable cause to remove.

3. Kathleen Morris caused the destruction of exculpatory evidence including video tapes and audio tapes of interrogations of children.

4. Kathleen Morris caused the development of alibi evidence of a defendant.

5. Kathleen Morris caused the development of false allegations by children of sex abuse.

6. Kathleen Morris directed Scott County Human Services Department not to perform its statutory and regulatory duties.

7. Kathleen Morris suborned perjury of James Rud.

8. Kathleen Morris continued to meet with child accusers subsequent to October 19, 1984, after her office was removed, in an effort to keep the children from admitting the falsity of their allegations.

PART III: FINDINGS AND CONCLUSIONS

PROVED: ACT CONSTITUTES MALFEASANCE

1. In the course of her investigation and prosecution of alleged sexual abuse of children in Scott County commencing in September of 1983, Kathleen Morris suppressed exculpatory evidence, that being statements by children who were witnesses in the sex abuse cases that they had witnessed persons being mutilated and murdered.

FINDINGS:

1. Shakopee Police Officer Fleck interviewed, or assisted Scott County Deputy Pint in interviewing, the following children between July 9, 1984 and August 17, 1984: VK, SR, AnM, JeB, SK, AB, BB, and AmM. (Comm. Ex. #54-1). All but one of the interviews were conducted in the Scott County Attorney's Office in a room next to Kathleen Morris' personal office (trans. p. 1160).

2. Officer Fleck took notes every time he conducted an interview. Officer Fleck discussed the interviews with Kathleen Morris and made extensive reference to his notes during such discussions (trans. pp. 1161, 1167, 1177).

3. Officer Fleck did not believe, based on the interviews and his investigation, that there was sufficient probable cause to seek the issuance of a search warrant (trans. pp. 1103-1104, 1137, 1190-1191, 1171) and remained open to the possibility that the children were fabricating the murder stories (trans. p. 1150, line 25). Nonetheless, Officer Fleck discussed the possibility of securing the issuance of a search warrant with Kathleen Morris between July 9 and August 17, 1984. Kathleen Morris never indicated to him that she felt that there was enough probable cause for the issuance of a search warrant (trans. pp. 1170-1171). Officer Fleck testified that she, in fact, concurred with him that there

was not enough probable cause for a search warrant in the murder and mutilation investigation (trans. p. 1191).

4. Officer Fleck did not categorize the murder investigation as separate and completely different from the criminal sexual abuse cases but, rather, defined the homicide allegations as occurring in the context of the sexual abuse investigations (trans. pp. 1200-1201).

5. Deputy Sheriff Pint, sometimes alone, and sometimes with Officer Fleck, interviewed the following children between July 10 and September 25, 1984: JeB, AmM, AnM, JK, BB, SK, AB and KF (Comm. Ex. #58-1).

6. Deputy Pint discussed with Kathleen Morris from time to time the interviews that he had with the children. If Deputy Pint talked with Kathleen Morris immediately following an interview with a child, he would have his notes with him and would refer to them in the course of the discussion (trans. pp. 1238, 1645, 1590). Deputy Pint testified that Kathleen Morris was aware that he, Pint, was preserving his notes as a record and, in fact, she had encouraged Pint to make a detailed record of what the children were saying (trans. pp. 1238-1239, 1536).

7. Six of the ten above-named children who were interviewed by Pint and Fleck alleged that murders and mutilations took place and all of the children except SR were potential witnesses in the Bentz trial. SR was a potential witness in the other sex abuse cases.

8. Deputy Pint told Kathleen Morris about some of the specific allegations (trans. p. 1693) made by the children, including JeB's allegations as to who had been murdered and how (trans. p. 1698). He, Pint, however, was not sure that he discussed with Kathleen Morris an interview with AB in which AB related that an 8-to-10-year-old boy accomplished penetration at least 15 times during a sex party (trans. pp. 1701-1702).

9. Deputy Pint also recognized very early in the investigation that the children might be totally fabricating the murder and mutilation allegations, and probably shared his doubts with Kathleen Morris (trans. p. 1667). Pint believed that some statements by the children of occurrences were highly unlikely (trans. p. 1705), and was not convinced that even one person was murdered (trans. p. 1670). He was in agreement with Officer Fleck that it wasn't necessarily homicides that occurred but, rather, kiddy porn or kiddy snuff porn that the children had seen (trans. pp. 1543, 1582).

10. Deputy Pint did not seek search warrants in the murder and mutilation investigation because he did not feel there was probable cause. He was not convinced with any certainty that even one person was murdered (trans. pp. 1541, 1671).

11. Kathleen Morris testified she was aware that neither Fleck nor Pint thought there was sufficient evidence to provide probable cause for a search warrant in the murder and mutilation investigation (trans. p. 2644).

12. When asked if, in her opinion as Scott County Attorney, there was sufficient evidence to provide probable cause for a search warrant in the murder and mutilation investigation, Kathleen Morris responded: "I can't answer that yes or no. If I had to say, I'd say no, not at that time, no, doing a search warrant wasn't the thing to do." (trans. p. 2644). When asked again about obtaining search warrants in later questioning, Kathleen Morris testified: "I think we all knew that there was probable cause if we wanted to . . . make it a public investigation." But then said that Officer Fleck probably thought there was not (trans. pp. 3467-3468)

13. Kathleen Morris testified she did not recall specifically but probably did tell Deputy Pint to document the murder and mutilation allegations (trans. pp. 3445-3446).

14. Prior to the Bentz trial, Kathleen Morris received a written request, pursuant to Minnesota Rules of Criminal Procedure, Rule 9.01, Subd. 6,* dated February 13, 1984, from Joseph Friedberg, attorney for Robert Bentz, asking for: "any and all materials or information within the prosecutor's possession ... or others who have participated in the investigation ... which is favorable to the defense, which tends to reduce guilt or culpability, ... which may tend to disprove or detract from the strength of the allegations against the defendant ...." (Comm. Stip. #8).

15. Kathleen Morris received another request, again pursuant to Minnesota Rules of Criminal Procedure, Rule 9.01, Subd. 6, dated July 9, 1984, from Robert Bentz through his new attorney, Earl Gray, asking the prosecutor "to disclose to defense counsel any material or information within its possession and control that tends to negate or reduce the guilt of the accused as to the offense charged (Comm. Stip. #8).

16. Both of the above requests reminded Kathleen Morris that she had a duty to provide the information requested even if the information was in the sole possession of law enforcement

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*NOTE: **Minnesota Rules of Criminal Procedure**
Rule 9.01. Disclosure by Prosecution.

> Subd. 1. Disclosure by Prosecution without Order of Court. Without order of court, the prosecuting attorney on request of defense counsel shall, make the following disclosures:
>
> > (6) Exculpatory Information. The prosecuting attorney shall disclose to defense counsel any material or information within his possession and control that tends to negate or reduce the guilt of the accused as to the offense charged.
> >
> > (7) Scope of Prosecutor's Obligations. The prosecuting attorney's obligations under this rule extend to material and information in the possession or control of members of his staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to his office.

officers, as long as the law officers reported to her office on the case in question (Comm. Stip. #8).

17. Kathleen Morris never asked either Deputy Pint or Officer Fleck to produce or turn over their notes in response to the above requests prior to the Bentz trial, even though she was aware of the notes and their substance (trans. pp. 1109, 1239, 2551). Kathleen Morris never advised defense counsel of the existence of the murder notes nor did she ever turn over such notes to defense counsel in the Bentz case (trans. p. 3478).

18. Kathleen Morris's definition of exculpatory material as discussed in Rule 9.01 subd. 6, "is material that would tend to negate the guilt of an individual or would somehow help him favorably in his case." (trans. p. 2508).

19. Kathleen Morris testified that she did not regard the murder and mutilation investigation notes of Officer Fleck and Deputy Pint as exculpatory (trans. pp. 2547-2548).

20. Kathleen Morris did testify however that, had the attorneys for Robert and Lois Bentz known that child witneses in that trial had alleged murder and mutilation, they might have thought it would affect the credibility of those witnesses (trans. pp. 2548, 3475). Kathleen Morris herself, testified that she had stated to Sgt. Einertson in October, 1984, that she thought that the murder notes would affect the credibility of the children (trasn. p. 3477).

21. Kathleen Morris further testified that when a State's witness takes the witness stand, that witness has his or her credibility on the line and, therefore, it is the prosecutor's obligation to turn over to the defense attorney anything of which the prosecutor is aware that could affect that credibility (trans. p. 3498).

22. Gehl Tucker, an assistant Scott County attorney in 1984, and the lawyer to whom Kathleen Morris entrusted the trying of the Buchan case, believed that the murder and mutilation allegations would make ordinary people question the children's credibility (trans. p. 2915).

23. Kathleen Morris stated she recognized a duty to follow Rule 9.01 and that she did observe this rule in the conduct of her affairs as Scott County Attorney (trans. p. 2509).

24. Kathleen Morris was aware that, under Minnesota law, Rules of Criminal Procedure Rule 9.03, a motion for a protective order can be made when a prosecutor is concerned about sensitive information which, under Rule 9.01, should be turned over to defense attorneys. Kathleen Morris never made that motion prior to the Bentz trial with regard to the murder notes (trans. pp. 3480-3482).

25. On the eighth day of the Bentz trial (August 29, 1984), while Mr. Gray was cross-examining a child, that child indicated that an officer was making handwritten notes as the child was being interviewed, whereupon Mr. Gray made a demand for the handwritten notes (Bentz trial trans. pp. 286-287).

26. According to Judge Mansur, when Kathleen Morris then produced all of the handwritten police notes to him as he ordered, she indicated that some of Deputy Pint's notes were a confidential, ongoing homicide investigation and she requested that the Judge treat those differently, describing sordid details about children being butchered, dumped into the river, some being buried in parks, and generally stated it was "God awful stuff that they were doing to the children." (trans. p. 1283).

27. Judge Mansur testified that he then assembled everyone in his chambers and went through Deputy Pint's notes. It was very difficult to ascertain from the notes who the children were talking about and to follow the notes in any semblance of order (trans. pp. 1281, 1423).

28. Judge Mansur then directed Deputy Pint to reproduce only those parts of the notes that dealt with sex abuse that was the subject matter of the Bentz trial and ruled that, since the notes relating to murder and mutilation involved an ongoing investigation that was not related, they were

work product and not discoverable and sealed those notes (trans. pp. 1281-1282, Bentz trial pp. 294-295).

29. Officer Earl Fleck's notes were never mentioned or produced (trans. p. 1424, 3469).

30. Kathleen Morris gave Judge Mansur, according to Judge Mansur's testimony, no indication or details of what law enforcement was doing to solve these alleged murders, and he just accepted her word for it that it was an ongoing investigation (trans. pp. 1434-1435). His statement on the record at the Bentz trial was "It's my understanding, and the State can correct me if I am wrong, . . . these reports are primarily work product of an ongoing investigation." (Bentz trial p. 294).

31. Judge John Fitzgerald found that these same notes were not work product and ordered them released to defense attorneys in the Buchan trial on October 10, 1984 (Comm. Ex. #EEE-3).

CONCLUSION:

Based upon the foregoing findings of fact, the Commission concludes that the statements of murder and mutilation made by children who were potential witnesses in the sex abuse cases in Scott County went to their credibility as witnesses and were, therefore, exculpatory evidence. Under Minnesota Rules of Criminal Procedure, Rule 9.01 these notes were discoverable. The Commission also concludes that Kathleen Morris did have knowledge of the existence of the murder and mutilation notes and did suppress those notes from the defense counsel in the Bentz cases who had asked for exculpatory materials. Kathleen Morris knew that others could consider these notes exculpatory. The Commission finds that the suppression of the murder and mutilation notes does constitute malfeasance on the part of Kathleen Morris in her role as county attorney in that she intentionally suppressed the existence of those murder and mutilation notes from defense counsel on he own initiative knowing of their

impeachment potential. Even if Kathleen Morris though her reasons for suppressing the notes were valid, nonetheless, she had a clear duty to apply to the court for a protective order rather than determining on her own that the exculpatory material should not be disclosed.*

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*NOTE:

The Commission does not find that Kathleen Morris' conduct in suppressing the murder and mutilation notes resulted in the violation of the Bentz's constitutional rights thereby not bringing into issue the standards espoused in Brady v. Maryland and subsequent cases interpreting Brady.

2. Violated the Court's Order for sequestration of witnesses in the trial of Robert and Lois Bentz.

FINDINGS:

1. A formal sequestration order never appears in the Bentz trial record although as the Prosecution called its first witness, the attorney for Mr. Bentz stated to the Court that there was a sequestration of witnesses (Bentz trial p. 169) and one potential defense witness was specifically pointed out. Since no record was made at the Bench Conference there is no record of the Judge's decision. However, a State's witness was briefly removed from the courtroom some time later and Mr. Gray reminded the Court that "he is sequestered, that witness." (Bentz trial p. 205). No one questioned Mr. Gray's comment.

2. Later in the Bentz trial there was another discussion about what the sequestration order meant with regard to Kathleen Morris talking with her witness after he had testified and prior to resuming the stand the next day (Bentz trial p. 216-217).

3. Kathleen Morris defined sequestration during the discussion in #2 above as follows: "Sequestration order just means that I can't have him talking to another witness about his testimony so that witness could come in and corroborate it." (Bentz trial p. 216).

4. At this point in the trial Judge Mansur agreed with Kathleen Morris stating: ". . . standard is that the prosecution witnesses are precluded from discussing the substance of their testimony among themselves or as to any witnesses that may have testified as to what he has discussed or what he had testified to." (Bentz trial p. 217).

5. The disagreement as to what sequestration meant arose after WB testified in the Bentz trial that the children were housed together in a motel. Kathleen Morris defined sequestration as witnesses not listening to other witnesses testifying, and that they are not to discuss that testimony (Bentz trans. p. 606). Judge Mansur did not disagree with that principle but added that he had relied upon the attorneys to tell their witnesses when a sequestration order applied, and "even more important, it's my feeling that there is a duty upon the prosecution when there is a sequestration order to inform the Court of this type of housekeeping . . . . have the court given an opportunity to listen, or give the defense an opportunity to object, and have the court then address the problem and set some standards." (Bentz trial pp. 608-609).

6. Judge Mansur admitted he did not discuss the above definition with Kathleen Morris or anyone from her office on the record in the Bentz trial and does not recall ever discussing it with them prior to the Bentz trial (trans. p. 1293 and Comm. Ex. #81).

7. On August 28, 1984 the night before the first day of the Bentz trial testimony JeB, KF and SK were housed together at the Howard Johnson Motel in Burnsville, Minnesota. On August 29, 1984 the following child witnesses were at the same Howard Johnson Motel: JeB, KF, SK, BB, TB and WB. Only JeB had testified that day.

On the third day, August 20, 1984, BB, TB and WB were the only child witnesses who remained at the motel (Comm. Ex. #81).

8. Kathleen Morris stated that the children were placed together for safety, convenience, and other reasons (trans. pp. 2563-2564); that they were scared and in need of protection (Bentz trial p. 556).

9. Diane Johnson, Guardian Ad Litem for SK, JeB, BB, and JK, stated that the children were placed at the motel for safety, convenience, as a calming or distracting event and to keep the sex abuse trials away from their personal lives (trans. pp. 2143-2145).

10. There was a stipulation in the Bentz trial after the children had testified that if therapists, guardians, and police were called as witnesses they would all testify that the reason the children had been placed in a motel together was for their safety and protection (trans. p. 1297, Bentz trial p. 1049-1050).

11. There was a stipulation at the Commission Hearing that the housing in the motel during the Bentz trial was reasonable and appropriate because there were legitimate security concerns. The remaining issues, however, were whether Kathleen Morris should have notified Judge Mansur, and whether her conduct at the motel was appropriate (trans. pp. 2873-2875).

12. Kathleen Morris told JeB at dinner on August 29, 1984 that he did a good job in Court that day and everyone should give him a hand (Bentz trial pp. 585-6 and trans. p. 2570). Deputies Pint, Morgan, and Busch were present as was Child Protection Social Worker Doris Wilker (trans. pp. 944, 1649, 1879 and Bentz trial p. 1046). The children present were JeB, KF, WB, SK, BB, AB, JK and MC (Bentz trial pp. 564-565).

13. BB testified that she heard Kathleen Morris say that JeB did a good job and she also heard that everybody did good from Pam McCabe, Diane Johnson, Nancy Platto, Kathleen Morris and Gehl Tucker (Bentz trial pp. 702-703).

BB further testified that she knew what Kathleen Morris meant and what the other adults meant by "doing good" and that was to tell the truth which BB understood was to testify that the Bentzes hurt them. When BB was told the kids who testified did good she believed that meant they testified that the Bentzes hurt them (Bentz pp. 704-706).

14. After that dinner, Doris Wilker told SK "You do a good job, too," (Bentz trial p. 1046) and told KF that JeB had done a real good job and she hoped KF did a good job, too. KF later testified she knew what Ms. Wilker meant, stating: "I know what she wants me to do a good job because they did stuff wrong." (Bentz trial p. 592).

15. After Judge Mansur became aware that the child witnesses were being housed together he stated: " . . . What happens to the children prior to trial is different than what happens once the trial starts, as far as communication" and Kathleen Morris responded "You're right, Your Honor that is why they don't talk to each other about it." (Bentz trial p. 555).

16. WB testified that he didn't talk with the other kids a month earlier at a party about what would be said in court but had talked with JeB and KF since he had been at the motel (Bentz trial pp. 545-6).

17. WB testified that JeB told him he went up against his mom and dad when he testified the first day of the Bentz trial, and that JeB also told him what he testified about (Bentz trial pp. 503-4).

18. SK testified that JeB told her when they asked her a question all she had to do was answer yes or no (Bentz trial p. 473).

19. Diane Johnson never heard the children talking about testimony although she was not present the entire time with the children at the motel (trans. p. 2131), and she was never told by Kathleen Morris and was unaware of a sequestration order (trans. p. 2132).

20. After interviewing some of the child witnesses in the Bentz trial, Judge Mansur found no evidence of tainting that

would warrant striking their testimony (Bentz trial pp. 1296-1297).

21. Kathleen Morris stated she did not talk with her witnesses about sequestration but she asked Doris Wilker and a homemaker to talk with the children (trans. pp. 2554-2555, 3487, 3511) as well as mentioning it to Paul Thompson, a guardian ad litem (trans. p. 3512).

22. Doris Wilker, a Child Protection Social Worker for Scott County, testified that she had been aware of sequestration orders ever since she worked in her job (4 years) and knew that meant the children should not talk about their testimony. She stated further that Kathleen Morris reminded her of sequestration and Ms. Wilker then told the children as they arrived at the motel (Bentz trial pp. 1042-1044).

23. KF told the Judge in a hearing on the sequestration issue that Doris Wilker told KF and the other kids that "they are not supposed to talk about testifying because the judge didn't want that." KF further stated that Doris Wilker told her this late in the afternoon of August 30, 1984 after WB had testified because no one had told Doris, so she didn't know about it until then. (Bentz trial pp. 580-581).

24. When confronted by Judge Mansur with the fact that KF had told him she was not instructed on the sequestration order until late the day before, Kathleen Morris responded: "She said she wasn't. I know everybody knew that you couldn't. I talked to them. Everybody knew that you couldn't discuss testimony. You Honor, not the case. I never discussed the case with that witness (KF). I didn't." (Bentz trial p. 608).

25. On December 20, 1984, Judge Mansur held a hearing in which he publicly reprimanded Kathleen Morris for violating his sequestration order during the Bentz trial. Kathleen Morris took this issue to the Appellate Court of Minnesota seeking a vacation of the reprimand or, alternatively, a contempt hearing. On March 28, 1985, that Court found that Kathleen Morris "had no effective notice

or opportunity to be heard" at the hearing on December 20, 1984 and, therefore, vacated the reprimand and sent the matter back to the trial court for further proceedings (Comm. Ex. #JJ-5).

26. Judge Mansur testified that the matter was sent to the chief judge of the district and is still pending (trans. p. 1379).

CONCLUSION:

Based upon the foregoing findings of fact, the Commission concludes that while it was reasonable to house the children together during the Bentz trial, Kathleen Morris had a duty, because of these special arrangements, to make both the children and the adults involved aware of the sequestration order. She also had a responsibility to see that her own behavior was above reproach. It has been proved by clear and convincing evidence that Kathleen Morris breached her duty and failed in her responsibility and, thus, violated the Court's Order for sequestration of witnesses in the trial of Robert and Lois Bentz. In the judgment of the Commission this act constitutes malfeasance.

PROVED: ACT DOES NOT CONSTITUTE MALFEASANCE

1. Dismissed all criminal complaints against 21 defendants on October 15, 1984, despite her professed belief that:

(i) The cases had been properly investigated.

(ii) There was probable cause to charge the cases.

(iii) The cases had been properly prepared for trial and could be successfully prosecuted.

FINDINGS:

1. Kathleen Morris dismissed all criminal complaintis against twenty-one defendants on October 15, 1984. (Comm. Stip. #13). Of those defendants, only Donald and Cindy Buchan had jeopardy attached (trans. pp. 2911-2912).

2. Kathleen Morris testified that all of the criminal sexual conduct cases dismissed on October 15, 1984, had been properly investigated (trans. pp. 2472-2476), that there existed probable cause to charge all those cases (trans. p. 2475) and that the cases had been properly prepared for trial and could have been successfully prosecuted (trans. pp. 2503, 2507, 2639).

3. Deputy Patrick Morgan testified that the dismissed sex abuse cases in which he was the complainant were all properly investigated, probable cause existed to charge the defendants, and further that it was "technically possible" that convictions could have been obtained on those cases if they had not been dismissed (trans. p. 949).

4. Deputy Norman Pint testified that the sexual abuse complaints signed by him were properly investigated, probable cause existed to charge the defendants involved, and while he did not ask Kathleen Morris to protect his murder investigation, he did not disagree with the dismissals (trans. pp. 1537-1551).

5. Officer Larry Norring testified that the six to ten sex abuse complaints he signed as the complaining witness were

all properly investigated and prepared, that probable cause existed to charge the defendants involved, and that he personally did not agree that any of them should be dismissed because they would have been successful had they gone to trial (trans. pp. 692, 782).

6. Deputy Michael Busch testified that those sexual abuse cases in which he signed the complaint were all properly investigated, that there was probable cause to charge and that he agreed with the dismissals but was not sure that was the correct decision (trans. pp. 1805-1807).

7. Kathleen Morris gave three reasons for dismissing all of the sex abuse cases on October 15, 1984:

> a. protection of an active criminal investigation of great magnitude (Comm. Stips. #33, #13);
>
> b. the inability of many of the children to testify in any more criminal proceedings without great emotional distress or trauma (Comm. Stips. #13, #33); and
>
> c. discovery motions pending in criminal matters would have subjected child witnesses to additional stress and trauma (Comm. Stip. #33).

8. The following were the occurrences which were the basis for Kathleen Morris' public reasons for dismissal:

> a. Judge John Fitzgerald ordered, on October 10, 1984, the release to defense counsel of Deputy Pint's notes concerning the murder and mutilation allegations made by some of the children who were to testify in the Buchan trial (Comm. Ex. #EEE-3).
>
> b. In the only trial before October 15, 1984, KF, BB, JeB, SK, WB and AB all testified in the Bentz trial, an experience which was extremely difficult for them (trans. pp. 694, 947-948, 1041-1042, 2120, 2175).
>
> c. On September 24, 1984, Judge Jack Mitchell, in a strongly worded order, required that those alleged victims or juvenile witnesses in the following cases submit to up to 4 hours of interviews with defense counsel and have a psychological evaluation by a psychologist or psychiatrist chosen by the defense:

James Brown
Christine Brown
Judith Kath
Alvin Rud
Rosemary Rud (Comm. Ex. #00-13)

A motion for a rehearing on this order was denied on October 15, 1984 (Comm. Ex. #00-12) although Kathleen Morris was aware of what Judge Mitchell's written order was going to be on October 12, 1984 (trans. p. 3503).

9. As to Judge Fitzgerald's Order:

a. The children who were alleging murder to Deputy Pint were JeB, AnM, AmM, and AB [who immediately recanted] (Comm. Ex. #58-23B) and these children were witnesses expected to testify in the following number of cases:

JeB	- 10
AnM	- 11
AmM	- 10
AB	- 2

b. According to Deputy Pint and Sgt. Einertson, Kathleen Morris was concerned with the effect on the credibility of the children's testimony in the sex abuse cases if their bizare allegations of murder and mutilation were revealed (trans. pp. 1553-4, 3477), and Kathleen Morris testified that was a concern and may have had an impact on her decision to dismiss (trans. p. 3429).

c. Judge Fitzgerald's order did not include all of the child witnesses in the Buchan case, so that even if Kathleen Morris protected the murder investigation by dismissing only those counts regarding children making murder allegations, the case could still have gone forward although the counts remaining relied on the testimony of children ages 5 and 3 years old. These children had not testified in the Bentz trial. (Comm. Exs. #32-13, #81 and trans pp. 2633-4).

d. Gehl Tucker testified that there were adult witnesses he intended to call in the Buchan trial who would corroborate the testimony of the two children who would remain as witnesses after those counts regarding children making murder allegations were dismissed (trans. p. 2893).

10. As to Kathleen Morris' concern for the inability of the children to further testify:

a. New complaints were filed by Kathleen Morris against both Helen and Tom Brown on September 18, 1984 and in those complaints JeB, BB, SK, KF, AB and WB were all listed as alleged victims. (Comm. Stip. #2). These are the same children who had just testified in the Bentz trial. (Comm. Ex. #81).

b. Kathleen Morris testified that on September 24, 1984, almost one month after KF, BB, and JeB had testified in the Bentz trial, she was still willing to use them as witnesses in a future trial (trans. p. 2636).

c. Kathleen Morris testified that charges involving three of the children who testified in the Bentz trial were dismissed in the Buchan cases just days before that trial began. The reason for this was to "narrow the focus" and to give them "a rest" so that those children could testify "down the line." (trans. p. 3418).

d. Diane Johnson, Guardian Ad Litem for the three of the children who testified in the Bentz trial (SK, JeB and BB) testified that one of those children (JeB) recanted on the stand but the other children adhered to their stories although they were emotionally upset, and Ms. Johnson's opinion was that they could not continue to testify (trans. pp. 2120-2121).

e. Anita Fossen, mother of KF who also testified in the Bentz trial, said that her daughter felt she never got a chance to tell the truth in that trial but never said she was unwilling to testify again and, in fact, Mrs. Fossen stated she could testify at further hearings without harm if the cross-examination was controlled. Mrs. Fossen said neither she nor her husband were consulted before the cases were dismissed (trans. pp. 2170-2171).

11. As to Judge Mitchell's Order:

a. The following children were affected: VK, SK, JK, SG, MG, BB, TB, RR, TR, SR, and RK. (Comm. Stip. #2).

b. It is possible that each of these children could have been interviewed up to 24 hours by defense counsel and had six different psychological evaluations.

c. Kathleen Morris did not intend to appeal Judge Mitchell's Order even though she believed it would have been overturned on appeal (trans. pp. 3420-3421).

d. Judge John Fitzgerald had denied a similar motion for doctor and psychiatric examinations of the child witnesses in the Myers' cases on September 4 & 7, 1984 and in the Buchans' cases on September 13, 1984 (Comm. Ex. #00-21).

12. If Kathleen Morris were to have dismissed the complaints against the four defendants affected by Judge Mitchell's Order, and to have dismissed all counts involving children who had testified in the Bentz trial and those children who had made murder allegations, she could still have proceeded against the following defendants:

Helen Brown
Thomas Brown
Donald Buchan
Cindy Buchan
Marlene Germundson
Irene Meissinger
Greg Myers
Jane Myers
Scott Germundson
Robert Rawson (Comm. Stip. #2).

13. Of the sex abuse defendants listed in #12, if Kathleen Morris had further dismissed complaints against those defendants where the child witnesses were 5 years old or younger, and where there was no physical corroborating evidence, Kathleen Morris still could have proceeded against the following:

Robert Rawson
Irene Meissinger
Scott Germundson
Marlene Germundson
Thomas Brown
Helen Brown (Comm. Ex. #00-20).

14. Other serious problems had developed for Kathleen Morris at the time she made the decision to dismiss:

A. The following occurred during the Bentz trial:

i. James Rud, Kathleen Morris' first witness, could not identify Robert Bentz (Bentz trial p. 180).

ii. Kathleen Morris was stopped by the Court from presenting evidence of offenses of others not pled as separate counts in the Bentz complaints (Bentz trial p. 224).

iii. James Rud's testimony was stricken by the Court (Bentz trial p. 802, 807).

iv. The first child witness, under cross-examination, admitted he lied 3 times on direct examination by Kathleen Morris (Bentz trial p. 319, 350-352).

v. The testimony of all of the five children consisted of mainly yes or no answers to Kathleen Morris' questions with very little elaboration (Comm. Ex. #81).

vi. Even though some of the cross-examination of the children was very strenuous, Kathleen Morris testified she chose to make very few objections for "tactical" reasons. She also re-questioned only one child (Comm. Ex. #81 and trans. p. 3501).

vii. Kathleen Morris was accused by the defense and the judge of violating the sequestration order (Bentz trial p. 810-821).

viii. The judge granted a judgment of acquittal on those counts involving 2 of the 3 Bentz children, (Bentz trial p. 847), and the defense called one of those children as its first witness (Bentz trial p. 869).

ix. Dr. Ralph Underwager testified as an expert for the defense. Kathleen Morris neither objected to the expert status of Dr. Underwager nor cross-examined him (Bentz trial pp. 1295-1332).

x. Both defendants testified, denying any sexual abuse. Kathleen Morris did not cross-examine either defendant (Bentz trial pp. 1349-1382).

xi. Robert and Lois Bentz were acquitted of all charges on September 19, 1984 (Comm. Stip. #12).

B. In early September, 1984 (while the Bentz trial was in process) Judge John Fitzgerald ordered that James Rud could not be used by Kathleen Morris to testify against Greg Myers or the Buchans (Comm. Ex. #00-21). However, Kathleen Morris testified that she knew at the time of the Buchan trial that she would eventually be able to use the testimony

of James Rud as a corroborative witness in the subsequent sex abuse cases (trans. p. 3417).

C. Kathleen Morris believed she had become the focus that could harm the Buchan case, so just two 2 weeks before the Buchan trial she substituted Gehl Tucker for herself as the attorney for that trial. (trans. pp. 2613, 2887-2888).

D. On September 26, 1984, Judge Michael Young ruled that the Assistant Scott County Attorney, Miriam Wolf, had failed to provide clear and convincing evidence that the Buchan children were neglected. This was just two weeks before Don and Cindy Buchan were to go on trial for sexually abusing their children in the criminal court. (Comm. Ex. #00-21 sealed by Order of Commission, but see Minneapolis Star & Trib. 9-20-84).

15. After dismissing the twenty-one sex abuse cases, Kathleen Morris asked the Attorney General for Minnesota to take over the family court matters of the children involved in these cases since most had been removed from their homes and were under the jurisdiction of the family court (trans. pp. 3409-3413).

16. When asked for the underlying criminal files of the Family court cases by the Attorney General, Kathleen Morris responded that those cases were dead, they were finished (trans. pp. 3036-3067, 3119).

17. The Attorney General insisted upon receiving all files before the office would become involved. The criminal sex abuse files as well as the family court files were then delivered to his office several days later (trans. pp. 3035-3038, 3042, 3044-3045, 3119-3120, 3143).

18. The Attorney General did explore the possibility of recharging some or all of the sex abuse cases. None of the former defendants were recharged, however, based upon a determination that the original Scott County sex abuse investigation did not meet the Attorney General's standard for charging of a case and, in the weeks and months following the dismissals, a number of major potential witnesses began to recant their allegations of sex abuse (Comm. Ex. #AA-10, trans. pp. 3134-3136, 2040).

19. The Attorney General testified that in his opinion, his investigation and conclusion not to prosecute does not foreclose the right or authority of Kathleen Morris to recharge those cases if she believes any could be successfully prosecuted (trans. pp. 3141-3142).

CONCLUSION:

Kathleen Morris did dismiss all criminal complaints against 21 defendants on October 15, 1984. She did believe that the cases had been properly investigated and that there was probable cause to charge the cases. She also believed that the cases had been properly prepared for trial and could be successfully prosecuted. Although other factors clearly existed in addition to those specifically stated by Kathleen Morris for dismissing the 21 sex abuse cases, a prosecutor has broad discretion in deciding whether to dismiss a case. The evidence presented to the Commission did not establish to a clear and convincing standard that Kathleen Morris exceeded this prosecutorial discretion.

2. Kathleen Morris falsely stated in appearances before news media the children were not subject to "dozens of interviews".

FINDINGS:

1. In her statements to the media on February 15, 1985, Kathleen Morris stated "the suggestion in Mr. Humphrey's report that children were subjected to dozens of such investigative interviews is simply false." (Comm. Stip. #36).

2. In that same statement Kathleen Morris said that one to three investigative interviews with a particular child is the usual practice but because there were "numerous victims and numerous suspected perpetrators" more than the usual investigative interviews was needed (Comm. Stip. #36).

3. Based upon the Report put together by deputies Morgan, Pint, Busch and Officer Norring (Comm. Stip. #11) as well as the testimony of Pint and Fleck as to their interviews, (Comm. Exs. #54-1 and #58-1) the Affidavit of Guardian Ad Litem, Diane K. Johnson (Comm. Ex. #77-1) and the testimony of Catherine Gasteyer (Comm. Ex. #91-1) the following is a list of children who had more than a dozen interviews each with investigators.

SK - 23
BB - 27
VK - 24
JK - 15
JeB - 25
KF - 22
AB - 18
WB - 13
AnM - 22
SR - 15

4. In addition to the listed interviews the named children were meeting with therapists and psychologists (Comm. Stip. #36), and were having court preparation interviews with Kathleen Morris (trans. p. 2489, Comm. Ex. #37 p. 11) or her staff. In at least four cases, the guardian ad litem documented the number of court preparation interviews (Comm. Ex. #77-1) as follows:

SK - 19
VK - 14
JeB - 7
BB - 6

5. "Investigative interviews" have been defined by Kathleen Morris as those interviews where there is substantive discussion about sex abuse (trans. pp. 3356-3357).

6. There were also interviews with investigators, according to Deputy Pint, with a child where no substantive discussion about sex abuse issues occurred (trans. p. 1625).

7. There were occasions during Court preparation interviews with a child when substantive discussion of sex abuse allegations occurred or when new information of sex abuse would be obtained (pp. 1009-1011, Bentz trans. pp. 902-903).

CONCLUSION:

Based upon the foregoing findings of fact the Commission concludes that Kathleen Morris did make a false statement to the media when she said the children were not subject to dozens of interviews even if one interprets this to mean only "investigative" interviews, but does not find this to be malfeasance.

3. Kathleen Morris falsely stated to the trial Judge in the Bentz trial that the Defendants never asked for the notes of the investigating officers when, in fact, defense counsel had specifically requested such notes.

FINDINGS:

1. Prior to the Bentz trial, Kathleen Morris received a Request for Discovery dated February 13, 1984 from Joseph Friedberg, Attorney for Robert Bentz, in which he requested "all copies of all written summaries of oral statements made by witnesses the state intends to call at trial . . . " (Comm. Stip. #8).

2. Prior to the Bentz trial, Kathleen Morris received a Request for Disclosure dated July 9, 1984 from Earl Gray, the substituted attorney for Robert Bentz, in which he requested to be allowed to inspect and reproduce any "written summaries within its knowledge or the substance of relevant oral statements made by . . . witnesses to prosecution agents." (Comm. Stip. #8).

3. Both Mr. Friedberg and Mr. Gray reminded the County Attorney that she had a duty not only to disclose what was in her possession but also what materials others might have who had participated in the investigation (Comm. Stip. #8).

4. Kathleen Morris testified that these requests from the defense attorneys could cover police notes (trans. pp. 2548-2549).

5. On the first day of the Bentz trial (August 20, 1984), Mr. Gray and Mr. Voss, attorneys representing Mr. and Mrs. Bentz, made a motion requesting discovery which they believed they were entitled to but had not received, stating to Judge Mansur in the presence of Kathleen Morris: ". . . we have a right . . . to find out if there are more reports in that county, not what she has, but what the police have . . . or what these officers have in handwritten notes. We have a right to cross-examine them, Your Honor, and maybe its handwritten notes . . . everytime their log showing each time those kids were interviewed." (Bentz trial trans. p. 20). (Emphasis Added).

6. Kathleen Morris responded to this request ". . . there are no reports, and I am sure no notes." (Bentz p. 24, line 18).

7. On the eighth day of trial (August 29, 1984) while Mr. Gray was cross-examining a child, that child indicated that an officer was making handwritten notes as the child was being interviewed, whereupon Mr. Gray made a demand for the handwritten notes stating: "I have asked before for them, and all we got were logs." (Bentz trial trans. pp. 286-7).

8. Kathleen Morris immediately responded: "They never asked for the notes, what they saw, and what time, specific dates. You know I haven't seen any of those notes. I don't know whether any of those notes are still in existence . . . " (Bentz trial p. 287). (Emphasis Added).

9. After some discussion about the defense attorneys receiving the officer's logs of interviews with the children, the Court stated that was the alternative to receiving the handwritten notes since it was his understanding Kathleen Morris had " . . . received from the officers all the records that they had . . . " (Bentz trans. p. 288).

10. Kathleen Morris finally stated " . . . I will have to see them and see if they got notes. They may very easily have notes in their files." (Bentz trial p. 288, lines 19-21).

CONCLUSION:

Based upon the foregoing facts, the Commission concludes that Kathleen Morris did state to Judge Mansur, on the eighth day of the Bentz trial, that the Defendants never asked for the notes of the investigating officers when in fact, defense counsel had specifically requested such notes. However, given the fact that Judge Mansur recalled that defense counsel had requested such notes and those notes were subsequently delivered to defense counsel, no damage was done. Therefore, because no damage was done, the Commission concludes this is not malfeasance.

4. She falsely stated to the trial Judge that the child witnesses were housed separately, or failed to disclose to the trial Judge that the child witnesses were housed together.

FINDINGS:

1. During the Bentz trial when arrangements for competency hearings for the child witnesses were being discussed by Kathleen Morris and Judge Mansur, Kathleen Morris stated that she needed to make some arrangements with children and their foster families, and the transportation, adding that: "some of the children haven't seen each other because we didn't want defense counsel to think they were giving each other clues." (trans. p. 1252, Bentz trial pp. 43-44, Comm. Ex. #JJ-2).

2. After one of the prosecution witnesses had testified in the Bentz trial, Judge Mansur recalled that defense counsel made a request, off the record, to be heard on a motion that Kathleen Morris had violated the Sequestration Order because SK (child witness) could not have answered certain questions in the manner in which she had without having discussed with JeB (another child witness) his

testimony, to which Judge Mansur responded, still off the record, "that these children were all in different locations coming from different parts of the metropolitan area and that JeB had left long before that particular child had arrived . . . so . . . I . . . said that there's no substance to their motion." (trans. pp. 1268-9, Comm. Ex. #JJ-2).

3. Kathleen Morris did not know whether Judge Mansur stated the above and she did not remember him making that statement (trans p. 3492).

4. Judge Mansur recalled that Kathleen Morris responded that was right, and she said nothing further about where the children were housed. (trans p. 1269)

5. SK and JeB were housed at Howard Johnson's Motel on the same two nights of August 28, 1984 and August 29, 1984 before they testified and after JeB had testified partially the first day (Comm. Ex. #81).

6. Kathleen Morris states that she did not tell Judge Mansur that some of the potential child witnesses in the Bentz trial were housed together in a motel or moved to a motel after the competency hearings (trans pp. 2557, 2559, 3387) because she did not believe that was her duty (trans. p. 3387).

7. Judge Mansur discovered that some of the children were housed together when one of the child witnesses testified to this during the Bentz trial (Bentz trans. p. 559 and Comm. Ex. JJ-2).

CONCLUSION:

Based upon the foregoing findings of fact, the Commission concludes that Kathleen Morris did not falsely state to the trial Judge that the child witnesses were housed separately, but did fail to disclose to the trial Judge that the child witnesses were housed together. The Commission finds Kathleen Morris had no duty to disclose this information to the Judge although a prudent prosecutor would have done so, and, therefore, finds no malfeasance.

5. Ms. Morris has physically and verbally abused employees of her office, and has used intemperant and abusive language toward employees in her office and other Scott County employees.

FINDINGS:

1. According to testimony of both Sheriff Tietz and Assistant County Attorney, Pamela McCabe, Kathleen Morris went to Tietz's office in June, 1984, to request that Tietz allow Deputy Pat Morgan to interview Cindy Buchan, the wife of one of the Scott County deputies. When the Sheriff refused, saying a BCA agent should to that, both Tietz and McCabe testified that Kathleen Morris became upset and said heatedly: "You fucked up the investigation." Sheriff Tietz recalled that Ms. Morris further added: "I'm holding you personally responsible and the whole world is going to know." (trans. pp. 548-550, 1939).

2. Maila Hedin testified that in a phone conversation with Kathleen Morris on July 30, 1980 Kathleen Morris told her "Maila you fucked up," that she [Kathleen Morris] was going to burn her with the commissioners and that Maila was out to get her (trans. pp. 2350-2351).

3. Lt. Donald Hamilton of the Scott County Sheriff's Department testified that on three different occassions he had disputes with Kathleen Morris regarding criminal cases he was working on during which Kathleen Morris called him "a son of a bitch," "a fucker," and terminated one conversation with: "Hamilton, you fucked me for the last time." (trans. pp. 2393-2398).

4. According to Sgt. Frederick Rgnonti, sometime during July, 1979, just after a judge had dismissed a complaint against former Sheriff Moody following an Omnibus Hearing in which Rgnonti testified, Kathleen Morris stated to him: "You blew it, you fucker. You blew it." (trans. p. 84).

5. Kathleen Morris did, however, state in the Bentz trial in response to the accusation that she told child witnesses,

another child "did a good job" in court that: ". . . and any time with any witness, I'm never going to walk him out and say it was a horseshit job you did. You know, I'm never going to do that. By gosh, people have a right to be treated as human beings, and so do children." (Bentz trial p. 796).

6. Janet Vogel, a clerk/typist with the Scott County Attorney's Office, testified that during late July or early August of 1984 after she had been seen answering a reporter's question (as to where another reporter had gone) by Kathleen Morris, Ms. Morris said: "goddamn you, I thought I never — I thought I told you never to talk to reporters." Ms. Vogel testified further that "At that point she took the back of one of her hands and flung it against my upper left arm," and that this contact "stung for a minute." (trans. pp. 174-176).

7. Kathleen Morris denied that she struck Janet Vogel during that incident, and that, in fact, she did not even display anger (trans. pp. 2460-2461).

8. Ms. Vogel testified that on another occassion Kathleen Morris "had a stack of files and she lifted them above her. I was thinking she was going to hit me so I shrunk back." (trans. p. 177).

9. Kathleen Morris testified that she does not recall threatening Janet Vogel with a handful of papers (trans. p. 2461).

10. Patricia Buss, a former assistant Scott County Attorney, testified that in February, 1982, she had spoken to a reporter (as to where two people who worked in the courthouse were located) and when Kathleen Morris learned of this she shouted Ms. Buss' name throughout the office and when Ms. Buss approached her, Kathleen Morris, "grabbed me behind the neck and pulled me into an office." This conduct by Kathleen Morris was not reported by Ms. Buss because she felt she would be fired if she did. (trans. pp. 235-237).

11. Kathleen Morris denied that she seized Ms. Buss by the arm or by the neck (trans. p. 2461).

12. Deputy Norman Pint testified that Kathleen Morris is given at times to fits of anger, and that she made liberal use of intemperate language and was known to strike out physically at people during such fits of anger. (trans. pp. 1647, 1657).

CONCLUSION:

Based upon the foregoing findings of fact, the Commission concludes that Kathleen Morris has struck out physically at and verbally abused employees of her office, and has used intemperant and abusive language toward other Scott County employees. While her conduct, particularly toward those who work for her, is reprehensible it does not constitute malfeasance.

NO BASIS FOR ALLEGATION

Kathleen Morris falsely stated to the trial Judge in the Bentz trial that the family court Judge had been advised that child witnesses were being housed together during the trial.

FINDINGS:

1. Kathleen Morris stated to Judge Mansur during the Bentz trial that the family court judge knew that some of the children were in a motel (Bentz trial trans. p. 558).

2. Judge Young stated he was aware that some Bentz siblings were being moved to a hotel for safety and he had even phoned the defendants attorneys to warn them that there should be no threats to the safety of these children (trans. pp. 1469-1474). He knew of no other children being housed together (trans. p. 1472).

CONCLUSION:

Based upon the foregoing the Commission concludes there is no basis for the allegation because the evidence shows the family court had been advised that some child witnesses were being housed together.

NOT PROVED BY CLEAR AND CONVINCING EVIDENCE

1. Kathleen Morris falsely stated that the reason she dismissed the twenty-one cases of alleged sexual abuse of children on October 15, 1984 was because of an ongoing investigation of great magnitude when, in fact, she knew that the investigation in question was essentially complete and that investigating officers had been unable to locate credible evidence establishing the commission of serious crimes.

FINDINGS:

1. Kathleen Morris did state that a partial reason for her dismissal of the twenty-one sex abuse cases on October 15, 1984, was that the release of the murder and mutilation notes (by Order of Judge Fitzgerald in the Buchan trial) would likely prejudice an investigation that she labelled as "an active criminal investigation of great magnitude" and an "ongoing criminal investigation of a serious and sensitive nature." (Comm. Stip. #13).

2. Between July 9, 1984 and September 25, 1984 Deputy Pint and Officer Fleck interviewed 10 children, one child as many as seven times. Six of those children alleged murders occurred during the summer of 1983 (Comm. Exs. #54-1, #58-1). Both Pint and Fleck kept Kathleen Morris advised on the progress of their investigation (trans. pp. 1160-1167, 1237-1238). Deputy Pint shared with Kathleen Morris that some of the statements made by the children were "highly unlikely." (trans. p. 1705-1706). Officer Fleck remained open to the possibility that the children were fabricating the murder stories (trans. p. 1150).

3. Officer Fleck discussed with Kathleen Morris the possibility of securing the issuance of a search warrant and testified that Kathleen Morris concurred with him that there was not sufficient evidence to have probable cause for a search warrant (trans. pp. 1170-1191). Deputy Pint did not seek search warrants because he did not believe there was sufficient evidence to have probable cause. He was not

convinced with any certainty that even one person was murdered (trans. pp. 1541, 1671). Kathleen Morris testified she was aware that neither Fleck nor Pint thought there was sufficient evidence to provide probable cause for a search warrant in the murder investigation (trans. p. 2644).

4. Both Fleck and Pint testified that no physical evidence was ever obtained or developed to corroborate the claims of murder and mutilation (trans. pp. 1126, 1542). Deputy Pint testified that very early in the investigation he recognized that the children could be totally fabricating the murder and mutilation allegations (trans. p. 1667). Deputy Pint agreed with Officer Fleck that it was not necessarily homicides that had occurred. It could have been kiddy porn or kiddy snuff porn that the children had seen (trans. pp. 1543, 1582).

5. Deputy Pint testified that the most productive work on the murder and mutilation allegations was done between July 10 and August 16, 1984 (trans. p. 1538). Officer Fleck testified he did nothing substantial in the murder and mutilation investigation after September 1, 1984 (trans. pp. 1115,1206).

6. Scott County Sheriff Douglas Tietz testified that the "Inferences offered by the children were very far fetched as far as homicide . . ." was concerned (trans. p. 1944). Deputy Pint was aware that Sheriff Tietz was skeptical of the murder and mutilation allegations (trans. p. 1670). Kathleen Morris testified that she knew Sheriff Tietz did not believe the murder allegations (trans. p. 2645).

7. During August and September, 1984 a decision was made by the Scott County Sheriff's Department that security at the courtrooms in the Bentz and Buchan trials had a higher priority than the murder and mutilation investigation, and Deputy Pint (the sole Scott County Deputy working on the murder investigation) was assigned those security tasks (trans. pp. 1671-1673).

8. Sgt. David Einertson supervised the sex abuse and murder investigations for the Scott County Sheriff's

Department in 1983-1984. He had discussions with both Deputy Pint and Kathleen Morris about the necessity of keeping the murder investigation secret because it was "a hunting expedition" at the time. The decision to keep it secret was also based upon Sgt. Einertson's concern that his credibility as an investigator and Kathleen Morris' credibility as a county attorney would suffer if it were known that they were working on a murder investigation with no body or other physical evidence (Comm. Ex. #53-1, pp. 40-41, trans. pp. 3289-3291).

9. On October 10, 1984 there was a meeting at the Shakopee Police Department. Present at that meeting were: Deputy Pint, Chief Deputy DuBois, Chief Deputy Bill Neiven, Gehl Tucker, Rick Virnig, Kathleen Morris and Officer Fleck (who arrived later) (trans. pp. 1554-55). At that meeting Judge Fitzgerald's Order releasing Deputy Pint's notes on the murder and mutilation allegations was discussed. The county attorney's office wanted to know the status of the murder and mutilation investigation (trans. p. 1555). Deputy Pint felt strongly that the investigation should continue and that additional things could be done, (trans. p. 1556) although, he admitted that the police officers were never "hot on the trail" in any of their investigation thus far (trans. p. 1672-73).

10. On October 11, 1984 there was another meeting at the Shakopee Police Department. Attending that meeting was Officer Fleck, Deputy Pint, Chief Tom Brownell, Deputy Chief DuBois, and Deputy Chief Neiven (trans. p. 1567-68). Officer Fleck testified that the attitude of the Shakopee Police Department was supportive of leaving the case open (trans. p. 1197). Chief Deputy DuBois was more skeptical of the murder and mutilation allegations (trans. p. 1139). It was decided at that meeting to call in additional help and Chief Brownell contacted the BCA (trans. pp. 1568-69). It was communicated to Kathleen Morris that the investigation would go forward (trans. p. 1575).

11. Officer Fleck testified that he believed that as of October 15, 1984 the murder and mutilation investigation was still open and things could be done in furtherance of the investigation (trans. p. 1147). However, Officer Fleck also testified that the ". . . trail was very cold [concerning the murder and mutilation allegations] and that the suspects had had ample opportunity over that period of time, and certainly the cat was out of the bag in terms of the sexual abuse complaints and arrests, to destroy physical evidence." (trans. p. 1138).

12. BCA Agent Campion testified that in mid October he had several meetings with members of the Shakopee Police Department in response to a request to the BCA for help in a homicide investigation. It was Campion's sense that neither the Scott County Sheriff's Department nor the Shakopee Police Department "continued active in the homicide investigation." (trans. pp. 1965-1968). As of October 15, 1985, Campion testified he did not believe the murder investigation was a serious one although there were some matters he would have suggested to the investigators to clear up (trans. pp. 1994-2052).

12. As of October 15, 1984, Sheriff Tietz testified the file was still open and it was considered an ongoing investigation of homicide allegations. It was not an investigation of great magnitude, however. Had it been, Sheriff Tietz testified, he would have assigned greater manpower (trans. pp. 1944-1952).

13. On October 19, 1984, Kathleen Morris met with BCA Agent Campion who testified that Kathleen Morris told him the Sheriff did not take the murder allegations very seriously. In fact, there was basically only one person, Deputy Pint, working on the homicide. She told Agent Campion that she believed the allegations but there surely was a possibility that the homicides didn't exist and, according to Agent Campion, she added ". . . maybe we're all crazy out there." (trans. pp. 1973-1974).

14. Kathleen Morris testified that while she believed the murder investigation was an active criminal investigation of great magnitude she did recognize that the allegations could be the invention of troubled children (trans. p. 2643).

CONCLUSION:

Based upon the foregoing findings of fact there remains a grave doubt in the minds of the Commission that there was an investigation of great magnitude at the time Kathleen Morris dismissed the 21 sex abuse cases. Nonetheless, the investigation was still open. Accordingly, the evidence is not clear and convincing that Kathleen Morris did not believe that the investigation was of great magnitude.

2. She falsely stated to the trial Judge in the trial of Robert and Lois Bentz that there were no notes taken by investigative officers when, in fact, she knew the investigative officers had maintained notes in their investigative files.

[NOTE: The findings in this section deal with notes not related to the murder allegations but, rather, to the sex abuse charges. The murder investigation notes are dealt with in 1.a.(v) above.]

FINDINGS:

1. Kathleen Morris knew the deputies and police officers took notes while investigating the sex abuse cases but believed those notes were routinely destroyed when reports were made from them (trans. pp. 2523, 2550-2551).

2. Kathleen Morris tesified that prior to the Bentz trial she did not ask any of the investigating law enforcement officers if they had maintained notes on the sex abuse cases in their investigative files (trans. pp. 2540, 3485). At the Bentz trial Kathleen Morris stated to the Court: "They (the police officers) may very easily have notes in their files"

(Bentz trial p. 288), Kathleen Morris agreed that she had a duty to inquire about the existance of the notes (trans. p. 2542).

3. Deputy Morgan never told Kathleen Morris he had departed from the the custom of destroying his notes when he did reports, and Kathleen Morris never asked him if he had kept his notes regarding the sex abuse cases (trans. pp. 964-965).

4. Deputy Busch never told Kathleen Morris he had saved his notes of the sex abuse cases which was a change from his normal practice of destroying notes when reports are done, and does not recall whether Kathleen Morris asked for notes (trans. p. 1812-1813).

5. Officer Norring was never asked by Kathleen Morris for his notes, and he did not tell Kathleen Morris about the notes he kept (trans. p. 685).

6. Deputy Pint, contrary to his usual routine and custom to destroy notes when reports were made of any investigation, retained his notes in the sex abuse cases, but does not specifically remember telling Kathleen Morris that he was doing this (trans. p. 1623).

CONCLUSION:

Based upon the foregoing facts the Commission concludes that, while it is clear Kathleen Morris did not ask for handwritten notes even though it was her duty to do so, it has not been proved by clear and convincing evidence that she knew the officers had maintained notes in their files as to the sex abuse charges.

3. Kathleen Morris violated the constitutional rights of certain criminal Defendants (who were represented by lawyers) to have counsel and to remain silent by arranging for the criminal Defendants to be contacted by a lay person who was instructed to attempt to obtain incriminating statements from the criminal Defendants to be used against them in the pending criminal prosecutions.

FINDINGS

1. James Rud was arrested on September 26, 1983 on 8 Counts of Criminal Sexual Conduct in Scott County (Comm. Ex. #00-21, p. 3) filed against him by Kathleen Morris, Scott County Attorney.

2. Kathleen Morris was aware by October 3, 1983 that James Rud was represented by counsel in that she signed a letter addressed to Mr. Thomas O'Connor, attorney at law, regarding the State vs. James Rud matter. (Comm. Ex. #114-1).

3. James Rud was in the Scott County Jail in the early part of November, 1983 having had two additional complaints filed against him by Kathleen Morris totaling 14 counts of Criminal Sexual Conduct (Comm. Ex. #2).

4. James Rud had continuous representation of record during that period of time which consisted of four separate lawyers, all public defenders (trans. p. 761 and Comm. Stip. #1).

5. Marjorie Jelinek Hakarine visited James Rud in the Scott County Jail on November 1, 1983, November 6, 1983, and November 8, 1983 according to the jail records (Comm. Ex. #637, 2 & 3)

6. On at least three occasions during the months of October and November, 1983, tape recording equipment was taped under Marjorie Jelinek Hakarine's blouse before Ms. Hakarine went to see James Rud in jail. According to her testimony, she understood that she was to be an informant on James Rud through the use of the hidden taping equipment (trans. pp. 584-594).

7. On at least one occasion referred to in #6 above Marjorie Jelinek Hakarine testified that she had recording equipment taped under her blouse in a small office off Kathleen Morris' office by Assistant Scott County Attorney Pamela McCabe before going to see Rud in jail, and had the same equipment removed by Ms. McCabe when she returned from visiting Rud. Ms. McCabe does not recall this, (trans. pp. 540-543) but was identified in the hearing room by Ms. Jelinek Hakarine as the woman who placed the recording equipment on her and also removed it (trans. p. 586).

8. On one or two other occasions Ms. Hakarine testified she had the taping equipment referred to in #6 above placed on her body and later removed either by Ms. McCabe again or by a secretary in the Sheriff's Department of Scott County (trans. pp. 593-594).

9. Pamela McCabe testified that she knew Marjorie Jelinek Hakarine in October of 1983, and, though she did not remember specifics, she did recall Majorie Jelinek Hakarine being in her (McCabe's) office at the Scott County Attorney's Office ". . . to be wired to go to the Scott County jail to visit James Rud." Pamela McCabe testified Officer Larry Norring was present but she does not remember observing who wired Majorie Jelinek Hakarine (trans. pp. 540-541).

10. Pamela McCabe further testified she did not remember Kathleen Morris being in the office when Majorie Jelinek Hakarine was having the hidden tape recorder placed on her (trans. p. 541).

11. Officer Larry Norring of the Jordan Police Department testified he went with Marjorie Jelinek Hakarine to the jail on one occassion after the microphone had been placed on Ms. Hakarine by a Sheriff's Department secretary (trans. pp. 587, 687-690).

12. Paul Gerber of the Bureau of Criminal Apprehension worked with Larry Norring on the Scott County sex abuse cases during a two month period of October-November 1983,

and it was his suggestion that Marjorie Jelinek Hakarine be used as an informant on James Rud (trans. p. 654-653).

13. If she became an informant on Rud, Marjorie Jelinek Hakarine was promised some money by Gerber and was also promised that Sgt. Einertson and Gerber would leave her alone regarding the allegations of sex abuse of her son by her (trans. pp. 599, 601).

14. John Hakarine made a statement on October 26, 1983 about his mother Marjorie Jelinek Hakarine being sexual with him (Comm. Ex. #52-1).

15. Marjorie Jelinek Hakarine took and failed two polygraph tests on November 2, 1983 and on November 9, 1983 (trans. p. 641).

16. Sgt. Einertson took a statement from Marjorie Jelinek Hakarine on November 10, 1983 in which she admitted being sexual with her son, John (Comm. Ex. #52-1).

17. Marjorie Jelinek Hakarine was never charged with sex abuse (Comm. Ex. #AA-10).

18. Paul Gerber discussed his investigative activities almost daily with Kathleen Morris and specifically discussed with her the wiring of Marjorie Jelinek Hakarine in order to get information from James Rud, but does not remember when that conversation took place (trans. pp. 643, 647, 654).

19. Kathleen Morris testified that she was not aware that Marjorie Jelinek Hakarine had been wired prior to seeing Rud in jail until she talked by phone with Paul Gerber at the end of November or the beginning of December, 1984 (trans. pp. 2583-2584, 3376-3377).

20. Larry Norring had almost day-to-day contact with Kathleen Morris from September 25, 1983 until June 1984 but states he did not talk with Kathleen Morris prior to the one occassion when he went with Marjorie Jelinek Hakarine to the jail to talk with James Rud while Ms. Hakarine was wired with recording equipment.

21. Nancy Platto, the law clerk who worked almost exclusively with the sex abuse cases in the Scott County

Attorney's Office, was aware of the meetings between Ms. Hakarine and James Rud while Rud was in jail. She was also aware that Ms. Hakarine made recordings of the conversations with Rud but does not remember hearing the tapes or knowing what was on the tapes (trans. pp. 349-50).

22. Janet Lill, a Scott County Welfare Fraud Investigator, was directed by Kathleen Morris in the last few months of 1983 to hold up on a welfare fraud investigation of Marjorie Jelinek Hakarine because Kathleen Morris was going to use Ms. Hakarine in the Rud case (trans. p. 433).

23. Kathleen Morris does not remember calling Janet Lill but states it could have happened (trans. p. 2588).

24. Marjorie Jelinek Hakarine was aware that in 1983 she was being investigated for welfare fraud (trans. p. 582).

25. Charges of welfare fraud against Marjorie Jelinek Hakarine were never brought (trans. p. 2588).

CONCLUSION:

Based upon the foregoing findings of fact, the Commission concludes that while it is clear that criminal defendant James Rud's constitutional rights were violated and that at some time Kathleen Morris was aware of it, it has not been shown by clear and convincing evidence that Kathleen Morris herself arranged for Mr. Rud to be contacted by Marjorie Jelinek Hakarine.

4. Kathleen Morris made a statement to the news media denouncing the presumption of innocence.

FINDINGS:

1. Kathleen Morris did made the statement: "I'm sick to death of things like the presumption of innocence . . . ." (Comm. Exs. #104-11).

2. It was stipulated to at the Commission hearings that the tape (Comm. Ex. #104-1) was a product of editing, and that the tape did appear on Chanel 11-tv. (trans. pp. 2217-2218).

3. Kathleen Morris stated that she had said much more after that statement and that the sentence itself was actually completed with the following: " . . . being shoved down my throat at that point in time; that one of the things that I believed in was that the presumption of innocence is the basis of our system of justice and specifically that that's something I took into account every time I looked about charging someone." (trans. pp. 3370-3371).

CONCLUSION:

Based upon the foregoing findings of fact, the Commission concludes that while Kathleen Morris did make a statement about the presumption of innocence, it is evident that her statement was edited mid-sentence and, therefore, it was not proved by clear and convincing evidence that Kathleen Morris "denounced" the presumption of innocence.

PART IV: RECOMMENDATION

INTRODUCTION

The Commission was presented twenty-six allegations to consider regarding the possible removal of Kathleen Morris as Scott County Attorney. Of the twenty-six allegations seven have been proved, and, of those seven, the Commission has concluded that two of the allegations constitute acts of malfeasance.

The Commission has determined that these two allegations are malfeasant acts, not because they constitute illegal conduct, but because the acts involve wrongful conduct. In order to conclude that an act involves wrongful conduct, the Commission must find that damage or injury to a party has been the consequence of such acts whether that party is an individual or society in general. The Commission has found such damage.

While it is extremely difficult to glean from Minnesota case law exactly how serious malfeasance must be in order to justify removal from elective office, the Commission has decided that the standard is a high one.

It is generally accepted that the removal of an official from the office to which the public has elected him/her is a drastic remedy. Such action is an intervention in the processes of democracy, and it is an infringement on the fundamental principle that the right of choosing and repudiating public officials belongs exclusively to the electorate.

Accordingly, the Commission has determined that the acts constituting malfeasance must be so serious as to result in severe damage to the aggrieved party before the Commission is justified in recommending that an elected County Attorney, albeit found by the Commission to have betrayed her trust in office, is so unfit as to require removal of that County Attorney from office.

It is helpful, in making this determination, to first examine the duties of a County Attorney as prosecutor. The American Bar Association Standards inform us

that a prosecutor is charged with the responsibility to ensure that justice is done. The prosecutor must not only represent the State, but the interests of justice as well. In order to accomplish that goal a prosecutor must, among other responsibilities:

1. respect the rights of the accused;
2. deal openly and honestly with all the judges before whom he/she appears;
3. see that the guilty are prosecuted.

MURDER NOTES

The first act on the part of Kathleen Morris which the Commission has found to constitute malfeasance involved a violation of Rule 9.01 of the Minnesota Rules of Criminal Procedure. The purpose of this rule is to be certain that the defendant in a criminal case has access to any information which would tend to prove his/her innocence. Kathleen Morris did intentionally suppress evidence which could have been of assistance to Robert and Lois Bentz in the defense of the charges against them.

The Commission can easily envision a situation where a violation of the provisions of Rule 9.01 would evidence such a callous disregard of the standards set by the rule, and of justice and fair play, that removal would be warranted. However, given Judge Mansur's trial ruling on the evidence and the Bentzes' subsequent acquittal, the conduct of Kathleen Morris, while malfeasant, did not cause the degree of injury to the defendants or to the criminal justice system as to justify a recommendation to remove.

SEQUESTRATION ORDER

The second act on the part of Kathleen Morris which the Commission has found to be malfeasance is the violation of a sequestration order by Kathleen Morris during the Bentz trial.

The purpose of "sequestration" is to ensure that witnesses do not talk with one another about their testimony and, thus, are not influenced by the testimony of other witnesses during the course of a trial.

While there is no formal sequestration order of record, the Commission found that all parties, including Kathleen Morris, knew that the witnesses were to be sequestered during the Bentz trial. The children who testified during that trial were the witnesses of Kathleen Morris and it was incumbent upon her to personally caution the children that under no circumstances were they to discuss their testimony with each other.

From the Bentz trial transcript it appears that the failure of Kathleen Morris to sequester the child witnesses bolstered the defense's case and damaged the credibility of the children as witnesses. In view of the fact, however, that Judge Mansur at the trial ruled that the children's testimony was not tainted and he did not allow their testimony to be stricken, the Commission is unable to assess the degree of damage the sequestration violation caused to the prosecution's case.

While the Commission has concluded that Kathleen Morris' violation of this order is malfeasance, we do not find the high degree of damage necessary to recommend removal.

DISMISSALS

As noted above, five additional allegations have been proved by clear and convincing evidence but, in the judgment of the Commission, these allegations do not constitute malfeasance. The findings as to four of the allegations need no further discussion at this point. The Commission would be remiss, however, if it did not discuss at some length the allegation regarding the wholesale dismissal of the twenty-one sex abuse cases approximately one month after the acquittal in the Bentz trial.

In order to put this allegation in proper perspective it is necessary to review just briefly the chain of events. Twenty-four persons were charged in Scott

County with sex abuse of children. One defendant pleaded guilty, two defendants were tried and acquitted, and the charges against twenty-one defendants were dismissed. The reasons given by Kathleen Morris for these dismissals were 1) that an on-going criminal investigation of great magnitude was in process, i.e. the murder and mutilation allegations by the children; 2) the inability of the child witnesses involved in the Bentz trial to testify after that trial; and 3) the order by Judge Mitchell which required the children to be subjected to multiple examinations by defense attorneys and psychologists.

The testimony before the Commission regarding Kathleen Morris' first reason for dismissing the sex abuse cases indicated that most of the work actually done on the murder allegations was completed prior to the Bentz trial, there was not sufficient evidence to secure a search warrant, and the investigative officers were not sure that even one murder had taken place.

As to Kathleen Morris' second reason for the dismissals, the inability of the children to testify, there was evidence that, in fact, at least one child who testified at the Bentz trial was willing to testify again. In any event, even if none of the children who testified in the Bentz trial had testified again, many of the sex abuse cases could still have been tried.

With regard to the third reason given by Kathleen Morris for the dismissals, Judge Mitchell's Order, only four defendants in the sex abuse cases were included in this Order. Similar motions before another judge had been denied, and Judge Mitchell's Order could certainly have been appealed.

The Findings indicate that the stated reasons of Kathleen Morris for the dismissals were not the only reasons that existed. In addition, the Commission found that it would be reasonable to conclude that some of the cases could have been successfuly prosecuted. Once all of these cases were dismissed by Kathleen Morris, however, the prospect of recharging by herself or by the Attorney General represented a difficult task at best.

Kathleen Morris, following the dismissals, asked the Attorney General for the State of Minnesota to take over the handling of the Family Court matters. It should be noted that most of the children had been removed from their homes and, even though the criminal charges had been dismissed, the children were still under the protection of the Family Court. In spite of Kathleen Morris' assertion that the sex abuse cases were dropped or were dead the Attorney General insisted that, before his office would become involved, all of the files, both family and criminal, must be delivered to his office. After investigation, the Attorney General determined that the sex abuse criminal cases could not be recharged.

In many ways the dismissal allegations were the most troublesome of all for the Commission. Those defendants who were guilty went free, and those who were innocent were left without the opportunity to clear their names. Those children who were victims became victims once again.

The Commission has concluded that the wholesale dismissal of the twenty-one cases was not justified. In reaching this conclusion the Commission does not find itself in conflict with the decision of the Attorney General to not recharge these cases. The issue of the soundness of the investigation prior to the dismissals, a major concern of the Attorney General, was not before the Commission. The Attorney General, after the dismissals, was also faced with a number of recantations by potential witnesses. Additionally, the Attorney General found no new evidence to support the sex abuse allegations, and was unable to even review the Buchan case because jeopardy had attached.

Despite the fact that the Commission has concluded that the dismissals by Kathleen Morris were unjustified it cannot find this action to constitute malfeasance. Under our system of justice the County Attorney has such broad prosecutorial discretion that the power to dismiss cases without regard to whether or not a conviction could be secured is practically absolute. Under these circumstances, since the Commission is precluded from finding that the actions of Kathleen Morris in

dismissing all twenty-one sex abuse cases was malfeasance, the Commission cannot recommend removal.

The resolution of this case has been most difficult for us as Commissioners. We have found that Kathleen Morris did not respect the rights of the accused when she violated Rule 9.01 of the Minnesota Rules of Criminal Procedure. We have found that she did not deal openly and honestly with the trial judge when she falsely stated that defendants had not asked for notes when they had. She did not deal honestly with the trial judge when she failed to disclose that the children were housed together. Kathleen Morris did not respect the rights of the accused nor did she deal openly and honestly with the trial judge when she violated the sequestration order and said she had not. We have found that Kathleen Morris did not see that the guilty were prosecuted when she dismissed the twenty-one pending sex abuse cases. She misled the public when she told the media that the children were not subject to dozens of investigative interviews when they were. Finally, the Commission has found that Kathleen Morris was unnecessarily abusive to her staff and associates.

To add to the burden of the Commission's decision is the belief that the children who were urged to be witnesses in the criminal justice system were, in the end, themselves abandoned by that system and by the system's representative, Kathleen Morris.

FINAL RECOMMENDATION

Nevertheless, for all of the reasons previously stated, the Commission cannot recommend removal. While the Commission has found that Kathleen Morris has committed malfeasance in the performance of her official duties as Scott County Attorney, the Commission recommends to the Governor that he utilize the discretion granted in Minn. Stat. § 351.03 and deny the petition to remove Kathleen Morris from office.

PETITION TO REMOVE R. KATHLEEN MORRIS
FROM THE OFFICE OF SCOTT COUNTY ATTORNEY

TO: THE HONORABLE RUDY PERPICH,
GOVERNOR OF THE STATE OF MINNESOTA

Petitioner Cindy Lee Buchan, respectfully requests that R. Kathleen Morris be removed from her office as Scott County Attorney by reason of malfeasance in the performance of her official duties, pursuant to Minnesota Statute Section 351.03 as amended.

Petitioner requests the below charges be presented to R. Kathleen Morris and that a hearing to determine the accuracy of said charges by competent evidence be scheduled forthwith.

Upon information and belief, Ms. Morris, in the course of an investigation and prosecution of alleged sexual abuse of children in Scott County commencing in September, 1983, committed the following acts in violation of the Constitution and Statutes of the United States and State of Minnesota.

I.

Caused the arrest of citizens knowing there was insufficient probable cause existing at the time of the arrest to justify the issuance of criminal complaints alleging felonious behavior.

Exhibit A

II.

Caused the forcible removal of children, as young as eighteen months of age, from their parental home knowing there was not probable cause establishing the necessity of their removal existing at the time of the removal.

III.

Caused the destruction of material evidence tending to establish the innocence of adults charged, such evidence including but not limited to:

(a) videotapes of interrogations of children;

(b) audiotapes of interrogations of children; and

(c) calendars establishing the dates and times she and/or other members of her staff interrogated children.

IV.

Caused the secreting and suppression of evidence tending to establish the innocence of adults charged, such evidence including but not limited to:

(a) information regarding dates and/or times of alleged criminal behavior when said dates and/or times were known to have been absolutely impossible because of the uncontroverted proof of alibi on said dates and/or times;

(b) statements by children that they had not been sexually abused;

(c) admissions by children that they had lied in saying they were sexually abused; and

(d) Results of medical examinations of children which examinations revealed normalcy and no finding of sexual abuse.

V.

Caused the development of false allegations by children of sexual abuse of children by directly or indirectly through her staff and others working under her direction:

(a) threatening children who were actual or potential State's witnesses with jail, other punitive incarceration, and/or that they would not see their parents again, unless the children gave testimony incriminating the accused adults;

(b) interrogating children using severely coercive methods which resulted in psychological disorders and traumas to those children; and

(c) accusing children of lying if they did not bring forth incriminating testimony and lying to child witnesses, falsely telling them that their siblings had already made incriminating statements about their parents;

VI.

Directed the Scott County Human Services Department not to perform their statutory and regulatory duties with regard to children and families involved in her investigation and prosecution.

VII.

Suborned perjury of James Rud through intimidation and offers of leniency in order to induce him to provide "corroboration" of other false allegations of child sexual abuse.

VIII.

Intentionally violated Court Orders regarding sequestration of witnesses.

IX.

Knowingly misrepresented to Courts and counsel the existence of police notes and memoranda and withholding production of same in direct contradiction of Court order.

X.

Misrepresented to Courts, counsel and to the public that she was dismissing charges of alleged sexual abuse of children because of an on-going investigation of great magnitude when she knew no law enforcement agency was conducting any such investigation.

XI.

Continued to meet with child accusers subsequent to October 19, 1984, after her office was removed from criminal and

family court jurisdiction, in an effort to keep the children from admitting the falsity of their allegations and the reasons they told stories of sexual abuse, mutilations and murders.

Dated: March 8, 1985.

s/ Cindy Lee Buchan
CINDY LEE BUCHAN

STATE OF MINNESOTA)
) ss:
COUNTY OF HENNEPIN)

CINDY LEE BUCHAN, being first duly sworn upon oath, deposes and states that she is the petitioner herein; that she has read the foregoing Petition to Remove R. Kathleen Morris from the Office of Scott County Attorney, knows the contents thereof and that the same is true and correct, except as to matters stated on information and belief and as to those matters she believes them to be true.

s/ Cindy Lee Buchan
CINDY LEE BUCHAN

SUBSCRIBED and SWORN to before me
this 8th day of March, 1985.

s/ Marc G. Kurzman
Notary Public

MARC G KURZMAN
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires Aug. 31, 1986

STATE OF MINNESOTA

COMMISSION ESTABLISHED BY
EXECUTIVE ORDER NO 85-10
CONCERNING KATHLEEN MORRIS, SCOTT COUNTY ATTORNEY

NOTICE OF RESTATED PETITION AND ADDITIONAL ALLEGATIONS

TO: R. KATHLEEN MORRIS AND STEPHEN P. DOYLE, HER ATTORNEY.

NOTICE IS HEREBY GIVEN, that the undersigned, as independent counsel for the State of Minnesota, hereby restates the original petition of Cindy Buchan and makes additional allegations.

Pursuant to Section 351.03 of the Minnesota Statutes, R. Kathleen Morris should be removed from her office of Scott County Attorney by reason of malfeasance and nonfeasance in the performance of her official duties:

1. In the course of her investigation and prosecution of alleged sexual abuse of children in Scott County commencing in September of 1983, Ms. Morris:

a. Caused the secreting, destruction or suppression of evidence which should have been furnished to defense lawyers under applicable discovery rules including evidence tending to establish the innocence of adults charged in violation of Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, and D.R.7-102(A)(3), and D.R.7-103(B) of the Code of Professional Responsibility, including:

(i) Statements by children that they had not been sexually abused.

(ii) Admissions by children that they had lied in saying that they were sexually abused.

(iii) Results of medical examinations of children which examinations did not corroborate allegations of sexual abuse.

(iv) Statements by children regarding sexual activities among themselves.

(v) Statements by children who were witnesses in the criminal sex abuse cases that on various occasions they had witnessed persons being mutilated and murdered.

b. Made false statements in Court proceedings, sworn affidavits and in appearances before news media representatives contrary to D.R.1-102(4) and D.R.7-102(5) of the Code of Professional Responsibility and Section 609.48 and Section 609.77 of the Minnesota Statutes as follows:

(i) She misrepresented the extent of her involvement in the investigation of the sex abuse cases and the dates and places of her interrogation of child witnesses.

(ii) She falsely stated the children were not subject to "dozens of interviews" when, in fact, she knew that several of the children involved in the investigation were the subject of more than two dozen interviews.

(iii) She falsely stated that the reason she dismissed the twenty-one cases of alleged sexual abuse of children was because of an ongoing investigation of great magnitude when, in fact, she knew that the investigation in question was essentially complete and that investigating officers had been unable to locate credible evidence establishing the commission of serious crimes.

(iv) She falsely stated that her calendar for the year of 1984 was lost or destroyed in November of 1984 when, in fact, the calendar was in existence after that date in December of 1984.

(v) She falsely stated to the trial Judge in the trial of Robert and Lois Bentz that there were no notes taken by investigative officers when, in fact, she knew the investigative officers had maintained notes in their investigative files.

(vi) She falsely stated to the trial Judge in the Bentz trial that the Defendants never asked for the notes of the investigating officers when, in fact, defense counsel had specifically requested such notes.

(vii) She falsely stated to the trial Judge that the child witnesses were housed separately, or failed to disclose to the trial Judge that the child witnesses were housed together.

(viii) She falsely stated to the trial Judge that the family court Judge had been advised that child witnesses were being housed together during the trial.

(ix) She falsely stated to representatives of the news media that medical evidence existed to support charges that Donald and Cindy Buchan had abused their own children, when, in fact, no such medical evidence existed.

c. Charged 23 adults with criminal sexual abuse of children relying almost entirely on the uncorroborated testimony of alleged child victims, in the expectation that most defendants would plead guilty so that trials would be unnecessary.

d. Dismissed all criminal complaints against 21 defendants on October 15, 1984, despite her professed belief that:

(i) The cases had been properly investigated.

(ii) There was probable cause to charge the cases.

(iii) The cases had been properly prepared for trial and could be successfully prosecuted.

e. Violated the Court's Order for sequestration of witnesses in the trial of Robert and Lois Bentz.

2. Ms. Morris caused the destruction of her 1984 calendar or day book (which would have assisted in the determination of the dates and times she and other members of her staff interrogated children) after being notified that certain lawyers were seeking a Court Order requiring her to preserve the calendar or day book and certain other records.

3. Ms. Morris has physically and verbally abused employees of her office, and has used intemperant and abusive language toward employees in her office and other Scott County employees.

4. Ms. Morris has misappropriated public funds belonging to Scott County and has caused others to misappropriate Scott County funds.

5. Ms. Morris breached her oath of office in which she pledged to "support the Constitution of the United States and the Constitution of the State of Minnesota," and to "impartially discharge the duties of the office of" Scott County Attorney, as follows:

a. She attempted to compel certain Defendants who were charged with sexual abuse of children to suffer public arrest rather than surrendering voluntarily to avoid widespread news media coverage of their arrest.

b. She violated the constitutional rights of certain criminal Defendants (who were represented by lawyers) to have counsel and to remain silent by arranging for the criminal Defendants to be contacted by a lay person who was instructed to attempt to obtain incriminating statements from the criminal Defendants to be used against them in the pending criminal prosecutions.

c. She made a statement to the news media denouncing and criticizing the presumption of innocence which is guaranteed to all criminal Defendants under the Constitutions of the United States and the State of Minnesota.

6. Ms. Morris caused Frederick Rgnonti, a Scott County Sheriff's Deputy, to sign a search warrant application without personal knowledge of its contents, and directed the deputy to present the application to a Judge on the basis of his personal knowledge.

7. When this conduct produced a civil suit against Scott County and the Sheriff's Department, Ms. Morris directed Deputy Rgnonti to issue an offense report which falsely stated the date upon which the criminal investigation began. Ms. Morris then issued a criminal complaint based upon the offense report.

8. Ms. Morris refused to prosecute a substantial number of meritorious welfare fraud cases investigated and presented by Deputy Rgnonti because of Ms. Morris' hostile feelings toward Rgnonti.

9. Ms. Morris compelled Sheriff Douglas Tietz to transfer Deputy Rgnonti from welfare fraud investigation to sergeant of the night patrol to avoid an "irreparable personality conflict."

10. When a public defender sought early release for his incarcerated client, Ms. Morris threatened to penalize a second client unless the public defender abandoned his efforts in violation of D.R.7-102 and D.R.7-103.

Dated this 5th day of July, 1985.

Kelton Gage
BLETHEN, GAGE & KRAUSE
Independent Counsel for the State of Minnesota
P.O. Box 3049
Mankato, Minnesota 56002
Telephone: (507) 345-1166
File Number: 7482/001

MEMORANDUM AND ANALYSIS

Minn. Stat. § 351.03 (1983) states:

> The governor may remove from office any clerk of the appellate courts or a district court, judge of probate, judge of any municipal court, court commissioner, sheriff, constable, coroner, auditor, county recorder, county attorney, county commissioner, county treasurer, or any collector, receiver, or custodian of public moneys, when it appears to him by competent evidence, that the officer has been guilty of malfeasance or nonfeasance in the performance of his official duties. Prior to removal, he shall give to the officer a copy of the charges against him and an opportunity to be heard in his defense. (Emphasis added.)

The governor may remove a county attorney for malfeasance or nonfeasance in the performance of his or her official duties, but the issue arises of what actions constitute malfeasance or nonfeasance.

In determining whether actions of an official constitute malfeasance or nonfeasance in the performance of his or her official duties it is important to concentrate on the acts the official allegedly committed, rather than on the official personally. By concentrating on the act itself rather than on the person, the intentions or motives the person had for committing the act are irrelevant to the question of whether the act constituted malfeasance or nonfeasance in the performance of official duty.

There are relatively few Minnesota cases defining malfeasance or nonfeasance in the context of Minn. Stat. § 351.03, therefore, it is necessary to look to other jurisdictions in arriving at a practicable definition of the terms. The resulting definitions which appear in this memorandum are the cumulation of a multitude of cases from Minnesota and other jurisdictions.

Malfeasance

In determining what acts constitute malfeasance, the first question to consider is whether the official willfully did the alleged act or acts. Olszewski v. Borough of Blawnox Council, 455 A.2d 1280, 1283 (Pa. Comwlth. 1983). Willfulness

should not be confused with motive or intention. In determining willfulness inquiry should be made as to: 1) whether the official did the act at all; and 2) if the official did do the act, whether the official did the act proceeding from a conscious motion of the will, voluntarily, and not accidentally or involuntarily.[1]

If it is determined that the official did willfully do the claimed act or acts, the issue of malfeasance is further analyzed by determining:

(1) whether the act or acts were wrongful, illegal or unlawful;[2]

(2) whether the official had any right to do the act or acts;[3] and

(3) whether the doing of the act or acts by the official interfered with the performance of the official's duties.[4]

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[1] Definition of willful from Black's Law Dictionary 1434 (5th ed. 1979).

[2] George v. Godby, 325 S.E.2d 102, 108-09 (W. Va. 1984) (no legal right to act); Olszewski v. Borough of Blawnox Council, 455 A.2d 1280, 1283 (Pa. Comwlth. 1983) (corrupt); Johnson v. Macon County Board, 433 N.E.2d 707, 712 (Ill. App. 1982) (evil conduct or illegal deed); Mazzola v. City & County of San Francisco, 169 Cal. Rptr. 127, 132, 112 Cal. App. 149 (Cal. App. 1st Dist. Div. 2 1980) (evil conduct or an illegal deed, wholly illegal and wrongful); Smith v. Godby, 174 S.E.2d 165, 169 (W. Va. 1970) (positively unlawful or wrongful); Jacobsen v. Nagel, 255 Minn. 300, 304 96 N.W.2d 569, 573 (1959) (wholly illegal and wrongful).

Wrongful is defined as "[i]njurious, heedless, unjust, reckless, unfair. Infringement of some right." Black's Law Dictionary 1446 (5th ed. 1979) citing Mathes v. Williams, 134 S.W.2d 853, 858 (Tex. Civ. App. 1939). A wrongful act is defined as "[a]ny act which in the ordinary course will infringe upon the rights of another to his damge, unless it is done in the exercise of an equal or superior right. Term is occasionally equated to term 'negligent', but generally has been considered a more comprehensive term, including criminal, wilful, wanton, reckless and all other acts which in ordinary course will infringe upon rights of another to his damage. Black's Law Dictionary 1446 (5th ed. 1979) citing County of DuPage v. Kussel, 12 Ill. App. 3d 272, 298 N.E.2d 323, 326 (1973). Illegal is defined as "[a]gainst or not authorized by law." Black's Law Dictionary 673 (5th ed. 1979). Unlawful is defined as "[t]hat which is contrary to, prohibited, or unauthorized by law. That which is not lawful. The acting contrary to, or in defiance of the law; disobeying or disregarding the law. While necessarily not implying the element of criminality, it is broad enough to include it." Black's Law Dictionary 1377 (5th ed. 1979). An unlawful act is defined as an "[a]ct contrary to law, and presupposes that there must be an existing law. A violation of some prohibitory law and includes all wilful, actionable violations of civil rights, and is not confined to criminal acts. Black's Law Dictionary 1377 (5th ed. 1979) citing State v. Hailey, 350 Mo. 300, 165 S.W.2d 422, 427 (1942).

[3] Smith v. Godby, 174 S.E.2d 165, 169 (W. Va. 1970); Arellano v. Lopez, 467 P.2d 715, 718 (N.M. 1970); State v. Twitchell, 367 P.2d 985, 990 (Wash. 1962).

[4] Kemp v. Boyd, 275 S.E.2d 297, 306-07 (W. Va. App. 1981); Smith v. Godby, 174 S.E.2d 165, 169 (W. Va. 1970); Arellano v. Lopez, 467 P.2d 715, 718 (N.M. 1970); State v. Twitchell, 367 P.2d 985, 990 (Wash. 1962); State ex rel. Martin v. Burnquist, 141 Minn. 308, 321, 170 N.W. 201, 203 (1918).

If the answers to the above are:

(1) yes, the act or acts were wrongful, illegal or unlawful;

(2) no, the official had no authority to do the act or acts; and

(3) yes, the doing of the act or acts interfered with the performance of the official's duties

malfeasance has been established.

From the analysis of what constitutes malfeasance it follows that the defenses an official would have to the allegation of malfeasance are:

(1) the official did not do the alleged act or acts at all;

(2) even if the official did do the act or acts;

(a) the act or acts themselves were not wrongful, illegal or unlawful,

(b) the official had the authority from his or her position to do the act or acts, or

(c) the doing of the act or acts did not interfere with the performance of the official's job.

Nonfeasance

To analyze nonfeasance different inquiries need to be made. These inquiries consist of the following:

(1) whether the official did not do a specific act or acts; and

(2) whether the omitted act or acts were acts that the official was required to do as part of his or her duties in the performance of his or her job.[5]

A negligent failure to act on the part of the official as well as an intentional failure to act can be found to constitute nonfeasance.[6]

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[5] Arellano v. Lopez, 467 P.2d 715, 718 (N.M. 1970); Gray v. Hakenjos, 366 Mich. 588, 115 N.W.2d 411, 413 (1962); State v. Begyn, 34 N.J. 35, 167 A.2d 161, 168 (N.J. 1961); Jacobsen v. Nagel, 255 Minn. 300, 304, 96 N.W.2d 569, 573 (1959); In re Olson, 211 Minn. 114, 117-18, 300 N.W. 398, 400 (1941).

[6] Arellano v. Lopez, 467 P.2d 715, 718 (N.M. 1970); Gray v. Hakenjos, 366 Mich. 588, 115 N.W.2d 411, 413 (1962); Jacobsen v. Nagel, 255 Minn. 300, 304, 96 N.W.2d 569, 573 (1959); State ex rel. Kinsella v. Eberhardt, 116 Minn. 313, 322, 133 N.W.2d 857, 861 (1911).

If the answers to the above inquiries are:

(1) yes, the official did not do a specific act or acts; and

(2) yes, the act or acts were a required part of the official's duties

nonfeasance has been established.

From the analysis of what constitutes nonfeasance it follows that the defenses an official would have to the charge of nonfeasance are:

(1) the official did do the act or acts that he or she is claimed not to have done, or

(2) even if the official did not do the act or acts, the act or acts are not a required part of the official's duties.

Minnesota Case Law

There are four Minnesota Supreme Court cases that analyze the standard of removal under Minn. Stat. § 351.03, or its predecessor statutes, of what are referred to by statute as "inferior officers."[7] Two of these cases, In re Mason[8] and State ex rel. Martin v. Burnquist,[9] are concerned primarily with malfeasance in office. The remaining two cases, State ex rel. Kinsella v. Eberhardt[10] and In re Olson,[11] concern primarily nonfeasance of the particular public officials involved.

The case of In re Mason[12] involved the petition to remove the Hennepin County Attorney for allegedly receiving bribes to protect certain persons from being

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[7] Minn. Const., art. 8 § 5 (1974). There are other "removal" cases in Minnesota caselaw, e.g. State ex rel. Rockwell v. State Board of Education, 213 Minn. 184, 6 N.W.2d 251 (1942) and State v. Peterson, 50 Minn. 239, 52 N.W. 655 (1892), however, the statutes authorizing those proceedings were not Minn. Stat. § 351.03 or its predecessor statutes.

[8] 147 Minn. 383, 181 N.W. 570 (1920).

[9] 141 Minn. 308, 170 N.W. 201 (1918).

[10] 116 Minn. 313, 133 N.W. 857 (1911).

[11] 211 Minn. 114, 300 N.W. 398 (1941).

[12] 147 Minn. 383, 181 N.W. 570 (1911).

prosecuted and for allegedly being involved in the illegal importation of intoxicating liquors. In Mason the governor appointed a commissioner to take down and make a record of the testimony at the hearing, but the testimony was heard by the governor personally and it was the governor who made the various rulings throughout the "extended hearing."[13] The evidence was presented by an assistant attorney general on behalf of the petitioners and the county attorney was represented by two attorneys.[14] The governor found that: 1) the county attorney had been a party to the so-called liquor conspiracy; 2) the county attorney had received a bribe in the Max Brooks case; and 3) the county attorney had received bribes in the cases of four women indicted for keeping houses of ill fame. The governor removed the county attorney from office for this illegal conduct and this removal was upheld by the Minnesota Supreme Court on certiorari.[15]

The case of State ex rel. Martin v. Burnquist[16] involved the petition to remove a Dodge County Probate Judge for allegedly making anti-war and pro-Germany statements during the time period that the United States was involved in World War I. "Subsequent proceedings [were held] which were in all things regular."[17] A commissioner was appointed by the governor to hear the evidence. The commissioner began to take the evidence on May 26, 1918. He heard all of the petitioner's evidence which was presented by the attorney general's office. The commissioner recessed until July 22, 1918, and then took the probate judge's evidence as it was presented by his three attorneys.[18] The governor found that the judge did make certain anti-war and

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[13] Mason, 147 Minn. at 385, 181 N.W. at 571; Minutes of the Removal Hearing contained in the Briefs filed with the Minn. Supreme Court, Minn. Reports 147 (1920).

[14] Minutes of the Removal Hearing at p. 33, Minn. Reports 147 (1920).

[15] Mason, 147 Minn. at 391, 181 N.W. at 571.

[16] 141 Minn. 308, 170 N.W. 201 (1918).

[17] Martin, 141 Minn. at 319, 170 N.W. at 202.

[18] Respondent's Brief at 7, Minn. Reports 141 (1918).

pro-Germany statements and he granted the petition for removal. The Minnesota Supreme Court on certiorari vacated the removal order. The Supreme Court found:

> scolding the President of the United States, particularly at long range, condemning in a strong voice the war policy of the federal authorities, expressing sympathy with Germany, justifying the sinking of the Lusitania, by remarks made by a public officer of the jurisdiction and limited authority possessed by the judge of probate under the Constitution and laws of this State, do not constitute malfeasance in the discharge of official duties, and therefore furnish no legal ground for removal.[19]

The case of State ex rel. Kinsella v. Eberhardt[20] involved the petition for removal of the Lake County Attorney for allegedly refusing and neglecting to advise the county commissioners on certain matters, for allegedly failing and neglecting to prosecute violations of the liquor laws when requested to do so by the county sheriff, and because seven indictments had been returned against the county for libel and circulating obscene literature. A special commissioner was appointed by the governor and evidence was taken by the commissioner from July 26, 1911, through August 23, 1911, and reported to the governor. Mr. Kinsella was given an opportunity to be heard on his own behalf before the governor on September 7, 1911.[21] The governor found the allegations in the complaint to be true and removed the county attorney from office.[22] The Minnesota Supreme Court upheld the removal on certiorari. The court found that there existed sufficient evidence that the county attorney had refused and neglected to do his official duties saying that in part this was because he was unable to do so due to the fact that he was not an attorney. In addition, the court found sufficient evidence of the indictment implications.[23]

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[19] Martin, 141 Minn. at 322, 170 N.W. at 203.

[20] 116 Minn. 313, 133 N.W. 857 (1911).

[21] Brief of Respondent at p. 2, Minn. Reports 116 (1911).

[22] Respondent's Brief at 2, Minn Reports 116 (1911).

[23] Kinsella, 116 Minn. at 322, 133 N.W. at 861.

The most recent case of In re Olson[24] involved the petition to remove the Scott County sheriff for allegedly refusing to investigate claims of several citizens of gambling occurring in establishments selling liquor in the county. It appears from the opinion that the hearing was held before the governor.[25] The sheriff's defense to the charges in the petition was that he did not know first-hand knowledge that such gambling existed and that he did not consider it his " 'duty to snoop around.' "[26] Both the governor and the Supreme Court rejected the sheriff's defense. The governor removed the county sheriff and the Supreme Court upheld the removal on certiorari. The Supreme Court stated:

> [The sheriff's] statutory duties and his obligations to the public cannot be discharged by willful failure to see the obvious. He may not shut his eyes or close his ears to what others see and hear.[27]

Since 1941 there have been no removal cases pursuant to Minn. Stat. § 351.03 which have been appealed to the Minnesota Supreme Court. Records of any removal proceedings that were not appealed are unavailable.

One other case that did discuss the definitions of malfeasance and nonfeasance in the context of Minn. Stat. § 351.03 is Jacobsen v. Nagel.[28] The facts in Jacobsen did not involve the removal of a public official, but rather, the recall of a public official. The Minnesota Supreme Court held that the standards of malfeasance and nonfeasance contained in the removal statute applied also to recall petitions.[29] The Supreme Court found that political criticisms of the actions of a councilman did

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[24] 211 Minn. 114, 300 N.W. 398 (1941).

[25] Olson, 211 Minn. at 116, 300 N.W. at 399.

[26] Olson, 211 Minn. at 116, 300 N.W. at 399.

[27] Olson, 211 Minn. at 118, 300 N.W. at 400.

[28] 255 Minn. 300, 96 N.W.2d 569 (1959).

[29] Jacobsen, 255 Minn. at 304, 96 N.W.2d at 572.

not amount to a sufficient showing of malfeasance or nonfeasance to justify the recall of the councilman.[30]

Summary

The definition of malfeasance in the context of Minn. Stat. § 351.03 can be summarized as the willful illegal, unlawful or wrongful act of an official done without right to do so (outside the scope of the official's authority) which was of a sufficient degree of seriousness to interfere with the official's duties.

The definition of nonfeasance in the context of Minn. Stat. § 351.03 can be summarized as the not doing of a specific act or acts which are a required part of an official's duties.

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[30] Jacobsen, 255 Minn. at 305, 96 N.W.2d at 573.