

CONFIDENTIAL

**CONFIDENTIAL INVESTIGATIVE REPORT
OF HURLEY, BURISH & STANTON, SC**

TO

THE WISCONSIN ETHICS COMMISSION

**REGARDING INDEPENDENT INVESTIGATION AS TO WHETHER
BRIAN M. BELL HAS ACTED IN A PARTISAN MANNER**

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EXECUTIVE SUMMARY

The law firm of Hurley, Burish & Stanton, S.C. (“HBS”) conducted a confidential, independent investigation regarding whether Brian Bell has acted in a partisan manner. Additionally, we investigated allegations relating to his invocation of his Fifth Amendment right to counsel, his handling of John Doe records and his cooperation with an investigation by the Wisconsin Department of Justice. We find that Brian Bell has not acted in a partisan manner, that his invocation of his right to counsel was at the direction of the WEC Commissioners, and that his handling of John Doe records was proper, and that he cooperated with the DOJ investigation.

BACKGROUND

In December 2017, the law firm of Hurley, Burish & Stanton, S.C. (“HBS”) was retained by the Wisconsin Ethics Commission (“WEC”) to conduct a confidential independent investigation pursuant to Wis. Stat. § 19.49(2)(b)2. The retainer agreement states that the scope of our services will include investigation of whether Brian Bell has acted in a partisan manner. The HBS attorneys involved in the investigation are Stephen P. Hurley, Patrick J. Fiedler, Peyton B. Engel and Marcus J. Berghahn. During our investigation, we were assisted by Steven Watson, who has been a licensed private investigator in Wisconsin for over 20 years. The investigation included review of certain documents and interviews of numerous individuals.

INVESTIGATION

The WEC authorized the investigation in response to a written request from Brian Bell. *See attached* Exhibit 1. Prior to this request, Wisconsin Attorney General Brad Schimel had issued a report dated December 5, 2017 (and released on the following day) entitled, *Report of the Attorney General Concerning Violations of the John Doe Secrecy Orders*. The report is 88 pages long. It is critical of Brian Bell in two ways, which may be summarized as follows:

1. It claims that Bell invoked his right to counsel under the Fifth Amendment when the Wisconsin Department of Justice ("DOJ") requested that he submit to an investigative interview;
2. It criticizes Bell's handling of the sealed John Doe records and his cooperation with the DOJ in responding to their requests for those records.

The WEC responded to the Schimel report in a memo dated December 12, 2017. *See attached* Exhibit 2. That same day, AG Schimel replied to the WEC in a letter. *See attached* Exhibit 3. On December 14, 2017, Scott Fitzgerald, Senate Majority Leader, and Robin Vos, Speaker of the Assembly issued a letter to Brian Bell asking that Bell tender his resignation to the Ethics Commission. *See attached* Exhibit 4. Subsequent to this letter, Brian Bell issued his memo to the WEC requesting an investigation. *See attached* Exhibit 5.

INTERVIEW PROTOCOL

At the beginning of each interview, I advised each person that I was retained by the Wisconsin Ethics Commission to conduct an independent investigation regarding whether or not Brian Bell has acted in a partisan manner. Further, that submitting to the interview was voluntary and the person could stop the interview at any time. I also advised each person of their right to have an attorney present and that they should feel free to ask any questions as the interview was conducted. I asked each interviewee to be as truthful and accurate as possible. I further told them not to assume that I would be asking all of the right questions and that they should feel free to volunteer any information that may be helpful. At the conclusion of each interview, I told them to feel free to contact me if they had any additional information. I also asked that they keep the details of the interview confidential.

INTERVIEWS

37 individuals were either interviewed or declined to be interviewed. This report summarizes the interviews that revealed the most relevant information. The interviews focused on the issue of whether Brian Bell has acted in a partisan manner. Additionally,

certain individuals who may be in a position to know were asked questions related to the two criticisms of Bell contained in the Schimel report referenced above.

Brian Bell

Brian Bell was interviewed in person. He was cooperative and answered all questions. Attached as Exhibit 5 is his résumé which details his education, his professional experience as a state employee since 2012, and his military experience since 2000. Of note is that Bell is presently a Captain in the U.S. Army Reserve, has served two overseas deployments (Iraq and Afghanistan), and has numerous military awards and decorations including the Bronze Star and the Purple Heart.

Bell is the Administrator of the Wisconsin Ethics Commission and commenced his duties in 2016. Prior to that time, Bell served in various capacities for the Wisconsin Department of Safety and Professional Services, and the Wisconsin Government Accountability Board.

Bell was asked why he made the request for an investigation. He responded:

Well, I think as a result of allegations involving my conduct it has questioned whether or not the Senate will consider confirmation of me in this position which, I think impacts the agency to perform its duties. My hope was that the investigation could discover any sources, or motivations behind the allegations, determine if there is any basis for the allegations and/or if there is not. I also thought that a lot of the allegations that have been made assumed that anyone who had anything to do with the previous agencies was guilty by association. I believe that the way I conducted myself in this role and in previous roles clearly distinguishes how I have acted compared to how others have acted. And as well, the John Doe investigations and the security of those documents. So, in my prior role, I had no connection whatsoever to those prior investigations.

Bell was questioned about allegations that he is partisan. He stated that he is not a member of any political party but he did volunteer to work for the George W. Bush 2000 presidential campaign. He may have made a \$10 or \$20 donation to the campaign. For that campaign, Bell “set up a couple of events.” Bell is not a member of any political party. Bell believes that he has carried out all of his duties without any partisan considerations throughout the course of his state employment.

As to the allegations that Bell is partisan, I asked him if he had any information or belief that anyone he currently works with would that view. Bell responded,

I don't. I've approached this position, I think, in a way that is very hypersensitive to the allegations and criticisms of all the predecessor agencies, not just the Government Accountability Board, but the two previous boards as well. And if anything, our staff would say that I have very much pushed in a very different direction and try to guide the agency and commissioners towards; and the directions they've [WEC Commissioners] given me are, we don't want to follow past mistakes, we want to behave differently and want a different reputation. So, I think I've been very hyperaware of that and tried to guide that and I think that that's been evident throughout. What I have done is the minutes someone says, 'We have always done it that way,' that gives me pause and I say, 'Let's look at other options.' If nothing else, just for the fact that we should be doing things differently. I think it's been important that our commissioners have taken the lead on any controversial or politically sensitive decisions. But so, I think my title as Administrator is very appropriate. It's not a legislator, it's not a judge, it's really to administrate the agency. To keep the lights on, to keep the walls up, and to keep the ship moving in the right direction. That's consistently how I've guided and try to operate objectively. We are impartial, treat everyone equally and fairly. Really, the only mitigating circumstances we should be considering are: is there some terrible thing that occurred, a candidate's spouse passed away and maybe we don't harp on them for not filing their expense reports that day. What party they are in, or whether or not they have been elected, should not matter at all.

Some of the criticism directed at Bell relate to the fact that he was employed for a time at the now defunct Government Accountability Board. Bell stated that while with the GAB, he had nothing to do with the John Doe investigations. At one point in time, Johnathan Becker was Bell's supervisor at the GAB. Becker told Bell,

You may have heard some things in the news about an investigation. You're not going to be involved in that. We are not going to tell you anything about it and you are completely walled off from that.

Bell was also criticized in the Schimel report for "invoking his right to counsel" when the DOJ requested to interview him. Bell stated in regards to the report,

I don't believe it effectively characterized the extent of cooperation and support for the leak investigation. For example, the report states that I exercised rights under the Fifth Amendment for counsel. What the report does not say, which the investigators were fully aware of, was that we only requested to have an attorney

present for interviews because the Commissioners wanted an attorney present and did want us to meet individually. That was not my decision, it was not David's [Buerger] decision, that was the Commission, the unanimous decision of the Commission.¹

Bell was questioned about the "lack of cooperation" with the DOJ investigation and the criticisms relating to that by Senator Steve Nass in his January 11, 2018 letter to Patrick J. Fiedler. *See attached* Exhibit 6. At my request, Bell prepared a memo dated January 17, 2018 which details his responses to those criticisms. *See attached* Exhibit 7. Bell also commented during his interview,

The report also mentioned that the DOJ repeatedly returned to the commission seeking additional information and additional records. What the report doesn't include is that because of how records were organized that we inherited, that we were in the process of inventorying and securing which delayed our ability to complete those searches. But again, we had a very collaborative effort with them [DOJ]. They were aware that we were working through things as fast as we could and that it was our top priority, even though we had an agency to run with a small staff. But, it also fails to mention that we would give them information and they would review it and say, 'There's this term used throughout. We asked you to look for case A, but case A talked about B and C. Can you now look and see if records may have been co-mingled and can you look for those cases, too?' And so, we would look and go through it and find cases B and C. And then, they would read through those and say, 'These mentioned G, H and I.' And we would go through and we would find case H and in H we would find records related to cases A and B.

So I disagree with how the report fails to represent that we did that extensive research and went back and found other things. We were the one, me in particular, who were pushing that between the two agencies [WEC and DOJ], we needed to inventory and secure records.

The media reported that at the WEC meeting on January 11, 2018, Bell was asked by the Commissioners why he left the GAB. Upon learning of this, I contacted Bell and asked him to prepare a memo stating why he left the GAB and later applied to be the new WEC Administrator. Bell responded in a memo dated January 15, 2018. *See attached* Exhibit 8.

¹ This was confirmed by all six WEC Commissioners.

Wisconsin Ethics Commission Staff

The following staff members of the WEC were interviewed; David Buerger, Richard Bohringer, David Devine, Kavita Dornala, Adam Harvell, Julie Nishik, Collette Reinke and Caroline Russell. With the exception of David Buerger, they are all supervised by Brian Bell.

David Buerger

David Buerger was interviewed in person. He was cooperative and answered all questions. Buerger is the staff counsel for the WEC. Buerger has known Brian Bell since Bell was hired at the Government Accountability Board. Buerger explained that Bell is not his supervisor and that Buerger reports directly to the WEC; however, on an organizational chart, Bell would be above him. Bell is responsible for Buerger's performance evaluations.

Buerger stated that since meeting Bell, he has never seen him or heard him display any partisan behavior or shown any interest in one candidate or elected official over another.

Buerger stated that he had read the Schimel report. He stated that the report, ... was very quick to point fingers. I don't think it was a very fair representation of what occurred, particularly for the Commission. We had operated with the understanding that we were cooperating with the investigation by the DOJ. It was our part of the law that was broken, the release of confidential records, and so we were trying to find out who leaked the records and working with the DOJ as the investigating agency. It wasn't until they wanted to interview Brian [Bell] and I separately that we realized that we were potential targets of the investigation and not just providing them with information. At that point, the Commission directed us that we had to have attorneys present before we could be interviewed individually. That was mischaracterized in the report. The production of documents, I feel, was also mischaracterized. There's several points in the DOJ report that it took so many months to receive these documents and we're [DOJ] receiving more and more documents. Well, the reason that happened is that they [DOJ] kept changing what they were asking for.

Buerger stated that Bell has been very responsive to his staff and the public.

I would also say that Brian is very conscious of what we can't give. There are some very strong restrictions in place on staff being able to discuss what we do in closed session on all of our complaints and investigations and I think that he's been very good about trying to give as much as he can to be transparent while still respecting those restrictions.

Buerger was asked if he was aware of any WEC staff that may have demonstrated partisan behavior. He replied,

I'm aware of the prior histories of staff in partisan jobs. I'm not aware of any partisan activities while they've been employees of the Commission. The staff has always conducted themselves in a non-partisan fashion. Staff that came over from the old GAB was very conscious of the fact that there had been a magnifying glass put on the conduct not just because of management but the staff of the agency. The new staff, we've impressed that the same awareness that their activity, even in their personal lives, could reflect on the agency. Brian and I drafted a non-partisan policy staff policy, which as a lawyer I'm a little leery of because it restricts their First Amendment rights, saying they can't do things without checking with Brian. Our staff has all accepted that policy. There's been no pushback on it. They understand that they're in a very sensitive position and they have to hold themselves to a higher standard.

Richard Bohringer

Richard Bohringer was interviewed in person. He was cooperative and answered all questions. Bohringer is employed by the WEC as an Elections Specialist, although he is commonly referred to as a Campaign Auditor. He has been a state employee since 1990, starting with the Elections Board, then the Government Accountability Board, and finally with the WEC.

Bohringer has known Brian Bell from the time that Bell started working for the GAB. Bohringer stated that he has never seen or heard anything from Bell that would indicate partisanship; in fact, Bohringer is unsure of what, if any, political leanings Bell may have. Bohringer stated that if he had to guess, he would probably say that Bell would lean towards Republican due to his military background. Bohringer explained that politics doesn't enter into what they do at their office. He stated, "If there's an indication of looking at a committee, it is because of what they have done, not who they

are. When further pressed if he has ever seen or heard evidence of partisanship by Bell while at the GAB or the WEC, Bohringer replied,

I've seen nothing but professionalism. I have not seen any perception of partisanship there. He almost goes out of his way to make sure it's not brought up at all, which is refreshing because that was not always the case with former supervisors that I've had.

Bohringer feels that the criticisms of the WEC outlined in the Schimel report are unfair as the "sloppy record keeping as far as not documenting what evidence there was, and the way they were locked up and stored" occurred under the GAB, not the WEC. He went on to state,

Brian [Bell] and David [Buerger], when they came on, this stuff had all been sealed by the courts for years. They inherited these records. The records were all sealed at that point. We couldn't look at them if we wanted to. So, they couldn't even go through a box to inventory what was in there. So, they got blamed for inventorying done by the GAB at the time it was gathered.

Bohringer explained that all new hires at the WEC go through orientation regarding partisan activities. They are allowed to maintain whatever political affiliations they may have had but should not share their views via social media, etc. as the news media monitors their accounts. Each staff member is provided with a non-partisanship policy and must sign an agreement to abide by that policy.

Bohringer stated that Bell, as his supervisor, is responsible for conducting his (Bohringer's) performance reviews. Bohringer said that what Bell has done differently than any other supervisor that he has had is letting the employee know, prior to being reviewed, what the standards and expectations are. Bohringer concluded by saying, "Brian's been a great supervisor and I think he's getting a bad rap."

David Devine

David Devine was interviewed in person. He was cooperative and answered all questions. Devine was hired by the WEC in March 2017 as an elections specialist. His direct supervisor is Brian Bell. Devine did not know Bell prior to being hired. Devine

stated that, upon being hired, he did have to sign a form stating that he understood the policies regarding non-partisanship and agreeing to abide by those policies.

Devine stated that, during his tenure at the WEC, he has not seen or heard anything that would indicate to him that Bell or any other WEC staff are partisan. He stated, "I don't believe that Mr. Bell, or the Commission staff in general, participate in any type of partisan activity." When asked if he knows if Bell belongs to a particular political party, Devine replied, "I do not."

Devine was asked what occurs if a member of the public submits a complaint to the WEC. He explained that those complaints are given to Attorney David Buerger who conducts an initial review to determine if any evidence has been provided, ensures that the form complies with statute, and provides a brief to the commissioners giving them some legal background and summarizing the complaint.

Kavita Dornala

Kavita Dornala was interviewed in person. She was cooperative and answered all questions. Dornala is a self-employed IT consultant. She received a three-year contract to work for the GAB in 2013. This contract was renewed with the WEC in 2016. As an independent contractor, Brian Bell does not conduct employee evaluations of Dornala but they do meet monthly to discuss the progress and priorities of her work.

Dornala stated that she learned of the accusations against Bell from the newspaper. She has not discussed the matter with him. They have never discussed politics. Dornala offered this opinion of Bell, "He is a good person with technologies, his opinions, how he wants to lead ... he has a lot of vision for that."

Dornala stated that she has not seen or heard anything that would indicate that Bell or any other WEC staff is partisan.

Adam Harvell

Adam Harvell was interviewed in person. He was cooperative and answered all questions. Harvell first met Brian Bell in 2013 or 2014 when Bell was working for the GAB. Bell is currently Harvell's direct supervisor. When asked about his relationship

with Bell, Harvell stated, "I like him. I admire him. He's fair... respectful. He's a good boss."

Harvell stated that he has never seen nor heard Bell indicate any type of partisanship toward either party and he does not know which party, if any, Bell is affiliated with. Harvell stated that although politicians are discussed in the office, which party they belong to isn't relevant. "It's always been a culture that the rules are more important than the players."

When asked if he has ever had access to the John Doe investigation documents, Harvell replied, "No. That was Molly Nagappala, Nate Judnic and Shane Falk. Harvell stated that the WEC inherited all John Doe documents, in whatever condition they were in, from the GAB when it was dismantled. He explained,

Any accusation that Brian [Bell] or David [Buerger] was careless with the records is kind of the opposite of the truth because when we inherited the records, the storage rooms in the basement, everything was everywhere. Boxes weren't labeled. We didn't know what was there. Brian has made a very conscious effort to organize the boxes and catalog what's in there, and sort them in accordance to the records retention requirement in a way that the GAB never tried to do or failed to do.

Julie Nishik

Julie Nishik was interviewed in person. She was cooperative and answered all questions. Nishik is employed at the WEC as an office management specialist, starting in February 2017. Prior to this, she worked for the GAB from October 2011 until August 2015. At GAB, she did not have much contact with Bell. Presently, Bell is her supervisor.

Nishik stated that her only involvement with the John Doe investigations is that she paid invoices to the private investigators while she was working for the GAB.

Nishik stated that she has not seen any indication that Bell is partisan. She does not know if he belongs to a political party. As a boss, Nishik believes that Bell treats everyone the same and that he is "very consistent."

Collette Reinke

Collette Reinke was interviewed in person. She was cooperative and answered all questions. Reinke has worked for the WEC since June 2017. Her present job title is ethics specialist. Reinke was never employed by the GAB.

Reinke stated that she did not know Brian Bell prior to beginning her employment with the WEC. Bell is her supervisor and she typically has daily contact with him.

Reinke stated that since being hired, she has never seen Bell exhibit any type of partisan behavior. She has no idea what, if any, political affiliation Bell may have.

Reinke agreed that in doing his job, Bell is very "statute oriented." She stated, "That's very true. Definitely looked right at those. I think he's also very good about presenting all of the facts to the Commission and letting them determine what the next steps are. I think he understands that as the staff and Administrator, we're not the decision makers. I think he's really good at making sure we're presenting the Commissioners with all of the relevant facts."

As to the John Doe records, Reinke's understanding is that they had been passed on to the WEC and no one really knew what was there. She said,

"When we went through them, I think it was in September, we went through boxes that had emails and notes and official documents all mixed together. We took the initiative to go through those things and determine what they are and properly document where they are and properly file them together in groups that should be together. There's been a strong initiative to take over those records and get them in line with state law about how we're supposed to keep records."

Caroline Russell

Caroline Russell was interviewed in person. She was cooperative and answered all questions. Russell started at WEC in April 2017 and she is an ethics specialist. Brian Bell has been her supervisor since the start of her employment. She did not know Bell before she started at WEC. She has never been employed at the GAB.

When asked if Bell has ever exhibited any partisanship, she replied, "No, definitely not in the workplace." Bell has accompanied some of the employees to outside events, such as celebrating birthdays at happy hour, and Russell stated at those

times it has been “close, but it’s only by proxy, talking about his military experience, but that’s not even partisan. It’s just talking about foreign policy.” When asked whether Bell was a part of any political party, Russell responded, “Not that I am aware of, if he is.”

Russell concluded the interview by stating that Bell is “by far, the best boss I have ever had.”

Wisconsin Ethics Commissioners

The Wisconsin Ethics Commissioners are David Halbrooks, Katie McCallum, Judge Mac Davis, Patricia Strachota, Judge Timothy Van Akkeren and Jeralyn Wendelberger; all of them were interviewed by phone. Each commissioner is supportive of Bell. In December 2017, the commissioners did an evaluation of Bell’s performance and determined that he “exceeded expectations.”

David Halbrooks

Commissioner David Halbrooks was interviewed by telephone. He was cooperative and answered all questions. Halbrooks is the Chair of the WEC. There have been several conversations with him. Halbrooks emphasized that the investigation must be independent and thorough.

Halbrooks stated that he has seen no indication whatsoever that Bell is partisan. He noted that the DOJ has searched the John Doe records and has found nothing that implicates Bell. Halbrooks stated that the WEC has searched non-John Doe data and has found nothing that implicates Bell. He stated that when the Government Accountability Board was abolished and the legislature created the Wisconsin Ethics Commission and the separate Wisconsin Elections Commission, the Wisconsin Ethics Commission inherited the John Doe records from the GAB; the records were not organized and were under seal. Halbrooks believes that Bell did everything within his power to cooperate with the DOJ in turning over these records as requested by the DOJ. Halbrooks stated that the WEC insisted that Bell have an attorney when he was interviewed by the DOJ.

Finally, Halbrooks stated that, in December 2017, the Commission had reviewed Bell’s performance and determined that he “exceeded expectations.”

Katie McCallum

Commissioner Katie McCallum was interviewed by telephone. She was cooperative and answered all questions. McCallum is the Vice-Chair of the WEC. She acknowledged that she had the opportunity to review the Schimel report. As to the report's criticism that Bell invoked his right to counsel, McCallum stated:

He was advised by the Commission to retain counsel. This was not his individual decision. I was on a phone call about it prior to the Commission meeting. The Commission ended up voting on it at a subsequent meeting. I had left early, so I don't believe that I was part of that final discussion, but it was because the DOJ had said that they wanted to specifically interview David Buerger and Brian Bell separately. The attorneys on the Commission thought that meant they should immediately go in with counsel and obviously David couldn't act as counsel for Brian if they were going to be interview separately.

McCallum supported the Commission's decision in this regard.

McCallum's opinion regarding Bell's involvement with the John Doe records is:

I feel that he has taken the job of records management seriously from the day he stepped into his position. He inherited a mess. He has helped the Commission get all new security protocols and has really changed the way that things are handled since we transitioned from the Government Accountability Board to the Ethics Commission.

Finally, McCallum stated that from the time of Bell's hiring by the WEC to the present, she has had no indication of partisan activity on his part.

Judge Mac Davis

Commissioner Mac Davis was interviewed by telephone. He was cooperative and answered all questions. Davis was involved in the hiring process for Brian Bell. Davis stated that he had no concerns regarding partisanship during that process and he has had no indication since Bell was hired that he has acted in a partisan manner at any time. Davis stated, "Some people may have implied or suggested that he may have done so and I'd like to get to the bottom of that."

Davis noted that he had reviewed the Schimel report. He stated that it was the Commission's recommendation that Bell be represented by counsel at the DOJ interview. Davis also stated that while he has no personal knowledge of the condition of

the John Doe records that were transferred from the GAB to the WEC, it is his understanding that Brian Bell and David Buerger didn't really know what records they had until the Attorney General's Office started requesting certain things. It was at that time that they discovered that the records were in disarray.

As to Bell's performance as administrator of the WEC, Davis stated that Bell has continued to "meet or exceed expectations since his hiring."

I was perhaps his biggest advocate during the hiring process. I was very impressed with him from the get-go and I've been very impressed with him since then. He wants to make sure that we're tethered to statutory authority. As an administrator, I think he's been excellent. We've made many advancements over the Government Accountability Board in terms of our record keeping and regularity of process. He's been a mover in terms of internal audits.

Davis agreed that it would be fair to say that Bell is process oriented as opposed to result oriented.

Patricia Strachota

Commissioner Patricia Strachota was interviewed by telephone. She was cooperative and answered all questions. Strachota was asked if, during the entire time that she has had contact with Brian Bell, she has ever noticed him to act in a partisan manner. Strachota replied, "No, I have not."

Strachota noted that she has reviewed the Schimel report and described her reaction,

I was alarmed a little bit at some on the information that had been collected on individuals as part of a John Doe investigation and that they weren't aware of that information. I didn't think that Brian had done anything wrong. And I think the Attorney General stated that afterwards, that he did not recommend any sort of discharge.

Strachota confirmed that the Commission recommended that Bell have separate legal counsel because David Buerger was being interviewed separately and could not act as Bell's counsel.

Strachota stated that since Bell was hired as administrator, she has been pleased with his performance.

We had an evaluation of him and we directed the Chair and the Vice-Chair to write a letter to both the Speaker and the Majority Leader telling them that we felt that he exceeded expectations.

Judge Timothy Van Akkeren

Commissioner Timothy Van Akkeren was interviewed by telephone. He was cooperative and answered all questions. Van Akkeren stated that he was not involved in the hiring process for Brian Bell as he was not yet a commissioner when this occurred. When asked if at any time he has had any indication that Bell has acted in a partisan manner, he replied, "Absolutely not." Van Akkeren confirmed that the Commission recently gave Bell a very positive performance evaluation, to wit, "The highest possible." When asked about Bell's work being statute driven, Van Akkeren replied,

Absolutely. I mean he will pull us back if we start getting off base and kind of gently say, 'Hey, we're looking at the statute now, reference to that', and I think he does that always. I think he's extremely conscientious.

Van Akkeren confirmed that the entire Commission recommended that Bell retain independent counsel prior to being interviewed by the DOJ.

Regarding the handling of the John Doe files, Van Akkeren stated,

Being a Commissioner, you don't have the day to day contact with what's going on there. The thing is, they didn't necessarily know what they had there or how it should be put together, but I believe they had worked hard to secure these in a fashion that made them inaccessible to anyone other than authorized staff.

Jeralyn Wendelberger

Commissioner Jeralyn Wendelberger was interviewed by telephone. She was cooperative and answered all questions. Wendelberger was asked if she had ever had any indication was acting in a partisan way and she replied, "No, not at all. No indication of partisanship." She stated that the Commission had completed a performance review of Bell in December 2017 and that, "We found that he exceeded expectations." This was a unanimous decision by all six Commissioners. Wendelberger

also noted that Bell has always been very responsive to the Commission and is knowledgeable in his job.

Wendelberger confirmed that the Commission had instructed Bell to retain independent legal counsel prior to being interviewed by the DOJ. As to the criticism in the Schimel report regarding storage of John Doe files, she stated that she knew that many files and boxes had been transferred to the WEC from the GAB but that she did not know if any files from the John Doe investigations were among them. Wendelberger further stated,

I feel that he [Bell] and David [Buerger] did their best to file and store everything because there was a lot left behind and everything changed very quickly from the GAB to the Commission.

Former Wisconsin Ethics Commissioners

There are two prior Wisconsin Ethics Commissioners, Peg Lautenschlager and Judge Robert Kinney; they were both interviewed by telephone.

Peg Lautenschlager

Commissioner Peg Lautenschlager was interviewed by telephone. She was cooperative and answered all questions. Lautenschlager is a prior Chair of the WEC. She was actively involved in the hiring process of Brian Bell. She did not have any concerns about partisanship during this hiring process. When asked if at any time during her tenure on the Commission about whether Bell was acting in a partisan way, she responded, "Absolutely not." Lautenschlager stated that, "He [Bell] is a very sincere career public servant who works hard to do the right thing.

Judge Robert Kinney

Commissioner Robert Kinney was interviewed by telephone. He was cooperative and answered all questions. Kinney was involved in the hiring of Brian Bell and ultimately recommended that he be hired as administrator. Kinney stated that Bell was a "very polished, very articulate, very impressive young man." Kinney stated that during his dealings with Bell, including any presentations that Bell made, he did not see any evidence of partisanship on Bell's part. Kinney concluded his interview by stating,

“I thought Brian Bell was outstanding – he won me over because he was a hard worker.”

Wisconsin Elections Commission Staff

The following staff members of the Wisconsin Elections Commission were interviewed or declined to be interviewed; Michael Haas, Sharrie Hauge, Nathan Judnic, Diane Lowe, Reid Magney, Anne Oberle, Richard Rydecki and Sarah Whitt.

Michael Haas

Michael Haas was interviewed in person. He was cooperative and answered all questions. Haas is currently the Administrator of the Wisconsin Elections Commission. He first met Brian Bell when Bell started at the Government Accountability Board. Haas was Bell’s supervisor for about a year. Haas stated that Bell had a “good, good” work performance and took the lead in a number of initiatives that assisted the agency quite a bit.

When Haas was asked if he had ever seen any indications that Bell had said or done anything that indicated partisanship, he answered, “No, definitely not. I thought through that a little bit since we talked and both at the GAB and since he has been back, definitely not.” When asked if he had any idea which party Bell may lean towards, Haas replied, “If I had to guess I’d probably say Republican but we never discussed it.”

As to the John Doe investigations carried out by the GAB, Haas stated that Bell had no involvement whatsoever and that Bell had never made any comments regarding them. Haas stated that he was in the closed meetings of the GAB when the investigation was discussed and that Bell was never in those meetings.

Sharrie Hauge

Sharrie Hauge was interviewed in person. She was cooperative and answered all questions. Hauge is the Chief Administrative Officer of the Wisconsin Elections Commission and she has held that position since the Elections Commission was created. Hauge began her career with the State of Wisconsin in 2001 with the Elections Board which became the Government Accountability Board and which morphed into her present employment with the Elections Commission.

Hauge stated that she has had very minimal contact with Brian Bell. When asked if Bell had ever shown any indications of being partisan, Hauge responded, "Not that I am aware of."

Hauge was questioned regarding what familiarity she had with the John Doe investigations when she worked at GAB. She replied,

I did know about the John Doe investigation ... I was the Budget Officer so I had to pay the invoices for the attorneys ... and yes, I did know a little bit about it.

To Hauge's knowledge, Bell had nothing to do with the John Doe investigation. She stated, "I know for a fact that he was not involved in that."

Nathan Judnic

Nathan Judnic's supervisor is Michael Haas. Through Haas, I requested to interview Judnic. Haas informed me that he had relayed my request to Judnic and that Judnic was declining to be interviewed because "he had a bad experience with the DOJ."

Diane Lowe

Diane Lowe was interviewed in person. She was cooperative and answered all questions. Lowe is the lead elections specialist at the Wisconsin Elections Commission. Lowe started her state employment in 1995 at the Elections Board.

Lowe first met Brian Bell when they both worked at the GAB. She has never been in a position of supervision over Bell nor has she worked on any projects with him directly. She only had contact with Bell in passing and in meetings at the GAB.

When asked if Bell had ever shown partisan motives in his work, Lowe replied, "No," and said that, in her opinion, Bell is non-partisan.

Finally, Lowe stated that she, while the GAB, had nothing to do with the John Doe investigations.

Reid Magney

Reid Magney was interviewed in person. He was cooperative and answered all questions. Magney is the public information officer for the Wisconsin Elections Commission, having held this position since the Commission was created. Prior to the

creation of the Commission, Magney was the PIO for the GAB, having started there in 2009.

Magney could not remember when he first met Brian Bell but it would have been when they were both employed by the GAB. At various times, Magney has worked closely with Bell.

When asked whether Bell had shown any signs of partisan leaning, Magney replied,

I have never heard a partisan word out of Brian Bell's mouth. That's just not who ... I've never known him to say anything bad about Democrats as a class or group of people. Or use the term Republican or Democrat in a pejorative sense, or for anyone that we deal with. I cannot honestly say that I don't know what Brian's own personal political beliefs are.

Finally, Magney stated that, to his knowledge, Bell had nothing to do with the John Doe investigation.

Anne Oberle

Anne Oberle was interviewed in person. She was cooperative and answered all questions. Oberle is presently employed by the Wisconsin Elections Commission. She started with the Elections Board in 2005 and continued her employment with the GAB and now the Elections Commission.

Oberle first met Brian Bell when he started at the GAB. For a period of time, she worked closely with Bell but did not supervise him. When asked to describe Bell as a worker, Oberle stated

Very diligent. When he is focused on a project, he stays on it. You can see that he is very focused, stays on his task and objective and he works really hard.

During her time at the GAB, Oberle never worked on the John Doe investigation. She said that she had no idea if Bell was involved in the investigation.

Oberle was asked if she had ever seen any indications that Bell was partisan. She replied,

No, not at all ... he doesn't bring his viewpoints into the office. I don't even know if he has worked with anyone or on any campaigns.

When asked if she thought that any accusations regarding Bell being partisan are fair, Oberle commented,

No, I don't. Based on my experience and my interaction with Brian, like I said, I have never while working with him, ever seen him at all, express a partisan meaning on anything.

Richard Rydecki

Richard Rydecki was interviewed in person. He was cooperative and answered all questions. Rydecki began his state career in 2011 when he was hired as an elections specialist of the GAB. When the GAB was dissolved, he went to work for the Wisconsin Elections Commission in June 2016. In July 2017, Rydecki was promoted to his present position of elections supervisor.

Rydecki believes that he met Bell in 2013 when they both worked for the GAB. Neither of them has been the other's supervisor. In the past, they have worked together on two significant projects.

When asked if he has ever seen Bell exhibit any partisan motivations, Rydecki replied, "No, not that I can think of. I've never had a conversation with him about his political leaning." Regarding any accusations that Bell has been partisan, Rydecki responded, "I haven't seen any evidence of it. I've seen the allegations of it but no evidence."

Rydecki was asked if he thought that Bell was a good worker and he replied, "His career trajectory speaks for itself, yes."

Rydecki stated that he had no role in the John Doe investigation while at the GAB. As to whether he thought that Bell had anything to do with the investigation, Rydecki replied, "To my knowledge, he did not."

Sarah Whitt

Sarah Whitt was interviewed in person. She was cooperative and answered all questions. Whitt started her career with the state in 2002 at the no longer existing Department of Electronic Government. She also worked for the Government

Accountability Board and is presently employed at the Wisconsin Elections Commission.

Whitt first met Brian Bell when they both worked for the GAB. She stated that she did end up working with him quite a bit. When asked what it was like to work with Bell, Whitt replied,

He is wonderful to work with. He is a very intelligent man, he is a critical thinker and he is very easy to get along with ... very rational person. He works hard and is very diligent, very motivated.

Whitt stated that she has never gotten the impression that Bell is partisan in any way. While she has not read the Schimel report, Whitt stated, "I honestly was genuinely confused why in the world they would think that Brian Bell, in particular, would be behaving in a partisan fashion." She has not seen any examples of partisan behavior on Bell's part, "He behaves intelligently and consistent with the statutes." Whitt also stated, "I think he is an excellent civil servant and is trying to do the correct thing based on the laws that the legislature passes." She stated that she has no idea if Bell had political leanings one way or the other.

Whitt stated that, while at the GAB, she had nothing to do with the John Doe investigations. When asked if Bell had involvement in the investigations, Whitt replied, "Not at all that I am aware of. I don't think he would have in his role."

Former Government Accountability Board Members

The former Government Accountability Board was in existence from 2007-2016. All of its members were retired Wisconsin Circuit Court Judges. Those interviewed were Judge Thomas Barland, Judge David Deininger, Judge Timothy Vocke, and Judge Gerald Nichol. They are all former GAB Chairs during the time period from 2011-2015 and they were all interviewed by phone and they were all cooperative.

Judge Thomas Barland

Judge Barland was the GAB Chair in 2011 and 2014. Barland stated that he has relatively little memory of Brian Bell. He said that Bell would appear before the GAB members on occasion. He does recall that Bell was a "military man" and a "hard

worker.” As to the issue of Bell’ partisanship, Barland stated, “I know of no partisanship on his part while he was with the GAB.” As to the John Doe investigations, Barland indicated that he does not think that Bell was involved, and if he was it was “very peripherally.”

Judge David Deininger

Judge Deininger was the GAB Chair in 2012. Deininger does not recall having any interaction with Brian Bell but stated that, “his name kind of rings a bell.” Deininger stated that, to the best of his recollection, Bell was not involved in the John Doe investigations.

Judge Timothy Vocke

Judge Vocke was the GAB Chair in 2013. Vocke stated that he did not have much contact with Brian Bell. What he does remember is that Bell was a Captain in the National Guard. Vocke cannot remember Bell’s job function. He is not aware of Bell being partisan but again, he did not have much contact with him. Vocke was on the GAB during the John Doe II investigation, but he has no idea if Bell was at GAB during that time period.

Judge Gerald Nichol

Judge Nichol was the GAB Chair in 2015. Nichol stated that he vaguely recalls Brian Bell. He did not deal with Bell directly but stated that Bell had a good reputation as a team player and that he was well respected. Nichol does not recall that Bell had anything to do with the John Doe investigations. Nichol also stated that he knows of nothing that would indicate partisanship on the part of Bell.

Former Government Accountability Board Staff

Telephone interviews were conducted with former GAB Staff Jonathan Becker, Kevin Kennedy, Molly Nagappala and Kyle Kundert. They were all cooperative.

Jonathan Becker

Jonathan Becker’s involvement with the GAB actually started in 1990 when he became legal counsel to the State Ethics Board. When the GAB was formed, Becker

became administrator of the division of ethics and accountability. He retired from the GAB a month before it was dissolved in 2016.

Becker first met Brian Bell when Bell started at GAB. There were times when Becker was Bell's supervisor. As such, Becker did have the opportunity to evaluate Bell's work performance and stated that he did "very well and in fact, I recommended him to be the new administrator of the new ethics commission.

When asked about any possible indications of partisanship on the part of Bell, Becker stated that, in his opinion, Bell has "always been non-partisan. I could not tell you what his political beliefs are at all.

While at the GAB, Becker stated that he personally did have involvement in the John Doe investigations but that, to his knowledge, Bell did not have any involvement.

Kevin Kennedy

Kevin Kennedy's involvement with the Government Accountability Board actually started in 1979 when he was hired as staff counsel for the Wisconsin Elections Board. He served there in various capacities. From 2007 until his retirement in 2016, Kennedy was director and general counsel for the GAB.

Kennedy first met Brian Bell when Bell started at the GAB. When Kennedy was asked if he'd ever seen any indication that Bell was partisan, he stated that he knew Bell had been active in the Young Republicans in Whitewater at an earlier time, that is, before Bell started at the GAB. Kennedy then stated that there were no indications of partisanship related to Bell's GAB job duties or his performance.

Finally, Kennedy stated that Bell was not involved in any John Doe investigations or anything related to those investigations.

Molly Nagappala

Molly Nagappala started working for the Government Accountability Board in 2012. When the GAB morphed into the Wisconsin Ethics Commission in 2016, she was then employed by the WEC until she left in 2017.

Nagappala first met Brian Bell when she was at the GAB. She had daily contact with him as their desks were right next to each other. When the WEC was created and Bell became the Administrator, he would have been Nagappala's supervisor.

When asked about her relationship with Bell, Nagappala stated, "I like him. I admire him. He's fair ... respectful. He's a good boss." When asked about Bell's work performance, Nagappala stated, "Definitely above average, very, very dedicated, focused on his work, really the ideal employee, I would think."

Nagappala was asked whether she had ever seen any indication that Bell was partisan and she replied, "No, definitely not." She affirmatively stated that Bell is nonpartisan.

Nagappala was asked whether Bell was ever involved in any way in the John Doe investigations and she replied, "Not to my knowledge." Bell never discussed the John Doe investigations in her presence.

Nagappala agreed that the John Doe investigation records were in the possession of the GAB and, when the GAB was disbanded, then the records went to the newly created WEC. She said,

Well, yeah, I think that would best be described as 'transfer in name only.' The records didn't go anywhere because the agency didn't go anywhere, and when a change from the GAB to the Ethics Commission, nothing changed as far as where we were located, or where the records were located.

Nagappala stated that she was involved in the John Doe investigation.

Nagappala concluded the interview with this statement,

Brian had a very distinguished record in the military and, as such, I think he is probably predisposed to be as nonpartisan as anyone else, if that makes sense. He kind of came into the job with that philosophy already ingrained in his work.

Kyle Kundert

Kyle Kundert started working for the Government Accountability Board in January 2014. When the GAB was abolished, his employment was then with the Wisconsin Ethics Commission until he left in March 2017.

Kundert first met Brian Bell when Kundert started at the GAB. Bell was Kundert's supervisor for approximately the last six months of Kundert's employment at the WEC. As a supervisor, Kundert stated that Bell was very organized and even keeled. Kundert stated that there were no indications of any kind that Bell was partisan. Finally, Kundert stated that he would have no knowledge regarding the John Doe investigations.

Former Government Accountability Board Special Prosecutor

Francis Schmitz

Attorney Francis Schmitz served as a special prosecutor for the GAB in the John Doe proceeding. Through his counsel, Attorney Randall Crocker, Schmitz declined to be interviewed but did send me a letter dated January 19, 2018 which states,

Regarding your recent inquiry regarding Mr. Brian Bell, I am pleased to provide you with the following information.

I met Mr. Bell while I was working at the GAB offices. I somehow learned that he was an Army officer and subsequently had a few conversations with him regarding his service as I am a retired Army officer.

I have never known Mr. Bell to act in a partisan manner. I have never heard him advocate a partisan position.

He was not involved in the John Doe proceeding where I served as Special Prosecutor. To the best of my knowledge he was not consulted or privy to any of the documentation or other material related to the investigation.

I hope this information is helpful to you in your investigation.

/s/ Francis D. Schmitz
Attorney at Law

Legislators

Speaker Robin Vos

On January 8, 2018, I spoke with a staff member at Speaker Vos' office and requested an interview with Speaker Vos. The following day, Steve Fawcett telephoned me and we discussed the scope of my investigation and my desire to interview the

Speaker. Fawcett stated that he would discuss this within the office and that someone would get back to me one way or the other. On January 10, 2018, my office received a message from Jennene Hall (sp?) who stated that she was with Speaker Vos' office and that the Speaker was declining my interview request.

Senator Scott Fitzgerald

On January 8, 2018, I spoke with a staff member at Senator Fitzgerald's office and requested an interview with Senator Fitzgerald. The following day, I went to the Senator's office and met with Dan Romportl, Chief of Staff. We discussed the scope of my investigation and my desire to interview Senator Fitzgerald. Romportl stated that he would discuss this with the Senator and get back to me. I did not hear back from Romportl and I assumed this meant that Senator Fitzgerald was declining my interview request.

Senator Steve Nass

On January 10, 2018, I spoke with Mike Mikalsen, Chief of Staff for Senator Steve Nass. We discussed the scope of my investigation and my desire to interview Senator Nass. Mikalsen stated that he would discuss this with Senator Nass and get back to me. Later that same day, Mikalsen called me and stated that Senator Nass was declining my interview request but that he would be sending me a letter. On January 11, 2018, I received a letter from Senator. The letter is attached as Exhibit 6.

NON-INTERVIEW BASED INVESTIGATION

The Guardian Documents

The current concerns about Mr. Bell appear to stem, at least in large part, from questions over his behavior related to the Department of Justice's inquiry into the leakage of documents from John Doe investigations to *The Guardian*. Specifically, the calls for Mr. Bell's resignation began after the Attorney General released a report critical of many aspects of the investigation and its aftermath. Because the report appeared to be the trigger for the push to remove Mr. Bell from his position, one

prong of the investigation began with a detailed review of the Attorney General's report.

When *The Guardian* broke its story on Wisconsin campaign finance, it released the documents on which it based its investigation. The documents were released, in electronic form, *via* an online file-sharing web site. In discussing those documents, the Attorney General's report mentions metadata found within some of them. Specifically, the report says:

The metadata also contains information regarding the machine that scanned the leaked documents. This information does not match the scanners at Ethics/Elections or any of the scanners Wisconsin Supreme Court and Wisconsin Supreme Court offices.

(Report of the Attorney General Concerning Violations of the John Doe Secrecy Orders, p. 78.)

In other words, the Attorney General was able to discern from the documents that they were not scanned via any of the machines at the Ethics Commission, the Election Commission, or the Supreme Court. This raised the obvious question: if it is possible to determine where the documents were not scanned, is it possible to determine where they were scanned?

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The Physical Plant

When the Ethics Commission and the Elections Commission were established, they had shared custody of the prior records of the Government Accountability Board. A storage room (4B) in the basement of the building which had formerly housed the GAB, and which now housed the two newly-created Commissions,

housed a large collection of documents. These were, on the whole, loosely or poorly organized.

An effort began to separate them, with documents properly pertaining to the Ethics Commission moved to room 5B, and Elections Commission materials remaining in 4B. Mr. Bell was involved in pulling out the Ethics Commission's materials, and it was in the course of that work that he discovered two boxes of John Doe materials in a file cabinet.

The investigation examined the two rooms. In 5B, the Ethics Commission's materials are stacked in labeled boxes. In 4B, where the file cabinet resides, there is less organization. Nothing was discovered that suggests anything improper about the management of the Ethics Commission's materials, or anything suspicious about the project of separating the Commissions' records. Photographs of rooms 4B and 5B are included as Exhibits 10(a)-(d) and 11.

It is not possible at this point to determine whether or to what extent the GAB's formerly commingled records were handled irresponsibly. The doors on 4B and 5B are locked, and access to the basement area in general is controlled by proximity card during off hours.

Mr. Bell's E-Mail History

With the Ethics Commission's cooperation, investigators obtained a copy of Mr. Bell's e-mails. Specifically, they obtained a snapshot of the contents of his inbox and all sub-folders. This included e-mails dating back to the establishment of the Ethics Commission.

The contents were searched for terms related to the John Doe investigation, and for signs of partisan leanings. Unsurprisingly, there was a flood of John Doe-related content beginning in early December of 2017, as the Commission received and responded to the Attorney General's report. Prior to that, there had been none.

With respect to potentially partisan content, the investigators found nothing. By all appearances, Mr. Bell's work correspondence is strictly non-partisan.

The investigators also ran `exiftool` on a substantial sample of PDFs attached to e-mail sent or received by Mr. Bell's account, but did not identify any connected with the Document ID associated with the documents leaked to *The Guardian*.

Mr. Bell's Social Media Presence

The investigators scrutinized Mr. Bell's social media presence. They began by conducting a WestLaw PeopleSearch to uncover any accounts which might be recognized as associated with him: that search revealed nothing. Mr. Bell provided access to his Facebook and Twitter accounts.

Mr. Bell's Twitter history consisted of less than 20 "tweets." All were either "re-tweets" of images or content authored by others, or links to articles (*e.g.*, in *The Economist*, or *The Wisconsin State Journal*). The majority of the content was related to veterans' issues, but there were a few related to the current situation (*e.g.*, a link to an article on `madison.com` covering Mr. Bell's call for an investigation into his own conduct).

In terms of Twitter accounts that Mr. Bell follows, the majority are political in nature, but this is unsurprising given Mr. Bell's profession, and the accounts hail from both sides of the aisle. For example, Mr. Bell follows the ethics commissions of several other state and local governments, individuals such as Scott Fitzgerald and Tammy Baldwin, and political parties: the GOP, the Democratic Party of Wisconsin, and the Libertarian Party of Wisconsin. Also included are an array of news outlets and veterans' interest groups.

It would not be possible to deduce any partisan political alignment from Mr. Bell's Twitter activities, other than an interest in veterans' issues.

Mr. Bell's use of Facebook is more extensive than his use of Twitter, and his account history goes back to 2005. However, despite a greater volume of usage, the issue-centric content Mr. Bell favors on Facebook is roughly similar to what he consumes and shares on Twitter – largely related to veterans' issues. The major difference is that on Facebook Mr. Bell also shares photos of his dog and family. In short, Mr. Bell makes absolutely typical usage of the social media platform. Other than a strong interest in veterans' and military issues, no political bent is discernible.

FINDINGS

Having reviewed the relevant documents and considered the statements of those with relevant and material knowledge, we find the following:

1. Brian Bell acted in a proper manner as to his cooperation with the DOJ investigation and in his handling of the John Doe materials.
2. Brian Bell was directed by the Wisconsin Ethics Commissioners to be represented by an attorney during his interview by the DOJ investigators.
3. There is not a scintilla of evidence that Brian Bell has ever performed any of his governmental duties in a partisan manner.

Respectfully submitted this 22d day of January, 2018.

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