

EXHIBIT A

STATE OF ALABAMA)
MADISON COUNTY)

AFFIDAVIT OF AMY BISHOP

My name is Amy Bishop, and I am also known as Amy Bishop Anderson. I am the Defendant in the case of State of Alabama v. Amy Bishop Anderson (CC2011-1131 AM). I have been accused of killing three of my friends and colleagues, Maria Ragland Davis, Gopi Podila and Adriel Johnson, and wounding Luis “Roger” Cruz-Vera, Joseph Leahy and Stephanie Monticciolo.

I have no memory of the shooting that took place at the UAH campus on February 12, 2010, and I had no reason to be angry with or to harm my friends and colleagues. I considered Maria Ragland Davis, Gopi Podila, Adriel Johnson, Luis “Roger” Cruz-Vera, Joseph Leahy and Stephanie Monticciolo to be my friends and my supporters. The people killed and wounded in the February 12, 2010 UAH shooting were always kind to me and supportive of me during my difficulties in the tenure process at UAH. The idea that I would harm Maria, Gopi or Adriel or the other people in that room is something that is foreign to me and it is a concept that I have difficulty imagining or comprehending.

When I was first placed in the Madison County Jail in February 2010, I was convinced that I had been falsely accused of this crime. During the months preceding my incarceration in February 2010, my mental condition had deteriorated to the point that I was not in my right mind. When I was initially placed in jail, I was seeing things and hearing things that I now know were hallucinations. While in jail, I was placed on anti-psychotic medication, and after a time my thinking became clearer. The improvement in my mental functioning and psychiatric condition was a mixed blessing. Although the improvement in my mental functioning brought some ease to my disarranged and disturbed thinking and the hallucinations, it also brought with it the ability to rationally comprehend the evidence that exists in this case.

After review of materials and information concerning the shooting at the UAH campus on February 12, 2010, I have become convinced that the evidence is overwhelming that I was in fact the person who fired the shots that killed Maria, Gopi and Adriel and injured Joseph Leahy, Stephanie Monticciolio, and Luis "Roger" Cruz-Vera. I cannot comprehend how I did this or why I did this, and it feels as though I am reading about some other person, but the overwhelming evidence is that the person that I am reading about is me. I cannot explain how or why I fired the weapon that killed three of my friends and colleagues and wounded three other friends and colleagues. I have no memory of this, and I do not understand how or why I could have done this. Even though the evidence convinces me that I am the one responsible for the deaths and injuries of my friends, I still vacillate between the realization that I committed these horrible acts and the belief that I could not have committed these acts.

Words cannot explain the grief and despair that I feel for the actions that I now believe that I took on February 12, 2010. My grief and despair is compounded by not being able to conceive of how I did this or why I did this. Not knowing how or why I did this, and from time to time believing that I could not possibly have done this is torture. The acts that I am accused of doing are foreign to me, and yet at the same time, I am now convinced by the evidence that has been presented to me that I somehow did these things and inflicted death and injury on people that I loved and respected and who I believe love and respected me. When I finally realized that I was in fact the person who shot her friends and colleagues on February 12, 2010, I tried to take my own life in jail. I desperately wanted to die because of the death and injury that I inflicted on people that I loved and because I could not conceive of how I did this or why I did this. Since I have been incarcerated, not a day has gone by when I did not wrestle with the question of how this could have happened or why this happened.

As I recount the months leading up to February 2010, I know that my psychiatric condition had deteriorated to a degree that I was suicidal and sometimes out of touch with reality. As is indicated

below, I believe that my mental deterioration had become noticeable to the Provost and other people around me at UAH.

During the summer of 2009, my friend, Debra Moriarity, was especially concerned about my mental condition and by what she termed my “come apart.” The term “come apart” was the term that Debra Moriarity used to describe my mental state during the summer of 2009 and the period leading up to February 2010. I told Debra Moriarity that I was suicidal and that the stress that I was under was more than I could bear. During this period of time, Debra Moriarity suggested that I needed psychological counseling and urged me to speak with Delois Smith, who was Vice President of Diversity and Student Affairs at UAH, and who had a background in psychological counseling. At Debra Moriarity’s request, I spoke with Delois Smith about the stress that I was under and the problems that I was having. Delois Smith recommended breathing exercises to help alleviate the stress that I was under. Debra Moriarity also suggested that I accompany her to a shooting range for target practice as means of stress relief, and Debra Moriarity and I, along with other faculty members and some graduate students, went to the shooting range at Larry’s Pistol and Pawn Shop on several occasions.

During the summer of 2009, I became obsessed with the belief that I was being stalked by a graduate student named Lelon Sanderson. (Sanderson was a graduate student who was involuntarily committed in 2007. I, along with other faculty members, assisted in that involuntary commitment). During the summer of 2009, I thought that I saw Sanderson at various locations on campus, but no one else saw Sanderson at the same locations that I saw him. Additionally, I became obsessed with the belief that Yelena Zakin had been killed by an individual or individuals associated with the UAH administration because Zakin had uncovered wrongdoing concerning UAH grants.

In trying to explain to Vistasp Karbhari the immense stress that I was under, I shared with Vistasp Karbhari my belief that I was being stalked by Sanderson and that Yelena Zakin had been

murdered because she uncovered wrongdoing concerning UAH grant money, and that I feared I would be next, i.e., that the same UAH personnel who killed Yelena Zakin would also kill me. When I told Karbhari this, he just smiled and was nonresponsive.

As I look back on the state of my deterioration in the summer of 2009, I recall an incident when I drove to the office of the Provost and the President to confront them about some of the issues I was having in my tenure battle. I sat in my car in the parking lot adjacent to the Provost's office and the President's office and telephoned the President's Office. I told the President's assistant that I wanted to meet with the President, and if he were not available, then I wanted to meet with the Provost. The secretary indicated that neither the President nor the Provost were available to see me, and I indicated that I would nevertheless be there momentarily to see either the President or the Provost. Shortly after this conversation, I saw Vistasp Karbhari and President Williams leave the back door of the building with two uniformed police officers. Karbhari and Williams appeared to be hurriedly leaving the building. I called Deb Moriarity on my cell phone and told her about what I had seen and expressed my dismay and outrage that Williams and Karbhari appeared to be afraid of me. Deb Moriarity laughed and indicated that the Karbhari was indeed afraid of me. I remember that at the time, I did not understand why the Provost and President Williams would be fearful of me and I felt puzzled and insulted by their behavior.

As I have reviewed some of my diary entries for the summer of 2009, I can now better understand that my deterioration had become so noticeable that I did cause consternation to the Provost and those around him. An entry of June 9, 2009 from my diary provided as follows:

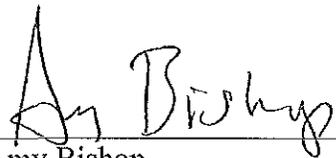
Generally the whole process has made me sick — I have asthma and anaphylaxis and have gone to Crestwood Emergency May 24 and am under the care of Dr. Laura Dyer who witnessed the asthma attack and anaphylaxis. I am on prednisone, and just finished Cipro. She has stated that I need what is rightfully mine without this long drawn out fight and that it is getting me sick. I have relayed this to Vistasp,

the President, everyone. I need to keep fighting for what is rightfully mine as I am the sole supporter of my family of four children – and need this job with the blue cross blue shield insurance to provide medical care for my 4 children. I need this for my career as not getting tenure at UAHuntsville typically ends ones career. However there is a very real risk of me dying if this not resolved quickly. There is a very real possibility that my health will be permanently damaged.

When I told Karbhari that I was suicidal and that I was thinking about jumping from the Shelby Center, he just smiled and said: “You’ll get through it.”

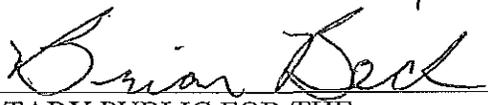
I now realize that my mental condition had deteriorated to the point that the Provost and those around him were actually afraid of me. I was suicidal and so sick that I thought that I was dying. I wish that someone had intervened to get me treatment before this horrible tragedy occurred.

I know that there is nothing that I can do to alleviate the pain and suffering that I have caused to my friends and colleagues and to their families. I wish that I could provide an explanation for how or why this happened, but no rational explanation exists. I want the victims of this tragedy to know that I am deeply sorry and remorseful for the pain and the suffering that I have caused.



Amy Bishop

SWORN TO AND SUBSCRIBED BEFORE ME THIS
10th DAY OF February, 2012.



NOTARY PUBLIC FOR THE
STATE OF ALABAMA

My Commission Expires: 2/17/2016

EXHIBIT B

At approximately 4:20 p.m., Dr. Bishop once again called Ms. Mandel and reiterated her request to see the President.³⁵ Ms. Mandel advised Dr. Bishop again that Dr. Williams was not available.³⁶ Ms. Mandel also informed Ms. Walker of this call.³⁷

In response, Ms. Walker called Dr. Bishop at 4:28 PM and spoke to her for just over three minutes.³⁸ During this call, Dr. Bishop informed Ms. Walker that she would not be coming to the President's office.³⁹ At 4:40 PM, less than an hour after Dr. Bishop's initial call to Caroline Mandel, Ms. Walker informed the UAHuntsville police as follows:

. . . Chief Gailes or somebody was going to be around Madison Hall in case we had an upset professor coming over because of her tenure decision. . . . Tell the Chief that she is not coming over and that the danger situation is over and he does not need to have someone over here . . . we don't need that safety issue anymore.⁴⁰

A search of the Computer Aided Dispatch Record Management System contains no records of any dispatch to the President's office or relating to Dr. Bishop that day.⁴¹ In fact, there are no dispatch records of any calls relating to complaints about Dr. Bishop prior to February 12, 2010.⁴² The fact that UAHuntsville police were never actually

³⁵ Ex. 9 (Mandel Aff.) ¶ 10; Ex. 8 (Spreadsheet of Telephone Records).

³⁶ Ex. 9 (Mandel Aff.) ¶ 10.

³⁷ Ex. 9 (Mandel Aff.) ¶ 10.

³⁸ Ex. 11 (Walker Aff.) ¶ 7; Ex. 8 (Spreadsheet of Telephone Records).

³⁹ Ex. 11 (Walker Aff.) ¶ 7.

⁴⁰ Ex. 15 (Recording of November 12, 2009 Call to UAHuntsville Police Dispatch); Ex. 11 (Walker Aff.) ¶ 8.

⁴¹ Ex. 16 (Sisco Aff.) ¶ 6.

⁴² Ex. 16 (Sisco Aff.) ¶ 9.

EXHIBIT C

Compilation of Telephone Records for 11/12/2009 for the Office of President, Office of Provost, Dr. Debra Moriarty, and Dr. Amy Bishop's Cell Phone

Conn. Date	Conn. Time	Elapsed Time	Originating Number	Caller	Terminating Number	Number Dialed	Person Called	Additional Notes
11/12/2009	7:20 AM	:24	(256) 288-0150	Gupta residence		(256) 824-6960	Karbhari	
11/12/2009	8:03 AM	1:14	(256) 716-4702	Jacob Sverdrup		Ext. 6341	Misty Bader	
11/12/2009	8:14 AM	3:13	(678) 687-3634	Catherine & Kraig Pendleton		Ext. 6341	Misty Bader	
11/12/2009	8:27 AM	:32	Ext. 6686	Debbie Stowers		431-1233	Albert Stowers	
11/12/2009	8:43 AM	:52	(678) 687-3634	Catherine & Kraig Pendleton		Ext. 6341	Misty Bader	
11/12/2009	8:47 AM	:08	(678) 687-3634	Catherine & Kraig Pendleton		Ext. 6341	Misty Bader	
11/12/2009	8:57 AM	:02	(256) 431-1233	Albert Stowers		Ext. 6686	Debbie Stowers	
11/12/2009	8:59 AM	1:42	Ext. 4086	Jason Smith		(888) 442-4551	1-888-GIBILL-1	
11/12/2009	9:01 AM	:56	Ext. 4086	Jason Smith		(888) 442-4551	1-888-GIBILL-1	
11/12/2009	9:02 AM	:58	Ext. 4086	Jason Smith		(888) 442-4551	1-888-GIBILL-1	
11/12/2009	9:03 AM	3:58	(256) 797-7017	Willson C. Luquire		(256) 824-6335	Provost's Office	
11/12/2009	9:03 AM	:04	(256) 797-7017	Willson C. Luquire		(256) 824-6337	Peggy Bower	
11/12/2009	9:03 AM	27:28	Ext. 4086	Jason Smith		(888) 442-4551	1-888-GIBILL-1	
11/12/2009	9:06 AM	1:50	Ext. 6686	Debbie Stowers		431-1233	Albert Stowers	
11/12/2009	9:08 AM	:34	(256) 539-0723	Rose Norman		Ext. 6341	Misty Bader	
11/12/2009	9:39 AM	2:22	(256) 534-9964	Spearman Realty		(256) 824-6655	Mary Beth Walker	
11/12/2009	9:43 AM	:42	(256) 824-6982	Faye Hartman		(256) 468-5802	Thomas Estes	
11/12/2009	9:43 AM	:06	(256) 424-5227	Daniel Cobb		(256) 824-6337	Peggy Bower	
11/12/2009	9:44 AM	:28	(256) 424-5227	Daniel Cobb		(256) 824-6335	Provost's Office	
11/12/2009	9:46 AM	1:16	(256) 824-6982	Faye Hartman		(256) 535-5992	Doctor's Office	
11/12/2009	9:48 AM	:08	(402) 982-0579	Credit Services - Hospitality Inc.		Ext. 6341	Misty Bader	
11/12/2009	10:10 AM	1:22	(256) 824-6767	Carole Jackson		(256) 539-2728	Doctor's Office	
11/12/2009	10:12 AM	1:32	(256) 824-6767	Carole Jackson		(256) 539-2728	Doctor's Office	
11/12/2009	10:13 AM	:48	(256) 532-4423	The Huntsville Times		(256) 824-6337	Peggy Bower	
11/12/2009	10:26 AM	2:06	(801) 852-0351	Provo, UT		(256) 824-6767	Carole Jackson	
11/12/2009	10:34 AM	:48	(256) 539-6320	Just A Trim		(256) 824-6982	Faye Hartman	
11/12/2009	10:36 AM		(612) 808-5643	Twin Cities, MN		(256) 683-8660	Moriarty (cell)	
11/12/2009	10:37 AM	13:12	Ext. 6254	Lynn Bell		(800) 692-7753	Apple (1-800-NY-APPLE)	
11/12/2009	10:51 AM	:40	Ext. 6254	Lynn Bell		(800) 692-7753	Apple (1-800-NY-APPLE)	
11/12/2009	10:52 AM	:36:42	(916) 399-7381	Sacramento, CA (Apple)		Ext. 6254	Lynn Bell	
11/12/2009	11:09 AM	:10	(256) 683-4365	Paul Youngblood		Ext. 6610	David Frees	
11/12/2009	11:22 AM	:50	(256) 503-6878	Unlisted		(256) 824-6982	Faye Hartman	
11/12/2009	11:27 AM	2:24	(256) 824-6982	Faye Hartman		(256) 489-3948	Waite residence	
11/12/2009	11:29 AM	:36	(256) 716-4665	Jacobs Technology		(256) 824-6655	Mary Beth Walker	
11/12/2009	11:30 AM	0:00	Ext. 6254	Lynn Bell		(800) 692-7753	Apple (1-800-NY-APPLE)	
11/12/2009	11:34 AM	:18	(256) 532-4423	The Huntsville Times		(256) 824-6337	Peggy Bower	
11/12/2009	11:48 AM	1:16	(256) 585-9126	V. Karbhari		(256) 824-6335	Provost Office	
11/12/2009	11:56 AM	1:52	(256) 424-5227	Daniel Cobb		(256) 824-6335	Provost Office	
11/12/2009	11:59 AM	5:18	(256) 824-6767	Carole Jackson		(800) 777-5500	Car Rental Service	
11/12/2009	12:03 PM	:06	(954) 771-7275	Ft. Lauderdale, FL		(256) 824-6767	Carole Jackson	
11/12/2009	12:05 PM	:12	(800) 699-8654	PetSmart		(256) 824-6767	Carole Jackson	
11/12/2009	12:06 PM	1:06	(256) 824-6982	Faye Hartman		(256) 479-8915	Judge Edward Smith	
11/12/2009	12:06 PM	8:16	Ext. 6254	Lynn Bell		337-6955	Lisa and Robert Sinclair	
11/12/2009	12:11 PM	2:32	(954) 771-7783	Ft. Lauderdale, FL		(256) 824-6767	Carole Jackson	

11/12/2009	12:11 PM	5:02	(256) 824-6982	Faye Hartman		(256) 425-0300	Nesin Therapy Service PC
11/12/2009	12:12 PM	:24	(617) 460-1274	Jimmy G. Anderson		(256) 824-6461	Amy Bishop
11/12/2009	12:20 PM	1:52	(256) 544-3284	US Government		(256) 824-6982	Faye Hartman
11/12/2009	12:23 PM	:30	(256) 509-5131	Daniel Boone		(256) 824-6982	Faye Hartman
11/12/2009	12:23 PM	3:34	(256) 824-6982	Faye Hartman		(256) 520-6201	Cynthia Doubet
11/12/2009	12:31 PM	2:22	(256) 824-6982	Faye Hartman		(256) 544-3284	US Government
11/12/2009	12:38 PM	:04	(256) 824-6982	Faye Hartman		(256) 509-5131	Daniel Boone
11/12/2009	12:41 PM	1:22	(256) 509-5131	Daniel Boone		(256) 825-6982	Faye Hartman
11/12/2009	1:17 PM	:02	(256) 424-5227	Daniel Cobb		(256) 824-6337	Peggy Bower
11/12/2009	1:38 PM	1:38	(256) 544-3284	US Government		Ext. 6341	Misty Bader
11/12/2009	1:45 PM	4:04	(256) 824-6982	William Craft		(256) 726-4829	Thesi
11/12/2009	1:58 PM	:54	(256) 658-9800	William Craft		Ext. 6341	Misty Bader
11/12/2009	2:23 PM	:32	(256) 824-6767	Carole Jackson		(256) 539-3630	Regis Salton
11/12/2009	2:28 PM	:02	(256) 424-5227	Daniel Cobb		(256) 824-6337	Peggy Bower
11/12/2009	2:35 PM	:58	(256) 824-6335	Provost Office		(256) 489-9470	Grille 29
11/12/2009	2:42 PM	28:32:00	(256) 824-6982	Faye Hartman		(256) 658-9800	William Craft
11/12/2009	2:45 PM	7:00:00	(256) 683-8660	Moriaty (cell)		(256) 828-8629	Sutton O'Neal
11/12/2009	3:01 PM	2:00:00	(256) 759-9240	Ornett Jackson		(256) 683-8660	Moriaty (cell)
11/12/2009	3:08 PM	:36	(256) 427-5033	Huntsville City		(256) 824-6982	Faye Hartman
11/12/2009	3:15 PM	:04	(256) 428-7600	Academy for Academics & Arts		(256) 824-6461	Amy Bishop
11/12/2009	3:17 PM	:38	(256) 694-4385	Peggy Bower		(256) 824-6767	Carole Jackson
11/12/2009	3:19 PM	:14	(256) 679-8521	John O'Neal		(256) 828-6767	Carole Jackson
11/12/2009	3:19 PM	:06	(256) 694-4385	Peggy Bower		(256) 824-6335	Provost Office
11/12/2009	3:19 PM	5:00	(617) 460-5514	Amy Bishop	19783562034	(978) 356-2034	Parents
11/12/2009	3:20 PM	:04	(256) 824-6982	Faye Hartman		(256) 722-5598	Jerrald Pierre Jr.
11/12/2009	3:24 PM	9:01	(617) 460-5514	Amy Bishop	12568246263	(256) 824-6263	Podila
11/12/2009	3:25 PM	:04	(256) 679-8521	John O'Neal		(256) 824-6767	Carole Jackson
11/12/2009	3:29 PM	:48	(256) 824-6982	Faye Hartman		(256) 206-5885	Phyllis Bagwell
11/12/2009	3:34 PM	:05	(617) 460-5514	Amy Bishop	12568246605	(256) 824-6605	Dean
11/12/2009	3:35 PM	:11	(617) 460-5514	Amy Bishop	12568242845	(256) 824-2845	UAH University Bookstore
11/12/2009	3:36 PM	7:30	(617) 460-5514	Amy Bishop	12568246605	(256) 824-6605	Dean
11/12/2009	3:39 PM	2:04	(256) 206-5885	Phyllis Bagwell		(256) 824-6982	Faye Hartman
11/12/2009	3:39 PM	5:12	(256) 427-5033	Huntsville City of Recreation - Westside Gym		Ext. 6341	Misty Bader
11/12/2009	3:44 PM	:12	(617) 460-5514	Amy Bishop	12568246335	(256) 824-6335	Provost's Office
11/12/2009	3:45 PM	5:18	(617) 460-5514	Amy Bishop	12568246340	(256) 824-6340	President's Office
11/12/2009	3:46 PM	5:18	(617) 460-5514	Amy Bishop		Ext. 6341	Caroline Mandel
11/12/2009	3:52 PM	1:52	(256) 824-6982	Faye Hartman		(256) 722-5598	Jerrald Pierre Jr.
11/12/2009	3:58 PM	:18	(617) 460-5514	Amy Bishop	12568246045	(256) 824-6045	Moriaty
11/12/2009	3:58 PM	:04	(256) 509-3867	James Roberts		(256) 824-6655	Mary Beth Walker
11/12/2009	3:58 PM	:04	(256) 684-4593	David Williams		(256) 824-6655	Mary Beth Walker
11/12/2009	4:00 PM	11:16	(617) 460-5514	Amy Bishop	12568246045	(256) 824-6045	Moriaty
11/12/2009	4:03 PM	:26	(256) 824-6655	Mary Beth Walker		(256) 509-3867	James Roberts
11/12/2009	4:03 PM	1:22	(256) 306-2557	Calhoun Community College		Ext. 6341	Misty Bader
11/12/2009	4:08 PM	4:34	(256) 509-3867	James Roberts		(256) 824-6655	Mary Beth Walker
11/12/2009	4:12 PM	3:36	(256) 824-6982	Faye Hartman		(256) 489-3948	Waite residence
11/12/2009	4:12 PM	:02				Ext. 6341	Misty Bader
11/12/2009	4:13 PM	5:36	(978) 356-2034	Parents	16174605514	(617) 460-5514	Amy Bishop
11/12/2009	4:19 PM	1:03	(617) 460-5514	Amy Bishop	12568246340	(256) 824-6340	President's Office

11/12/2009	4:20 PM	1:04	(617) 460-5514	Amy Bishop			Ext. 6341	Caroline Mandel	
11/12/2009	4:21 PM	:42	(617) 460-5514	Amy Bishop	12568246340	(256) 824-6340	(256) 824-6340	President's Office	
11/12/2009	4:22 PM	:42	(617) 460-5514	Amy Bishop		Ext. 6341	Ext. 6341	Caroline Mandel	
11/12/2009	4:22 PM	9:29	(617) 460-5514	Amy Bishop	16174601274	(617) 460-1274	(617) 460-1274	Jimmy G. Anderson	
11/12/2009	4:28 PM	3:02	(256) 824-6655	Mary Beth Walker	16174605514	(617) 460-5514	(617) 460-5514	Amy Bishop	Call not shown in UAH records.
11/12/2009	4:32 PM	3:09	(617) 460-5514	Amy Bishop	12568246045	(256) 824-6045	(256) 824-6045	Morarity	
11/12/2009	4:36 PM	8:43	(617) 460-5514	Amy Bishop	19783562034	(978) 356-2034	(978) 356-2034	Parents	
11/12/2009	4:36 PM	:50	(225) 405-6805	Baton Rouge, LA		(256) 824-6982	(256) 824-6982	Faye Hartman	
11/12/2009	4:42 PM	:32	(256) 541-2362	Unlisted		(256) 824-6982	(256) 824-6982	Faye Hartman	
11/12/2009	4:44 PM	1:22	(256) 658-3997	Lewis Radonovich		(256) 824-6655	(256) 824-6655	Mary Beth Walker	
11/12/2009	4:54 PM	:04	(256) 541-0335	Unlisted		(256) 824-6045	(256) 824-6045	Morarity	
11/12/2009	5:02 PM	:46	(256) 655-7958	D. Rochowalk		(256) 824-6045	(256) 824-6045	Morarity	
11/12/2009	5:04 PM	:24	(256) 509-5131	Daniel Boone		(256) 824-6982	(256) 824-6982	Faye Hartman	
11/12/2009	5:09 PM	1:10	(256) 824-6982	Faye Hartman		(256) 851-8498	(256) 851-8498	KD Crutcher	
11/12/2009	5:18 PM	:32	(256) 379-3444	Debra Morarity		(256) 824-6045	(256) 824-6045	Morarity	
11/12/2009	5:18 PM	3:00	Blocked			(256) 683-8660	(256) 683-8660	Morarity (cell)	
11/12/2009	5:41 PM	:10	(256) 535-5992	Doctor's Office		(256) 824-6982	(256) 824-6982	Faye Hartman	
11/12/2009	5:56 PM	:10	(256) 652-9666	Alfred Hampton		Ext. 6686	Ext. 6686	Debbie Stowers	
11/12/2009	7:06 PM	:08	(617) 460-5514	Amy Bishop	19783562034	(978) 356-2034	(978) 356-2034	Parents	
11/12/2009	7:28 PM	8:04	(617) 460-5514	Amy Bishop	12564899999	(256) 883-9880	(256) 883-9880	Bishop Home	
11/12/2009	8:05 PM	:06	(256) 883-9880	Bishop Home	14015800680	(617) 460-5514	(617) 460-5514	Amy Bishop	
11/12/2009	8:25 PM	1:45	(617) 460-5514	Amy Bishop	12564899999	(256) 883-9880	(256) 883-9880	Bishop Home	
11/12/2009	9:02 PM	8:18	(617) 460-5514	Amy Bishop	12564899999	(256) 883-9880	(256) 883-9880	Bishop Home	
11/12/2009	9:33 PM	1:19	(617) 460-5514	Amy Bishop	12564899999	(256) 883-9880	(256) 883-9880	Bishop Home	
11/12/2009	9:35 PM	:09	(617) 460-5514	Amy Bishop	12564899999	(256) 883-9880	(256) 883-9880	Bishop Home	
11/12/2009	9:36 PM	:37	(617) 460-5514	Amy Bishop	16174601274	(617) 460-1274	(617) 460-1274	Jimmy G. Anderson	
11/12/2009	9:37 PM	1:28	(617) 460-5514	Amy Bishop	16174601274	(617) 460-1274	(617) 460-1274	Jimmy G. Anderson	

EXHIBIT D



The University of
Alabama in Huntsville

EMERGENCY PROCEDURES HANDBOOK

UAH Public Safety (256) 824-6911

EMERGENCY PROCEDURES HANDBOOK INTRODUCTION

This handbook is intended for use by faculty, staff members, and students at UAH and has been designed for quick reference during emergency conditions on this campus.

Recipients of the handbook should become familiar with its contents and all new employees should be made familiar with these procedures during orientation.

Informational blanks have been provided in several sections and should be filled in immediately. Once the blanks are filled in and procedures reviewed, the handbook should be kept in a readily accessible location, preferably near the telephone. Users should strive to keep this handbook up to date by periodically checking the information to insure it is current.

In instances where emergency procedures for the UAH Police Department differ from those in this handbook, such procedures will supersede the instructions in the handbook for persons in those departments.

PSYCHOLOGICAL CRISIS

A psychological crisis exists when an individual is threatening harm to themselves or others, or is delusional and out of touch with reality.

The crisis may be manifested as:

Paranoia
Hallucinations
Uncontrolled behavior (anger, yelling)

Disruptive behavior
Complete withdrawal
Self injury

Students: If a student is experiencing a severe psychological crisis, contact the University Police (**911 or 824-6911**) and the Counseling Center (**824-6203**). University Police can ensure physical safety of all involved and arrange for transportation of the student to the nearest hospital emergency room. The Counseling Center can provide psychological assessment, treatment planning and emotional support. The University Police and Counseling Center staff will collaborate to determine the best approach in each situation to protect the physical and emotional well-being of all involved.

Faculty/Staff: A faculty/staff member experiencing a psychological crisis should be directed to the nearest hospital emergency room or call their family physician. If a faculty/staff member is experiencing a severe psychological crisis, contact the University Police for assessment and transport to the nearest hospital emergency room.

Procedures.

Should you come into contact with someone experiencing a psychological crisis, **DO NOT** attempt to handle the potentially dangerous situation alone. Notify University Police at **824-6911** or **911**. All suicide attempts should be immediately reported to Police. The safety of the person in crisis and those around him should be of first concern. University Police will work closely with campus counseling professionals when necessary.

HAZARDOUS GAS LEAKS PSYCHOLOGICAL CRISIS

EXHIBIT E

IN THE CIRCUIT COURT FOR MADISON COUNTY, ALABAMA

SAMMIE LEE DAVIS, as Personal Representative of THE ESTATE OF DR. MARIA RAGLAND DAVIS, deceased, Plaintiff,

CASE NO. 47-CV-2011-900037.00

vs.

DR. VISTASP M. KARBHARI, DR. AMY BISHOP aka AMY BISHOP ANDERSON, and JAMES ANDERSON, Defendants.

DR. JACQUELINE U. JOHNSON, as Personal Representative of THE ESTATE OF DR. ADRIEL D. JOHNSON, SR., deceased, Plaintiff,

CASE NO. 47-CV-2011-900038.00

vs.

DR. VISTASP M. KARBHARI, DR. AMY BISHOP aka AMY BISHOP ANDERSON, and JAMES ANDERSON, Defendants.

RULE 56(f) AFFIDAVIT OF DOUGLAS E. FIERBERG

STATE OF MICHIGAN)
COUNTY OF LEELANAU)

My name is Douglas E. Fierberg. I am over 19 years of age and have capacity to make this affidavit and have personal knowledge of the facts stated herein.

- 1. I am the counsel for Plaintiffs in the above-referenced matters.
2. I have performed a preliminary investigation into the facts and circumstances that led to the tragic shooting deaths of Dr. Maria Ragland Davis and Dr. Adriel D. Johnson, Sr.

3. Nearly all witnesses that Plaintiffs can presently identify as having knowledge relevant to the material facts and circumstances surrounding the deaths of Dr. Maria Ragland Davis and Dr. Adriel Johnson, Sr. are directly or indirectly controlled by Defendant Karbhari or his counsel. Many of these potential witnesses are unwilling to provide official statements outside of formal discovery.
4. Most of these witnesses, as employees or former employees of UAHuntsville, are also represented by Defendant Karbhari's counsel.
5. Defendant Karbhari and his counsel have blocked many discovery attempts initiated by Plaintiffs and refused to disclose crucial information until ordered to do so by this Court.
6. Materials produced by Defendant Karbhari and UAHuntsville's counsel after this Court's Order to compel included phone records and the recorded phone call between Mary Beth Walker and UAHuntsville Police, wherein a threatened meeting with Bishop was described as a "danger situation" and a "safety issue." Counsel for Defendant Karbhari and UAHuntsville has previously stated that UAHuntsville Police had never been called in relation to Bishop.
7. Depositions of three witnesses have now been taken. Those depositions create issues of fact in relation to the affidavits provided by Defendant Karbhari and the accuracy thereof. For instance and without limitation:
 - a. The deposition of UAHuntsville Police dispatcher Scott Malcolm included testimony that former Chief Gales personally told Malcolm that he may receive a phone call from UAHuntsville administrative offices – the phone call about Bishop. Chief Gales's affidavit claims he had no knowledge of the call or potential call, or even the contact he must have had to alert him of the potential call.
 - b. Mary Beth Walker testified that many of the statements in her affidavit, which purported to be based on her personal knowledge, were not in her personal knowledge or recollection when she signed the affidavit. This includes her claims about specific conversations with Caroline Mendel, which forms the basis for her attempts to rationalize the recorded phone call.
8. At a minimum and without limitation, Plaintiffs are planning further written discovery; depositions of Defendant Karbhari and his administrative staff from the time of the shooting and the time surrounding November 12, 2009; additional UAHuntsville administrators and staff, possibly including Caroline Mendel and Chief Gales; the deposition of Amy Bishop; the deposition of Debra Moriarity; and the deposition of David Williams.
9. On information and belief, discovery will show, *inter alia*, the following facts:

- a. More proof that Defendant Karbhari had direct knowledge of Bishop's threats to herself and others.
 - b. More proof that Defendant Karbhari knew Bishop was dangerous.
 - c. More proof that Defendant Karbhari, thinking that Bishop might come to visit him, months before the fatal shootings, called UAH Police, had Bishop barred from entering Shelbie King Hall, and ran out the back door of Shelbie King Hall with then-president David Williams under armed police protection.
 - d. More proof that Defendant Karbhari failed to warn Dr. Maria Ragland Davis and Dr. Adriel Johnson, Sr. of the dangers posed by Bishop.
 - e. More proof that Defendant Karbhari took no action to protect Dr. Maria Ragland Davis and Dr. Adriel Johnson, Sr. from the dangers posed by Bishop.
 - f. More proof that Defendant Karbhari received multiple, credible reports from credible sources demonstrating:
 - i. Bishop's psychological crisis;
 - ii. that Bishop was out of touch with reality;
 - iii. that Bishop had threatened to commit suicide or harm others;
 - iv. that they avoided Bishop because they did not feel safe around her;
 - v. that Bishop was "crazy;"
 - vi. that one professor had referred Bishop to a doctor because of her mental and emotional instability; and
 - vii. that Defendant Karbhari otherwise had actual and constructive knowledge of Bishop's psychological crisis and that she was dangerous.
10. Defendant Amy Bishop's deposition has not yet been taken, but her testimony is expected to be consistent with the statements made in his affidavit, which has previously been provided to this Court and the parties.
11. Plaintiffs have retained an expert witness, Dr. George Kirkham, the country's preeminent police procedure expert, who will testify that if Bishop had been appropriately reported, she would not have killed Dr. Adriel D. Johnson, Sr., and Dr. Maria Ragland Davis.

12. On information and belief, discovery will also show many other facts supporting Plaintiffs' claims and substantiating Defendant Karbhari's liability.
13. Summary judgment on this case would be inappropriate without allowing discovery of these facts.

This the 11th day of September, 2013.



Douglas E. Fierberg
Attorney for Plaintiffs

I, Chris D. DeJong, hereby certify that Douglas E. Fierberg, whose name is signed to the foregoing and who is known to me, acknowledged before me this day, that being informed of the contents thereof, voluntarily executed the same on the day of its date.



Chris D. DeJong, Notary Public
State of Michigan, Leelanau County
Acting in Leelanau County
My Commission expires: 06/27/2015

EXHIBIT F



IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

SAMMIE LEE DAVIS, as Personal
Representative of THE ESTATE OF DR.
MARIA RAGLAND DAVIS, deceased,

Plaintiff,

vs.

DR. VISTASP M. KARBHARI; DR. AMY
BISHOP, a/k/a AMY BISHOP
ANDERSON; and JAMES ANDERSON,

Defendants.

CIVIL ACTION NO. : CV-11-900037

ORAL ARGUMENT REQUESTED

JACQUELINE U. JOHNSON, as Personal
Representative of THE ESTATE OF DR.
ADRIEL D. JOHNSON, JR., deceased,

Plaintiff,

vs.

DR. VISTASP M. KARBHARI; DR. AMY
BISHOP, a/k/a AMY BISHOP
ANDERSON; and JAMES ANDERSON,

Defendants.

CIVIL ACTION NO. : CV-11-900038

MOTION TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINTS

COMES NOW, Dr. Vistasp M. Karbhari, a defendant in both the above-styled actions, and submits this motion to strike, pursuant to *Alabama Rule of Civil Procedure* 15(a), the Amended Complaints filed by Sammie Lee Davis and Jacqueline U. Johnson. In support of this Motion, Dr. Karbhari states as follows:

1. On April 18, 2011, one day prior to the deadline for filing all written motions pertaining to Dr. Karbhari's Motion to Dismiss, Plaintiffs filed the Amended Complaints.
2. In addition, Plaintiffs also filed Supplemental Memoranda in Opposition to Defendant Karbhari's Motion to Dismiss which accused Dr. Karbhari and his counsel of "not being candid with the Court," "manufacturing a Motion to Dismiss," playing a "legal shell game designed to hide the truth," and abusing the law. (Supp. Opp'n Mem. at 1-2.)
3. Plaintiffs' counsel based these accusations on the alleged last-minute discovery of the following new information:

Upon denial of her tenure, Bishop contacted Dr. Debra Moriarty¹ [sic] by telephone. Dr. Moriarty [sic] is a member of the UAH faculty and Bishop's tenure review committee. In that conversation, *Bishop indicated that she was going to commit suicide*. She also stated that she was in her car and on her way to talk with Karbhari and/or the UAH president about the decision. Dr. Moriarty [sic] called Karbhari at his office in Shelbie King Hall to tell him of the conversation. *Karbhari immediately called UAH police and requested that officers be posted outside Shelbie King Hall to prevent Bishop from getting to him and other administration personnel in the building*. Armed police were posted outside the building prepared to bar Bishop access. Bishop apparently changed her mind and did not attempt to enter the building that day.

(Supp. Opp'n Mem. at 2.) (emphasis in original)(footnote omitted).

¹ Although the Supplemental Memoranda specifically identify Dr. Moriarity as the faculty member in direct contact with Bishop, the Amended Complaints inexplicably fail to identify her, merely describing Dr. Moriarity as "another faculty member" (Am. Compls. at 5) and "a UAH faculty member" (*id.* ¶ 19). Plaintiffs' counsel failed to provide any explanation why more detailed information was provided in the simultaneously filed Supplemental Memoranda, but not in the Amended Complaints.

4. Although Dr. Moriarity is the only non-incarcerated party with direct knowledge concerning this newest allegation, Plaintiffs' counsel never attempted to interview or contact her before filing the Supplemental Memoranda and the Amended Complaints. (Moriarity Aff. ¶ 3, attached hereto as Exhibit "A".) Instead, Plaintiffs' counsel audaciously claimed to "confirm[] the veracity of this information" through an anonymous professor who purportedly provided a third-hand account of supposed conversations between Dr. Moriarity and Dr. Bishop and between Dr. Moriarity and Dr. Karbhari. (Supp. Opp'n Mem. n.2.) Although relying on a single anonymous source for a third-hand rumor falls below the standards typically required for publication in a newspaper,² such reliance is apparently sufficient for Plaintiffs' counsel since these allegations were filed without even asking Dr. Moriarity to verify the accuracy of the rumor.
5. If Plaintiffs' counsel had consulted with Dr. Moriarity or the UAHuntsville Police before making these latest allegations, they would have discovered numerous untruths among those allegations. (Moriarity Aff.; See also Sisco Aff., attached hereto as Exhibit "B").
6. The attached Affidavits reveal the following inaccuracies:

² Even the press at least attempted to confirm the veracity of the rumor by directly contacting Dr. Moriarity before reporting Plaintiffs' newest allegation in these lawsuits. See Victoria Cumbow, UAH Knew Amy Bishop Was Danger, Says Widow of Slain Professor in Lawsuit, HUNTSVILLE TIMES, Apr. 19, 2011 ("Moriarity told The Times on Monday that said [sic] she had no comment on the lawsuit and has never been contacted by [Jacqueline] Johnson's lawyers. She said the information in the court documents did not come from her.") (attached hereto as Exhibit "C").

- (a) First, the Amended Complaints imply that the events occurred shortly before the February 12, 2010 shooting when, in truth, the telephone calls took place almost 10 months before the shooting, in April or May of 2009. (Moriarity Aff. ¶ 5.)
- (b) Second, instead of an actual and immediate threat of suicide, as alleged in the Amended Complaints, Dr. Bishop's comment was perceived by Dr. Moriarity to be just a dramatic comment. (Id. ¶ 8.) Moreover, when Dr. Karbhari inquired of Dr. Moriarity whether Dr. Bishop might actually harm herself, Dr. Moriarity said no. (Id. ¶ 13.) Thus, to have concluded that Dr. Bishop was actually threatening suicide based on Dr. Moriarity's telephone call, Dr. Karbhari would have been required to disregard Dr. Moriarity's personal observations of the nature of Dr. Bishop's comments.
- (c) Third, Plaintiffs' counsel claims it is a "*fact . . . that [Dr.] Karbhari . . . directly knew and believed that Bishop was an actual, serious threat to others because . . . [Dr.] Karbhari had armed University of Alabama Huntsville ("UAH") police officers stationed at the UAH administrative building, Shelbie King Hall, to protect himself and other administration personnel from Bishop after tenure had been denied.*" (Supp. Opp'n Mem. at 1) (emphasis in original). Yet, the truth is that UAHuntsville Police has no record of receiving any complaints concerning Dr. Bishop from Dr. Karbhari or any other person, and no records that they were ever called to

Shelbie King Hall to prevent Bishop from entering the building. (Sisco Aff. ¶¶ 6-10; Moriarity Aff. ¶¶ 15-16.)

(d) Fourth, Plaintiffs’ allegation that Dr. Karbhari responded to Dr. Moriarity’s call by “*immediately*” calling UAHuntsville Police “*to prevent Bishop from getting to him,*” is simply untrue. As discussed above, UAHuntsville Police received no calls from Dr. Karbhari, or anyone else, relating to Dr. Bishop before the February 12th shooting. Moreover, the allegation is completely illogical given the sequence of events. Dr. Bishop had already attempted to see either President Williams or Dr. Karbhari and had already been rebuffed—not by an armed police force, but rather an unarmed secretary—before Dr. Moriarity ever called Dr. Karbhari. (Moriarity Aff. ¶¶ 11, 12, 17).

7. Under Alabama Rule of Civil Procedure 15(a), leave to amend a complaint should not be given where the amendment is sought in bad faith. Hughes v. Wallace, 429 So. 2d 981, 984 (Ala. 1983) (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)). “A finding of good faith must have at least [a] prima facie showing of a possibility of the amender’s ability to establish factual support for the new matters sought to be pleaded.” Billy Baxter, Inc. v. Coca-Cola Co., 47 F.R.D. 345, 346, 348-50 (S.D.N.Y. 1969) (denying plaintiff’s motion for leave to amend complaint where amendment was sought to avoid grant of defendant’s motion for summary judgment, and new matters sought to be plead were “both contrary to fact and without factual basis”).

8. The Amended Complaints are merely an attempt to avoid dismissal of Plaintiffs' claims against Dr. Karbhari and are without a reasonable factual basis. The new allegation contains clear factual inaccuracies based on third-hand, hearsay rumors.

CONCLUSION

WHEREFORE PREMISES CONSIDERED, Dr. Karbhari respectfully requests this Court strike Plaintiffs' Amended Complaints.

Respectfully submitted this 9th day of May, 2011.

s/ Randal H. Sellers
Randal H. Sellers (ASB-3398-E56R)
Jay M. Ezelle (ASB-4744-Z72J)
Stephen A. Sistrunk (ASB-4229-E63S)
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EXHIBIT G

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THE CIRCUIT COURT OF MADISON COUNTY

STATE OF ALABAMA

CIVIL ACTION NUMBER: 47-CV-2011-900037.00

SAMMIE LEE DAVIS, as Personal Representative
of THE ESTATE OF DR. MARIA RAGLAND DAVIS,
deceased,

Plaintiff,

Vs.

DR. VISTASP M. KARBHARI, DR. AMY BISHOP,
a/k/a AMY BISHOP ANDERSON, and JAMES
ANDERSON,

Defendant.

DR. JACQUELINE U. JOHNSON, as Personal
Representative of THE ESTATE OF DR. ADRIEL
D. JOHNSON, SR., deceased,

Plaintiff,

Vs.

DR. VISTASP M. KARBHARI, DR. AMY BISHOP,
a/k/a AMY BISHOP ANDERSON, and JAMES
ANDERSON,

Defendant.

DEPOSITION OF MARY BETH WALKER

Was taken before Tina Eller Kent,
Alabama Certified Court Reporter Number 340,
Tennessee Licensed Reporter Number 595, and
Notary Public for the State of Alabama at
Large, at 9:04 a.m. on Wednesday, August
21st, 2013, at the offices of BRINKLEY &
CHESNUT, 307 Randolph Avenue, Huntsville,
Alabama.

1 Q. Did you know Chief Gailes'
2 telephone number?

3 A. No, I did not know the telephone
4 number.

5 Q. How did you get in touch with
6 Chief Gailes?

7 A. I would look it up on a directory
8 if I needed to call, or I would have it on
9 speed dial.

10 Q. Did you call him on a university
11 line, or did you have his cell phone number?

12 A. I did not have his cell phone
13 number that I recall.

14 (Whereupon, Plaintiff's
15 Exhibit 1 was marked for
16 identification and attached
17 hereto.)

18 BY MR. FIERBERG:

19 Q. I want to show you what we marked
20 as Exhibit Number 1. I will ask you
21 recognize that at all?

22 A. I recognize my name on it, but I do
23 not recall meeting or writing it, but it's
24 obvious that I did.

25 Q. Okay. Well, when I had asked you,

1 you know, about conversations regarding
2 Dr. Bishop, and I had been more focused on
3 her as a potential threat or being at the
4 executive offices, do you recall being in
5 meetings with either David Williams,
6 Karbhari, Jack Fix, Rhonda Gaede, or Gopi
7 Podilla regarding the tenure decision
8 relating to Amy Bishop?

9 A. I do not recall that meeting, but I
10 was there, obviously.

11 Q. Do you recall any meetings
12 involving discussions concerning Amy
13 Bishop's tenure, appeal, or denial of the
14 appeal?

15 A. I do not recall any meetings.

16 Q. Do you recall in any such meetings
17 anybody expressing concerns of any kind over
18 Bishop's behavior, were she to be denied
19 tenure?

20 A. I do not recall that.

21 Q. Not just in this meeting --

22 A. In any meeting.

23 Q. -- in any meetings.

24 A. I do not recall that.

25 Q. Do you recall any conversations or

1 meetings with any of these individuals
2 identified here concerning Bishop?

3 A. I do not recall any conversations
4 with any of those people regarding
5 Dr. Bishop.

6 Q. Do you recall being present in the
7 meetings about Dr. Bishop more than just
8 this one?

9 A. No, I do not.

10 (Whereupon, Plaintiff's
11 Exhibit 2 was marked for
12 identification and attached
13 hereto.)

14 BY MR. FIERBERG:

15 Q. Let me show you what we're marking
16 as Number 2, which is a series of e-mails,
17 and I think if you go to the very back, do
18 you see the first of that string is July
19 27th, 2009, an e-mail from Amy Bishop to
20 David Williams? Do you see that?

21 A. Yes.

22 Q. First of all, did you ever recall
23 seeing that e-mail?

24 A. I do not recall that e-mail.

25 Q. Do you recall the circumstances

1 related -- that are related in that e-mail?

2 A. No, I do not recall the
3 circumstances.

4 Q. Okay. Were you looking above that,
5 there's an e-mail from you -- no, stay on
6 the same page.

7 MR. EZELLE: Here (indicating).

8 BY MR. FIERBERG:

9 Q. You've got to go back. Do you see,
10 sort of above that is an e-mail written by
11 you on David Williams e-mail responding to
12 Dr. Bishop?

13 A. (Witness nods head.)

14 Yes. What is the question again,
15 please, sir.

16 Q. Do you recognize that as an e-mail
17 written by you to Dr. Bishop on or about
18 July 27th, 2009?

19 A. I recognize it because it has my
20 name on it. I do not recall sending that
21 e-mail.

22 Q. Okay. Do you recall having any
23 discussions with Dr. Bishop concerning
24 information she was seeking from
25 Dr. Williams?

1 A. I do not recall that at all.

2 Q. No conversations whatsoever?

3 A. No conversations about content.

4 Q. Okay. Do you recall having any
5 conversations with David Williams about
6 things that Amy Bishop was asking for?

7 A. I do not recall that at all.

8 Q. Do you recall having any
9 conversations with David Williams whatever
10 regarding Amy Bishop?

11 A. I do not recall any conversations.

12 Q. Do you see above that, Amy Bishop
13 responds to you?

14 A. Yes, I see that.

15 Q. Okay. Do you recall getting that
16 e-mail from her?

17 A. No, I do not recall getting that
18 e-mail.

19 Q. Okay. Do you see above that,
20 there's some continued correspondence
21 between Amy Bishop and David Bishop and Amy
22 Williams?

23 A. Yes, I see that.

24 Q. At the top, it says there's an
25 e-mail from David Williams to Mr. Karbhari?

1 A. Yes.

2 Q. It says, "Dave, we need to talk.
3 Dave"?

4 A. Yes.

5 Q. Were you aware of the executive
6 assistant for Dr. Williams, conversations
7 that he was having with Mr. Karbhari about
8 Amy Bishop?

9 A. I do not recall that.

10 Q. Do you ever recall setting up
11 meetings for the two individuals scheduling
12 them so they could talk about Dr. Bishop?

13 A. I do not do that. Faye Hartman set
14 up all of the meetings. I did not schedule
15 meetings.

16 Q. Okay. Did you ever have any
17 discussions with Dr. Williams concerning Amy
18 Bishop's tenure and things he had been
19 talking with Dr. Karbhari's office about?

20 A. No. Tenure was a private
21 situation, I had no authority to discuss
22 tenure of faculty meetings.

23 Q. Well, I understand that, but in
24 Exhibit Number 1, you were taking notes or
25 you were at meetings --

1 A. Right.

2 Q. -- where the tenure decision was
3 being discussed concerning Dr. Bishop; is
4 that fair to say?

5 A. Yes.

6 Q. Were you at any other any meetings
7 with Dr. Karbhari or Dr. Williams where the
8 discussion of Amy's tenure was --

9 A. No.

10 Q. -- being discussed?

11 MR. EZELLE: Objection. Asked and
12 answer, but you can answer.

13 A. No, I was not at any other meetings
14 where Dr. Bishop's tenure was discussed.

15 MR. BRINKLEY: Can we take -- let's
16 take a break, about five minutes, let's take
17 a break here.

18 (Whereupon, a short recess
19 was taken from 9:26 a.m.
20 until 9:31 a.m.)

21 MR. BRINKLEY: Let me ask, for the
22 record, what is our agreement regarding the
23 authentication of Exhibits 1 and 2?

24 MR. FIERBERG. I don't think we can
25 do it through her.

1 MR. BRINKLEY: No, I mean --

2 MR. FIERBERG: Just agree that
3 they're --

4 MR. BRINKLEY: Are we in agreement
5 that that's what was produced by you to us,
6 and that they are authentic?

7 MR. EZELLE: Well, generally
8 speaking, I don't have a question about
9 authenticating what we've produced.
10 Specifically with respect to some of these,
11 I need to go back and see. Like for
12 example, I know on Exhibit 1, it's not a
13 complete copy. I don't doubt that this is
14 the one that came from our file, but it's
15 not the complete copy, there's a second page
16 to it. But generally, on authentication, I
17 don't have an issue with that.

18 MR. BRINKLEY: Have you produced to
19 us the second page of Plaintiff's
20 Exhibit 1?

21 MR. EZELLE: Yes.

22 MR. BRINKLEY: And then Plaintiff's
23 Exhibit 2, there's no issue about the
24 authentication of it?

25 MR. EZELLE: No. That came from

1 production from UAHuntsville.

2 MR. BRINKLEY: And my question is:
3 It is what it purports to be, an e-mail from
4 somebody to somebody?

5 MR. EZELLE: Yeah.

6 MR. BRINKLEY: And it's a business
7 record of UAH?

8 MR. EZELLE: Yeah.

9 MR. BRINKLEY: I'm asking because I
10 don't -- apparently, for example, this
11 witness doesn't know -- cannot identify --
12 qualify any agreement that she has about any
13 document.

14 MR. EZELLE: Well, no, you didn't
15 ask her question the about whether she
16 thought this was an e-mail that came from,
17 you know --

18 MR. FIERBERG: Yeah.

19 MR. EZELLE: I think that would be
20 a waste of time. I don't think that the
21 authentication is going to be an issue in
22 this case on the e-mails produced.

23 (Whereupon, Plaintiff's
24 Exhibit 3 was marked for
25 identification and attached

1 hereto.)

2 BY MR. FIERBERG:

3 Q. Just mark as Exhibit 3, November,
4 9th, 2009 memo from Dr. Karbhari to
5 Dr. David B. Williams; do you see that? Do
6 you recall ever reviewing that in your job?

7 A. I recall that I probably saw it,
8 but we would get a great deal of mail each
9 day, I would not have read it in its
10 entirety. I would have put it on a mail
11 log.

12 Q. Who was responsible for doing
13 Dr. Williams' typing for letters?

14 A. I did, and so did Faye Hartman, but
15 it was primarily me.

16 Q. Okay. Do you ever recall --
17 because in this memo, at the very end, it
18 says, "I'm sending you this report with the
19 understanding that you will inform
20 Dr. Bishop of my decision;" do you see that?

21 A. Yes. Yes, sir.

22 Q. Do you ever recall having a
23 discussion with Dr. Williams about preparing
24 a tenure denial letter for Dr. Bishop?

25 A. I do not recall that discussion.

1 Q. Do you recall ever doing that?

2 A. I recall writing a tenure denial
3 letter.

4 (Whereupon, Plaintiff's
5 Exhibit 4 was marked for
6 identification and attached
7 hereto.)

8 BY MR. FIERBERG:

9 Q. Okay. Let me show you what we've
10 marked as Exhibit Number 4, which is a
11 letter dated November 10th, 2009, which is a
12 day after the November 9th memo from
13 Dr. Karbhari to Dr. Williams that I gave you
14 as Exhibit Number 3; do you see that? Do
15 you recall, it doesn't have initials who
16 typed this.

17 A. May I make a correction on that
18 statement, please?

19 Q. Sure. Yeah.

20 A. I think, as I recall, that this is
21 a standard letter that was probably prepared
22 by the provost's office. If I had written
23 it, it would have had my initials on it, and
24 it does not.

25 Q. So do you believe then because it

1 doesn't have your initials, this letter was
2 prepared out of the provost's office?

3 A. Yes. That is my belief.

4 Q. And that would have been done by
5 who, Peggy Bowers?

6 A. I don't recall; maybe, I don't
7 know.

8 Q. And would it be then fair to say if
9 I wanted to ask somebody about the content
10 of this letter or any discussions that were
11 had concerning this letter, I would have to
12 speak to somebody at the -- in.
13 Dr. Karbhari's office and his administrativ
14 staff?

15 A. Yes. I think you would talk with
16 Dr. Karbhari's office.

17 Q. Okay. And again, head of that
18 staff is Peggy Bower?

19 A. Peggy Bower; correct.

20 Q. Do you recall, did this letter get
21 sent out by your office or would it have
22 been sent out by the provost's office, who
23 would have actually put it in the mail?

24 A. I don't recall who would have
25 actually put it in the mail.

1 him." Do you see that?

2 A. Yes.

3 Q. Now, just about a minute ago, I
4 asked you if you had any recollection of any
5 circumstances, that would have included
6 making this type of a statement, and as I
7 recall from your answer, you said you had no
8 recollection.

9 MR. EZELLE: Object to the form.
10 That mischaracterizes her testimony, but
11 you can answer.

12 BY MR. FIERBERG:

13 Q. Do you actually recall this
14 happening? You don't, do you?

15 MR. EZELLE: Well, Doug, are you
16 going to let her answer the question?

17 A. I don't know if I recall the event
18 or being told about the event later on when
19 this was written. I mean, I don't know.

20 BY MR. FIERBERG:

21 Q. You don't know sitting here whether
22 or not this -- from your own recollection,
23 whether or not this even happened?

24 MR. EZELLE: Object to the form.

25 MR. BRINKLEY: You can answer.

1 BY MR. FIERBERG:

2 Q. Do you recall from your knowledge
3 that that took place. You don't, do you?

4 A. I don't.

5 Q. Okay. It says, "Ms. Mandel
6 informed me that she had just had a phone
7 conversation with Dr. Amy Bishop." You
8 don't recall from your own recollection that
9 she said that to you, do you?

10 A. I don't -- Amy -- or Caroline was a
11 new employee, I was training her. I would
12 not have remembered every time she came to
13 me --

14 Q. Sure.

15 A. -- with a question about how to
16 handle phone calls.

17 Q. Sure. But you don't specifically
18 remember her informing you that she had had
19 a phone call with Dr. Bishop, you don't
20 remember that, do you?

21 A. I don't remember.

22 Q. Okay. And it says Dr. Bishop
23 wanted to meet with President Williams
24 regarding the final denial of tenure and
25 promotion, you don't know that to be

1 information that was communicated to you by
2 Caroline, you don't recall that, do you?

3 A. There would have been a discussion
4 of that at some point.

5 Q. You're saying "would have been,"
6 ma'am, I'm asking you very specifically: Do
7 you specifically recall having that
8 discussion and being told that information?

9 A. (No response.)

10 Q. Ma'am, it's not a guessing game, if
11 you don't recall, you can say you don't
12 recall.

13 MR. EZELLE: No. No. That's a
14 different question, so if --

15 MR. FIERBERG: It's still pending.

16 BY MR. FIERBERG:

17 Q. You don't specifically recall
18 having that information told to you by
19 Caroline, do you?

20 A. I recall having that information.

21 Q. Okay. So you recall having the
22 information that Bishop wanted to meet with
23 Williams regarding the denial of her tenure?

24 A. Yes.

25 Q. Where did you get that information?

1 A. It could have been from Faye. I
2 don't recall the dynamics of the
3 conversation.

4 Q. And you certainly don't recall
5 specifically that that conversation came
6 from speaking with Ms. Mandel?

7 A. I don't recall the specifics.

8 Q. You don't know that it came from
9 her, do you?

10 A. It could have been a group
11 conversation, I don't remember.

12 Q. Okay. Do you recall specifically
13 Ms. Mandel telling you that Dr. Bishop was
14 coming to the president's office to wait for
15 Dr. Williams to return so that she could
16 meet with him?

17 A. That could have been a separate
18 conversation, other than the conversation
19 that is -- it could have been separate from
20 that first sentence.

21 Q. But you don't know, do you?

22 A. It would have been in the same time
23 period, but I don't remember all of the
24 different dynamics of who said what when.

25 Q. And you don't know, then,

1 specifically that it was Ms. Mandel that
2 said that?

3 A. Reading that, it probably was.

4 Q. Those are your words, ma'am. I'm
5 asking you from your specific recollection,
6 do you recall that to be true, that that's
7 where that information came to you from?

8 A. I don't remember.

9 Q. Okay. Do you recall if there was a
10 broader conversation about this information
11 with others who was in that conversation?

12 A. I don't recall, but that could very
13 well have happened.

14 Q. Okay. And could it have happened
15 that people from Dr. Karbhari's office were
16 involved in that conversation? Peggy
17 Bowers?

18 A. Absolutely not.

19 Q. And you know that to be for sure?

20 A. Right.

21 Q. And why do you know that to be for
22 sure but you don't know who participated?

23 A. The president's office maintained a
24 strict atmosphere of confidentiality. We
25 would not have discussed this with anybody

1 else.

2 Q. Discussed what?

3 A. The tenure issue.

4 Q. Well, I'm not asking so much about
5 the tenure issue because this is talking
6 about Bishop planning to come to the
7 president's office. Do you recall, this is
8 not a discussion about whether or not she
9 would or wouldn't give tenure as I'm looking
10 at paragraph three. This is about her
11 speaking to Ms. Mandel and planning to come
12 to the offices. Do you recall who
13 participated in that discussion in your
14 office?

15 MR. EZELLE: Object to the form.
16 That mischaracterizes her paragraph three of
17 her affidavit.

18 A. Can you divide that question into
19 better parts. It's all muddled together.

20 BY MR. FIERBERG:

21 Q. Okay. It says in your sentence
22 includes the phrase "Dr. Bishop was planning
23 to come to the president's office to wait
24 for Dr. Williams to return so that she could
25 meet with him." Do you see that?

1 A. Uh-huh.

2 MR. EZELLE: Actually, that's not
3 the sentence, that a phrase in the sentence.

4 MR. FIERBERG: Okay. I'll read the
5 whole thing.

6 MR. EZELLE: Thank you.

7 BY MR. FIERBERG:

8 Q. "Ms. Mandel informed me that she
9 had just had a phone conversation with
10 Dr. Amy Bishop." Now, I think we've
11 established, you don't recall speaking to
12 Ms. Mandel on November 12th, do you?

13 A. I don't recall.

14 Q. Okay.

15 A. I don't recall that conversation.

16 Q. And then it continues on,
17 "Dr. Bishop wanted to meet with President
18 Williams regarding the final denial of
19 tenure and promotion, and Dr. Bishop was
20 planning to come to the president's office
21 to wait for Dr. Williams to return so that
22 she could meet with him." You do not recall
23 specifically Ms. Mandel having that
24 conversation with you?

25 MR. EZELLE: Object to the form.

1 Asked and answered.

2 BY MR. FIERBERG:

3 Q. Is that true?

4 A. I don't know.

5 Q. Okay. In the fourth paragraph,
6 again, referring to Ms. Mandel, it says,
7 "She expressed concerns about allowing
8 Dr. Bishop to come to the president's office
9 and to wait without an appointment." Do you
10 see that?

11 A. Yes.

12 Q. You don't recall Ms. Mandel
13 expressing those concerns, do you?

14 A. There was probably a three-way
15 conversation. I was aware of the concerns,
16 I don't recall the details of all of the
17 conversations.

18 Q. Okay. Who were the conversations
19 with?

20 A. It would have been Caroline Mandel
21 and Faye Hartman and me. The offices are
22 very close in proximity to each other. One
23 can hear conversations, there's no privacy.

24 Q. Okay. So you don't know
25 specifically that it was Ms. Mandel that

1 expressed the concerns. Is that fair, it
2 may have been Ms. Hartman who expressed the
3 concerns?

4 A. I'm assuming it was Ms Mandel.

5 Q. I don't want the assumption, I want
6 to know exactly what you specifically
7 recall. Do you recall specifically if it
8 was Ms. Mandel, specifically?

9 A. I don't recall specifically.

10 Q. Okay. In number five -- well, when
11 you were presented this for your signature
12 by the lawyers, did you read it before you
13 signed it?

14 A. Yes, I did.

15 Q. Do you recall, and I know you've
16 got degree in English, do you recall going
17 through and making changes to it?

18 A. Yes, I did.

19 Q. Do you recall what changes you made
20 to this before you signed it?

21 A. Very minor.

22 Q. Do you recall going through this
23 and expressing any concerns regarding
24 whether or not you specifically recalled
25 some of the things that were said in here?

1 MR. EZELLE: Well, to the extent
2 you're asking for conversations she had with
3 counsel, I'm going to instruct her not to
4 answer.

5 MR. FIERBERG: That's fine.

6 BY MR. FIERBERG:

7 Q. In paragraph five, it says my
8 normal practice was to notify UAHuntsville
9 police if there were was going to be
10 potentially uncomfortable meeting, such as a
11 termination." Do you see that?

12 A. Yes, sir.

13 Q. Do you recall, and I asked you
14 specifically about conversations you may
15 have had with the police, do you recall ever
16 contacting UAH police about them setting up
17 something related to Ms. Bishop?

18 A. I do not recall doing that.

19 Q. Do you recall if anybody else did
20 that?

21 A. I do not know about that.

22 Q. Do you recall if Faye Hartman made
23 a phone call to anybody affiliated with the
24 police department to arrange for police to
25 be available in case there was an

1 very physical presence, and I was in an
2 office where I could see. I was concerned
3 that he was overreaching standard bounds of
4 courtesy, and that was a call that was made.

5 Q. And that was because of safety
6 issues?

7 A. It was security.

8 Q. Security issue?

9 A. Yes.

10 Q. Now, the other one with the sick
11 individual that was not a security issue?

12 A. No, that was a health-related
13 issue.

14 Q. And what other security issues do
15 you recall having where the police were
16 called and placed in a concealed spot.

17 A. I don't recall others. There
18 probably were others, I don't recall.

19 Q. Okay. In paragraph six it says,
20 "In accordance with my normal practice, and
21 because of the concern raised by Ms. Mandel,
22 the UAHuntsville police were apparently
23 informed that there could be a potentially
24 tense meeting with a professor who had been
25 denied tenure." Do you see that?

1 Q. And in there, it says, "Because of
2 the concern raised by Ms. Mandel." Do you
3 see that?

4 A. Yes.

5 Q. Okay. Again, specifically, you
6 don't recall any of the conversations that
7 Ms. Mandel specifically had with you, do
8 you?

9 MR. EZELLE: Object to the form.
10 Asked and answered, but you can answer.

11 A. I repeat, I do not know.

12 BY MR. FIERBERG:

13 Q. Okay. And in here, it says, "In
14 accordance with your normal practice and
15 because of the concern, police were
16 apparently informed." Is it your
17 recollection that police were informed about
18 Dr. Bishop's potential tense meeting with
19 the president's office after Ms. Mandel had
20 spoken to Dr. Bishop?

21 A. Okay. Repeat that, please.

22 MR. BRINKLEY: Ms. Court Reporter,
23 read it back.

24 (Whereupon, the court
25 reporter read the pending

1 timing.

2 Q. Okay. So from your understanding,
3 the police conversation -- the police being
4 informed about a potentially tense meeting
5 had to have taken place after Ms. Mandel
6 spoke with Ms. Bishop?

7 A. That makes sense to me, yes.

8 Q. You don't recall if they were
9 informed by your office prior to Bishop
10 having spoken with Mandel?

11 A. Well, that would never have
12 happened? Why? Would it have happened?

13 Q. I'm asking you if recall that
14 taking place. I don't want conjecture.

15 MR. EZELLE: It's not -- no. Don't
16 characterize her testimony as conjecture.
17 Allow her to testify and you can ask her
18 questions.

19 BY MR. FIERBERG:

20 Q. Okay.

21 A. I do not recall. I do not
22 remember.

23 Q. Okay. And paragraph seven, it says
24 in the middle, "I believe I called
25 Dr. Bishop, and she informed me that she

1 would not be coming to meet Dr. Williams."

2 Do you see that?

3 A. Yes, sir.

4 Q. Do you specifically recall having
5 that discussion with Dr. Bishop?

6 A. I do not recall that specific
7 discussion, but it would have taken place.
8 It was a very short discussion. It was
9 probably very business-like. No -- probably
10 kind of a thing where this is the way it is,
11 that's all, good-bye. It would not have
12 been a detailed situation.

13 Q. Did you know how long the call
14 lasted?

15 A. Well, I saw the record, it was
16 three minutes.

17 Q. Sure. So what out of that three
18 minutes do you specifically recall being
19 discussed with Dr. Bishop? I'm asking not
20 what might have been said, what could of or
21 should have been said, what do you
22 specifically recall being discussed in that
23 three-minute phone call?

24 MR. EZELLE: I object to the form
25 of that. You can answer.

EXHIBIT H

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THE CIRCUIT COURT OF MADISON COUNTY

STATE OF ALABAMA

CIVIL ACTION NUMBER: 47-CV-2011-900037.00

SAMMIE LEE DAVIS, as Personal Representative
of THE ESTATE OF DR. MARIA RAGLAND DAVIS,
deceased,

Plaintiff,

Vs.

DR. VISTASP M. KARBHARI, DR. AMY BISHOP,
a/k/a AMY BISHOP ANDERSON, and JAMES
ANDERSON,

Defendant.

DR. JACQUELINE U. JOHNSON, as Personal
Representative of THE ESTATE OF DR. ADRIEL
D. JOHNSON, SR., deceased,

Plaintiff,

Vs.

DR. VISTASP M. KARBHARI, DR. AMY BISHOP,
a/k/a AMY BISHOP ANDERSON, and JAMES
ANDERSON,

Defendant.

DEPOSITION OF SCOTT MALCOLM

Was taken before Tina Eller Kent,
Alabama Certified Court Reporter Number 340,
Tennessee Licensed Reporter Number 595, and
Notary Public for the State of Alabama at
Large, at 2:31 p.m. on Wednesday, August
21st, 2013, at the offices of BRINKLEY &
CHESNUT, 307 Randolph Avenue, Huntsville,
Alabama.

1 Q. Did you hear that?

2 A. Yes, sir.

3 Q. It says, Chief of police Gailes or
4 some other officer was going to be around
5 Madison Hall in case there was --

6 A. Yes, sir.

7 Q. -- an upset professor over tenure?

8 A. Yes, sir.

9 Q. Had you been made aware of that
10 situation before that phone call?

11 A. I was made aware that I was going
12 to receive a call, and then that call, I was
13 going to be told whether or not I needed to
14 send an officer.

15 Q. Okay. So describe for me who made
16 you aware and when and what they said?

17 A. It was Chief Gailes.

18 Q. Okay.

19 A. The conversation took place between
20 the hours of 4:00 and 5:00 p.m., and he
21 said, "You're going to receive a phone
22 call." No details were given to me. And he
23 said, "They are going to indicate whether or
24 not they need an officer sent to their
25 location."

EXHIBIT I



AlaFile E-Notice

47-CV-2011-900038.00

Judge: WILLIAM K. BELL

To: BRINKLEY JOHN ALLEN
allen@huntsvilleattorneys.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

JACQUELINE U. JOHNSON V. DR. VISTASP M. KARBHARI ET AL
47-CV-2011-900038.00

The following matter was FILED on 7/31/2011 2:24:45 PM

Notice Date: 7/31/2011 2:24:45 PM

JANE C. SMITH
CIRCUIT COURT CLERK
MADISON COUNTY, ALABAMA
MADISON COUNTY, ALABAMA
HUNTSVILLE, AL 35801

256-532-3390
jane.smith@alacourt.gov



IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

JOHNSON JACQUELINE U.,)	
Plaintiff,)	
)	
V.)	Case No.: CV-2011-900038.00
)	
KARBHARI DR. VISTASP M.,)	
BISHOP DR. AMY #0064007,)	
ANDERSON JAMES E.,)	
Defendants.)	

ORDER ON PENDING MOTIONS

This case came for hearing on the motions pending in this case, with the parties being represented by their respective attorneys of record. The court having considered the issues presented in said pending motions, the thorough briefing of applicable law by counsel, and the arguments of counsel, enters the following orders:

- (1) The **Motion to Strike Plaintiffs' First Amended Complaint** filed by the Defendant, Dr. Vistasp M. Karbhari, is **denied**.
- (2) The **Motion to Dismiss Plaintiffs' First Amended Complaint** filed by the Defendant, Dr. Vistasp M. Karbhari, is **denied**.
- (3) Based on the rulings made above, **Defendant Karbhari's Motion to Stay Discovery** is **moot**.

DONE this 31st day of July, 2011.

/s/ WILLIAM K. BELL
CIRCUIT JUDGE

EXHIBIT J

IN THE CIRCUIT COURT FOR MADISON COUNTY, ALABAMA

SAMMIE LEE DAVIS, as Personal)
Representative of THE ESTATE OF)
DR. MARIA RAGLAND DAVIS, deceased,)
)
Plaintiff,)

CASE NO. 47-CV-2011-900037.00

vs.)

DR. VISTASP M. KARBHARI, DR. AMY)
BISHOP aka AMY BISHOP ANDERSON, and)
JAMES ANDERSON,)
)
Defendants.)

DR. JACQUELINE U. JOHNSON, as)
Personal Representative of THE ESTATE)
OF DR. ADRIEL D. JOHNSON, SR., deceased,)
)
Plaintiff,)

vs.)

DR. VISTASP M. KARBHARI, DR. AMY)
BISHOP aka AMY BISHOP ANDERSON, and)
JAMES ANDERSON,)
)
Defendants.)

CASE NO. 47-CV-2011-900038.00

**PLAINTIFFS' OPPOSITION TO DEFENDANT KARBHARI'S
MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINTS**

"[T]hey [Defendant Karbhari and the UAH President] won't let me see them," and "they told me not to come up... **They act like I am going to walk in and shoot somebody.**"¹

- *Amy Bishop*, prior to the February 12, 2010, massacre.

Introduction

Defendant Vistasp M. Karbhari's Motion to Dismiss Plaintiffs' First Amended Complaints is based almost entirely on arguments claiming that he had no possible basis for

¹ Affidavit of Debra Moriarity, ¶11. Filed by Defendant Karbhari, attached to his Motion to Strike First Amended Complaints.

knowing of Defendant Amy Bishop's psychological crisis and potential threat to others, and, thus, owed no legal duties towards his colleagues.² The *fact* is that Defendant Karbhari directly knew that Bishop was a threat to himself and others. As the Amended Complaints allege, prior to this massacre Defendant Karbhari had Bishop barred from entering Shelbie King Hall; treating her in a way that led Bishop to state: "They act like I am going to walk in and shoot somebody."

In fact, Plaintiffs' counsel has credible information concerning the very reason for Bishop's statement:

Months before the massacre, Defendant Karbhari and former UAH President, Dr. David Williams, ran out the back of Shelbie King Hall protected by two armed police officers in order to flee a possible confrontation with Defendant Bishop over the denial of her tenure. Their flight was likely recorded by UAH security cameras.

In accordance with this Court's rules, Plaintiffs sought discovery from numerous individuals – including Defendant Karbhari – who likely have knowledge of these and other facts, all of which would directly contradict the numerous assertions by Defendant Karbhari and his counsel that he had absolutely no way of knowing that Bishop was a threat. Defendant Karbhari blocked all discovery, hoping that this Court would dismiss this matter in advance of discovery and, as the following Memorandum demonstrates, in violation of law.³

Defendant Karbhari knew that Bishop was a threat, yet failed to abide by UAH's mandatory life-safety policy requiring Bishop to be reported to the police for evaluation and intervention. Defendant Karbhari also failed to abide by his common-law and assumed duties to protect others from the threats posed by Bishop, or, at the very least, to warn others so they would know of the danger and take measures to protect themselves. As a result, three extraordinary people died, including Dr. Maria Ragland Davis and Dr. Adriel D. Johnson, Sr.

² Karbhari Memorandum, pp.2, 3, 9 and 10.

³ It is essential to the prosecution of their claims, and the defense to this Motion, that Plaintiffs be permitted to conduct discovery. See Rule 56(f) Affidavit of Douglas Fierberg, attached as Exhibit A.

This tragedy could have been prevented. Plaintiffs state claims for relief under well-settled principles of law; and Defendant Karbhari's Motion to Dismiss should be denied.

Facts and Procedural History

Plaintiffs' First Amended Complaints contain the following central allegations:

- Defendant Bishop was a member of the UAH faculty with a long, demonstrated history of violence, mental instability, and severe psychological crisis.⁴
- UAH had in place an unambiguous, nondiscretionary life-safety regulation requiring Defendant Karbhari to report anyone experiencing psychological crisis to the University Police for evaluation and intervention.⁵
- Defendant Karbhari was aware – personally and having received *multiple* reports from *multiple*, credible sources – that Bishop was “crazy,” “out of touch with reality,” and experiencing severe psychological crisis.⁶
- Defendant Karbhari was aware that Bishop threatened suicide.⁷
- Defendant Karbhari was aware that Bishop threatened and harassed colleagues, causing them to avoid contact with her.⁸
- Defendant Karbhari prevented Bishop from gaining access to him and other senior administration officials following the denial of her request for tenure by calling for armed security at Shelbie King Hall.⁹
- Special circumstances and other duties assumed by Defendant Karbhari placed further legal obligations on him to act to prevent Bishop from causing harm to others.¹⁰
- Defendant Karbhari failed to take the steps mandated by the life-safety regulation or other duties recognized by law, even though he had knowledge of Bishop's threats, risk, and severe psychological crisis.¹¹

⁴ Amended Complaints, *inter alia*, ¶¶10-16, 22-26.

⁵ Amended Complaints, *inter alia*, ¶¶33-39, 58-61.

⁶ Amended Complaints, *inter alia*, ¶¶14, 19, 20, 30, 31, 33-39, 49-51.

⁷ Amended Complaints, *inter alia*, ¶19. Plaintiffs also have good reason to believe that one UAH professor personally took Bishop to a physician out of concern for her psychological instability.

⁸ Amended Complaints, *inter alia*, ¶¶16, 21.

⁹ Amended Complaints, ¶19.

¹⁰ Amended Complaints, *inter alia*, ¶¶49-51, 58-61.

¹¹ Amended Complaints, *inter alia*, ¶¶19, 42.

- Thereafter, on February 12, 2010, Bishop shot six of her colleagues at a staff meeting, killing three, all of whom were outstanding persons and faculty members.¹²
- Had Defendant Karbhari complied with his duties, this tragedy would have been averted.¹³

Defendant Karbhari responded to the initial Complaints with a Motion to Dismiss, premised on *numerous* assertions that he “had no...knowledge of Dr. Bishop’s mental state or her violent past.”¹⁴ Defendant Karbhari now discards his original claims that he had no knowledge of Bishop’s psychological crisis. The affidavits submitted with his Motion to Strike *establish* that he was informed about Bishop’s suicide threats by UAH faculty member Dr. Debra Moriarity.¹⁵ The affidavits *establish* that Bishop was, in fact, barred from seeing Defendant Karbhari and other senior administrative staff.¹⁶ The affidavits certainly imply that Defendant Karbhari was afraid of Bishop.¹⁷ Specifically, the affidavit Defendant Karbhari obtained from Dr. Moriarity provides the following recounted statement of Bishop:

‘[T]hey [Defendant Karbhari and the UAH President] won’t let me see them’ and ‘they told me not to come up... **They act like I am going to walk in and shoot somebody.**’¹⁸

The complete shift in Defendant Karbhari’s approach, as well as the information learned by Plaintiffs, understandably led Plaintiffs to seek discovery from third parties and others likely to possess information on this important subject, including Cindy Backus (UAH Director of Employee Relations and Compliance), Mary Beth Walker (Office of the President of UAH), Fay

¹² Amended Complaints, *inter alia*, ¶21.

¹³ Amended Complaints, *inter alia*, ¶¶41, 43, 53, 63.

¹⁴ Brief Supporting Defendant Karbhari’s Motion to Dismiss, p. 2.

¹⁵ Defendant Karbhari’s Motion to Strike, ¶6(b).

¹⁶ Defendant Karbhari’s Motion to Strike, ¶6(d).

¹⁷ Dr. Moriarity’s affidavit leaves unclear numerous circumstances concerning how Bishop was barred from reaching Defendant Karbhari. For example, Defendant Karbhari does not himself deny that the police were then or ever called to protect him and other administrative staff. Instead, Defendant Karbhari submitted a “record-keepers” affidavit stating that the police have no “record” of being summoned, as if the absence of such a record conclusively establishes that the event did not in fact occur. Plaintiffs’ information indicates that he and former UAH president Dr. David Williams were escorted out of Shelbie King Hall by two armed police officers.

¹⁸ Affidavit of Debra Moriarity, ¶11.

Hillis Hartman (Office of the President of UAH), Chester R. Garner (Office of University Relations, UAH), and a person to be “designated” by the UAH Office of the Provost (UAH). Depositions were noticed and set for June 27-28, 2011. On May 25, 2011, Plaintiffs properly filed and served a Request for Production on each of the Defendants, with responses due within 30 days. By letter dated June 10, 2011, Defendant Karbhari’s counsel blocked the depositions and indicated responses to the outstanding discovery requests would be limited to preserving objections, though there is no protective order or other legal basis justifying such tactics.

Argument

I. Defendant Karbhari is not immune from liability for his negligent acts contributing to Dr. Davis’s and Dr. Johnson’s deaths.

The Alabama Constitution guarantees that anyone harmed will have a right to redress through the courts: “all courts shall be open; and...*every person, for any injury* done him, in his lands, goods, person, or reputation, *shall have a remedy by due process of law*; and right and justice shall be administered without sale, denial, or delay.”¹⁹ In the long shadow of this Constitutional right, and recognizing that discovery is almost always needed to determine immunity issues, the Supreme Court of Alabama has ruled that “*it is the rare case involving the defense of [state-agent] immunity that would be properly disposed of by a dismissal pursuant to Rule 12(b)(6)* [Ala.R.Civ.P.]”²⁰ This is no such “rare” case.

The Alabama Supreme Court has repeatedly and unequivocally ruled that government employees cannot escape individual tort liability by arguing that their mere *status* as government employees cloaks them with constitutional immunity.²¹ Duties that have nothing to do with

¹⁹ Article I, §13, *Alabama Constitution of 1901* (emphasis added).

²⁰ *Ryan v. Hayes*, 831 So.2d 21, 32 (Ala. 2002), quoting *Patton v. Black*, 646 So.2d 8, 10 (Ala. 1994). Defendant Karbhari cites *Ryan v. Hayes* as authoritative on the issue of governmental immunity. Defendant Karbhari’s Memorandum, p. 13.

²¹ *Phillips v. Thomas*, 555 So.2d 81, 83 (Ala. 1989); *Barnes v. Dale*, 530 So.2d 770, 781 (Ala. 1988); quoting *Tort Liability of State Officials in Alabama*, 35 Ala.L.Rev. 153 (1984).

government position are not protected just because a defendant is, in some areas, a government agent.²² Even when duties related to government agency are involved, a government employee acts beyond his authority, and is not immune from suit, when he “fail[s] to discharge duties pursuant to detailed rules or regulations, such as those stated on a checklist.”²³ This does not require that the rules be in the form of a checklist, only that they give explicit commands.²⁴ State-agent immunity only applies to discretionary acts or judgment calls within the government employee’s authority.²⁵

Accordingly, whether state-agent immunity applies to Defendant Karbhari’s violation of the life-safety regulation is determined by resolving two principle issues: (1) whether the plain language of the life-safety regulation sets forth explicit mandates, which it does; and, (2) whether the plain language of the life-safety regulation allowed discretion and judgment by Defendant Karbhari about reporting Bishop to police for evaluation and intervention, given his unequivocal knowledge of her psychological crisis and concerns for his own physical safety. No such discretion is allowed.

A. The life-safety regulation sets forth explicit, non-discretionary mandates and procedures to be followed by Defendant Karbhari.

The UAH life-safety regulation provides:

Psychological Crisis

Faculty/Staff: A faculty/staff member experiencing a psychological crisis should be directed to the nearest hospital emergency room or call their family physician. If a faculty/staff member is experiencing a severe psychological crisis, contact the University Police for assessment and transport to the nearest hospital emergency room.

²² See *Ex parte Cranman*, 792 So.2d 392 (Ala. 2000).

²³ *Giambrone v. Douglas*, 874 So.2d 1046, 1052 (Ala. 2003), quoting *Ex parte Butts*, 775 So.2d 173, 178 (Ala. 2000).

²⁴ *Ex parte Lawley*, 38 So.3d 41, 48 n1 (Ala. 2009).

²⁵ E.g., *Howard v. City of Atmore*, 887 So.2d 201, 208 (Ala. 2003).

Procedures. Should you come into contact with someone experiencing a psychological crisis, **DO NOT** attempt to handle the potentially dangerous situation alone. Notify University Police at **824-6911** or **911**. *** The safety of the person in crisis and those around him should be of first concern. University Police will work closely with campus counseling professionals when necessary. **(Emphasis in original)**

The UAH life-safety regulation details that “[a] psychological crisis exists when an individual is threatening harm to themselves or others, or is delusional and out of touch with reality.”²⁶ The life-safety regulation is “intended for use by faculty, staff members, and students at UAH.” It prohibits people from acting alone to prevent bad judgment calls by people who – like Defendant Karbhari – lack expertise, training, and authority to evaluate and respond to the danger posed by a person in psychological crisis.²⁷ The life-safety regulation is set forth in a fluorescent Emergency Procedures Handbook posted in offices and buildings throughout campus.²⁸ The UAH Handbook requires that all staff be familiar with these regulations and procedures.²⁹

The Tuscaloosa and Huntsville campuses share information regarding such life-safety regulations and crisis management in the University of Alabama System generally, and, specifically, through the Office of the Vice-Chancellor for Systems Relations.³⁰ The University of Alabama System Board of Trustees Manual confirms that, although provisions might differ among the institutions in order to reflect appropriate and legitimate differences in organization and mission, “consistency should be sought to the extent that such is practicable.”³¹ Defendant Karbhari is a member of the University Emergency Management Structure’s Policy Group and *one of only three people to sign the UAH Emergency Management Plan’s letter of*

²⁶ The regulation identifies additional ways such a crisis could be manifested, including: paranoia, uncontrolled behavior (anger, yelling), disruptive behavior, and complete withdrawal.

²⁷ Amended Complaints, *inter alia*, pp. 2-3.

²⁸ Amended Complaints, *inter alia*, p. 3 and ¶34.

²⁹ Amended Complaints, *inter alia*, p. 3 and ¶34.

³⁰ Amended Complaints, *inter alia*, pp. 4-5.

³¹ Manual of Board of Trustees of University of Alabama System, Rule 306(3).

promulgation.³² The Emergency Management Plan contains the very life-safety regulation giving rise to Defendant Karbhari's duty to report. Defendant Karbhari would, therefore, have been aware of the University of Alabama System's nearly identical regulation that also plainly mandates reporting someone in mental distress to the proper authorities:

Mental Health Emergency

On occasions, people can experience tremendous stress or emotional instability that could result in harm to themselves or others. Should you encounter someone who fits these criteria, it is **vital** that you immediately report it to either the University Police or the University Counseling Center. Doing so may save someone from being harmed. (**Emphasis in original**)

The text of the UAH life-safety regulation is to be construed according to its "natural, plain, ordinary, and commonly understood meaning, just as language in a statute."³³ And when the statute – or, as in this case, regulation – uses plain language, it is *improper* for a court to engage in judicial construction that would render its clear terms meaningless:

[W]here plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.³⁴

This principle is reflected in the Alabama Constitution, which prohibits one branch of government from exercising powers properly reserved to another branch:

In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial

³² Amended Complaints, p. 5.

³³ *State Personnel Bd. v. Wallace*, 682 So.2d 1357, 1359 (Ala.Civ.App. 1996), citing *Alabama Medicaid Agency v. Beverly Enterprises*, 521 So.2d 1329 (Ala.Civ.App. 1987). See Section IIB below, identifying authority by which the UAH life-safety "rule" constitutes, and, thus, must be interpreted and enforced as, a "regulation."

³⁴ *IMED Corporation v. Systems Engineering Associates Corp.*, 602 So.2d 344, 346 (Ala. 1992), citing *Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County*, 589 So.2d 687 (Ala. 1991); see also, *City of Bessemer v. McClain*, 957 So.2d 1061, 1074-75 (Ala. 2006), citing *Ex parte Waddail*, 827 So.2d 789, 794 (Ala. 2001).

shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.³⁵

The requirement that courts interpret regulations according to their plain meaning and refrain from “judicial activism” has been expressed by the Alabama Court of Civil Appeals as follows: “It is our job to say what the law is, not what it should be. We are bound by the words used by the legislature...”³⁶

The UAH life-safety regulation’s plain language does not allow for any discretion or judgment before reporting; certainly not where, as here, the person obligated to report: (1) knows from multiple credible reports that someone is “crazy,” “out of touch with reality,” threatening and hounding colleagues, and otherwise experiencing psychological crisis as such term is clearly defined in the regulation; (2) knows of a credible threat of suicide, a term which on its own meets the definition of psychological crisis; and, (3) concludes that the person is enough of a danger or threat to run from a building with armed police to avoid her. Such facts meet the plain terms of the life-safety regulation triggering an absolute, unequivocal duty to report and seek police intervention. By the very terms of the regulation, no judgment or discretion is allowed. Defendant Karbhari failed that process by ignoring the mandates of the life-safety regulation.

B. The life-safety regulation required Defendant Karbhari to report Bishop to UAH police.

Plaintiffs’ original complaints contain numerous allegations of how Defendant Karbhari was aware of Bishop’s psychological crisis.³⁷ The Amended Complaints supplemented such allegations by detailing how Defendant Karbhari was *directly* made aware of Bishop’s suicide

³⁵ Article III, §43 Alabama Constitution of 1901.

³⁶ *Hill v. Campbell*, 804 So.2d 1107, 1116 (Ala.Civ.App. 2001); *accord Ex parte James*, 836 So.2d 813, 817 (Ala. 2002) (the court can do no more than say what the Constitution requires without “resorting to unconstitutional judicial activism”).

³⁷ Johnson’s Opposition to Karbhari’s Motion to Dismiss, p. 8-11; Davis’s Opposition to Karbhari’s Motion to Dismiss, p. 8-11. Incorporated herein by reference.

threats and danger because he summoned UAH police to Shelbie King Hall to prevent Bishop from getting near him and other administrative personnel,³⁸ and ran, under armed guard, from the building.

These allegations were substantially *confirmed* – albeit not intentionally – by affidavits Defendant Karbhari filed in support of his Motion to Strike. The Affidavit of Debra Moriarity establishes that Defendant Karbhari knew of Bishop’s threat of suicide; saw Bishop as a safety threat; and had her barred her from getting to his and other administrative offices.³⁹ This information demonstrates the falsity Defendant Karbhari’s claims that he was unaware of Bishop’s severe psychological crisis or that he had to exercise some discretion in diagnosing her condition. Contrary to Defendant Karbhari’s suggestions, Bishop was far more than just an idiosyncratic “nutty professor.” Bishop was a threat to herself and others, and the allegations – taken in their most favorable light – establish that Defendant Karbhari knew it and took affirmative and extreme steps to protect himself. Such reports, information, and knowledge obligated Defendant Karbhari to *immediately* notify University Police for evaluation of Bishop. The life-safety regulations required more than the actions taken to protect himself.⁴⁰

³⁸ Johnson’s Supplemental Memorandum in Opposition to Defendant Karbhari’s Motion to Dismiss, pp. 1-2; Davis’s Supplemental Memorandum in Opposition to Defendant Karbhari’s Motion to Dismiss, pp. 1-2. Incorporated herein by reference.

³⁹ Affidavit of Dr. Moriarity, ¶¶11-13. Dr. Moriarity assumes that Defendant Karbhari’s administrative staff prevented Bishop from entering Shelbie King Hall. Defendant Karbhari does not attest that he did not summon for, or know of, police intervention to prevent Bishop from gaining access to Shelbie King Hall or to protect him and Dr. Williams.

⁴⁰ Contrary to Defendant Karbhari’s misstatements, the regulations do not require, nor do Plaintiffs argue, that Bishop should have been *arrested* because of her psychological crisis. Defendant Karbhari’s Memorandum, p. 3. The life-safety regulation required that Bishop be reported so that the University Police could make the appropriate determinations regarding how to proceed. Per the allegations, her background of dangerous and criminal misconduct (**including the murder of her brother, investigation for alleged involvement in sending a bomb to a university professor, and a guilty plea to assault**) would reveal lies in her employment application and would have resulted in her being treated or barred from campus and attendance at the meeting where she killed her colleagues.

The Court must accept all of Plaintiffs' allegations as true⁴¹ and make all possible inferences in their favor.⁴² It is paramount that Plaintiffs be given all favorable inferences from their allegations at this stage of the proceedings because, as should be apparent since filing the initial Complaints, these allegations are but the tip of the iceberg concerning Bishop's documented danger, psychological crisis, and threat to others. Numerous professors have come forward to reveal that Bishop was visibly "out of touch with reality" before the massacre, though Plaintiffs cannot depose such persons because Defendant Karbhari's legal counsel has blocked all discovery attempts by Plaintiffs.

Defendant Karbhari had no obligation, authority, or even opportunity to make what he calls an "inherently subjective assessment" of whether Bishop was in psychological crisis.⁴³ This cannot pass muster in light of his earlier decision to bar Bishop access to Shelbie King Hall. Beyond his direct knowledge and actions, other assessments had been made by credible university personnel (repeatedly), and reported to him (repeatedly), and required nondiscretionary action under the life-safety regulation (immediately). The UAH life-safety regulation expressly removes mental-health assessment from the scope of Defendant Karbhari's authority, and he lacked the authority vested with the police to intervene further. The plain language of the life-safety regulation shows that its drafters recognized that untrained faculty *could not* be given discretion in such critical areas involving life-safety. Accordingly, the regulation instructs Defendant Karbhari, and others, to immediately report – removing any and all discretion. The regulation not only does not require, *it does not even allow* Defendant Karbhari to assess or diagnose anyone's mental health. Defendant Karbhari's argument

⁴¹ *Harden v. Ritter*, 710 So.2d 1254, 1255-56 (Ala.Civ.App. 1997); *Crosslin v. Health Care Authority of Huntsville*, 5 So.3d 1193, 1195 (Ala. 2008).

⁴² *Ex parte Hale*, 6 So.3d 452, 458 (Ala. 2008); quoting *Ex parte Alabama Dep't of Youth Svcs.*, 880 So.2d 393, 402-403 (Ala. 2003); quoting in turn *St. George v. Pinellas County*, 285 F.3d 1334, 1337 (11th Cir. 2002).

⁴³ Defendant Karbhari's Memorandum, pp. 16-17.

demonstrates that he acted beyond his authority and under a mistaken interpretation of the University's life-safety regulations. Defendant Karbhari cannot be allowed to hide behind a claim of discretion when he had none; especially when – concerning his own physical safety – his purportedly “discretionary” assessment resulted in a call to the police for personal protection.

In *Ex Parte Cranman*, the Supreme Court addressed the discretion issue and noted that, “as long as the [government] agent has not disobeyed clear instructions, almost any challenged conduct can be reduced to the exercise of some degree of judgment or discretion.”⁴⁴ The Court cautioned that giving “judicial deference to all conduct in which judgment or discretion is employed would exalt the immunity of [Article 1, §] 14 over the right to a remedy preserved by [§]13.”⁴⁵ In the case at bar, Defendant Karbhari disobeyed clear instructions. This Court should not be persuaded by his argument that he acquired state-agent immunity simply by introducing his untrained judgment and discretion into a realm where there was no authority for its exercise – indeed a realm where its exercise had been expressly removed. That argument cannot trump the rights to a remedy *guaranteed* Dr. Maria Ragland Davis and Dr. Adriel D. Johnson, Sr. by §13 of the Alabama Constitution.

In *Howard v. City of Atmore*,⁴⁶ relied upon heavily by Defendant Karbhari, the Alabama Supreme Court discussed discretionary versus mandatory duties. The *Howard* plaintiff sued for wrongful death based on the suicide of a city-jail inmate. There were two regulatory policies at issue in *Howard*. The first, “paragraph 7,” required jailers to make checks at least twice an hour and required the camera monitoring jail cells “constantly be operating and observed by [jailers].”⁴⁷ The other policy, “paragraph 10,” gave jailers the responsibility of checking on

⁴⁴ 792 So.2d at 404.

⁴⁵ *Id.*

⁴⁶ *Supra.*

⁴⁷ *Howard*, 887 So.2d at 207.

“intoxicated persons, drug addicts, physical and mental health risks and suicidal risks” every 30 minutes.⁴⁸

The *Howard* plaintiff argued that the City of Atmore jailer on duty, officer Bryars (who claimed state-agent immunity), acted beyond his authority by violating both paragraph 7 and paragraph 10. The Court reviewed the procedures and found that there were no “specific written instructions or statutes” setting out how Bryars should determine whether an inmate was potentially suicidal.⁴⁹ Accordingly, the Court held that Bryars was shielded by state-agent immunity under paragraph 10, because, *absent instruction*, it was left to his discretion to decide whether the paragraph 10 requirements applied in a given case.⁵⁰ But the Court held that state-agent immunity *did not* protect Bryars in regard to the requirements of paragraph 7 because that paragraph did not turn on the “subjective observations or assessments” or “contemplate the exercise of judgment;” instead, paragraph 7 simply instructed officers what to do.

The UAH life-safety regulation that Defendant Karbhari failed to follow, unlike *Howard’s* paragraph 10, gives very specific written instructions for determining whether someone is in psychological crisis. Defendant Karbhari received multiple credible reports from tenured faculty and students that Bishop had threatened suicide, was threatening others, and was “crazy” and “out of touch with reality.”⁵¹ Such reports fit squarely the very terms of the instructions. Some of her threats against others were in writing.⁵² From this, or other information, Defendant Karbhari treated Bishop as if she was going to walk into UAH offices and shoot someone and had her barred (with the assistance of police) from reaching him and

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Amended Complaints, *inter alia*, ¶¶14, 38.

⁵² Amended Complaints, *inter alia*, ¶¶18, 19; Affidavit of Dr. Moriarity, ¶¶12, 13.

others. These circumstances meet the plain definition of psychological crisis set forth in the life-safety regulation.

The UAH life-safety regulation is also similar to the safety rule discussed in *Giambrone v. Douglas*, which involved a lawsuit against a wrestling coach who engaged in a challenge match with a 15-year-old freshman who weighed approximately 70 pounds less than the coach.⁵³ Douglas, the coach, raised the defense of state-agent immunity, claiming he was using discretion in the manner he educated students. The rule at issue in *Giambrone* stated that wrestling coaches “should not arrange competition between individuals whose physical abilities are widely disparate.”⁵⁴ The Court ruled that state-agent immunity did not apply because when the rule was adopted it “removed Douglas’s judgment in determining whether he should participate in a ‘full speed’ challenge match with a student who was less experienced, much younger, and smaller” than him.⁵⁵ The *Giambrone* court ruled that discretion was removed by the rule, and that the rule prohibiting matches between individuals “whose physical abilities are widely disparate” was the type of “detailed rules and regulations” that removes the government employee’s judgment and, with it, state-agent immunity.⁵⁶

The *Giambrone* Court’s ruling demonstrates that observations that should be obvious are not discretionary or subjective. The fact that the student was “less experienced, much younger, and smaller” was obvious enough to show that there were widely disparate physical abilities, thus removing any governmental-immunity-invoking discretion.⁵⁷ The regulation in this case is even more blatant in its absence of employee discretion. Defendant Karbhari knew that Bishop was threatening others, threatening suicide, out of touch with reality, crazy, and dangerous

⁵³ *Supra.*

⁵⁴ *Giambrone*, 874 So.2d at 1053.

⁵⁵ *Id.* at 1055.

⁵⁶ *Id.*

⁵⁷ *Id.*

enough to bar her from gaining access to him and other administrators. The tenured professor who made some of these reports recognized that Bishop was “crazy” within “five minutes of meeting her.” What was *obvious* to him, and others, was specifically *obvious* to Defendant Karbhari – to the point where he ran from Shelbie King Hall under armed guard to avoid Bishop.

More recently, in *Ex parte Lawley*,⁵⁸ the Alabama Supreme Court reinforced the principle that failing to follow applicable regulations is conduct beyond a government employee’s authority and is not protected by state-agent immunity. In that case, the plaintiffs were injured when their boat struck the unmarked underwater remains of a pier in Gulf State Park. The plaintiffs sued several park employees in their individual capacities, alleging that they acted beyond their authority by failing to discharge their duties concerning the maintenance of navigational aids – duties dictated by several federal maritime navigation regulations.

The park employees claimed they had state-agent immunity because they exercised judgment and discretion in how to run the park, manage its budget, and allocate resources for expenses like rebuilding the pier. They also argued that the federal regulations did not provide sufficient guidance and were not sufficiently detailed, like a checklist, to qualify as an exception to state-agent immunity. The Supreme Court agreed with the plaintiffs that the applicable regulations, taken together, explicitly commanded that the pier remains were required to be lit and marked, implicating the “beyond-authority” exception to state-agent immunity. The Court noted with approval that in *Giambrone v. Douglas*,⁵⁹ and *Howard v. City of Atmore*,⁶⁰ the Alabama Supreme Court had not required a checklist in order to hold that the employee’s job duties had been sufficiently clear, and concluded that the trial court was correct in refusing to

⁵⁸ 38 So.3d 41 (Ala. 2009).

⁵⁹ *Supra*.

⁶⁰ *Supra*.

enter a judgment on the pleadings for defendants because the case appeared to be one of “simple disregard of a federal mandate.”⁶¹

Even if the step of determining whether Bishop was experiencing psychological crisis did involve some discretion – which it does not because clear instructions are given to determine this issue – Defendant Karbhari was provided sufficient guidance and explicit instruction under the life-safety regulation on what to do in the face of extensive credible information about Bishop’s psychological crisis that fit the very text of such instructions. In *Phillips*,⁶² the Alabama Supreme Court ruled that if a regulation contains both discretionary and ministerial elements, failure to perform the ministerial acts is actionable. *Phillips* involved the question of whether performing an inspection was a ministerial or discretionary act. The defendant argued that a licensing inspection was discretionary. The plaintiff responded, and the court agreed, that although some parts of an inspection may be discretionary, the defendant employee’s completion of an inspection sheet was ministerial and failure to do it properly was actionable.

Again, we recognize that these duties, although affirmative in nature, do require a considerable degree of discretion within department guidelines... Again, we also recognize that they can be composed of ministerial components. For example, if the department guidelines require that specific steps be taken in conducting an inspection or specify the manner in which they are to be taken, the performance of such steps is not discretionary, and, thus, a state employee’s negligence with respect to those particular ministerial acts is actionable.⁶³

Defendant Karbhari’s lack of discretion is underscored by the fact that the UAH policy he violated *did not* place a duty on him based on any supervisor-supervisee, employer-employee, or educator-student relationship. By its plain language, the life-safety regulation does not involve the manner in which staff is supervised or students are educated. All members of the campus community are bound by the policy, without any reference to employee/employer/staff status.

⁶¹ *Ex parte Lawley, supra* at 49.

⁶² *Supra*.

⁶³ *Phillips*, 555 So.2d at 86.

Plaintiffs do not allege that Defendant Karbhari's duty stemmed, *ex officio*, from any supervisory role, and this Court must reject requests by Defendant Karbhari's counsel to interpret the plain language of the life-safety regulation in this distorted, unlawful manner. There should be no such judicial activism by this Court as it would, unjustly, tread upon Plaintiffs' rights and, justly, constitute reversible error.

Defendant Karbhari's breach of duty is based on the fact that he is the one who had all of the relevant information – about the life-safety regulation and Bishop's threats, danger, and psychological crisis – and, hence, was bound by the same policy that governed *all* members of the campus community, regardless of position, to obtain police intervention. He had the information that gave rise to the duty, and he breached that duty. He must be held accountable for the consequences of that breach.

C. Plaintiffs properly sued Defendant Karbhari for his misconduct.

The Supreme Court of Alabama recognizes that §14, which prohibits actions against the State of Alabama, “speaks only to a prohibition of lawsuits against the State and does not mention lawsuits against individuals.”⁶⁴ Plaintiffs did not file suit against UAH or the University of Alabama System. In this regard, Plaintiffs' counsel understands the law just as well as Defendant Karbhari's counsel.

Suit was filed against Defendant Karbhari, lawfully, in full compliance with Plaintiffs' Constitutional rights. No law shields Defendant Karbhari from responsibility for his wrongdoing simply because his paycheck is issued by the government. While government officers and employees are immune from suit when the action is, “in effect,” one against the government, Defendant Karbhari relies on mere rhetoric, not law, to suggest that *this* action should be deemed

⁶⁴ *Ex parte Cranman*, 792 So. 2d 392, 401 (Ala. 2000). See also *Ex parte Shelley*, ___ So.3d ___; 2009 WL 2997498 (Ala 2009); *Ex parte Davis*, 930 So.2d 497, 500 (Ala. 2005).

“in effect” one against the government.⁶⁵ Far more than rhetoric is required where, as here, a defendant seeks to nullify one’s express right to pursue legal remedies under Article I, §13 of the Alabama Constitution.

Phillips v. Thomas involved a negligence action against two day-care workers at a government-run facility. In *Phillips*, the Alabama Supreme Court denied a 12(b)(1) motion for judgment on the pleadings, holding that “there can be no question...that the nature of the action and the relief sought...are not the kind that would afford either [government employee] absolute immunity from suit.”⁶⁶ The *Phillips* court relied on *Barnes v. Dale*,⁶⁷ and *DeStafney v. University of Alabama*,⁶⁸ in determining that a negligence suit to recover for personal injury was not a prohibited action against the government. The court concluded that personal injury complaints against a government official or employee, alleging negligent performance of official duties, state a valid cause of action and survive a motion for judgment on the pleadings.⁶⁹

[A] claim for personal injury based upon the alleged negligent conduct of a State employee, even when committed in the line and scope of employment, is not within the ambit of §14's protection. Such a claim, by virtue of its nature and the relief demanded, in no way seeks to circumvent the prohibition of §14. Any state interest affected by the suit is far too incidental to supply the requisite nexus for extension of constitutional immunity to the individual employee defendant.⁷⁰

Defendant Karbhari was not “picked from a hat” to be a defendant in this case, as his counsel supposes. Defendant Karbhari is a member of the University Emergency Management Structure’s Policy Group and a signatory to the UAH Emergency Management Plan’s letter of promulgation.⁷¹ The Emergency Management Plan contains the life-safety regulation.

⁶⁵ *Phillips*, 555 So.2d at 84.

⁶⁶ *Id.*

⁶⁷ 530 So.2d 770, 781 (Ala. 1988).

⁶⁸ 413 So.2d 391, 393 (Ala. 1981).

⁶⁹ *Id.*, at 86.

⁷⁰ *Phillips*, 555 So.2d at 783; quoting *Barnes*, 530 So.2d at 783; in turn quoting *DeStafney*, 413 So.2d at 395.

⁷¹ Amended Complaints, p. 5.

Defendant Karbhari is also on the tenure committee that received critical reports of Bishop's psychological crisis and threats. Defendant Karbhari is the very person to whom Dr. Moriarity reported Bishop's threat of suicide. The appropriateness of Plaintiffs' choice to sue Defendant Karbhari should be obvious. Plaintiffs have a Constitutional right to pursue their claims against Defendant Karbhari, for which this Court has subject matter jurisdiction. Accordingly, the Rule 12(b)(1) portion of Defendant Karbhari's Motion must be denied.

II. Defendant Karbhari breached duties owed to Dr. Maria Ragland Davis and Dr. Adriel D. Johnson, Sr.

Defendant Karbhari also breached several duties in no way related to government agency; liability for these breaches is not dependent on the fact that he acted beyond his authority. And the standard of care required is not limited to referring Bishop to police for evaluation; Defendant Karbhari's common-law and assumed duties included a duty to protect from Bishop or, if protection was not possible, at the very least, a duty to warn of the dangers she presented so that they could have been aware of the danger and taken actions to protect themselves.

A. The life-safety regulation imposed a duty on Defendant Karbhari to report Bishop to police.

Defendant Karbhari's counsel goes to great lengths to compare this case to a long string of inapposite premises-liability cases that exhaustively state the legal restrictions on pursuing claims involving third-party violence under bare *common law* principles. Such "authority" is of no impact to this case where, unlike those cases, there is an applicable life-safety regulation and other established duties of care. They are even less applicable given the allegations and evidence that Defendant Karbhari felt Bishop enough of a threat that he ran from a building, under armed guard, to avoid her. Defendant Karbhari failed in the duties this knowledge created.

It is axiomatic that statutes, regulations, ordinances, the assumption of duties, and special circumstances create duties of care underlying a wide range of civil claims. The Restatement (Second) of Torts says, in relevant part, that the standard of conduct may be “established by a legislative enactment or administrative regulation which so provides.”⁷² This also applies to actions involving third-party criminal acts; particularly where, as here, there are applicable safety rules and regulations. For example, in *Brock v. Watts Realty Co., Inc.*, the plaintiff’s daughter, Beverly Jackson, was murdered in her apartment.⁷³ Her mother, as administrator of her estate, sued the daughter’s landlord and lessor alleging that they were liable for the criminal acts of a third party because they failed to provide functioning locks. The Alabama Supreme Court held that city housing-code ordinances requiring landlords and lessors to provide functioning locks created liability for criminal acts by third parties that functioning locks could have prevented.⁷⁴ Because the issue of whether an ordinance created a duty to prevent criminal acts of third parties was one of first impression in Alabama, the Court looked to Florida’s decision in *Paterson v. Deeb*.⁷⁵ Both *Paterson* and *Brock* involved a landlord arguing that there was no duty under the common law to prevent those criminal acts.

The *Paterson* court reasoned, and the *Brock* court agreed, that even though the bare common law rule (in both Alabama and Florida) is that landlords are not liable to protect tenants from third parties’ criminal acts, ordinances can create that liability. The courts ruled that the only reason for the ordinances was to protect a certain class of people – tenants – from the foreseeable general risk of someone else entering their apartments and harming them.⁷⁶ The

⁷² Restatement 2d Torts, §285.

⁷³ 582 So.2d 438 (Ala. 1991).

⁷⁴ *Id.* at 440.

⁷⁵ 472 So.2d 1210 (Fla. Dist. Ct. 1985).

⁷⁶ *Brock*, 582 So.2d at 440-441, citing *Paterson*, *supra*.

Supreme Court of Alabama agreed that the ordinances, put in place because of a foreseeable risk, created a duty:

We agree with the Florida court's reasoning and hold that the two Birmingham Housing Code ordinances here... created a duty on the part of [the defendants] to maintain the locks on Jackson's doors "in satisfactory working condition" because the resulting crime (Jackson's murder) was one the *general risk* of which was foreseeable, regardless of whether there had been prior similar incidents in the area.⁷⁷

The *Brock* court ruled that because the ordinances requiring door locks were enacted to protect tenants from harm caused by people gaining unlawful access to their homes, it was also foreseeable that a failure to follow this regulation would result in risk of harm.⁷⁸

Likewise, the UAH life-safety regulation's express purpose is to protect members of the campus community from injury or death at the hands of people experiencing psychological crisis. The regulation is borne from high-profile massacres of staff and students, as well as single incidents of violence, in schools across the country. It is similar to what officials at Pima Community College abided by in 2010 to protect the campus community from dangers posed by Jared Loughner. The companion life-safety regulation enacted by the University of Alabama System expressly states that reporting is "**vital**" to "save someone from being harmed."⁷⁹ The campuses share information regarding these life-safety regulations through the Office of the Vice-Chancellor for Systems Relations.⁸⁰ Per the unambiguous terms of the life-safety regulation, Defendant Karbhari had a duty to report Bishop to police. Defendant Karbhari's breach of that duty led directly to these tragic deaths – deaths that would have been prevented had the regulation been followed. Because the regulation established the duty, Defendant Karbhari is liable for his failure to protect others from Bishop's psychological crisis.

⁷⁷ *Brock*, 582 So.2d at 440-441.

⁷⁸ *Id.*

⁷⁹ Amended Complaints, p. 3. Emphasis in original.

⁸⁰ Amended Complaints, p. 4.

B. Defendant Karbhari's violation of the life-safety regulation constitutes negligence *per se*.

It is well settled that the legislature may empower agencies to make reasonable rules and regulations.⁸¹ The UAH and University of Alabama System life-safety rules were promulgated pursuant to such authority and, thus, constitute regulations governing the campus.⁸²

The Alabama Supreme Court has held that violating a duty imposed by a regulation can constitute negligence *per se*.⁸³ Alabama courts have adopted four requirements for finding negligence *per se*:

1. The rule was enacted to protect a class of persons that includes the plaintiff;
2. The injury was of a type contemplated by the rule;
3. The party charged with negligent conduct violated the rule; and
4. The violation was a proximate cause of the injury.⁸⁴

Negligence *per se* applies to regulations and statutes equally. The UAH and University of Alabama System life-safety regulations concerning psychological crisis were enacted to protect a specific class of persons, members of the campus community.⁸⁵ The class of people to be protected can be as large as the general public using public streets and roads for travel, rendering violations of the rules of the road negligence *per se*.⁸⁶ Dr. Maria Ragland Davis and Dr. Adriel D. Johnson, Sr. were part of the campus community – the specific class the life-safety regulation was enacted to protect.

⁸¹ See *State v. Martin*, 10 So.2d 673, 676 (Ala. 1942).

⁸² Ala.Code 1975 §16-47-34.

⁸³ See *Elder v. E.I. DuPont De Nemours and Co., Inc.*, 479 So.2d 1243, 1248 (Ala. 1985).

⁸⁴ *Id.* citing *Fox v. Bartholf*, 374 So.2d 294, 295-296 (Ala. 1979).

⁸⁵ The class must be narrower than the public at large. *Parker Building Services Co., Inc. v. Lightsey*, 925 So.2d 927, 931 (Ala. 2005), citing *Thomas Learning Ctr., Inc. v. McGuirk*, 766 So.2d 161, 171 (Ala.Civ.App 1998).

⁸⁶ *Parker*, 925 So.2d at 932, citing *Simpson v. Glenn*, 88 So.2d 326 (Ala. 1956).

The life-safety regulation expressly states that its purpose is to protect members of the campus community from suffering harm by someone experiencing a psychological crisis.⁸⁷

Hence, the second prong of the test is satisfied.

Defendant Karbhari violated the life-safety regulation, resulting in the very type of harm it was enacted to prevent. The third and fourth prongs are met by the allegations in the Amended Complaints. Hence, the Amended Complaints fully and lawfully sets forth negligence *per se* claims against Defendant Karbhari.

C. Defendant Karbhari breached assumed duties under the life-safety regulation.

Anyone who voluntarily assumes a duty is obligated to exercise reasonable care when performing that duty. If he fails, and is negligent in performing that duty, he will be liable for the consequences of that negligence.

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.⁸⁸

Alabama has adopted this rule and requires reasonable care when performing an assumed duty, even if there would have been no duty without the voluntary assumption of one. In *Raburn v. Wal-Mart Stores, Inc.*, the Alabama Court of Civil Appeals examined an employee's violation of Wal-Mart's shoplifter-apprehension policy, which led to a customer's injury at the hands of a fleeing shoplifter.⁸⁹ The policy required that shoplifters not be apprehended inside the store, that at least two Wal-Mart workers be present, and that, when shoplifters were detained and re-entering the store, one associate should be following the shoplifters. The employee had detained

⁸⁷ Amended Complaints, *inter alia*, pp. 2-3.

⁸⁸ Restatement 2d Torts, §323.

⁸⁹ 776 So.2d 137 (Ala.Civ.App. 1999).

the shoplifters alone and they were following him to the office at the back of the store when one of the shoplifters bolted for the door, ran into the plaintiff, and seriously injured him.

The *Raburn* court held that, “[O]ne who volunteers to act, though under no duty to do so, is thereafter charged with the duty of acting with due care.”⁹⁰ The court ruled that Wal-Mart had voluntarily assumed the duty of preventing shoplifters from stealing merchandise, even though it was not required to do so and that, because of the voluntary assumption of duty, Wal-Mart and its employees were liable for injuries caused when this assumed duty was performed in a way that led to injury.

Just like Wal-Mart, UAH had adopted a policy that assumed a duty – the duty to protect the campus community from persons in psychological crisis. Just like the employee in *Raburn*, Defendant Karbhari failed to follow written rules guiding the way this assumed duty was to be performed. The Wal-Mart employee in *Raburn* assumed a duty when he apprehended the shoplifters; Defendant Karbhari assumed a duty as a UAH staff member when he became a clearinghouse for crucial information (like that about Bishop’s threat of suicide and other like information) and, even more so, when he obtained that information. Defendant Karbhari is responsible for the injuries caused by his negligent performance of this assumed duty, including the murders of Dr. Maria Ragland Davis and Dr. Adriel D. Johnson, Sr.

D. The life-safety regulation and related regulations, along with allegations of Defendant Karbhari’s own conduct to protect himself, establish the foreseeability of harm.

Defendant Karbhari’s counsel flippantly claims that Bishop’s acts were not foreseeable, as if the Court should disregard the language of the life-safety regulations, the context in which they were enacted (following numerous incidents of mass and individual acts of violence on

⁹⁰ *Id.* at 139; quoting *Herston v. Whitesell*, 374 So.2d 267, 270 (Ala. 1979); quoting in turn *United States Fid. & Guar. Co. v. Jones*, 356 So.2d 596, 598 (Ala. 1977).

campuses nationwide), and Defendant Karbhari's own actions to use the police to bar Bishop access to him and other administrative personnel and to protect him while he ran from the building. It is near ludicrous for Defendant Karbhari to concede that Bishop was barred from reaching his office (regardless of whether by police or administrative staff under his direction), yet argue that her risk to others was not foreseeable. And the UAH life-safety regulation and the regulation for the University of Alabama system both specifically state that extreme violence on campus are foreseeable in these very circumstances.⁹¹

The UAH life-safety regulation expressly warns against handling the "potentially dangerous situation alone."⁹² It states that "safety" should be of first concern. The companion regulation in the University of Alabama system provides:

On occasions, people can experience tremendous stress or emotional instability that could result in harm to themselves or others. Should you encounter someone who fits these criteria, it is **vital** that you immediately report it to either the University Police or the University Counseling Center. Doing so may save someone from being harmed. (Emphasis in original.)

The foreseeability giving rise to a duty does not require that plaintiff prove the specific consequence – here, a massacre of colleagues – should have been anticipated, "but rather that some general harm or consequence could have been anticipated."⁹³ The above regulations, and Defendant Karbhari's actions in light of his knowledge, exceed this standard.

The Alabama Supreme Court has ruled that efforts to protect potential victims also demonstrate the foreseeability of a third party's criminal conduct. In *Hail v. Regency Terrace*

⁹¹ The foreseeability of harm is evidenced by the University of Alabama System Campus Violence Policy, which also contains mandatory reporting requirements, and states the following "purpose," in relevant part: "**Violent acts are occurring with increased frequency in the workplace and on school campuses around the nation. Extreme violent acts, especially murder, get the most publicity. However, less extreme acts of violence are also serious.**" *Exhibit B*.

⁹² Amended Complaints, pp. 2-3.

⁹³ *Hail v. Regency Terrace Owners Ass'n*, 782 So.2d 1271, 1275 (Ala. 1999); quoting *Thetford v. City of Clanton*, 605 So.2d 835, 840 (Ala. 1992).

Owners Ass'n,⁹⁴ there had been a string of arsons at an apartment building. The owners' association took steps to protect residents from future fires. When Hail was killed in an arson-caused fire on the premises, his wife brought a wrongful death action against, among others, the owners' association. The association prevailed on summary judgment at the trial stage, claiming that the fatal fire – and the criminal arson that caused it – was not foreseeable. In overturning the summary judgment and rejecting the association's foreseeability argument, the Court held that the association's steps to prevent future fires evidenced that future fires were foreseeable. "This argument [against foreseeability] is contradicted by evidence of the significant steps the Association had taken in its attempts to protect the residents from the danger of future fires."⁹⁵

Hence, Defendant Karbhari's claim that violence and harm were not foreseeable is belied not only by his own self-preserving actions, but also by the clear terms of the life-safety regulation, which expressly anticipate and speak of violence, and the fact that UAH instituted such life-safety mandates precisely because injury or death to innocent people on campus is now, tragically, foreseeable. Plaintiffs' allegations establish that Defendant Karbhari could have foreseen general harm or consequence – including violence and injury – from Bishop's psychological crisis.

E. The foreseeable danger of injury and harm constitute special circumstances, imposing a duty that Defendant Karbhari violated.

Defendant Karbhari's Memorandum concedes that special circumstances will impose a common law duty where there might not otherwise be one.⁹⁶ Special circumstances arise when

⁹⁴ *Supra*.

⁹⁵ *Hail*, 782 So.2d at 1275.

⁹⁶ Defendant Karbhari's Memorandum, pp.6-7.

the defendant knew or had reason to know that a third party's conduct endangering the plaintiff was probable.⁹⁷

The Alabama Supreme Court has spoken of the type of special circumstances that will give rise to general common-law liability for the consequences of a third party's criminal conduct. *Nail v. Jefferson County Truck Growers Association, Inc.*⁹⁸ involved two vendors, Nail and Keith, who were feuding over a stand in the lessor's farmer's market. As the feud escalated, the vendors and their employees did things like throw fireworks into each other's produce stands. At one point, a fight broke out between the vendors' employees and Nail fired a gun into the air in attempt to break up the fight. Keith misinterpreted the shot and, thinking he was being fired upon, shot Nail. Nail fired back shooting Keith, Keith's father, and an employee, Sojourner. Nail and Sojourner sued the lessor of the market for negligently failing to prevent their injuries. The Supreme Court of Alabama overturned a JNOV in the lessor's favor, deciding there was sufficient evidence that "the Market knew or should have known there was a probability of conduct by third persons that would endanger the plaintiffs."⁹⁹ The Court did not require knowledge that there would be a shooting, but held it sufficient that several weeks prior to the shooting the lessor knew there was feuding between Nail and Keith employees and their identities, why the hostilities were mounting, and that people reported being threatened and scared that someone would get hurt.¹⁰⁰ The Supreme Court ruled that this was sufficient evidence of a probability of conduct by third persons that would endanger the plaintiffs.

⁹⁷ *Hail*, 782 So.2d at 1274; quoting *Saccuzzo v. Krystal Co.*, 646 So.2d 595, 596 (Ala. 1994), in turn quoting *Nail v. Jefferson County Truck Growers Ass'n, Inc.*, 542 So.2d 1208, 1211 (Ala. 1988).

⁹⁸ 542 So.2d 1208 (Ala. 1988).

⁹⁹ *Id.* at 1212.

¹⁰⁰ *Id.*

*Finley v. Patterson*¹⁰¹ overruled *Nail* on a very specific issue but did not change its import to this case. *Finley* affirmed a directed verdict because there was not “substantial evidence” that the defendant knew of the probability of harm; when *Nail* was decided, the rule only required a “scintilla” of evidence.¹⁰² Because Defendant Karbhari’s Motion to Dismiss is based only on the pleadings, it is sufficient that the facts alleged show Defendant Karbhari knew of a probability of harm. It cannot avail Defendant Karbhari to argue any lack of ability to protect from Bishop. Alabama Courts have held that when someone has a duty to protect (because of special circumstances), but is not able to furnish protection, they have a duty to warn the persons endangered, so they can take steps to avoid injury.¹⁰³

Plaintiffs alleged that Defendant Karbhari took specific steps – including using UAH police – to protect himself and other senior administration officials from Bishop. Plaintiffs allege that Defendant Karbhari knew that Bishop had threatened suicide, threatened colleagues, and claimed that she was “fighting for her life.” Defendant Karbhari was aware that Bishop was “out of touch with reality” and that several people, including tenured professors, had reported that Bishop was “crazy” and were – like Defendant Karbhari – avoiding her.¹⁰⁴ That Defendant Karbhari took steps to protect himself, should be dispositive on the issue of whether special circumstances existed requiring action by Defendant Karbhari to protect Plaintiffs. All of these allegations, taken in the light and with all inferences most favorable to Plaintiffs, demonstrate that Defendant Karbhari knew or should have known that danger from Bishop’s psychological crisis was probable. Hence, he owed a duty of care to Plaintiffs and his Motion to Dismiss must be denied.

¹⁰¹ 705 So.2d 826 (Ala. 1997).

¹⁰² *Id.* at 829 n3.

¹⁰³ *Woodall v. Castner-Knott Dry Goods Co., Inc.*, 673 So.2d 769, 771 (Ala.Civ.App. 1995).

¹⁰⁴ See pp. 9-10, above.

Conclusion

This Court should deny Defendant Karbhari's Motion to Dismiss pursuant to Rule 12(b)(1) and (6). This Court has subject matter jurisdiction and Plaintiffs have stated valid claims against Defendant Karbhari, in his individual capacity, for the negligent breach of duties that were a proximate cause of the murders of Dr. Maria Ragland Davis and Dr. Adriel D. Johnson, Sr. The unequivocal mandate of UAH's life-safety regulation, assumed duties of care, and the special circumstances arising based upon his knowledge of her psychological crisis and foreseeable harm, required Defendant Karbhari to report Bishop to police for intervention. Because Defendant Karbhari's conduct was beyond the authority of his employment and under a mistaken interpretation of law, he is not shielded from the consequences of his misconduct by governmental immunity. The Alabama Constitution and applicable legal principles permit Plaintiffs to seek redress against Defendant Karbhari.

WHEREFORE, for all of the reasons stated above, Plaintiffs ask this Court to DENY Defendant Karbhari's Motion to Dismiss the First Amended Complaints, and grant such other and further relief as is just and required under the circumstances.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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by E-Filing the same with Alafile on this the 21st day of July, 2011.

/s/ J. Allen Brinkley
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