



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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December 12, 2017

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

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,

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

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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

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