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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
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September 2, 2015

### VIA FACSIMILE AND U.S. MAIL

William C. Seay  
City Attorney  
City of Salem  
400 N. Iron Street  
Salem, MO 65560

Dear Mr. Seay,

I write to you in your capacity as special prosecutor in the matter of the death of my constituent, Brandon Ellingson, to inquire about the status of your investigation.

As you know, on May 31, 2014, Brandon, a 20-year-old college student from Clive, Iowa, drowned on the Lake of the Ozarks while in the custody of the Missouri State Highway Patrol (MSHP).<sup>1</sup> News reports in the wake of this tragedy raised serious questions about the role that law enforcement officers may have played in his death. These questions include whether the officer involved was properly trained for water safety, whether he gave Brandon a floatation device that was appropriate for an individual in handcuffs, whether the speed of the police boat and Brandon's positioning on the boat caused him to fall into the water, and whether all efforts were made to save his life afterward.<sup>2</sup>

The U.S. Department of Justice is reviewing this matter for violations of federal civil or criminal laws at my request. However, the question of whether anyone should be held criminally liable for Brandon's death is, in the first instance, a state or local matter. Accordingly, in September 2014, the Morgan County Coroner conducted an inquest into Brandon's death. According to news reports, after less than eight minutes of deliberation, a jury concluded that his death was not a crime.<sup>3</sup> Days later, the special prosecutor assigned to assist the coroner during the inquest announced that she would not pursue criminal charges.<sup>4</sup>

However, in January 2015, the special prosecutor reopened the investigation when a witness came forward with additional information that, in her words, "put things in a different

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<sup>1</sup> Regina Zilbermint, "Witness describes drowning Clive man's struggle in water," *Des Moines Register*, June 3, 2014, <http://www.desmoinesregister.com/story/news/2014/06/02/witness-describes-brandon-ellingsons-struggle-water-clive/9895195/>.

<sup>2</sup> Laura Bauer, "One year after Brandon Ellingson drowned in handcuffs, family still sees a 'lack of accountability,'" *Kansas City Star*, May 29, 2015, <http://www.kansascity.com/news/local/article22649784.html>.

<sup>3</sup> Laura Bauer, "Jurors at Brandon Ellingson inquest find drowning to be accidental," *Kansas City Star*, September 4, 2014, <http://www.kansascity.com/news/local/article1506824.html>.

<sup>4</sup> See Bauer, note 2, *supra*.

perspective.”<sup>5</sup> A few months later, though, she requested that she be removed from the case after questions arose about her potential conflict of interest.<sup>6</sup> At the time, according to media reports, she was “close to a decision” about whether to pursue criminal charges in the case.<sup>7</sup> Moreover, she believed that it was “very important that a new prosecutor be appointed.”<sup>8</sup>

Subsequently, on March 25, 2015, you were appointed to replace her as the special prosecutor.<sup>9</sup> However, there have been no reports of new investigative activity since your appointment almost six months ago. Meanwhile, according to news reports in June, a whistleblower within the MSHP was demoted and relocated allegedly for criticizing the role of law enforcement in Brandon’s death.<sup>10</sup>

Whenever an individual’s death is alleged to have been caused by law enforcement officers, the matter deserves a prompt, thorough, fair, and independent investigation. Accordingly, please answer the following questions by October 1, 2015:

1. What is the current status of the investigation into Brandon’s death?
2. Which, if any, law enforcement agencies are assisting in the investigation?
3. How long do you expect it will take to complete the investigation and for you to decide whether criminal charges are appropriate?
4. Once your investigation is complete, what steps, if any, will you take to provide meaningful transparency so that Brandon’s loved ones and the public at large will have confidence in both your investigative process and conclusions?

Please number your responses according to their corresponding questions. If you have any questions, please contact Tim Kelly of my Committee staff at (202) 224-5225. Thank you.

Sincerely,

  
Charles E. Grassley  
Chairman

cc: The Honorable Loretta E. Lynch, Attorney General, U.S. Department of Justice

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<sup>5</sup> Sonya Heitshusen, “Prosecutor Reviewing Ellingson’s Death Claims She Was Being Blackmailed,” *WHOTV*, March 16, 2015, <http://whotv.com/2015/03/16/prosecutor-reviewing-ellingsons-death-claims-she-was-being-blackmailed/>.

<sup>6</sup> Katherine Klingseis, “Special prosecutor steps down from reviewing Ellingson drowning,” *Des Moines Register*, March 11, 2015, <http://www.desmoinesregister.com/story/news/crime-and-courts/2015/03/12/special-prosecutor-removes-ellingson-drowning/70193000/>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Jennifer Weiser, “New information on Grellner recuse from Ellingson case,” *KRCG*, March 25, 2015, <http://krcgtv.com/news/local/new-information-on-grellner-recuse-from-ellingson-case?id=1182571>.

<sup>10</sup> Laura Bauer, “Trooper who questioned Missouri patrol after Brandon Ellingson drowning hit with discipline,” *Kansas City Star*, June 11, 2015, <http://www.kansascity.com/news/local/article23756080.html>.