



Wisconsin Ethics Commi

Campaign Finance | Lobbying | Ethics
212 East Washington Avenue | Third Floor | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

EXHIBIT

1

TO: Members, Wisconsin Ethics Commission

FROM: Brian M. Bell, MPA
Commission Administrator

SUBJECT: Request for investigation pursuant to WIS. STAT. § 19.49(2)(b)2.

As the Administrator for the Ethics Commission I am considered a state public official under the ethics code. Wisconsin statutes require that I, as Commission Administrator, shall be nonpartisan.¹ I am also required by law to maintain confidentiality of certain records and information², and only in very limited circumstances does the law all me to publicly disclose such information.³

Several state public officials and their staff have made public allegations regarding my conduct. Those allegations question my impartiality and nonpartisanship, my conduct regarding the confidentiality of records, and my ability to serve as Administrator simply based on past employment with the Commission's predecessor. Further they contend that those allegations adversely impact the likelihood I would receive Senate confirmation, as well as diminish public confidence in my abilities to lead this agency.

The ethics code allows for any person to whom Wisconsin's campaign finance, lobbying, or ethics laws may apply to request the commission to make an investigation of his or her own conduct, or of allegations made by other persons as to his or her conduct. I believe that an objective review of my conduct in service to the state would definitively show that I have consistently conducted myself in a nonpartisan and impartial manner. Such an investigation would also refute the baseless allegations that have been made against me.

Therefore, for the reasons set forth above, I am requesting that the Ethics Commission make an investigation into the allegations made by other persons as to my conduct. I welcome such an investigation and the public release of its findings.

Thank you for your time and consideration of this request.

¹ WIS. STAT. § 19.47(10), all employees of the commission shall be nonpartisan

² WIS. STAT. §19.50, regarding the unauthorized release of records or information

³ WIS. STAT. §19.55 public inspection of records

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Katie McCallum | Pat Strachota | Timothy Van Akkeren | Jeralyn Wendelberger

Administrator

Brian M. Bell, MPA



Wisconsin Ethics Commission

Campaign Finance | Lobbying | Ethics
212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

EXHIBIT

tabbies

2

DATE: December 12, 2017

TO: The Honorable Brad Schimel, Attorney General

FROM: David Halbrooks, Ethics Commission Chair
Katie McCallum, Ethics Commission Vice-Chair

SUBJECT: Report Concerning Violation of the John Doe Secrecy Order

Dear Mr. Attorney General,

We commend the efforts of the Wisconsin Department of Justice to investigate the perpetration the egregious criminal acts and the violation of court orders that occurred when sealed data was released to the public in violation of the John Doe secrecy order. It is our hope that those responsible will eventually be held accountable. Like so many citizens across Wisconsin, we remain horrified at the extent of the abuse of power and stand ready to assist DOJ in any way we can. However, we wish to clarify points in the report regarding our agency.

Ethics Commission Administrator Brian Bell and Ethics Commission Attorney David Buerger participated in the investigation in a fully cooperative manner. Additionally, the report does not acknowledge major security improvements put in place by staff and Commissioners since authority was transferred from the GAB to the Wisconsin Ethics Commission. The Ethics Commission stands ready to defend the security of the confidential information in our keeping. The following report and attached supporting document address these points, and we wish for you to address them as expeditiously as possible.

HIGHLIGHTS

- The report contains omissions and inaccuracies regarding the involvement in the investigation by Ethics Commission staff.
- The report raises questions regarding the security and custody of records under the Ethics Commission's control. These questions can be answered simply with a review of the improved security measures taken since the Government Accountability Board transitioned to the Ethics Commission. The Ethics Commission staff has taken affirmative steps to eliminate any future security issues.
- The report questions why the Ethics Commissioners and staff did not report a crime when The Guardian published leaked GAB documents. We could not have reported a crime because no commissioner nor staff member had ever been read into the secrecy order. There is not a single person in our agency who had knowledge of the content of the leaked documents before they were published, and as such none of us were able to identify that a crime had occurred at the time.

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Administrator

Brian M. Bell, MPA

- The report claims that Brian Bell and David Buerger invoked their right to counsel under the 5th amendment. It was actually the members of the Commission that requested counsel be present.
- The report gives the appearance that the Ethics Commission and its staff did not comply with DOJ's record requests. Our staff promptly provided all requested records based on each successive search criteria DOJ identified. We immediately notified DOJ when potentially responsive records were located.
- The report comingles a description of the security practices under the GAB with those under the Ethics Commission. Make no mistake, the security deficiencies that previously existed under the GAB have been resolved.
- With our new security protocols, any staff member of the Ethics Commission who accesses any data can be identified. We can immediately identify any attempt to obtain and leak confidential information in the future.

INTRODUCTION

On Wednesday, December 6, 2017, the Wisconsin Department of Justice released a report concerning violation of the John Doe secrecy order, regarding the investigation identified as "John Doe II" which involved the GAB (please see the full report, available online here: http://www.thewheelerreport.com/wheeler_docs/files/1206johndoe_01.pdf).

The Ethics Commission makes the following clarifications to the report regarding references to the Ethics Commission and its staff, which we hope will be addressed by the Department of Justice.

SUMMARY OF OBSERVATIONS

The report indicates that the document transfer and likely leak took place around May 2016, before the Government Accountability Board transitioned to the Wisconsin Ethics Commission, before David Buerger was appointed as Staff Counsel, and before Brian Bell was appointed as Administrator for the Ethics Commission.

Neither Administrator Bell, Attorney Buerger, any of the existing staff (either in current or previous roles), nor any of the Commissioners were covered by any of the John Doe secrecy orders, and thus had no way of knowing with any certainty which records were responsive to that investigation or any other related investigations. The report notes on page 85 that no member of the Ethics Commission reported a crime at the time the Guardian news story ran. The potential crime could not have been reported because staff and Commissioners were not read-into the secrecy order, and there was no way to know whether those records would potentially be records that should be in our custody.

The report also notes on page 85 that Nathan Judnic transferred records to David Buerger, but fails to indicate that Nathan Judnic, being previously read-into the secrecy order and involved in the investigation, should have known what he was providing to Attorney Buerger. Attorney Buerger however could not review the materials and thus did not know what he received from Nathan Judnic.

The report misrepresents the nature of the Ethics Commission's cooperation. Neither Attorney Buerger nor Administrator Bell ever invoked their rights under the 5th Amendment. When Commissioners were notified that DOJ wished to interview the two of them separately, the Commission directed staff to have an attorney present during the interview. This was also done because Attorney Buerger could not act as Attorney for Administrator Bell since he was being interviewed separately. Up until that point, we thought we were cooperating in a joint effort with DOJ to find those responsible for the leak, and then suddenly our staff was being interrogated. They answered every single question asked by DOJ and agreed to participate in interviews. We appreciate DOJ's patience and accommodation of the Commissioners' direction to staff to have representation present for the interviews.

The report also misrepresents the search warrant as permitting a broad search for any remaining GAB records in the GAB offices and refers to a lack of cooperation by staff. We make no statement regarding former GAB investigative staff. We are unaware of any lack of cooperation by our current staff. Please advise us of the actual instances referenced in your report. As for the search warrant itself, the search occurred more than a year after the dissolution of the GAB. The search was conducted in a professional and cooperative manner by all parties. However, the report does not accurately depict the search as authorized by the court. We request that the search warrant be unsealed to accurately depict the DOJ's authority. It is our understanding that nothing was recovered that was responsive to the warrant. The report also makes no mention that DOJ asked for assistance from Ethics Commission staff to provide access to secure areas, to which staff willfully obliged, eliminating the need to force them open. The Attorney appointed by the Office of the Governor, who represented the Commission and its staff, can corroborate all this information.

Further, the Commission and its staff made every effort to cooperate with the investigation and expedite its resolution. The staff voluntarily and aggressively reviewed records that the agency inherited from the GAB. The storage areas where the records were kept were in utter disarray. Staff inventoried and organized those records. Upon identifying a document that was potentially responsive to the investigation, the document was isolated and immediately reported to the DOJ. Again, it is important to highlight that the Commission and its staff were not read-in under the secrecy order, and thus could not know with any certainty whether a record was responsive to the case. The Commission and its staff exercised extreme caution and notified DOJ of any potentially responsive records, and the Chair and Vice-Chair were also promptly notified of any interaction with DOJ.

The report also refers to the initial order from the John Doe Judge to seize records in the possession of the Ethics Commission. We are surprised that the report fails to reflect the efforts of the Ethics Commission and its staff to cooperate with the investigation in a way that would not violate our confidentiality requirements in all other matters before the Commission pursuant to WIS. STAT. §19.50. We appreciated the effort made by DOJ to work with the John Doe Judge to ensure that the order explicitly addressed that cooperation and provided access to records maintained by the Ethics Commission and its staff in a manner that would not violate the confidentiality provisions in the statute. At this time, we request that the court's order be unsealed so that the public may understand the level of caution we took to protect our confidential data unrelated to this investigation.

The report also discusses security, and posits that the Ethics Commission should have greater security measures in place. Under the Government Accountability Board, documents should have been better secured and organized, and there should have been a system for tracking who accessed documents or storage drives. The Ethics Commission and its staff have taken proactive steps to rectify these security concerns from day one. All documents created since the inception of the Ethics Commission are stored electronically on state-owned servers. Access to those files requires pre-approval, and login with a username and password; we can thus track who accesses, edits, copies, or downloads any records. All other physical records, including those that the Ethics Commission inherited from the previous boards, have been inventoried and secured in locked file cabinets or a locked storage room. Only one staff person has access to the keys to those items. This system allows the Ethics Commission to identify any individual involved in any potential leak of documents in the future.

It is important to consider other affirmative steps that the Ethics Commission has taken since its creation to rectify the shortcomings of its predecessor agency. The Ethics Commission has adopted standardized complaint and investigation procedures, established objective and universal audits instead of individual audits, and established a new mission statement that includes a focus on protecting the rights of those in the regulated community. The Ethics Commission has also made great efforts to make public everything it can under the law. Additionally, the Ethics Commission operates under new statutes that prohibit staff and Commissioners from initiating an investigation without a sworn complaint, and require the agency to notify any target of a complaint within five days of the complaint's filing.

Finally, we have a concern about comments by your staff regarding mishandling documents and a file labeled "Opposition Research." It is our hope that these comments were directed to the GAB and not the Ethics Commission. We are not aware of a single allegation of anyone at our agency mishandling any materials. If we are incorrect, please inform us. As for the folder marked "Opposition Research," while provocative, it is our understanding that the file was one of the pieces of illegally seized data rather than a document prepared by a GAB operative.

CONCLUSION

Again, we appreciate your attention to this matter, and urge you to promptly address each of these observations regarding the report. We also request that you issue a statement that acknowledges that the Ethics Commission and its staff fully cooperated with, proactively contacted, and assisted DOJ with its investigation into the leak. We have enclosed a timeline of staff actions, including interactions with DOJ on numerous occasions. We also ask that you review the search warrant as well as the original and revised order from the John Doe Judge granting DOJ access to records of the Ethics Commission and its staff in a manner that would not violate Wis. STAT. §19.50.

Enclosure: Timeline of Staff Actions



Wisconsin Ethics Commission

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Timeline of Staff Actions RE: John Doe Leak Investigation

Timeline

2016

- June 30 Ethics Commission created. Staff Counsel Buerger interim Administrator.
- July 24 Administrator Bell official start date with Commission
- September 14 John Doe documents published by the Guardian.
- September 26 Met with Special Prosecutor Schmitz to discuss status of JD materials and preparations to comply with WISC order if USSC appeal unsuccessful.
- September 27 Moved JD materials from Nathan Judnic's office to locked cabinet in Commission offices.
- September 29 Changed passwords on all GAB gmail accounts so that only Staff Counsel Buerger had access.
- October 3 USSC rejects final appeal of JD investigation. 30 days to comply with WISC order to return documents.
- October ?? Special Prosecutor Schmitz in office to review hard copy files to determine what is subject to WISC order to turn over.
- October 4 Staff Counsel Buerger sends email to Matt Stippich of Digital Intelligence advising him to notify the Commission if it still has any JD material.
- October 6 Special Prosecutor Schmitz requests letters also be sent to GAB investigators
- October 24 Staff Counsel Buerger sends letters to former GAB members and staff on behalf of Special Prosecutor Schmitz requesting they certify they do not have any JD materials.
- October ?? Signed certifications from former GAB members, staff, and investigators turned over to Special Prosecutor Schmitz.
- October 31 Special Prosecutor Schmitz takes one box of papers containing evidentiary materials, one external hard drive, and four DVDs from Commission files to return to WISC. Remaining files deemed not subject to order and will be maintained in secure storage until destruction is authorized.

2017

Wisconsin Ethics Commissioners

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Administrator

Brian M. Bell, MPA

January 27	Phone call with DSG Dan Lennington re: DOJ criminal investigation. Received copy of order amending secrecy order to include DOJ staff. DOJ requests all GAB records in our possession related to JD investigation (email and hardcopy). Advised DOJ of our concerns with § 19.50 as well as other potential privilege or protections as we have not reviewed the requested documents. Lennington to explore alternatives to voluntary production.
January 30	Meeting with DSG Dan Lennington and AAG Schneider re: seeking another amendment to the secrecy order to explicitly permit DOJ staff access to materials covered under § 19.50 and other privileges or protections. We agreed that the proposed draft order would be sufficient for us to release our records to DOJ.
January 31	Received new secrecy order with broader language and specific finding as to § 19.50.
February 1	Turned over two file cabinet drawers of paper records left in our possession by Special Prosecutor Schmitz to SA Strauss and SA Kyra Schallhorn.
February 7	SA Strauss and Digital Forensic Examiner Flessert attempt to retrieve electronic files from segregated space on network drive, but due to technical problems have to come back another day?
February ??	SA Strauss and DFE Flessert return and retrieve electronic files by changing the network path and copying off files.
March ??	Staff uncovers potential additional JD materials
March 15	SA Strauss retrieves small folder of additional JD documents. SA Strauss relays request re: make and model of copiers/scanners available to staff from May-September 2016. Email sent to SA Strauss with make and model numbers of copiers available to GAB staff at the time. Also asked for further instructions on key words for archive email searches for prior staff. Arranged to meet next Tuesday to discuss in-person.
March 21	Met with DSG Lennington and AAG Schneider to narrow down search terms.
March 30	Conducted electronic search of network drive and archived emails. Found a dozen documents that match criteria. Conducting additional searches to ensure full disclosure.
April 26	Request from DSG Lennington for status update on electronic search.
April 27	Advised DSG Lennington of additional electronic files that met search criteria. SA Strauss to come pick up on May 2.

May 2	SA Strauss and another DFE retrieve additional electronic files. SA Strauss requests if agency has access to any building security camera footage. After brief inquiry, replied via email that we have no access to any recordings and referred them to Mullins Group LLC.
May 22	Administrator Bell finds two additional boxes of potential JD hardcopy material in basement storage unit (see May 25 memo). Administrator Bell turned documents over to Staff Counsel for review. Initial review indicated it was partially JD I and JD II material. Secured in locked storage in main office until it could be turned over to DOJ.
May 23	Compared inventory of additional hardcopy materials to index of material turned over to SA Strauss. Determined that at least some material was duplicative, but impossible to determine if 100% duplicative due to the vague descriptions on the DOJ index. Advised DOJ of the discovery and arranged for production of materials.
May 24	SA Strauss and SA Schallhorn retrieved both boxes of additional material.
May 25	Senior Counsel Lennington called with additional questions on possible locations of external hard drives used by GAB staff.
June 7	SA Strauss requests individual interviews with Administrator Bell and Staff Counsel Buerger re: involvement in collection of records. Clarified via email that we would need to talk to the Commission before agreeing as Commission had previously instructed outside counsel before taking individual interviews.
June 12	Requested representation from DOJ
June 20	DOJ declines request for representation due to conflict with investigation.
June 21	SA Strauss request for update on interview request. Advised of DOJ refusal to represent and plans to talk to Governor's office regarding appointment of special counsel.
June 27	Requested appointment of special counsel from Governor's office.
July 6	Governor's office appoints Sam Hall as special counsel for Commission.



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Paul W. Connell
Deputy Attorney General

Delanie M. Breuer
Chief of Staff

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
TTY 1-800-947-3529



December 12, 2017

David Halbrooks, Chairman
Katie McCallum, Vice-Chairwoman
Wisconsin Ethics Commission
212 East Washington Avenue, Third Floor
Post Office Box 7125
Madison, WI 53707-7125

Dear Chairman Halbrooks and Vice-Chairwoman McCallum:

The Wisconsin Department of Justice (DOJ) stands by the Attorney General's report. Although the commission's letter generally describes "omissions and inaccuracies" in the report, your letter does not, in fact, specify a single error in the report. Only six specific claims by the commission could be charitably called errors, yet closer inspection reveals that the commission is not actually claiming DOJ inaccurately portrayed any event. The commission's letter simply disagrees with DOJ's characterization of certain events and criticizes the tone of certain portions of the report. These are not serious criticisms and certainly do not point out any errors in the report.

1. The commission claims it did not report a crime because the commission was not "read-into the secrecy order" and "had no way of knowing with any certainty which records were responsive to that investigation or any other related investigation." But at the time of the leak, the commission was in custody of vast amounts of John Doe evidence. In fact, Special Prosecutor Francis Schmitz worked with the commission to collect much of this evidence and turn it over to the Wisconsin Supreme Court. Although commission employees could not review secret materials, they could (and ultimately did) identify boxes, files, and electronic folders labeled, "John Doe," "Badger Doe," "2013-02," "2012-01," or "2012-02." This information is all in the report, and the commission has not pointed out any portion of the report that is inaccurate in this regard.

David Halbrooks, Chairman
Katie McCallum, Vice-Chairwoman
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2. The commission disagrees that Bell and Buerger invoked their Fifth Amendment right to counsel. As explained in the report, Bell and Buerger talked to DOJ attorneys and investigators on several occasions. They turned over documents on February 1, March 15, May 2, May 23, and November 10 of this year. After the discovery of the so-called "Falk boxes" on May 23, Bell and Buerger requested an attorney before talking to investigators. When a witness in a criminal case refuses to talk to investigators without an attorney present, this is an invocation of the witness's Fifth Amendment rights. Although the commission wishes to characterize this event differently, the report is correct and speaks for itself.
3. The commission claims that DOJ "misrepresents the search warrant as permitting a broad search for any remaining GAB records in the GAB offices." The report makes no such claim. As fully explained on page 70 of the report, the search warrant allowed DOJ to search for a missing hard drive. The warrant permitted DOJ to search "all offices, conference rooms, board room, breakrooms, reception area, IT storage area and basement level storage area which may contain records of the former Government Accountability Board" in an effort to locate "a black electronic hard drive which was used by former GAB employee Shane Falk as described in the attached affidavit." Thus, the report is correct in this regard and speaks for itself.
4. The commission claims that there was no "lack of cooperation by staff." The commission is entitled to its own view of the evidence, but not its own set of facts. DOJ requested all John Doe documents and evidence in January 2017, months after this evidence was supposed to be turned over to the Wisconsin Supreme Court. DOJ presented the commission with a court order providing that certain DOJ attorneys and investigators "shall have access to all files, records, proceeding, evidence and materials related to [the John Doe investigation] and resulting appeals, whether sealed or not, and make use of such materials in their investigation to the extent necessary for the performance of their duties as investigators and prosecutors." The order further directs "[a]ll individuals in custody of files, proceedings, evidence, and materials related to these case numbers shall make such files, proceedings, evidence, and materials available to those listed above, notwithstanding any previous secrecy order, order to seal, or confidentiality designation under state law. Without limitation, this paragraph applies to all files, proceedings,

David Halbrooks, Chairman
Katie McCallum, Vice-Chairwoman
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evidence, and materials related to these case numbers and formerly in the custody of the former Government Accountability Board” As described in the report, the commission did not turn over such records in January, but turned them over in five separate batches on February 1, March 15, May 2, May 23, and November 10. And when DOJ asked to speak with certain commission staff after the discovery of the Falk boxes in May, these individuals refused to speak without an attorney. The commission’s level of cooperation is explained fully in the report, and the commission has not identified any inaccurate statements in the report.

5. The commission admits that GAB’s “records were kept in utter disarray” and that the commission went to great lengths to inventory and organize those records. But when DOJ visited the commission and inspected the basement on July 21, DOJ did not find the area well-organized. Boxes and file cabinets were haphazardly-arranged. In one room, boxes were stacked floor to ceiling, with records going back perhaps decades. If the commission has taken steps to improve this situation, it has been since July 2017.
6. The commission writes that the report “fails to reflect the efforts of the Ethics Commission and its staff to cooperate with the investigation in a way that would not violate” Section 19.50 of the Wisconsin Statutes. This claim is false. DOJ explained the commission’s position with regard to Section 19.50 on pages 58 and 59 of the report.

Finally, your letter addresses a file folder entitled “Opposition Research” located on one of the hard drives found in the basement of Ethics six months after those materials were required to be turned over to the Wisconsin Supreme Court, and four months after DOJ presented the commission with a court order requiring that they be turned over to DOJ investigators. The commission suggests that this folder was created by Republicans who were the target of the investigation, and not by former GAB staff.

This cannot possibly be true. The metadata shows that the “Opposition Research” folders were created on a GAB hard drive on April 10, 2012, which post-dates any of the documents and emails that were later found within these folders. The emails located within the “Opposition Research” folders contain selected emails from numerous Wisconsin Republicans that were obtained by search warrants utilized by the Milwaukee DA’s Office and issued to Google, Yahoo, Box.net, and other

David Halbrooks, Chairman
Katie McCallum, Vice-Chairwoman
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service providers. The commission is incorrect in its assertion that Wisconsin Republicans obtained search warrants on other Republicans' email accounts, or deposited them in a folder entitled "Opposition Research."

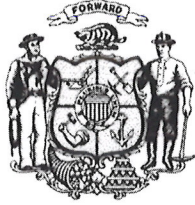
To be clear, the folders at issue here labeled "Opposition Research" were not obtained as part of any search warrant. The folders were created subsequent to the receipt of the evidence being collected via search warrant. More specifically, one of the folders at issue here contains over 390,000 separate files (333 GB of data), most of which are personal emails, and does not contain any items that a Republican would label as "Opposition Research." Again, we still have not heard an adequate explanation as to why the former GAB staff created this folder, placed in it emails from Republicans, saved it (despite the fact that it contains no evidence of criminal conduct), and then placed it in the Ethics Commission basement where it sat between at least June 2016 and May 2017.

Last, and perhaps most troubling, is Chairman Halbrooks' continued involvement in this matter at all as a member of the Ethics Commission. Attorney Halbrooks was a witness in John Doe I and was granted immunity in that proceeding. As everyone is now aware, John Doe I was used as a basis for John Doe II and for what DOJ's report refers to as "John Doe III." At best, this presents the appearance of a conflict-of-interest and at worst an actual conflict. DOJ believes the Ethics Commission would be well-served to have Mr. Halbrooks recuse himself from any further involvement in this matter and to have the remaining commissioners review any and all actions that he may have directed as chairman since this matter first came to light.

Very truly yours,

Brad D. Schimel
Wisconsin Attorney General

BDS:ts



Wisconsin State Legislature

December 14, 2017

Administrator Bell:

The recent revelations made by the Department of Justice about the John Doe investigation have been deeply concerning.

The voting public must have faith that the watchdog agency of ethics in government can be run without any tint of partisanship, and our creation of the bipartisan commission, in which both political parties are represented equally, was a positive step in that direction.

Unfortunately, due to past errors in judgment by leadership and staff at the recently-disbanded Government Accountability Board, there are still widespread concerns over partisan influence remaining at the top of the Ethics Commission. You have lost the confidence of our caucuses to be an impartial administrator.

Therefore, we believe that it would be appropriate at this time for you to tender your resignation to the Ethics Commission board.

Sincerely,

A handwritten signature in black ink that reads "Scott Fitzgerald".

Scott Fitzgerald
Senate Majority Leader

A handwritten signature in black ink that reads "Robin Vos".

Robin Vos
Speaker of the Assembly

cc: Ethics Commission Chairman David Holbrooks

MILITARY EXPERIENCE

416th Theater Engineer Command (TEC), US Army Reserve

2016 - Present

Captain (O-3E) – Combat Engineer Training Support Officer

- Act as the Combat Engineer Training Support Advisor for all current year operations
- Provide Combat Engineer Support to 176 units and over 12,450 Army Reserve Soldiers in 27 states

402nd Sapper Company, 389th Engineer Battalion, US Army Reserve

2014 - 2016

Captain (O-3E) – Company Commander

- Commanded a company of approximately 125 Soldiers, directing all organization personnel, medical, training, operations, maintenance, and logistics efforts
- Maintained accountability and serviceability for \$2.3 million of military equipment, vehicles, and weapons

389th Engineer Battalion, US Army Reserve

2012 – 2014

1st Lieutenant (O-2E) – Battalion Intelligence Officer

- Monitored and analyzed domestic and international threats for all battalion activities and personnel
- Developed the standard operating procedures for the Battalion Intelligence Section, and all subordinate CoISTs

1st Assault Platoon, 469th Mobility Augmentation Company

2009 – 2012

1st Lieutenant (O-2E) – Platoon Leader

- Managed a combat engineer unit of 30 personnel and approximately \$26 million of equipment/assets
- Directly planned and coordinated 270 route clearance combat missions throughout Afghanistan, resulting in an 80 percent find and clear rate of explosive hazards (Army standard is 50 percent)
- Partnered with an Afghan Language Assistant, Afghan National Security Forces, and International Security Assistance Forces including Canadian, British, Albanian, and Estonian Soldiers

Enlisted Combat Engineer, 469th Mobility Augmentation Company

2000 – 2009

Staff Sergeant (E-6), Combat Engineer Squad Leader

- Supervised a combat engineer squad as part of a platoon conducting route reconnaissance and clearance operations to eliminate explosive hazards and to enable freedom of movement during Operation Iraqi Freedom
- Managed more than \$1.5 million of equipment and eight personnel while deployed throughout Iraq

Military Education

- Engineer Captains Career Course Phase One – Online Course
- Company Commander and First Sergeant Course (Pre-Command) Course - Fort Knox, KY - 2014
- Engineer Basic Officer Leaders Course (EBOLC) – Fort Leonard Wood, MO – 2010
- Route Reconnaissance and Clearance Course (R2C2) for Leaders – Fort Leonard Wood, MO – 2010
- Basic Non-Commissioned Officer Course (BNCOC) Phase One – Fort McCoy, WI – 2006
- Route Reconnaissance and Clearance Course (R2C2) for Operators – Fort Leonard Wood, MO – 2006
- Primary Leadership Development Course (PLDC) – Fort Lewis, WA – 2005
- Combat Engineer Advanced Individual Training (AIT) – Fort Leonard Wood, MO – 2001
- Basic Combat Training (BCT) – Fort Leonard Wood, MO – 2000

Military Awards and Decorations

- Bronze Star Medal, Purple Heart Medal, Army Commendation Medal with bronze oak leaf cluster, Army Achievement Medal, Army Good Conduct Medal, Army Reserve Component Achievement Medal with three bronze oak leaf clusters, National Defense Medal, Afghanistan Campaign Medal with one bronze campaign star, Iraq Campaign Medal with two bronze campaign stars, Global War On Terrorism Service Medal, Armed Forces Reserve Medal with Mobilization “M” device, bronze hour glass device, and roman numeral “3”, Non-Commissioned Officer Professional Development Ribbon, Army Service Ribbon, Overseas Service Ribbon with roman numeral “2”, North Atlantic Treaty Organization (NATO) International Security Force (ISAF) ribbon, Combat Action Badge, Wheeled Vehicle Operator Badge with Special Equipment bar.

PROFESSIONAL EXPERIENCE

Wisconsin Ethics Commission

2016 - Present

Commission Administrator

- Serve as the head of the state agency responsible for administering campaign finance, lobbying, and ethics laws
- Issue informal advisory opinions to interpret of Wisconsin's campaign finance, lobbying, and ethics laws which over legal protection to the recipient, and all have been unanimously reaffirmed by the Commission
- Completed a legal/policy review of all campaign finance and lobbying advisory opinions of the previous boards
- Manage an agency budget of approximately \$1.4 million with eight separate appropriations
- Developed a comprehensive performance management strategy for the agency by creating a new mission statement, program objectives, performance measures, aligned position descriptions, and evaluations
- Renegotiated MOUs, saving the agency \$268,500 annually and provided greater agency independence
- Increased compliance, productivity, and staff compensation while reducing operating costs by over 25 percent
- Reduced office lease costs by 40 percent and increased security by implementing an electronic records system
- Moved the agency towards automation of transactional process, freeing staff to address more complex needs
- Conducted a comprehensive review of the agency's statutory requirements and developed a compliance plan
- Reviewed all agency administrative rules and began efforts for creation, updates, or repeal
- Reduced a backlog of outstanding settlements and requests for committee terminations
- Established standardized and objective policies to ensure impartial and nonpartisan internal operations
- Proactively met with over 100 elected offices to highlight new management approach and promote cooperation (Office of the Governor, Constitutional Officers, Senators, Representatives, Agency Heads)
- Created a new agency website and updated all forms and training materials

Wisconsin Department of Safety and Professional Services

2015 - 2016

Budget and Policy Analyst - Agency

- Developed and monitored the department's operating and appropriation budgets, and provided reports and analysis to management utilizing PeopleSoft ERP (STAR) and available office technologies
- Advised management on budgets, grants, contracts, and MOUs and developing effective courses of action
- Coordinated all procurement / purchasing activities for the Department as the Purchasing Officer
- Led six major procurements through RFB/RFP/RFI to contract valued over \$9.8 million, and managed all contracts for the department valued at \$18.5 million
- Procurement Card (P-Card) Administrator, WISBUY P-Card Marketplace Administrator, Printing Officer, and STAR Finance/Procurement Change Agent for the entire department

Wisconsin Government Accountability Board – Madison, WI

2012 – 2015

Elections and Ethics Specialist

- Guided and coordinated the development of the agency's first comprehensive legislative agenda
- Assisted the state legislature, media, and the public with available agency data and statistical/policy analysis
- Modernized the agency's complaints/investigations tracking to an online, secure, searchable database
- Managed modernizing the agency's legislative liaison reporting from a paper-based to online system

Elections Data Manager

- Advocated for and led the creation of a voter data request service utilizing Microsoft SharePoint and SQL, reducing request response times from five business days to roughly 15 minutes, and saving \$125,000 annually
- Created and managed the first statewide election cost data reporting system in the nation
- Sponsored cost-benefit analysis projects (online vs. paper-based voter registration, voter list maintenance)
- Collected, analyzed, and disseminated election data from 1,924 jurisdictions

EDUCATION

University of Wisconsin – Madison

Master's in Public Affairs

2008 - 2010

- Public Management, Policy Analysis, and National Security Policy emphasis
- Capstone: *Assessing Investment Advice Provided to Participants in Defined Contribution Plans* (Bell, Denney, Quinn, Shields, Weisman) <http://www.lafollette.wisc.edu/images/publications/workshops/2010-retirement.pdf>.

University of Wisconsin – Whitewater

Bachelor of Arts – Political Science

2002 – 2008

- Minor in Public Administration and an emphasis in Military Leadership
- 2004 – 2005 Midwest Campus Compact Student Civic Leadership Fellow



Stephen L. Nass
Wisconsin State Senator

January 11, 2018

Patrick J. Fiedler
Hurley, Burish & Stanton, S.C.
33 E. Main Street, Suite 400
Madison, WI 53703

Dear Mr. Fiedler:

I acknowledge your request for a meeting regarding Mr. Brian Bell of the Wisconsin Ethics Commission. You have informed my staff of your role as investigator, hired by the Wisconsin Ethics Commission, to gather information regarding an ethics inquiry of Mr. Bell.

First, I must share with you my objection with the commission's decision to utilize its powers to investigate potential violations of state ethics law in this situation. This is not a matter of alleged ethics law violations. The issues before us are related to an investigation of leaked documents gathered during the John Doe II and "III" by investigators including former staff of the Government Accountability Board (GAB). The leak investigation was authorized statutorily by the Wisconsin State Assembly and conducted by the Wisconsin Department of Justice (WDOJ).

Second, the inferences by Chairman David Halbrooks that authorizing an ethics investigation would allow the agency to utilize its subpoena powers in response to statements made by members of the Legislature regarding Mr. Bell is nothing short of intimidation. It's also an attempt to interfere with the Wisconsin State Senate's role of confirmation as prescribed in statute.

Third, the issues identified in the WDOJ investigation must also be taken in context with the facts already known from other sources regarding the scandalous nature of the John Doe II and "III". As you know, from your previous role as an attorney representing a former GAB investigator involved in the John Doe, the Wisconsin Supreme Court not only ended the abusive Doe investigation but clearly ruled that no violations of law had occurred.

My statements regarding the need for Mr. Bell to resign are based on the details of the WDOJ report and the supplemental materials released by that agency. Based on the information provided by the WDOJ, there exist serious questions regarding the level of

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11th Senate District

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Toll Free: (800) 578-1457 • E-mail: Sen.Nass@legis.wi.gov

cooperation that Mr. Bell provided to the WDOJ in conducting their investigation and the search for records in the possession of the Ethics Commission.

At a minimum, the WDOJ findings identified the flawed handling and storage of confidential records by the staff of the Ethics Commission. Vast amounts of John Doe records containing personally sensitive health, family, financial, and business information were maintained in an unprofessional manner and with minimum levels of security. While Mr. Bell may have taken steps to address these issues after the WDOJ investigation, it must be asked if anything would have been done if not for the WDOJ investigation.

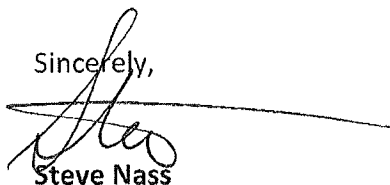
The WDOJ report also lays out an interesting circumstance that Mr. Bell and the Ethics Commission's general counsel were aware that the former Special Prosecutor Francis Schmitz was storing John Doe records in space under the control of the Ethics Commission despite an order of the Wisconsin State Supreme Court that all such records be turned over to the court. Key questions are did Mr. Bell defer to the wishes of Francis Schmitz in allowing the records to stay in their facility and why would he do that in relation to the order of the Wisconsin State Supreme Court. Mr. Schmitz had no authority to request that such records be stored at the Ethics Commission and be deemed under his control as to disposition.

Finally, I would also share with you that on February 1, 2017, Mr. Bell met with me to discuss the Ethics Commission's biennial budget request and his confirmation. My chief of staff also participated in this meeting. At that meeting, I did share with Mr. Bell my reservations regarding his appointment because of his previous employment with the former GAB. I felt then and now that the Ethics Commission won't be able to exit the clouds of the GAB scandal without appointing an administrator free of any connections to that rogue agency.

Morally, I can't ignore the unjustified harm and civil rights violations that the targets of the John Doe II and "III" suffered because of the inappropriate conduct of rogue employees of the GAB. I can't ignore the conclusions of the WDOJ investigators that employees of the GAB weaponized the John Doe process to achieve partisan goals to harm citizens involved in the constitutionally protected political process.

For these reasons, I will be unable to support the confirmation of Mr. Bell as Administrator of the Wisconsin Ethics Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Nass", with a long horizontal line extending to the right.

Steve Nass

State Senator

11th Senate District



Wisconsin Ethics Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8123 | ethics@wi.gov | ethics.wi.gov



DATE: January 17, 2018

TO: Patrick Fiedler, Stephen Hurley, Peyton Engel, and Marcus Berghahn
Hurley, Burish & Stanton, S.C.

FROM: Brian M. Bell, MPA
Commission Administrator

SUBJECT: Summary of Responses to DOJ Requests and Response to Letter of Senator Nass

On January 12th, you asked me to prepare a summary, including a timeline detailing the Wisconsin Department of Justice investigation and the timeliness of my responses to their requests. You also asked for the summary to include my response to the statements made by Senator Nass in his letter of January 11th. This memorandum and its attachments constitute my response to these requests.

Responses to DOJ Requests

The first contact the Ethics Commission had with the Wisconsin Department of Justice (DOJ) in its criminal investigation of the violation of the John Doe secrecy order was on January 27, 2017. We received a phone call from Deputy Solicitor General (DSG) Dan Lennington informing us that the secrecy order in the John Doe case had been amended to include several DOJ staff for the purposes of the investigation and that DOJ was requesting voluntary production of all Government Accountability Board (GAB) records in our possession related to the John Doe investigation. After review of the amended secrecy order, we advised DOJ that we remained concerned about releasing information related to the GAB investigation as WIS. STAT. § 19.50 prohibits any employee of the Commission from disclosing such information except as specifically authorized.

On January 30th we met with DSG Lennington and Assistant Attorney General (AAG) Randall Schneider regarding a proposed amendment to the secrecy order that would explicitly find that any disclosures to DOJ would be exempt from the restrictions of WIS. STAT. § 19.50. The amended order also instructed all individuals with custody of records related to the investigation to provide such records “notwithstanding any previous secrecy order, order to seal, or confidentiality designation under state law.” After receiving the amended secrecy order with that specific finding and broader language, we agreed to turn over to DOJ investigators all remaining records in our possession.

The first turnover of physical documents occurred on February 1, 2017. Special Agents (SA) Debra Strauss and Kyra Schallhorn visited the Ethics Commission office and claimed the remaining physical records which had previously been turned over to the Ethics Commission by former GAB Staff Counsel Nathan Judnic, reviewed by Special Prosecutor Fran Schmitz, and left in our

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Administrator
Brian M. Bell, MPA

possession by Special Prosecutor Schmitz as records that were not subject to the Wisconsin Supreme Court order. As no member of the Ethics Commission staff was included in the secrecy order, staff had not reviewed what it received from former GAB Staff Counsel Judnic or what had been left behind by Special Prosecutor Schmitz. SA Strauss subsequently provided the Commission a receipt for the materials turned over on February 1st with an index describing the various documents.¹

The first turnover of electronic records occurred on February 7, 2017. SA Strauss and Digital Forensic Examiner (DFE) Larry Flessert visited the Ethics Commission office and attempted to retrieve a folder labeled “Badger Doe” from the Commission’s restricted space on a shared network drive. The first attempt to retrieve these electronic records was unsuccessful due to a technical problem and staff arranged for SA Strauss and DFE Flessert to return at a later date to retrieve the contents of the folder. SA Strauss and DFE Flessert did return later in February and were able to successfully copy the electronic records by changing the network path.

After the voluntary production of documents of February 1st and February 7th, the Commission had no reason to believe any further materials related to the John Doe investigation was in our possession. However, on March 13th Ethics Specialist Molly Nagappala, who had previously assisted with the John Doe investigation, discovered a physical file with John Doe related material created by GAB staff while cleaning out her desk. (Nagappala’s last day with the Commission was March 15th.) Nagappala informed Staff Counsel David Buerger of this discovery who subsequently contacted DOJ that same day to arrange to turn over this material.

On March 15th, SA Strauss visited the Ethics Commission office to collect the newly discovered material and also relayed requests for additional information. Specifically, DOJ requested the make and model of all copier/scanners available to staff from May-September 2016 as well as that we search our electronic records and email archives of prior staff for John Doe related material. Staff Counsel Buerger responded via email that same day with the requested information on copiers/scanners and requested search terms to be used to identify emails/electronic documents related to the John Doe as Commission staff had not participated in the John Doe investigation and would not know the relevant keywords or parameters for such a search.

On March 21st, Staff Counsel Buerger and I met with DSG Lennington and AAG Schneider to identify the terms and parameters for the search of the Commission’s electronic records. On March 30th, using those search terms Staff Counsel Buerger identified twelve additional documents in three separate electronic files of GAB that matched the search criteria. Due to finding these documents in places other than the “Badger Doe” folder location, which Commission staff had understood to be the sole location where John Doe material had been stored, staff conducted a more detailed review of the electronic files inherited from the GAB. This review was quite time-consuming as it required staff to go through each archived file location and examine each document to determine if it was related to the John Doe investigation. This review was conducted at the same time as several other pressing Commission responsibilities such as providing customer support related to the April 4, 2017 Spring Election, hiring and on-boarding new Commission staff, meeting several administrative rule deadlines, and reviewing two legally complex complaints that had the potential for significant penalties.

On April 26th, DSG Lennington requested a status update on the Commission's electronic search and Commission staff advised DOJ on April 27th of the twelve additional electronic files that had been located. On May 2nd, SA Strauss and DFE Olesen visited the Commission offices to retrieve the twelve electronic files identified by Commission staff. During that visit, SA Strauss also inquired if the Commission had access to any building security camera footage. Staff Counsel Buerger investigated the possibility and informed SA Strauss via email later that day that the Commission had no security cameras and that any security cameras in place around the building were owned and operated by Mullins Group LLC, the property management company for the 212 East Washington office building.

Starting in 2016 and continuing into 2017, I had taken the initiative to schedule periodic "clean-out" days where myself and other Commission staff set aside time to review and inventory the physical records inherited from the GAB. On May 22, 2017, I was cleaning out the secure storage room located in the basement of the 212 East Washington Avenue office building. During my efforts, I discovered two boxes of potential John Doe material in an unlabeled drawer of a storage cabinet.ⁱⁱ I turned the boxes over to Staff Counsel Buerger. Staff Counsel Buerger reviewed the materials and compared the contents to the index of materials already produced as some material appeared to be duplicative of materials that had already been turned over; however, it was impossible to determine if all documents were duplicative due to the vague descriptions of the DOJ index. On May 23rd, Staff Counsel Buerger and I contacted now Senior Counsel Dan Lennington to inform him of the discovery and arrange for the turnover of the materials. On May 24th, Special Agents Strauss and Schallhorn visited the Ethics Commission office to retrieve both boxes.

On July 21, 2017, DOJ agents executed a search warrant on the 212 East Washington Avenue office building occupied by the Ethics and Elections Commissions, specifically searching for "a black electronic hard drive which was used by former GAB employee Shane Falk." Ethics Commission staff fully cooperated with the search by unlocking all office furniture, file cabinets, and storage areas. DOJ agents reviewed several external hard drives located during the search but did not locate the external hard drive of interest.

On November 1, 2017, SC Lennington emailed the Commission to request our staff to conduct further searches of our records for three case numbers: 2013-02, 2012-02, and 2012-01, and to produce all records found with those identifiers. SC Lennington had indicated that in their interview with former GAB Staff Counsel Nathan Judnic, he had indicated there may have been additional John Doe material mixed in with those case files. On November 6th, we informed AAG Schneider via phone and SA Strauss via email that staff had located two boxes of physical materials and approximately 4.5 GB of electronic files with those identifiers. On November 10th, SA Strauss and DFE Olesen visited the 212 East Washington office location to retrieve both the physical and electronic files.ⁱⁱⁱ

For a full description of each DOJ request and staff response, please see the attached timeline and associated materials.^{iv}

Response to Letter of Senator Nass

In his letter of January 11, 2018, Senator Nass indicated that his statements regarding the need for me to resign were based on the Wisconsin Department of Justice report and the Commission's response to that report. Senator Nass indicated that based on the DOJ report he had serious questions regarding the level of cooperation that I provided to DOJ in conducting their investigation and the search for records in the possession of the Ethics Commission. As described in detail above, the Ethics Commission fully cooperated with the DOJ investigation. I believe the DOJ report's incomplete presentation of the facts regarding our cooperation and the mischaracterization of the Commission's request to have an attorney present for any individual interviews with staff (as Staff Counsel Buerger was to be questioned separately) have contributed to the perception that staff was uncooperative. Quite the contrary, our staff voluntarily searched the disorganized mass of physical and electronic records they inherited from the GAB and produced responses to DOJ requests as quickly as possible with our initial turnover of documents occurring the very first day after receiving the John Doe judge's amended order. Where documents were discovered by Ethics Commission staff after that initial turnover had been made (specifically on March 13 and May 22), the record is clear that Commission staff contacted DOJ immediately to notify them of the discovery and the documents were handed over promptly.

Additionally, at various points in the DOJ report, it references "former GAB staff" as uncooperative or as having mishandled evidence; however, when the report names those former GAB staff it appears to limit that category to the former GAB staff it recommends for contempt proceedings. No current Ethics Commission staff have been recommended for contempt proceedings and in the report DOJ specifically references current Ethics Commission employees separately from "former GAB staff," so we do not believe DOJ intended to include current Ethics Commission staff in this category, although some individuals appear to be reading that category to include all former GAB staff and not simply those involved in the John Doe investigation who are recommended for contempt proceedings in the report.

One of the areas the report is critical of current Ethics Commission staff is the manner in which the records inherited by the Ethics Commission were stored by staff. Specifically, that the majority of records were stored in locked file cabinets or in locked storage rooms which any employee of the Ethics or Elections Commission could access by requesting the key. The DOJ report characterizes this as "unsecure" storage. I would respectfully disagree. While the security measures previously in place may not allow for DOJ to determine who specifically accessed the records, only Ethics or Elections staff would have had access to those locked file cabinets and storage areas.

Also, prior to the DOJ investigation, the Ethics Commission had already taken steps to identify and segregate its records from the Elections Commission. I had repeatedly urged the Elections Commission to participate in our planned records cleanup efforts for efficiency and so that records which were shared by both agencies could be identified and their retention addressed. Additionally, had the Elections Commission participated in this cleanup effort, it is possible that the records I discovered on May 22nd would have been discovered earlier as the Elections Commission has employees who had previously participated in GAB investigations including the John Doe and may have known that such records existed. Finally, since the DOJ investigation the Ethics

Commission has taken additional measures to secure its records, including moving all Ethics Commission records out of the locked storage room that is shared with the Elections Commission and keeping a log of the date, time, and reason an employee accesses a secure storage area.

Senator Nass states that Ethics Commission employees were aware that the former Special Prosecutor was storing John Doe records in its office despite an order that all such records be turned over to the Court. This is not accurate. Special Prosecutor Schmitz first contacted the Ethics Commission on September 26, 2016 regarding the actions that would be necessary if the United States Supreme Court denied certiorari in the John Doe case, thus starting the 30-day clock to comply with the Wisconsin Supreme Court order. In preparation for this decision, Ethics Commission staff began seeking out where the John Doe records were stored. As no Ethics Commission staff had been admitted to the John Doe, our staff relied on the representations of former GAB Staff Counsel Nathan Judnic when he indicated that the files which he had kept in his office, in the Badger Doe folder on the former GAB network, and in several inactive Gmail accounts were the sum whole of the John Doe materials maintained by the GAB. Ethics Commission staff moved swiftly to secure those documents in our own secure storage and segregated network; and changed the passwords on the Gmail accounts so that no one but Staff Counsel Buerger could access them.

Once cert was denied, Special Prosecutor Schmitz made arrangements to come to the 212 East Washington office to go through the materials the Ethics Commission inherited from the GAB regarding the John Doe investigation. In his review, Special Prosecutor Schmitz separated out what he believed were records that needed to be turned over to the Wisconsin Supreme Court from records that he believed were not required to be turned over. Again, as no Ethics Commission employee was admitted to the John Doe investigation, the Ethics Commission relied on Special Prosecutor Schmitz to review the material and turn over the appropriate records to the Court. Once the responsive material had been separated out, Special Prosecutor Schmitz issued the Ethics Commission a receipt for that material he took and turned those materials over to the Wisconsin Supreme Court.^v As of October 31, 2016, the Ethics Commission was of the understanding that it had complied with the Supreme Court order and no further responsive records were in our possession.

Finally, Senator Nass indicated in his letter that he had previously expressed his reservations about my appointment due to my prior employment with the GAB. As I recall the meeting, Senator Nass and I discussed my work experience and after I shared my military background and explained how I planned to run the agency differently, he indicated that his concern was more with those who had a managerial role in the GAB, such as Elections Administrator Mike Haas. As I have stated previously, I had no role in the John Doe or any other investigation conducted by the GAB. I left the GAB because I did not always agree with how it operated. At the time I thought I was approaching the limits of what I could change as an employee, and that despite the importance of the work being done I needed to look elsewhere for another opportunity to serve this state. When I was offered the opportunity to serve as the Administrator of the new Ethics Commission, I saw a chance to make the changes I could not have previously accomplished and thought I was uniquely qualified for the position due to my educational, military, and work experiences. I am deeply humbled by the position I am entrusted with and believe my track record as Administrator,

including a unanimous determination by the bipartisan Commission that I have exceeded expectations, speaks for itself.

ⁱ See Re: Inventory of Records (March 15, 2017)

ⁱⁱ See John Doe Document Discovery memo (May 25, 2017)

ⁱⁱⁱ See Property Receipt #8081 (November 10, 2017) and Index of Files spreadsheet

^{iv} DOJ Request and Response Timeline

^v See Receipt of Francis Schmitz (October 31, 2016)

Timeline

2017

- January 27 Phone call with DSG Dan Lennington re: DOJ criminal investigation. Received copy of order amending secrecy order to include DOJ staff. DOJ requests all GAB records in our possession related to JD investigation (email and hardcopy). Advised DOJ of our concerns with § 19.50 as well as other potential privilege or protections as we have not reviewed the requested documents. Lennington to explore alternatives to voluntary production.
- January 30 Meeting with DSG Dan Lennington and AAG Schneider re: seeking another amendment to the secrecy order to explicitly permit DOJ staff access to materials covered under § 19.50 and other privileges or protections. We agreed that the proposed draft order would be sufficient for us to release our records to DOJ.
- January 31 Received new secrecy order with broader language and specific finding as to § 19.50.
- February 1 Turned over two file cabinet drawers of paper records left in our possession by Special Prosecutor Schmitz to SA Strauss and SA Kyra Schallhorn. (see March 15 receipt).
- February 7 SA Strauss and Digital Forensic Examiner Flessert attempt to retrieve electronic files from segregated space on network drive (Badger Doe folder), but due to technical problems have to come back another day.
- February ?? SA Strauss and DFE Flessert return and retrieve electronic files by changing the network path and copying off files.
- March 13 Ethics Specialist Molly Nagappala uncovers potential additional JD materials as she was cleaning out her desk. Material turned over to Staff Counsel Buerger. Materials are sealed in an envelope and Buerger notifies DOJ of discovery.
- March 15 SA Strauss retrieves additional JD materials. SA Strauss relays request re: make and model of copiers/scanners available to staff from May-September 2016. Email sent to SA Strauss with make and model numbers of copiers available to GAB staff at the time. Also asked for further instructions on key words for archive email searches for prior staff. Arranged to meet next Tuesday to discuss in-person.
- March 21 Met with DSG Lennington and AAG Schneider to narrow down search terms (no documentation available of search terms used).
- March 30 Conducted electronic search of network drive and archived emails. Found a dozen documents that match criteria. Conducting additional searches to ensure full disclosure.
- April 26 Request from DSG Lennington for status update on electronic search.

April 27	Advised DSG Lennington of a dozen additional electronic files that met search criteria. SA Strauss to come pick up on May 2.
May 2	SA Strauss and DFE Olesen retrieve additional electronic files. SA Strauss requests if agency has access to any building security camera footage. After brief inquiry, replied via email that we have no access to any recordings and referred them to the property management company for 212 E. Washington office building, Mullins Group LLC.
May 22	Administrator Bell finds two additional boxes of potential JD hardcopy material in basement storage unit (see May 25 memo). Administrator Bell turned documents over to Staff Counsel for review. Initial review indicated it was partially JD I and JD II material. Secured in locked storage in main office until it could be turned over to DOJ.
May 23	Compared inventory of additional hardcopy materials to index of material turned over to SA Strauss. Determined that at least some material was duplicative, but impossible to determine if 100% duplicative due to the vague descriptions on the DOJ index. Advised DOJ of the discovery and arranged for production of materials.
May 24	SA Strauss and SA Schallhorn retrieved both boxes of additional material.
May 25	Senior Counsel Lennington called with additional questions on possible locations of external hard drives used by GAB staff.
July 21	DOJ executes search warrant on 212 E. Washington office for Falk hard drive, nothing found.
November 1	DSG Lennington provides additional search terms of: 2013-02, 2012-02, and 2012-01.
November 6	Informed AAG Schneider via phone and SA Strauss via email of two boxes of physical materials matching those search terms and approximately 4.5 GB of electronic files. Arranged to turn over on November 10.
November 10	Turned over 2013-02, 2012-02, and 2012-01 physical and electronic files (see 11-10-2017 paper receipt and 11-9-2017 Excel spreadsheet).



Wisconsin Ethics Commi

Campaign Finance | Lobbying | Ethics
212 East Washington Avenue | Third Floor | P.O. Box 7125 | Madison, WI 53707-7125
(608) 266-8123 | ethics@wi.gov | <https://ethics.wi.gov>

EXHIBIT

tabbies

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DATE: January 15, 2018

TO: Patrick Fiedler, Stephen Hurley, Peyton Engel, and Marcus Berghahn
Hurley, Burish & Stanton, S.C.

FROM: Brian M. Bell, MPA
Commission Administrator

SUBJECT: Why I left the GAB and Then Returned to the Ethics Commission

At the Ethics Commission's January 11, 2018 meeting I was asked essentially why I resigned from the Government Accountability Board (GAB), and based on that experience, why I was interested in returning to basically the same type of work in a greater capacity as the Administrator for the Ethics Commission. This memo is intended to provide a more detailed explanation of my response to those questions.

I mentioned that I left to pursue further career development, but also that I did not always agree with how the GAB operated. Some have claimed that the GAB was an ideal model to be emulated by other states. Others claimed it was a fatally flawed design. From my experiences, the reality lies somewhere in between those two diametrically opposed perspectives. I do not believe that blindly idolizing or demonizing an agency helps to provide a realistic understanding of its strengths and weaknesses. I left the GAB because I thought I was approaching the limits of what I could positively influence, and that I needed to look elsewhere for an opportunity to serve this state. I returned to the Ethics Commission because I believed that there was a sufficient foundation to build from and address shortcomings I perceived under the old agency. I thought the work of the agency was critically important.

There were several things the GAB did well. One of those was providing a level of customer service and assisting those who sought help from the staff in a way that I have rarely witnessed from a government agency. I also think that staff professional development benefitted from working in such a small agency. This provided significant insights into all aspects of the general operations and allowed for wide participation by staff in addressing a variety of non-confidential matters.

There were also many events that occurred which impacted the work of the agency that were beyond the agency's complete control (e.g., recalls, recounts, audits from the Legislative Audit Bureau and the federal government) that could affect the agency's performance. While it may be easier to identify alternative approaches in retrospect, I also think there were very apparent ways the agency could have managed many things differently and more in line with public management best practices. Some of the challenges the agency faced were consequences of how the agency chose to operate. For example, high staff turnover, staffing shortages, and labor-intensive activities. Eventually I reached a point where the negatives outweighed the positives. That was a reflection not on most of the individuals who worked at the GAB, but about the organization.

Wisconsin Ethics Commissioners

Mac Davis | David R. Halbrooks | Katie McCallum | Pat Strachota | Timothy Van Akkeren | Jeralyn Wendelberger

Administrator

Brian M. Bell, MPA

I began working at the GAB in March of 2012 as the Elections Data Manager. My responsibilities consisted primarily of collecting election statistics from municipalities and counties; summarizing, analyzing and reporting statistics; and responding to requests for voter lists (e.g., all registered voters in an assembly district, or only those who voted in certain elections). Due to my military background, I also worked on various issues regarding military and overseas voters. I also worked on occasional short- and long-term projects. Some examples of these include the feasibility of using federal data to verify voter citizenship, the impact of eliminating same-day voter registration, and Federal MOVE Act compliance reporting.

My initial supervisor was the Elections Division Administrator, Nathaniel (Nat) Robinson, who resigned at the end of 2012 at the request of GAB Director and General Counsel, Kevin Kennedy. I am not aware of the specific circumstances regarding his resignation. Director Kennedy then appointed Michael Haas, who at the time was Staff Counsel (one of two) for the GAB, as the new Elections Division Administrator. My responsibilities remained the same under Mr. Haas, with few exceptions. I volunteered to monitor relevant state and federal legislation, at first just related to the Elections Division but eventually for the entire agency. I was also able to persuade management to invest time and resources in developing an online, automated systems for processing voter lists requests, and served as the program lead on that development. Michael Haas was my supervisor for approximately 12 months.

In late 2013, a position in the Ethics and Accountability Division became open. I was offered that position, and accepted it for several reasons. First, the position was fully-funded by General Purpose and Program Revenue, which offered more security than the Federally-funded position I had under the Elections Division. Second, I found the subject matter to be more complex, challenging, and rewarding. And third, was the opportunity to work under a different supervisor who was more open to innovation. I was frustrated by the lack of a clearly identified strategic vision and a resistance to new ways of operating within the Elections Division. Had that opportunity not been available, I would have looked for a different job outside of the agency.

In the Ethics and Accountability Division I continued to monitor state and federal legislation for the agency. My duties also included primarily supporting the lobbying program, focusing on analyzing and reporting data and improving the Eye on Lobbying website. I also occasionally assisted with campaign finance reporting and statements of economic interests. I was involved in some auditing of reports, but I was not involved in any investigation under the GAB. In response to the audits of the GAB by the Legislative Audit Bureau, I helped create an improved tracking system for audits and investigations utilizing available technology. Jonathan Becker was my supervisor while I worked in the Ethics and Accountability Division for about 21 months.

By this point I had acquired a substantially greater understanding of how the agency operated. Having worked in both divisions of the agency, I had a reasonably comprehensive understanding of the management craft of supervisors, the culture of the organization, and the day-to-day operations of the agency.

The Government Accountability Board itself typically addressed election-related matters first, often leaving insufficient time to thoroughly address campaign finance, lobbying, and ethics.

Because the board typically requested that staff give a recommendation on any item of consideration, this created a systemic bias towards and deference to that staff recommendation (irrespective of the validity of that recommendation). Staff were also given great latitude in offering guidance determining the application of the law, particularly when permitting someone to register to vote, receive a ballot, or waive further review (e.g. by the board) on potential campaign finance or lobbying violations. I believe this created and permitted inconsistent, subjective, and biased actions of unevenly enforcing the laws the agency administered.

Staff received low wages in comparison to other state employees performing similar levels of work and extended work hours were a regular occurrence. These factors resulted in significant turnover and the loss of some particularly talented staff. New staff received minimal, if any, formal training, instead relying on more of a “learn-as-you-go” onboarding strategy. There was not any formal process in place for objective performance evaluations of staff. Classifications were created and utilized that did not readily translate into other career opportunities or offer any significant opportunities for progression. Additionally, there were very few management/supervisory positions within the agency. This also meant there could be a high supervisor-to-staff ratio.

It was also quite perplexing how someone as transparently partisan as Shane Falk could be appointed as a Staff Counsel and allowed to continue to serve in that role. He periodically displayed open partisanship and blatant insubordination toward Division Administrators, the Director, and the Board. He also enabled a climate at the GAB that considered it acceptable to make offensive or disparaging remarks about political parties, candidates and elected officials. Other staff, including some in management, also furthered and tolerated such a climate.

What I saw was that the culture of the agency was that of an organization that felt like it was always under attack and was struggling to feel like it could keep its head above water in terms of dealing with the efforts it chose to prioritize and the challenges presented to it (e.g., recall elections, portions of campaign finance laws being found unconstitutional, changes to the laws it administered, program and financial audits, etc.), rather than that of moving steadily as a unit toward a clearly defined objective.

Ultimately, I was concerned that this was typical of how Wisconsin Government Agencies operated, and I wanted to seek out an opportunity in a larger agency for an alternative perspective. I began applying for other positions around May of 2015, and in September of 2015 I accepted a position as a Budget and Policy Analyst with the Department of Safety and Professional Services. In notifying the GAB management of notice that I would be leaving that position, I chose to focus on positive experiences and move on, rather than dwell on any constructive criticisms. I do not recall participating in any sort of formal exit interview, but if I did, I doubt it was very substantial.

With the Budget and Policy Analyst opportunity at the Department of Safety and Professional Services I certainly got a fresh perspective. I gained significant insight into handling of administrative functions like budgeting, finance, and HR. I was able to regularly work with a cadre of professional managers including Bureau Directors, Division Administrators, and others. I received regular and structured professional development. Even though I was still continually learning, I was given the opportunity to have my suggestions heard and in many cases

implemented. My supervisor at the Department of Safety and Professional Services was Michelle “Bea” Beasley.

When I had an opportunity to apply for the Ethics Commission Administrator position, I spoke with Ms. Beasley about it. I told her that I thoroughly enjoyed my current position. I also told her that I was very uncertain of my chances of getting the position, but I felt uniquely qualified based on my understanding of the things that the previous agency had done well like customer service, but also uniquely aware of not just things that would need improvement but also already understanding how to make those improvements become a reality.

I was deeply humbled to receive an interview, and to be offered the position. The theme of my response as to why I was best suited for the position was this: I was uniquely qualified based on a combination of my education (public management AND public policy, and not an attorney), my honest view of my experiences under the GAB and the agency’s strengths and weaknesses, my administrative experience at DSPS and in the military, and my combat-tested leadership in highly stressful situations in the military.

These unique qualifications would enable me to manage a state agency created out of a crisis in a politically contentious environment, maintain and improve upon the things that people liked about the previous agency, as well as aggressively address the concerns of how the previous agencies operated. I returned to the Ethics Commission on a mission to reinforce its foundation, put the house in order and further fortify its structure. I have been dedicated to improving trust and confidence in the institution of this agency. I believe that my track record as Administrator, including the details of my recent performance evaluation and what the Commissioners and I have chosen to make a priority, reflects my intentions and have helped the agency be successful. I also believe that a candid, objective, and realistic assessment of the previous agencies helps the Ethics Commission avoid similar issues, and hopefully avoid a similar fate.

EXHIBIT

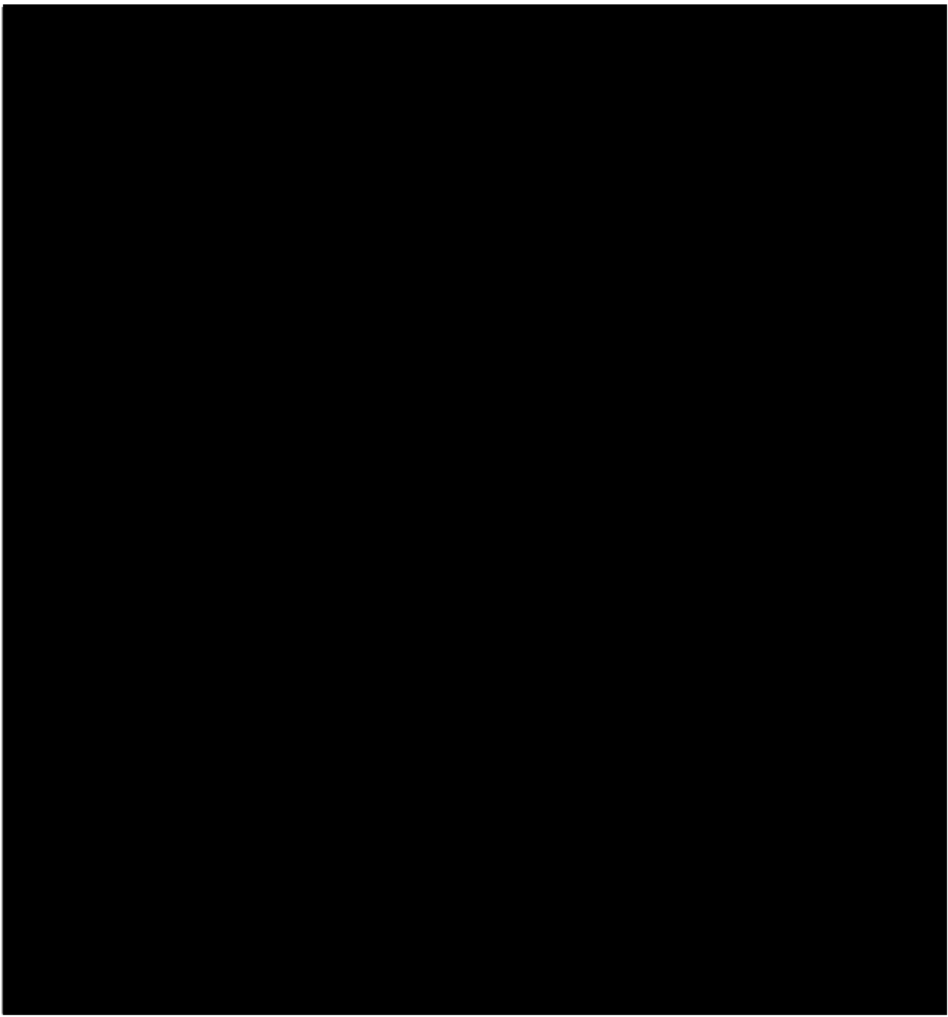
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