STATE OF WISCONSIN **BEFORE THE JOHN DOE JUDGE**

In The Matter Of A John Doe Proceeding

Columbia County Case No. 13JD11
Dane County Case No. 13JD9
Dodge County Case No. 13JD6
Iowa County Case No. 13JD1
Milwaukee County Case No. 13JD23

Related Cases: 2013AP2504-W through 2013AP2508-W, 2014AP296-OA & 2014AP417-W through 2014AP421-W

REPORT OF THE ATTORNEY GENERAL CONCERNING VIOLATIONS OF THE JOHN DOE SECRECY ORDERS

UNSEALED

By Order Of The John Doe Judge Dated: 12/6/17

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I. Introduction

On September 12, 2016, *The Guardian* newspaper published an online article by Ed Pilkington entitled, "Because Scott Walker Asked."[1] In writing the article, Pilkington claimed that he relied upon "[l]eaked court documents from 'John Doe investigation' in Wisconsin." The article further explained as follows: "*The Guardian* has obtained 1,500 pages of leaked documents assembled by Wisconsin prosecutors in the course of their John Doe—i.e. anonymous—investigation into alleged campaign finance violations in Wisconsin. They include legal filings held under seal and email exchanges between Scott Walker, his team of advisers, and rightwing lobby groups who support the governor and his anti-union agenda." As part of this article, *The Guardian* published a link to these leaked documents posted on www.documentcloud.org.[2] Following the publication of this article, the Wisconsin Legislature authorized, and the Attorney General directed, a criminal investigation to determine the source of this illegal leak.

The purpose of this report is to describe the Wisconsin Department of Justice's (DOJ) investigation, findings, and conclusions related to the *Guardian* leak. Although no criminal charges may be brought at this time for reasons explained in this report, DOJ recommends that the John Doe Judge take the following two actions in response to DOJ's investigation and findings: (1) refer former Government Accountability

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[1] *Available at* https://www.theguardian.com/us-news/ng-interactive/2016/sep/14/john-doe-files-scott-walker-corporate-cash-american-politics.

[2] *Available at* https://www.documentcloud.org/public/search/projectid:%2029102-the-john-doe-files.

Board attorney Shane Falk for discipline to the Wisconsin Court System's Office of Lawyer Regulation and (2) initiate contempt proceedings against John Doe Special Prosecutor Francis Schmitz and former GAB employees who grossly mishandled secret John Doe evidence and related materials and then failed to turn over all evidence as ordered by the Wisconsin Supreme Court.

As this report describes in detail, the systemic and pervasive mishandling of John Doe evidence likely resulted in circumstances allowing the *Guardian* leak in the first place, and now prevents prosecutors from proving criminal liability beyond a reasonable doubt. Moreover, DOJ is deeply concerned by what appears to have been the weaponization of GAB by partisans in furtherance of political goals, which permitted the vast collection of highly personal information from dozens of Wisconsin Republicans without even taking modest steps to secure this information.

In the following pages, this report will explain how the former GAB never fully divested itself of evidence from the John Doe investigations and how former GAB employees and current employees of the Wisconsin Ethics Commission (Ethics) left sensitive evidence unsecured in the former GAB office space and on former GAB computer systems. This report also describes how DOJ investigators, in searching for the leaked documents, discovered what this report calls "John Doe III," a previously unknown and secret investigation into a broad range of Wisconsin Republicans. John Doe III reached far beyond John Doe II's original (and unsubstantiated) allegation centering on unlawful "coordination" during Governor Walker's 2010 election and 2012 recall election. As explained more thoroughly below, this secret investigation

collected hundreds of thousands of private emails from dozens of Wisconsin Republicans (and at least two national conservative leaders, Ed Gillespie and Leonard Leo). In searching for the leaked documents and the leaker, DOJ investigators found over 500,000 of these John Doe III emails in the basement of the former GAB in two unsecured boxes labeled "Shane Falk." Moreover, for reasons that perhaps may never be fully explained, GAB obtained and then held thousands of private emails from Wisconsin Republicans in several folders on their servers marked "Opposition Research."

This report documents these new revelations and provides more detail as to other more well-known incidents involving the former GAB. And even though a criminal case cannot be filed at this time against the person or persons responsible for the leak, this report may serve as a guide to remedy the documented violations of court orders and investigative overreach by the former GAB. The remedy may include, as requested by this report, contempt proceedings and lawyer discipline, but may also require further action on the part of the Wisconsin Supreme Court or the Legislature.

II. Background

A. The Initiation Of John Doe II

Wisconsin law provides for a unique, secret investigation called a "John Doe," which is overseen by a John Doe Judge with the assistance of a district attorney. These criminal investigations are used to gather evidence and testimony in an effort to build a case for the filing of public criminal charges against one or more suspects.

This report is about one John Doe investigation (called "John Doe I") initiated in the spring of 2010 that ultimately triggered a second John Doe proceeding (called "John Doe II"). *See generally State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 85, ¶¶ 14–40, 363 Wis. 2d 1, 866 N.W.2d 165; *State ex rel. Three Unnamed Petitioners v. Peterson*, 2015 WI 103, 365 Wis. 2d 351, 875 N.W.2d 49.

In the spring of 2010, then-Milwaukee County Executive Scott Walker requested an investigation into a report of stolen public funds. The Milwaukee County District Attorney's Office agreed and petitioned a judge to initiate a John Doe proceeding. This investigation, John Doe I, ultimately resulted in six convictions. *State v. Russell*, No. 12-CF-053 (Milwaukee Cty., Wis., Jan. 5, 2012) (stealing from a veterans' charity); *State v. Rindfleisch*, No. 12-CF-438 (Milwaukee Cty., Wis., Jan. 26, 2012) (misconduct in office for fundraising on county time); *State v. Wink*, No. 12-CM-579 (Milwaukee Cty., Wis., Jan. 26, 2012) (political solicitation while on county time); *State v. Kavanaugh*, No. 12-CF-052 (Milwaukee Cty., Wis., Jan. 5, 2012) (felony theft from veterans' charity); *State v. Gardner*, No. 11-CF-137 (Washington Cty., Wis., Apr. 11, 2011) (unlawful political contributions); *State v. Pierick*, No. 12-CF-022 (Waukesha Cty., Wis., Jan. 5, 2012) (contributing to the delinquency of a minor).

Within a few days of Governor Walker's recall election victory on June 5, 2012, however, the Milwaukee County District Attorney asked Reserve Judge Neal Nettesheim to expand the scope of John Doe I from the original theft investigation into an investigation into Governor Walker's campaign-finance practices. Reserve Judge Nettesheim granted this request on June 25, 2012.

After this expansion of John Doe I from an investigation *requested by* Walker into an investigation *targeting* Walker, representatives from the Milwaukee District Attorney's Office consulted with GAB staff to evaluate these alleged campaign-finance violations. At the time, GAB was charged with regulating campaign-finance-related activities, including campaign fundraising and expenditures in Wisconsin, and therefore possessed the expertise to advise the Milwaukee DA on the legality of the Governor's campaign-finance activity.

On August 8, 2012, ADA David Robles sent GAB Attorney Jonathan Becker a prosecution memo outlining what he erroneously believed to be campaign-finance violations discovered during John Doe I. On August 9, Attorney Becker met with representatives from the Milwaukee DA's Office and reviewed a slide deck detailing the evidence. Based on this information, Attorney Becker erroneously advised the Milwaukee DA that he believed a violation of campaign-finance laws had occurred.

Based at least in part on this evaluation by GAB, the Milwaukee DA's Office decided to start a new John Doe proceeding. On August 10, 2012, Reserve Judge Nettesheim authorized the Milwaukee DA's Office to use and disclose information collected during the expanded John Doe I proceeding to form the basis for the new John Doe proceeding, John Doe II.

On August 23, 2012, the Chief Judge of the First Judicial District, Jeffrey Kremer, assigned Reserve Judge Barbara Kluka to the John Doe II investigation. This assignment was approved by then–Chief Justice Shirley Abrahamson on September 5, 2012.

On September 5, 2012, Reserve Judge Barbara Kluka formally granted the request to initiate John Doe II. Following this decision, the Milwaukee DA's Office began to execute search warrants and subpoenas to collect emails and bank records of various targets of the John Doe II investigation. GAB was actively involved in the investigation, directed parts of the investigation, and was routinely kept apprised of its progress, despite GAB's later statements to the Legislature that it "does not conduct John Doe investigations." *See* Government Accountability Board, Letter to Senator David Craig (Nov. 20, 2015).

Approximately nine months into the John Doe II investigation, on June 26, 2013, four district attorneys met with DA Chisholm at the offices of GAB to discuss the John Doe II investigation. These four district attorneys agreed to join with DA Chisholm to investigate alleged campaign-finance violations by Governor Walker's campaign: Columbia County District Attorney Jane Kohlwey signed a John Doe petition on July 22, 2013, followed by Iowa County District Attorney Larry Nelson on July 25, 2013, Dodge County District Attorney Kurt Klomberg on July 26, 2013, and Dane County District Attorney Ismael Ozanne on August 20, 2013. The petitions signed by each district attorney specifically targeted persons involved with Governor Walker's campaign who resided in that district attorney's county.

On August 22, 2013, DAs Chisholm, Kohlwey, Klomberg, Nelson, and Ozanne signed and sent a letter to Reserve Judge Kluka asking for the assistance of Attorney Francis Schmitz. Attorney Schmitz was appointed to act as special prosecutor on August 23, 2013. GAB agreed to provide staff and funds to assist in the investigation.

B. John Doe II Secrecy Orders

The prosecution team petitioned the court to keep all information relating to the John Doe II investigation secret. They argued that secrecy was necessary to render witnesses more free in their disclosures, to prevent defendants from hiding, tampering with, or destroying evidence, and to keep testimony that may be mistaken, untrue, or irrelevant from the public. The secrecy order was amended at least 26 times.

Although secrecy was deemed necessary to the prosecution, the prosecution drafted very broad exemptions to the secrecy orders. From the very start of John Doe II, access to secret materials was not reasonably limited to a finite group of individuals, as is typical in a John Doe proceeding or grand jury investigation. The chart below identifies all of the individuals (and groups of individuals) who were authorized to review and handle secret materials under the John Doe Judge's orders:

Secrecy Order	**Covered Persons**[3]
Order dated September 5, 2012	DA John Chisholm and "all Assistant District Attorneys, support staff, and investigative staff of the Milwaukee County District Attorney's Office"
First Addendum dated Sept. 5, 2012	GAB Board Members (Judges) David Deininger, Gordon Myse, Michael J. Brennan,[4] Thomas Barland, Thomas Cane, and Gerald Nichol

[3] No DOJ employees listed in these secrecy orders participated in this investigation into the *Guardian* leak, and all evidence and other materials were segregated on a protected DOJ server.

[4] Not to be confused with Michael B. Brennan, who has been nominated to the U.S. Court of Appeals for the Seventh Circuit.

	GAB Staff Director Kevin Kennedy, Administrator Jonathan Becker, Staff Counsel Shane Falk, Staff Counsel Michael Haas, Investigator Douglas Haag, and Investigator Dean Nickel. The order also allowed access to "support staff and other professional staff that may be designated by the above-named GAB staff"
Second Addendum dated Jan. 15, 2013	District Attorney Ismael Ozanne, ADA Matt Moser, and "such other staff as specifically authorized by the Milwaukee County District Attorney's Office" Attorney General J.B. Van Hollen and Assistant Attorney General Roy Korte
"Amended" Second Addendum dated Jan. 24, 2013	Deputy Attorney General Kevin St. John
Third Addendum dated June 15, 2013	Columbia County District Attorney Jane Kohlwey, Dodge County District Attorney Kurt Klomberg, and Iowa County District Attorney Larry Nelson
Fourth Addendum dated June 28, 2013	Columbia County Judge Daniel George, Dodge County Judge John Storck, Iowa County Judge William Dyke, Dane County Judge William Foust
Fifth Addendum dated June 28, 2013	John Roethke, Paul Schwarzenbart, Robert Mawdsley, Jon Axelrod, Robert Krohn, "for the purposes of determining if they would serve as special prosecutor"
Sixth Addendum dated June 28, 2013	Vince Biskupic, "for the purposes of determining if he would serve as special prosecutor"
Seventh Addendum dated June 28, 2013	Patricia Barrett and Brian Butler "for the purposes of determining if they would serve as special prosecutor"
Eighth Addendum dated July 18, 2013	Judge Janine Geske, Attorney Beth Blackwood
Ninth Addendum dated July 18, 2013	Dodge County ADA Robert Barrington and Iowa County legal assistant Jennifer Ramsden

Tenth Addendum dated July 18, 2013	Francis Schmitz
Eleventh Addendum dated July 25, 2013	Timothy Vocke of GAB, and Digital Intelligence employees Matthew Stippich, Douglas Elrick, and Tracey Porter
Secrecy Order dated Aug. 21, 2013	Columbia County Legal Secretary Ruth Kaczmarek
Secrecy Order dated Aug. 21, 2013	Dane County Deputy Michelle Viste, Deputy Michael Walsh, Deputy Tom Fallon, and Investigators Randy Burmeister, Steve Greiber, and Linda Kohlmeyer-Searls
Secrecy Order dated Aug. 21, 2013	Dodge County Special Prosecutor Robert Barrington
Secrecy Order dated Aug. 21, 2013	Iowa County Legal Assistant Jennifer Ramsden
Addendum to the Secrecy Order dated Oct. 9, 2013	Dodge County Sheriff Patricia Ninmann and "her designated Deputies"
Addendum to the Secrecy Order dated Oct. 9, 2013	Dane County Sheriff David Mahoney and "his designated Deputies"
Addendum to the Secrecy Order dated Oct. 9, 2013	Columbus Chief of Police Daniel Meister and "his designated Deputies"
Addendum to the Secrecy Order dated Oct. 9, 2013	GAB Investigators William Steckel and Thomas Marquardt
Addendum dated Nov. 12, 2013	Harold Froehlich and Elsa Lamelas of GAB
Addendum dated Nov. 12, 2013	Elizabeth Blackwood

Addendum dated Nov. 30, 2013	AAG David Rice
Addendum dated March 3, 2014	James Sempf
Order for Qualified Use dated July 1, 2014	Tom Brush and Paul Schwarzenbart "for purposes related to defense of the civil lawsuit [. . .], federal lawsuit [. . .] and appeals, and any other related papers"

In total, the secrecy orders authorized at least 60 specific individuals to review and handle secret information. In addition to these specific individuals, the various orders also authorized access for potentially hundreds of other individuals including (1) all Milwaukee County DA's Office staff assigned to the case, (2) support staff and other professional staff designated by GAB, and (3) any staff members in the Dane County DA's Office "specifically authorized by the Milwaukee County District Attorney's Office." Because of the broad scope of these secrecy orders, the exact names of all individuals who had access to the secret documents under the secrecy orders was never documented and thus is unknown. Email records show that many persons whose names do not specifically appear on the secrecy orders accessed confidential material including current Elections Commission Counsel Nathan Judnic, former GAB employee Molly Nagappala, and Milwaukee District Attorney's Office Investigator Robert Stelter.

C. John Doe II Evidence Collection

By the summer of 2013, the Milwaukee District Attorney's Office already had a massive amount of digital evidence in its possession, including 2011 and 2012 bank

records from at least five private organizations that supported Governor Walker, approximately 1.5 million emails from private citizens and organizations, and call records from over 80 private cell phones. The evidence consisted of information collected from the expanded John Doe I proceeding as well as John Doe II emails and bank records collected during the fall and winter of 2012.

In October 2013, the prosecution team sought additional evidence. The prosecution team obtained additional "wide-ranging subpoenas and search warrants for 29 organizations and individuals, seeking millions of documents that had been created over a period of several years." *Two Unnamed Petitioners,* 363 Wis. 2d 1, ¶ 2. The Wisconsin Supreme Court, referring to these additional subpoenas and warrants issued in October 2013, stated that the "breadth of the documents gathered pursuant to subpoenas and seized pursuant to search warrants is amazing." *Id.* ¶ 29. The items seized included "business papers, computer equipment, phones, and other devices, while [the] targets were restrained under police supervision and denied the ability to contact their attorneys." *Id.* These documents included "virtually every document possessed by the [targets] relating to every aspect of their lives, both personal and professional, over a five-year span (from 2009 to 2013)." *Id.* The subpoenas and search warrants were executed in or about October 2013, which led to the most infamous incident of the entire John Doe II proceeding: "The [personal residence] search warrants were executed at approximately 6:00 a.m. on October 3, 2013, in pre-dawn, armed, paramilitary-style raids in which bright floodlights were used to illuminate the targets' homes." *Two Unnamed Petitioners*, 363 Wis. 2d 1, ¶ 28.

To manage the vast number of documents in their possession, the prosecution team purchased access to an e-discovery software program called Relativity. The seized documents were turned over to a document-management company named Digital Intelligence, which uploaded the documents to a cloud-based server. The Relativity software allowed members of the prosecution team to access, download, and organize all the documents by remote/online access. As of the date of this report, it appears that Digital Intelligence handled the documents in a professional and secure manner and DOJ has no reason to believe that the leak emanated from that company.

The prosecution team also collected a vast amount of bank records belonging to the targets that were not placed in the Relativity database. These records included bank statements, deposits, and canceled checks. Confidential bank records were submitted to the prosecution team in a digital format. The information was duplicated, placed on portable drives, and distributed to various staff members at GAB for examination.

Shockingly, despite the sensitivity of the information collected and the fact that the investigation targeted Governor Walker, there was no log kept of what was received by GAB staff, how many copies were made, to whom these records were given, or where these records were stored after the John Doe II investigation was closed. Accordingly, DOJ has no way of knowing or discovering the scope of disclosure of these intimate financial details belonging to the targets of the investigation, and given the subsequent leak that led to this report in the first instance, DOJ cannot

assure any target of John Doe II that information illegally seized from them will not be published on the internet or by *The Guardian* at some future date. Nor can DOJ assure any person whose information was gathered that they will not suffer from identity theft or face other adverse consequences as a result of the irresponsible way that GAB handled personal information.

D. John Doe II's Organization

The John Doe II core prosecution team included the special prosecutor Francis Schmitz, Milwaukee ADAs David Robles and Bruce Landgraf, Milwaukee DA investigator Robert Stelter, GAB attorneys Shane Falk, Kevin Kennedy, Jonathan Becker, and Nathan Judnic, GAB contracted investigators Doug Haag and Dean Nickel, and GAB staff employee Molly Nagappala. Then-GAB Staff Counsel Mike Haas was involved with reviewing and editing court filings. GAB board members at the time were Judges David Deininger, Gordon Myse, Michael J. Brennan, Thomas Barland, Thomas Cane, and Gerald Nichol. GAB Board members and DA Chisholm were kept advised of the investigation and reviewed documents that had been filed with the court, but neither the GAB Board nor DA Chisholm had possession of or access to the majority of John Doe II documents that were leaked to *The Guardian*.

Sometime in 2013, the core prosecution team decided to communicate with each other through Gmail accounts rather than use the secure Department of Administration email system. The prosecution team feared that DOA, as part of

Governor Walker's Administration, could infiltrate the John Doe II investigation.[5] Seized documents, court pleadings, and other documents (including the leaked documents) covered by the secrecy orders, were shared over Gmail between members of the core prosecution team. Some prosecution team members shared passwords, or otherwise allowed access to each other's Gmail accounts. Oddly, the prosecution team did not employ Gmail's 2-step verification or any other basic security provisions. These cloud-based Gmail accounts were not always accessed from secure locations. The evidence collected shows that the Gmail accounts were accessed from locations other than secure work sites including home addresses, coffee shops, and airports.

The core prosecution team also decided that it would exchange documents, including several of the documents later leaked to *The Guardian*, with all members of the prosecution team via a cloud-based "Dropbox" account. Dropbox software is a free file-hosting service that allows a user to place a file in a designated folder located on the user's computer. The file is automatically uploaded to Dropbox's cloud-based service and can be accessed via the internet at any location and at any time by users who know the address and password to the Dropbox. The address and password to the Dropbox account were shared with the special prosecutor, the staff of GAB, Milwaukee DA, Iowa DA, Dane DA, Dodge DA, and Columbia DA. Dangerously, the same password was used by all parties. As a result, anyone with knowledge of the

[5] Capitol Police, part of DOA, also did not have physical access to GAB office space.

web address of the Dropbox account and the password could access many of the secret documents.

Because of the vast scope of materials collected, members of the core prosecution team were assigned specific tasks. All of the attorneys on the core team, including Schmitz, Landgraf, Robles, Falk, Judnic, Haas, Becker, and Kennedy were involved in the drafting or editing of court documents. Each court document that was filed was circulated via Gmail to all attorneys. The attorneys added their comments or revised the documents as they deemed appropriate.

The special prosecutor oversaw the entire operation. ADAs Landgraf, Robles, and DA investigator Stelter oversaw the execution of the search warrants. GAB staff, including Falk, Judnic, Investigator Haag, Investigator Nickel, DA investigator Steckel, and GAB staff employee Molly Nagappala were assigned to examine the seized emails (which were part of the Relativity database), the seized bank records, and to extract items that were helpful to the prosecutors' theory of the case. Falk and Judnic prepared the search terms and training documents that were to be used to conduct the search of the Relativity database.

The role of each party is important to determine who had access to the leaked documents. As will be discussed later, selected emails from the Relativity database were leaked to *The Guardian*. The examination of the Relativity database was done under the supervision of, and at the direction of, the staff of the former GAB, meaning that ADA Landgraf, ADA Robles, and Special Prosecutor Schmitz did not access, possess, or examine emails that were subsequently leaked from this database.

E. John Doe II's Conclusion

Until October 2013, it is likely that the targets of the investigation did not know they were under investigation. The bank records and emails in the possession of the core prosecution team were obtained in secret before October 2013. From press reports and court filings, it appears as though the John Doe II targets were unaware of what documents were obtained by the prosecutors.

With the execution of the personal residence search warrants and the issuance of 29 subpoenas and other search warrants on October 3, 2013, the targets of the John Doe became aware of the investigation. About two weeks later, on October 17 and 25, 2013, some of the John Doe targets filed motions with the John Doe Judge to quash the subpoenas. *Two Unnamed Petitioners,* 363 Wis. 2d 1, ¶ 30. On October 30, 2013, Judge Kluka, then John Doe Judge, disqualified herself for unspecified reasons. *Id.* ¶31. Then–Chief Justice Shirley Abrahamson appointed Reserve Judge Peterson to oversee John Doe II on November 4, 2013.

Shortly thereafter, on January 10, 2014, Judge Peterson quashed the subpoenas and search warrants, finding that the targets had not "committed any violations of the campaign finance laws." On January 27, 2014, Judge Peterson stayed his order pending appeal, but specifically ordered that property and evidence seized should not be examined by the investigation team. This court order was not followed by all members of the investigation team, as more fully discussed below.

Judge Peterson's January 10, 2014, order effectively ended the John Doe II investigation. The active part of the John Doe II investigation lasted just over 16

months. It started on September 5, 2012, by Reserve Judge Kluka and was ended by Reserve Judge Gregory Peterson on January 10, 2014. After John Doe II concluded, the prosecutors filed a series of appeals, supervisory writs, and original actions before the court of appeals and the Wisconsin Supreme Court. The Wisconsin Supreme Court formally ended the investigation on July 16, 2015. John Doe II did not result in the filing of any criminal charges or civil complaints.

F. The Order To Surrender John Doe Documents

After post-opinion motions, the Wisconsin Supreme Court ordered that all members of the prosecution team completely divest themselves of John Doe II documents. Relevant to this report, the Supreme Court specifically ordered the John Doe II special prosecutor, Francis Schmitz, to take the following actions:

> **Timing**: "Unless otherwise noted, all of these obligations must be completed within 30 days following the completion of proceedings in the U.S. Supreme Court on any petition for certiorari review."
>
> **Gather All Evidence**. "We require that Attorney Schmitz gather all documents and copies thereof (whether in hard copy or in digital form) and all electronic data and copies thereof obtained as a result of the John Doe II investigation from all persons who worked for or were associated with him and the prosecution team in the John Doe proceedings/investigations."
>
> **Prepare An Index**. "All of the documents and electronic data described above and all of the copies of such documents and electronic data shall be described on a written index."
>
> **File All Evidence With Court**. "We require that all of the documents and electronic data (and all copies thereof) be submitted under seal to the clerk of this court. Once this submission has occurred, no document or piece of electronic data (or any copies thereof) that was gathered in the course of the John Doe II investigation or that was gathered in the John Doe I investigation but authorized to be used in the John Doe II

> investigation should remain in the possession of Attorney Schmitz, any member of the prosecution team, or anyone who was authorized by the John Doe judge to have access to documents, materials, and electronic data gathered in the course of the John Doe II investigation. The prosecution team should be completely divested of all such documents, materials, and electronic data. The clerk shall not file them as part of the appellate record in this case, but shall merely maintain them in a sealed and secure manner pending further order of the court."
>
> **File An Index Of Evidence**. "At the time that the documents and electronic data are submitted to the clerk of this court, Attorney Schmitz shall file with the clerk of this court and with the John Doe judge the index of the documents and electronic data described above."
>
> **File An Affidavit**. "In addition to filing the index, Attorney Schmitz shall file an affidavit with both this court and the John Doe judge in which he avers that, to the best of his knowledge, he has collected and submitted to the clerk of this court all originals and all copies of documents and electronic data that were obtained in the course of the John Doe II investigation and that were obtained during the John Doe I investigation but were authorized to be used in the John Doe II investigation. The affidavit shall also include an averment that Attorney Schmitz has received written statements from all members of the prosecution team and all individuals who were granted access to John Doe II documents and electronic data that those persons have turned over to him all such documents and electronic data within their possession and that they no longer possess any such documents or electronic data (or copies thereof)."

Three Unnamed Petitioners, 365 Wis. 2d 351, ¶ 29. Although the order made some exceptions for attorney work product, *id.* nn.10–11, the thrust of this order was that the prosecution team should be "completely divested" of all John Doe II materials, including those John Doe I materials that were relevant to the John Doe II proceeding.

After this final order by the Wisconsin Supreme Court, the prosecution team attempted to take the case to the United States Supreme Court.[6] After two extensions, the prosecution team filed its petition for certiorari on April 27, 2016. The Supreme Court originally considered the case, in part, at a conference on May 19, 2016, but then on July 6, 2016, the Court set the matter for consideration on September 26, 2016. The Court ultimately denied the petition for certiorari on October 3, 2016.

G. Responses To The John Doe II Investigation

The fallout from John Doe II was substantial. The Legislature, for its part, disbanded GAB, breaking it into two commissions: the Wisconsin Ethics Commission (Ethics) and the Wisconsin Elections Commission (Elections). *See* 2015 Wisconsin Act 388 (effective June 30, 2016). The Legislature also completed an overhaul of Chapter 11, Wisconsin's campaign finance law, confirming the legality of coordinated expenditures and exempting issue advocacy from regulation. *See* 2015 Wisconsin Act 117. Finally, the Legislature restricted the use of John Doe proceedings in Wisconsin, primarily limiting their use to certain enumerated drug crimes and violent felonies. *See* 2015 Wisconsin Act 64.

[6] Although DA John Chisholm was not a party to the Wisconsin Supreme Court litigation, and the Wisconsin Statutes provide no authority for a district attorney to represent, speak for, and bind the State of Wisconsin at the U.S. Supreme Court, on January 25, 2016, the Court granted Chisholm's request to intervene for the purposes of filing a petition for certiorari at the U.S. Supreme Court.

The John Doe II investigation also spawned lawsuits by the targets, some of which resulted in substantial discovery into the practices of the former GAB. *See, e.g., Eric O'Keefe v. G.A.B. & Kevin Kennedy,* No. 14cv1139 (Waukesha County); *Eric O'Keefe and Wisconsin Club for Growth v. John Chisholm and Francis Schmitz*, 14-1822, 14-1888, 14-1899, 14-2006, 14-2012, 14-2023, 14-2585 (E.D. Wis.); *Archer v. Chisholm et al.*, 15-cv-0922 (E.D. Wis.); *John K. MacIver Institute for Public Policy v. Francis Schmitz, John Chisholm, Bruce Landgraf, David Robles, Kevin Kennedy, Shane Falk, and Jonathan Becker*, 3:16-cv-00539 (W.D. Wis.).

H. The Guardian Leak

Just 11 days before the U.S. Supreme Court was set to decide the prosecution team's petition for certiorari in September 2016, *The Guardian* published the leaked documents. Although the paper claimed to possess "over 1,500 pages" of leaked documents from the John Doe investigation, the paper published just 30 individual PDF documents, comprising 1,392 pages (of which 200 are duplicates), on www.documentcloud.com. Below is a chart identifying the leaked documents, with significant documents highlighted that will be discussed later in this report.

No.	Guardian File Name	Description	Date	Pages
1.	2012-08-14-Exhibits-01-100-PT2	John Doe II search warrant exhibits 50–100	8/10/12	133
2.	2012-08-14-Exhibits-01-100-PT1	John Doe II search warrant exhibits 1–49.3	8/10/12	108

3.	2013-09-16-Exhibits-41	John Doe II subpoena exhibits 1–41 filed in John Doe II	8/10/12	137
4.	Ad-Coordination	Selected Relativity Files	3/20/14	59
5.	Fundraising-Coordination	Selected Relativity Files	3/20/14	35
6.	Prosser	Selected Relativity Files	3/20/14	18
7.	Microtargeting	Four pages of selected Relativity files; combined with exhibits from John Doe II search warrant	Est. 3/14	39
8.	Strategy-Coordination	Selected Relativity Files	3/20/14	62
9.	WMC-Motion-Quash	Court filing; WMC motion to quash; cover letter copied to Francis Schmitz	10/25/13	8
10.	WICFG-Quash-EXC	Court filing; Exhibit C to Club for Growth Motion to Quash; Copies of filed John Doe Subpoenas from October 1, 2013	10/25/13	32
11.	WICFG-Quash-EXB	Court filing; Exhibit B to Club for Growth Motion to Quash; Copy of *Wisconsin Right to Life v. Vocke* decision from Seventh Circuit	10/25/13	27
12.	WICFG-Quash-Aff	Court filing; Affidavit from Club for Growth Motion to Quash	10/25/13	55
13.	WICFG-Motion-Suspend	Court filing; Club for Growth motion to suspend;	10/25/13	16

		cover letter copied to Francis Schmitz		
14.	WICFG-Motion-Quash	Court filing; Club for Growth motion to quash; cover letter copied to Francis Schmitz	10/25/13	23
15.	FOSW-Notice-Appear	Court filings; Friends of Scott Walker Notice of Appearance directed to Francis Schmitz; Memo in support of motion to quash	10/17/13	26
16.	CFSA-Motion-Suspend	Court filing; Citizens for Strong America motion to suspend	10/25/13	15
17.	CFSA-Motion-Quash	Court filing; Cover letter to Francis Schmitz; Citizens for Strong America motion to quash	10/25/13	21
18.	CFSA-Exhibit-3	Court filing; Exhibit A to motion to quash Wisconsin Right to Life v. Vocke, Seventh Circuit decision	10/25/13	27
19.	2013-Motion-Response	Unsigned, unfiled, draft brief by Francis Schmitz; handwritten note of "None" on last page	12/2013	30
20.	2014-02-21-Schmitz-Memo	Signed brief by Francis Schmitz; Wisconsin Court of Appeals; not stamped as filed	2/21/14	33
21.	2014-2-21-Schmitz-Affidavit	Signed affidavit by Francis Schmitz; Wisconsin Court of Appeals; not stamped as filed	2/25/14	105

22.	2013-12-20-Schmitz-Respo	Signed brief by Francis Schmitz; Wisconsin Court of Appeals; not stamped as filed	12/20/13	47
23.	2013-12-19-Chisholm-Aff	Signed affidavit by John Chisholm; Wisconsin Court of Appeals; not stamped as filed	12/19/13	14
24.	2013-10-01-Stelter-Aff	Filed affidavit of Bob Stelter; Signed and stamped as received by John Doe court	10/1/13	34
25.	2013-08-29-Schmitz-Affidavit	Unsigned, unfiled, affidavit of Francis Schmitz with attachments	12/2013	149
26.	Key-Misc-Set-Two	Selected documents used for Relativity Training	2013	8
27.	Key-Misc-Set-One	Selected documents used for Relativity Training	2013	16
28.	Calendars	Selected Relativity Files	3/20/14	66
29.	Corporate-Checks-Sanitized	Copies of checks, likely drawn from Relativity	3/2014	9
30.	WMC-Motion-Quash2	Filed, signed WMC motion to quash; includes highlighted portions	10/25/13	40
Total Pages				**1,392**

As seen from the chart above, the leaked documents comprise three categories of documents: (1) court filings (pleadings, motions, briefs actually filed with the Wisconsin courts, copied via cover letter to the prosecution team); (2) drafts of court filings only in the possession of the prosecution team; and (3) selected pieces of

evidence prepared and kept only by certain members of the prosecution team, as explained more fully below.

I. Special Prosecutor's Submission To The Wisconsin Supreme Court

On October 3, 2016, the U.S. Supreme Court denied the prosecutors' petition for certiorari, ending any chance that the John Doe II investigation would be re-opened. This denial triggered the special prosecutor's obligation to file under seal all evidence as required by the Wisconsin Supreme Court within 30 days.

On November 3, 2016, Francis Schmitz delivered to the Wisconsin Supreme Court the following items:

Description	**Source**	**Contents**
Box 1	Milwaukee DA	Evidence items 1-38; documents and electronic data
Box 2	Milwaukee DA	Evidence items 47-68; documents and electronic data
Box 3	Milwaukee DA	Evidence item 69; documents and electronic data
Box 4	Milwaukee DA	Evidence item 71; documents and electronic data
Box 5	Milwaukee DA	Evidence items 72–94; documents and electronic data
Box 6	Milwaukee DA	Evidence items 95–132; documents and electronic data
Box 7 (Pelican Case)	Milwaukee DA & Digital Intelligence	Three hard drives; electronic data from premises warrants
Box A	Milwaukee DA	ADA Robles hard copy documents

Box B	Milwaukee DA	ADA Robles hard copy documents
Box C	Milwaukee DA	ADA Robles hard copy documents
Box D	Digital Intelligence	Two hard drives; one DVD and one CD with PST mail files
Box E	GAB	Hard copy of John Doe attorney files; one portable hard drive, two disks
Box F	Francis Schmitz	Hard copy Schmitz files; 10 disks; 1 thumb drive with electronic data

Schmitz also filed an affidavit with the Wisconsin Supreme Court stating that "to the best of my knowledge, I have collected and submitted to the clerk of this court all [ ] copies of documents and electronic data that were obtained in the course of the John Doe II investigation, including that which was obtained during the John Doe I investigation and used in the John Doe II investigation." *Two Unnamed Petitioners*, Nos. 2014AP296, 2014AP417–421 (Nov. 2, 2016) (Affidavit Concerning John Doe II Evidence). Schmitz averred that he turned over "copies of evidentiary documents removed from work product materials and/or otherwise maintained in work product files as referenced in footnote 10 of the court's order."

Schmitz later filed with the Wisconsin Supreme Court a separate affidavit testifying that he personally returned "items of personal property" that remained in the custody of the prosecution team. Schmitz also sent 159 separate notices to "individuals and organizations whose documents or electronic data were obtained by the prosecution team in the course of the John Doe II investigation or were obtained

in the course of the John Doe I investigation and were authorized to be used in the John Doe II investigation." *Three Unnamed Petitioners*, 365 Wis. 2d 351, ¶ 37.

By the time of this final chapter of the John Doe II investigation, nearly all of the former GAB employees involved in the investigation had resigned. Shane Falk quit GAB in August 2014. Jonathan Becker retired on May 31, 2016. Kevin Kennedy retired on June 29, 2016. Molly Nagappala resigned from Ethics in March 2017. Of the original prosecution team, only Nathan Judnic and Mike Haas remain employed at the offices of the former GAB; they currently run the Elections Commission as staff attorney and administrator, respectively. Former GAB Attorney David Buerger, who did not participate in the John Doe II investigation, is General Counsel at Ethics.

III. Criminal Investigation

A. Authorization To Investigate

After the leak and the special prosecutor's filings with the Wisconsin Supreme Court, the John Doe II targets and others asked the John Doe Judge and the Wisconsin Supreme Court to investigate the leak. In response to several filings on the matter, on October 27, 2016, the Attorney General wrote to Chief Justice Patience Roggensack asking the Court to appoint a special master to investigate the leak. Citing established precedent, the letter explained that the Court had a "clear duty" to investigate any violations of a John Doe secrecy order. *See State v. O'Connor*, 77

Wis. 2d 261, 282, 252 N.W.2d 671 (1977).[7] The Attorney General explained that a court-appointed special master should investigate the breach of the secrecy orders as well as whether "the prosecution team has, in fact, been 'completely divested'" of the John Doe II evidence. Finally, the Attorney General offered "investigatory support and legal advice to any special master this Court chooses to appoint."

The Wisconsin Supreme Court rejected the Attorney General's offer of assistance and his suggestion that a special master be appointed. *See* Order, *Three Unnamed Petitioners v. Peterson,* Nos. 2013AP2504–2508-W (Nov. 21, 2016).

Instead, the Court issued a decision, among other things, denying the John Doe targets' requests for an investigation into the leaks. The Court noted that "the judicial branch has authority to protect and enforce its orders," but then declined to exercise this authority, stating instead that the "executive branch remains free, subject to the applicable laws governing that branch, to investigate and/or prosecute criminally individuals who may have unlawfully disclosed John Doe evidentiary materials in potential violation of criminal statutes, if they apply." Without elaborating as to why the Court would not exercise its "authority to protect and enforce its orders," the Court concluded, "[u]nder these circumstances, it is not for

[7] The Attorney General asked for this court-led investigation into the leak of court records because such an investigation could potentially require the execution of search warrants at sensitive locations: clerk's offices, judicial chambers, and court employee residences. A court-appointed special master would have avoided this potentially unnecessary conflict between two co-equal branches of government and the awkward situation of one judge issuing a warrant against the Clerk's office or judicial chambers. Through time-consuming efforts, DOJ successfully avoided this potential worrisome conflict.

this court to investigate or prosecute crimes, nor is it for this court to direct a co-equal branch of government to do so." Furthermore, the Court directed that all future matters regarding the John Doe II investigation be filed "with the John Doe II judge in the first instance."

Under the Wisconsin Statutes, DOJ has no independent authority to file charges in a case such as this. *See generally* Wis. Stat. ch. 165. In light of the Wisconsin Supreme Court's decision to decline the parties' request for an investigation into the leaks, on December 22, 2016, the Wisconsin Assembly invoked Wis. Stat. § 165.25(1m) and requested and authorized DOJ, the Attorney General, and his designees to represent the State in the investigation, prosecution, and defense of any cause or matter, civil or criminal, related to the violation of the secrecy orders.

The Attorney General accepted the authorization and directed an initial review of the leaked documents. Following this initial review, DOJ determined that the intentional leak of these documents was a criminal act. The Attorney General then assembled a team of experienced prosecutors, criminal analysts, and special agents to investigate the leak, determine if the prosecution team had in fact divested itself of all John Doe documents, and, if the evidence established proof beyond a reasonable doubt as to the identity of the person or persons who leaked the secret documents, to prosecute that individual or individuals.

On January 11, 2017, the then–John Doe Judge Dave Wambach signed an order authorizing access to John Doe II materials and amending the secrecy orders to allow specific DOJ prosecutors and investigators the authority to review secret

documents. The order specifically provided that "these individuals shall have access to all files, proceedings, and materials related to these [John Doe II] case numbers, whether sealed or not, and make use of such material in their investigation to the extent necessary for the performance of their duties as investigators and prosecutors." The order further provided that "[c]ourt clerks in possession of court files related to these above cases shall make these files available to the persons."

B. Review Of The Leaked Documents

As set forth above, the leaked documents comprise (1) court filings (pleadings, motions, and briefs actually filed with the Wisconsin courts, copied via cover letter to the prosecution team); (2) drafts of unfiled court documents (work in progress) only in the possession of the prosecution team and never previously made public; and (3) selected pieces of evidence prepared and kept only by staff members of the former GAB. This subsection explains these three categories.

1. The court filings

Final copies of secret court filings created between August 2013 and February 2014 were leaked to *The Guardian*. These particular documents are significant because of what they were intended to illustrate. There were many more documents filed in the court of appeals and Wisconsin Supreme Court in addition to these documents. The question DOJ considered was, why did someone leak these particular court filings, as opposed to other documents? In the assessment of the DOJ investigative team, the nature of the leaked court filings indicated an intent by

someone—likely a lawyer—to respond directly to the Wisconsin Supreme Court's decision in *Two Unnamed Petitioners*. Only someone with an intimate knowledge of the case and familiarity with the leaked documents would know which documents to leak that would correspond directly to the Wisconsin Supreme Court's opinion in *Two Unnamed Petitioners*. Below is a reconstruction of the fact section in *Two Unnamed Petitioners* along with an indication of which leaked document corresponds to each of the Wisconsin Supreme Court's statements:

> ¶15 John Doe I also triggered a second John Doe proceeding (John Doe II), the investigation at issue here. On August 10, 2012, Milwaukee County Assistant District Attorney David Robles filed a petition for the commencement of John Doe II in the Milwaukee County circuit court. **[Petition leaked DOJ 1114-1116]**.[8] This petition sought leave to investigate alleged campaign finance violations under Wis. Stat. Ch. 11, and requested a secrecy order to cover the investigation in anticipation that documents would be sought from the targeted individuals. In support of his request, Robles' petition referred to an affidavit by Investigator Robert Stelter. **[Affidavit leaked DOJ 1117-1126]**
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> ¶16 Stelter's affidavit indicates that emails obtained in response to a search warrant in John Doe I suggested that there may have been coordination of fundraising between campaign committees and other related, independent groups. **[Emails leaked DOJ 1128-1154]** Reserve Judge Neal Nettesheim, the John Doe I judge, authorized the use of the information obtained in John Doe I for the purpose of requesting the commencement of John Doe II. **[Order leaked DOJ 134]**
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> ¶17 On August 23, 2012, the Chief Judge of the First Judicial District, Jeffrey Kremers, assigned and forwarded the John Doe petition to Reserve Judge Kluka. **[Order leaked DOJ 1113]** On September 5, 2012, using a form titled "Application and Order for Specific Judicial Assignment," Director of State Courts John Voelker (with then-Chief Justice Shirley Abrahamson's name directly above) assigned Reserve Judge Kluka to preside over the John

[8] These numbers correspond to DOJ's bates-numbering system.

Doe proceeding in Milwaukee County. **[Assignment Leaked DOJ 1124]** That same day, Reserve Judge Kluka authorized the commencement of the John Doe proceeding and also granted the requested secrecy order. **[Order leaked DOJ 1253]**

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¶19 On December 13, 2012, Investigator Stelter filed another affidavit in support of a request for further search warrants and subpoenas. **[Affidavit leaked DOJ 1166-1211]** This affidavit provided additional details about the parties and how they operated in coordination with each other. The theory of the case, as put forward by the special prosecutor, is two-fold: (1) that the independent groups and the candidate committee worked "hand in glove" such that the independent groups became mere subcommittees of the candidate's committee, thus triggering reporting and disclosure requirements under Wis. Stat. §§ 11.10(4); and (2) that the coordinated issue advocacy amounted to an unlawful in-kind contribution to the candidate committee under Wis. Admin. Code § GAB 1.20. **[Exhibits upon which affidavit is based leaked DOJ 1-378]**

¶20 On January 18, 2013, Milwaukee County District Attorney John Chisholm met with then-Attorney General J.B. Van Hollen to discuss the ongoing investigation. District Attorney Chisholm sought to determine whether, given the statewide nature and gravity of the investigation, the Department of Justice ("DOJ") wished to become involved. On May 31, 2013, Attorney General Van Hollen sent District Attorney Chisholm a letter declining DOJ involvement in the investigation. Attorney General Van Hollen cited, among other things, potential conflicts of interest and the appearance of impropriety. **[Letter leaked DOJ 1067-1069]**

¶21 In July 2013, three more petitions to commence John Doe proceedings were filed: District Attorney Jane Kohlwey filed a petition in Columbia County circuit court on July 22, 2013; **[Petition leaked DOJ 1155-1157; 1212-1213]** District Attorney Larry Nelson filed a petition in Iowa County circuit court on July 25, 2013; **[Petition Leaked DOJ 1163-1165, 1218-1219]** and District Attorney Kurt Klomberg filed a petition in Dodge County circuit court on July 26, 2013. **[Petition leaked DOJ 1160-1162]**

¶22 On August 7, 2013, using a form titled "Application and Order for Specific Judicial Assignment," Director Voelker (with then-Chief Justice Shirley Abrahamson's name directly above) assigned Reserve Judge Kluka to preside over the Iowa County John Doe proceeding. **[Assignment leaked DOJ 1223]** On August 21, 2013, Reserve Judge Kluka entered an order

commencing the John Doe proceeding in Iowa County and also entered a secrecy order. **[Order leaked DOJ 1252]**

¶23 Also on August 7, 2013, using a form titled "Application and Order for Specific Judicial Assignment," Director Voelker (with then-Chief Justice Shirley Abrahamson's name directly above) assigned Reserve Judge Kluka to preside over the Dodge County John Doe proceeding**. [Assignment leaked DOJ 1222]** On August 21, 2013, Reserve Judge Kluka entered an order commencing the Dodge County John Doe proceeding and also entered a secrecy order. **[Order leaked DOJ 1251; 1216-1217]**

¶24 On August 14, 2013, using a form titled "Application and Order for Specific Judicial Assignment," Director Voelker (with then-Chief Justice Shirley Abrahamson's name directly above) assigned Reserve Judge Kluka to preside over the Columbia County John Doe proceeding. **[Assignment Leaked DOJ 1220]** On August 21, 2013, Reserve Judge Kluka entered an order commencing the John Doe proceeding and also entered a secrecy order. **[Order leaked 1249]**

¶25 On August 21, 2013, Dane County District Attorney Ismael Ozanne filed a petition in Dane County circuit court to commence a John Doe proceeding. **[Petition Leaked DOJ 1158-1159; 1214-1215]** On August 21, 2013, using a form titled "Application and Order for Specific Judicial Assignment," Director Voelker (with then-Chief Justice Shirley Abrahamson's name directly above) assigned Reserve Judge Kluka to preside over the Dane County John Doe proceeding**. [Assignment leaked DOJ 1221]** On August 21, 2013, Reserve Judge Kluka entered an order commencing the Dane County John Doe proceeding and also entered a secrecy order. **[Order leaked DOJ 1250]**

¶26 Also on August 21, 2013, the District Attorneys from all five counties sent a joint letter to Reserve Judge Kluka requesting the appointment of a special prosecutor to oversee the entire investigation. The District Attorneys encouraged Reserve Judge Kluka to appoint a special prosecutor on her own motion and in the exercise of her inherent authority. Their letter expressed concerns that it would be inefficient for five district attorneys to handle one investigation and that there may be a perception of bias given their partisan affiliations. The letter recommended Francis Schmitz for the position. **[Letter leaked DOJ 1225-1228]**

¶27 On August 23, 2013, Reserve Judge Kluka entered separate, but identical, orders in all five John Doe proceedings appointing Francis Schmitz as special prosecutor with jurisdiction across the five counties. Mirroring the District Attorneys' position on the matter, Reserve Judge Kluka cited, as the

basis of her appointment, concerns of efficiency and the appearance of impropriety. Reserve Judge Kluka made the appointment pursuant to her purported "authority" under State v. Carlson, 2002 WI App 44, 250 Wis. 2d 562, 641 N.W.2d 451, as well as her purported "inherent authority" under State v. Cummings, 199 Wis. 2d 721, 736, 546 N.W.2d 406 (1996). Each order fixed the special prosecutor's rate of pay at $130 per hour and stated that a copy should be sent to the Department of Administration. **[Orders leaked DOJ 1233-1242]**

¶28 On October 1, 2013, Reserve Judge Kluka authorized 29 subpoenas duces tecum to, among others, Unnamed Movants Nos. 1, 2, 3, 4, 5, and 8, based on an affidavit submitted to her by Investigator Stelter. **[Affidavit leaked DOJ 1071-1104]** These subpoenas compelled production of documents evidencing the conduct of coordination among the subpoenaed parties and a candidate committee, particularly the interaction between Unnamed Movants Nos. 1 and 2. . That same day Reserve Judge Kluka authorized search warrants for the homes and offices of Unnamed Movants Nos. 6 and 7**[Exhibits supporting the search warrant leaked DOJ 242-378]** The search warrants were executed at approximately 6:00 a.m. on October 3, 2013, in pre-dawn, armed, paramilitary-style raids in which bright floodlights were used to illuminate the targets' homes.

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¶30 Motions to quash the subpoenas were filed by Unnamed Movant No. 1 on October 17, 2013, and by Unnamed Movants Nos. 2 and 3 on October 25, 2013. **[Motions filed by Unnamed Movants leaked DOJ 592-599; 714-729; 730-752; 754-778; 779-793; 794-814]** On October 29, 2013, before ruling on the motions, Reserve Judge Kluka recused herself from the Milwaukee County proceeding, citing only an unspecified "conflict." **[Recusal leaked DOJ 1248]** The Milwaukee County proceeding was reassigned by Chief Judge Kremers to Reserve Judge Gregory Peterson on October 29, 2013. [**Order leaked DOJ 1243]**

¶31 The next day, on October 30, 2013, Reserve Judge Kluka disqualified herself from the remaining John Doe proceedings. On November 1, 2013, Chief Judge Potter of the Sixth Judicial District assigned Reserve Judge Peterson to preside over the John Doe proceedings in Columbia County and Dodge County. On November 1, 2013, Chief Judge Duvall of the Seventh Judicial District assigned Reserve Judge Peterson to preside over the John Doe proceeding in Iowa County. On November 4, 2013, Chief Judge Daley of the Fifth Judicial District assigned Reserve Judge Peterson to preside over the John Doe proceeding in Dane County. Thereafter, on November 4, 2013, Director Voelker (with then-Chief Justice Shirley Abrahamson's name

directly above) assigned Reserve Judge Peterson to preside over the Milwaukee County John Doe proceeding. **[Order leaked DOJ 1248]** On November 11, 2013, Director Voelker (with then-Chief Justice Shirley Abrahamson's name directly above) assigned Reserve Judge Peterson to preside over the John Doe proceedings in Iowa County and Dane County. **[Order leaked DOJ 1245, 1247]**. On November 14, 2013, Director Volker (with then-Chief Justice Shirley Abrahamson's name directly above) assigned Reserve Judge Peterson to preside over the John Doe proceedings in Columbia County and Dodge County. **[Order leaked DOJ 1244, 1246]**.

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¶33 In an order dated November 22, 2013, the court of appeals summarily dismissed what it deemed the Unnamed Movants' "first and sixth claims," namely, that there is no statutory authority to appoint or assign a reserve judge to preside over a John Doe proceeding, and that the John Doe judge circumvented the statutory functions of the clerks of court in five counties by requiring certain documents be sent to a post office box. Three Unnamed Petitioners, Nos. 2013AP2504-W-2508-W, unpublished order 6-7 (Wis. Ct. App. Nov. 22, 2013). Regarding the first claim, the court of appeals reasoned that there is no statute that limits the ability of reserve judges to oversee John Doe investigations. Id. Moreover, the court of appeals noted that the statute authorizing the appointment of reserve judges explicitly states that reserve judges "shall perform the same duties as other judges." Id. (citing Wis. Stat. § 753.075). The court of appeals ordered the respondents to address the remaining claims concerning the legality of a multi-county John Doe proceeding, the legality of a special prosecutor handling a multi-county John Doe proceeding, and the legality of the special prosecutor's appointment under Wis. Stat. § 978.045. Id. **[Court ordered response of special prosecutor with attached affidavits of Milwaukee DA and Special Prosecutor leaked DOJ 1010-1056, 1057-1070; 1105-1253]**

¶34 While that case was pending at the court of appeals, Unnamed Movant No. 6 also filed a petition in Dodge County circuit court on December 4, 2013, for the return of the property taken pursuant to the October 1 search warrant. On December 20, 2013, Unnamed Movant No. 7 filed a substantially similar petition in Dane County circuit court. After a response by the special prosecutor, Reserve Judge Peterson granted the motions to quash the subpoenas and the petitions to return property on January 10, 2014. **[Response by special prosecutor leaked 842-871]**

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> ¶38 Meanwhile, on February 7, 2014, Unnamed Movants Nos. 6 and 7 filed a petition for leave to commence an original action in the Wisconsin Supreme Court under Article VII, Section 3(2) of the Wisconsin Constitution (Two Unnamed Petitioners). The original action sought a declaration confirming the ruling of Reserve Judge Peterson in his January 10, 2014, order. The special prosecutor filed a response to this petition on February 25, 2014. **[Affidavit of the special prosecutor leaked DOJ 905-1009]** We granted the original action on December 16, 2014.
>
> ¶39 On February 21, 2014, the special prosecutor filed a petition for a supervisory writ and a writ of mandamus in the court of appeals (Schmitz v. Peterson**). [Petition Leaked DOJ 916-937][Memorandum leaked DOJ 872-904]** The special prosecutor sought the supervisory writ in order to vacate Reserve Judge Peterson's January 10, 2014, order and to direct Reserve Judge Peterson to enforce the subpoenas and search warrants. Unnamed Movants Nos. 1, 2, 3, 4, 5, 6, 7, and 8 filed responses to the petition on March 31, 2014. Shortly thereafter, the Unnamed Movants brought a petition to bypass the court of appeals. We granted bypass on December 16, 2014.

In sum, the leaked court filings show a specific intent to try to influence the United States Supreme Court as it was considering the pending petition for writ of certiorari in September 2016 by responding to particular parts of the opinion of the Wisconsin Supreme Court in *Two Unnamed Petitioners*. These leaked documents also indicate that the leaker has a sophisticated legal knowledge of the case and was motivated to try to influence the United States Supreme Court.

2. Drafts of court filings and exhibits

Several of the leaked documents were drafts and unsigned motions, briefs, or affidavits that could only have come from the files of the core prosecution team. These draft documents were incomplete works-in-progress and were circulated by Gmail for comment and revision among the attorneys in the core prosecution team. These

incomplete documents were not filed with the court or shared with opposing counsel. For example, the leaked document entitled "2013-Motion-Response" is undated and unsigned. DOJ's review of the Gmail accounts of the core prosecution team reveals that this draft document was circulated among the special prosecutor, GAB staff, and Milwaukee ADAs Robles and Landgraf, and that revisions were made to it before a signed and dated final version was filed with the court on December 9, 2013. The same can be said for the leaked draft document entitled "2013-08-29-schmitz-affidavit," which is undated and unsigned. The leaked document entitled "2013-09-16 Exhibits-41" is a draft collection of exhibits that were intended to be attached to a subpoena for documents. Emails reveal that prior to filing these exhibits with the court, the prosecution team revised them and removed the handwritten notations from them. As part of its investigation, DOJ reviewed the physical court files and confirmed that these leaked draft documents were never filed.

3. Selected pieces of evidence compiled by GAB staff

The key remaining leaked documents were collections of emails that were copied from the Relativity database by GAB staff. The documents are entitled "Ad-Coordination," "Calendars," "Fundraising-Coordination," "Prosser," and "Strategy-Coordination." As will be discussed below, these documents were selected and compiled by the staff of the former GAB who had sole possession of them and were not shared with the Milwaukee DA staff or with the special prosecutor.

C. Review Of Supreme Court Files

In addition to reviewing the nature of these leaked documents, DOJ also sought access to all secret or sealed files held by the Wisconsin Supreme Court. DOJ took this critical step because the Wisconsin Supreme Court had been custodian of all the John Doe II circuit court files since 2014, the sealed appellate files since 2015, and had become custodian of all John Doe II evidence in November 2016. Based on its initial review of the leaked documents, DOJ believed that the court files—the John Doe circuit court record, the appellate record, and the evidence files—should be reviewed to determine whether the court could be the source of the leak.

On January 23, 2017, DOJ presented the John Doe Judge's order to Diane Fremgen, Clerk of the Wisconsin Supreme Court, and requested access to all John Doe II materials, including the court files and evidence filed under seal.

Despite this lawful court order, the Clerk submitted the request to an unidentified Court Commissioner, who immediately rejected DOJ's request to review documents. In response, DOJ asked the Clerk if the Court Commissioner's position was that DOJ needed to obtain a search warrant, and that if this was the case, then DOJ would return with a search warrant and seize any evidence of a potential crime, including the court files and John Doe evidence.

On February 6, 2017, the Clerk called DOJ and stated as follows: "I have been advised by a majority of the Court that we may proceed under Judge Wambach's order." The Clerk did not produce any written order or explain how the Court made this decision. DOJ simply took this to mean that a "majority" of Justices agreed to

follow John Doe Judge Wambach's order granting DOJ access to secret and sealed files and ordering clerks to facilitate DOJ access. *See* Order, *Three Unnamed Petitioners v. Peterson,* Nos. 2013AP2504–2508-W, p. 2 (Nov. 21, 2016) (ordering that all John Doe II matters shall be addressed by the John Doe Judge "in the first instance"). The Clerk did not identify which Justices dissented from this decision or why.

Based on the Court's decision, that same week, DOJ visited the Clerk to examine the location of the court files and evidence. During this visit, DOJ learned that Special Prosecutor Francis Schmitz had indeed delivered a portion of the John Doe II evidence as required by the Supreme Court order during the first week of November 2016. DOJ learned that from November 2, 2016, until early February 2017, the Clerk stored the John Doe II evidence in an unrestricted alcove outside of her office. In early February 2017, the Department of Administration completed a construction project to add a locked door to the alcove, where the files and evidence are currently held.[9]

DOJ also learned during this visit that the Clerk only held the John Doe II evidence and the appellate record. The Clerk did not maintain the original John Doe

[9] During this visit, the Clerk also notified DOJ that just before their visit, Justice Shirley Abrahamson inspected the John Doe II evidence. DOJ did not interview Justice Abrahamson with respect to this report as to why she needed to review any evidence being maintained by the Clerk long after the John Doe investigation had concluded and the Supreme Court issued its decision in *Three Unnamed Petitioners*. As a result of the lack of security and to ensure chain-of-custody going forward, DOJ requested that the Clerk maintain a log of all those permitted access to the John Doe II files and evidence.

II circuit court files, which had been transferred from the John Doe II clerk to the Clerk of the Wisconsin Supreme Court in 2014. The Clerk notified DOJ that those trial-court-level files—all covered by the secrecy order and containing secret filings, evidence, and at least some of the leaked documents—had been sitting unsecured on the floor of a Court Commissioner's office. The Clerk did not identify the Commissioner or explain whether this was the same Commissioner who originally refused DOJ access to the court files. DOJ requested that these files be moved to the restricted area, and the Clerk complied. However, no one was able to account for who had access to or reviewed the files while they were unsecured in a Court Commissioner's office for nearly two years.

On February 16, 2017, DOJ special agents and a forensic analyst visited the Clerk's office to inspect the documents, ensure their integrity, and take measures to secure them.[10] DOJ inspected the John Doe II evidence and copied electronic data for inspection later. On February 22, 2017, special agents and analysts visited the Clerk's office again to inspect documents and make copies of hard drives.

D. Witness Interviews And Search Warrant

While endeavoring to secure the unsecured files at the Wisconsin Supreme Court and review their contents, DOJ interviewed members of the core prosecution

[10] Although DOJ did not announce its visit to the Supreme Court, and was otherwise inconspicuous, the visit was reported by Journal-Sentinel Reporter Daniel Bice, whose wife works in the same office space. DOJ has undertaken no action to determine why a member of the court staff would have reported this visit.

team to determine the origin of the leaked documents and the identity of those who had access to the full set of leaked documents. These in-person interviews started in January 2017. DOJ also interviewed other individuals who had handled John Doe documents and who were determined to have relevant information. These interviews included, for example, Milwaukee DA John Chisholm, Dodge County DA Kurt Klomberg, Dane County DA Ismael Ozanne, Columbia County DA Jane Kohlwey, and Iowa County DA Larry Nelson, all relevant staff and investigators employed by their offices, all investigators employed by GAB to work on the John Doe investigation, and Matthew Stippich of Digital Intelligence.

DOJ also interviewed the parties who had custody of GAB John Doe II documents at the time the leak occurred, namely Ethics Administrator Brian Bell and Ethics Staff Counsel David Buerger. DOJ also examined the computers at the Milwaukee County DA's office to confirm that no John Doe evidence remained. DOJ was also granted access to and reviewed discovery relating to *O'Keefe v. G.A.B. & Kevin Kennedy,* No. 14cv1139 (Waukesha County). DOJ also executed several search warrants on the accounts used by the prosecution team at Gmail, Dropbox, and Microsoft. Due to lack of cooperation by certain employees at the former GAB, as explained below, DOJ needed to execute a search warrant at the former GAB offices on July 21, 2017.

Finally, DOJ interviewed attorneys and court clerks who were in possession of at least some of the leaked documents due to the civil lawsuits filed against the prosecution team. These interviews included, for example, attorneys from Stafford

Rosenbaum LLP who represented the former GAB employees in the Waukesha litigation and the clerks from the Eastern and Western District of Wisconsin who still maintain copies of John Doe II evidence pursuant to federal court orders. DOJ is satisfied that these parties did not have access to the entire range of the leaked documents, appropriately handled John Doe materials, or otherwise could not have been the source of the leak.[11]

E. Relativity Emails And The Missing Hard Drive

Based on DOJ's review of the leaked documents and witness interviews, DOJ focused its investigation on the Relativity emails as the key to this leak investigation. These were the leaked email packets labeled in the *Guardian* leak as follows:

	Name	Description	Date	Pages
1.	Ad-Coordination	Selected Relativity Files	3/20/14	59
2.	Fundraising-Coordination	Selected Relativity Files	3/20/14	35
3.	Prosser	Selected Relativity Files	3/20/14	18
4.	Strategy-Coordination	Selected Relativity Files	3/20/14	62
5.	Calendars	Selected Relativity Files	3/20/14	66

[11] DOJ determined during the interviews with Stafford that they possessed thumb drives with leaked documents, but DOJ examined the thumb drive and determined that they had not been accessed since December 2014 and were not otherwise the source of the leak. Stafford turned over the thumb drive to the Clerk of the Wisconsin Supreme Court to file under seal with the rest of the John Doe evidence.

During the interviews, DOJ learned that although all of the core prosecution team attorneys had access to the court filings, only former members of GAB had access to these leaked Relativity emails. These former GAB employees include GAB Administrator Kevin Kennedy, GAB Attorneys Jonathan Becker, Shane Falk, and Nathan Judnic, and GAB Staff Ethics and Lobbying Specialist Molly Nagappala.

Nagappala's hard drive contained these leaked Relativity emails, but did not contain the leaked court pleadings. On the other hand, based on the evidence collected, DOJ assesses with reasonable certainty that the hard drive of Shane Falk is the only place where *all* of the leaked documents—court filings as well as Relativity emails—were located. Yet despite executing a search warrant at the offices of the former GAB and conducting numerous witness interviews, no one could account for Falk's missing hard drive, which remains missing and unaccounted for to this day.

Further investigation revealed the origin of these key Relativity emails and their final disposition. On January 10, 2014, Judge Peterson granted the motions to quash the subpoenas. Two weeks later, on January 27, 2014, at 9:55 a.m., Judge Peterson issued an order stating, "Property seized pursuant to search warrants shall not be examined by the State."

At 1:20 p.m. that same day, Shane Falk ordered Molly Nagappala to prepare a "data compilation" of donations to and from Wisconsin Club For Growth. Nagappala completed this task by reviewing "bank statements" seized as evidence in the John Doe II. **This was in direct violation of the court order received by Falk just hours earlier.**

Again, on February 6, Falk directed Naggappala to go into Relativity and print off emails seized from search warrants: "Periodically, you sent us some emails. Can you print out everything that you pulled out of Relativity and previously sent us? Then give a copy to Nate and one to me. Pretty please?" **Again, this was in direct violation of Judge Peterson's order.**

On February 12, 2014, Falk wrote to Schmitz that "it is imperative that we get Relativity up again so that Molly can pull documents she, Nate and I found regarding very helpful and important coordination activities other than fundraising. While Kevin did not participate in our teleconference as he said he would, he did tell me that he was going to tell you that we can put it up again. He is out of the office through the rest of this week I believe. Can you get DI to turn it back on, put the stuff back on the cloud and then Molly can pull the stuff we need?"

Schmitz did not order Falk to stand down in light of Judge Peterson's order. Instead, Schmitz responded that same day, stating, "I called Matt and he told me that Relativity is still up until the end of the month for now. So we should be able to access the information contained therein." Relativity contained emails seized pursuant to search warrants, exactly the type of evidence that Judge Peterson ordered the prosecution team **not** to review.

In response to Schmitz's permission, and despite the January 27 order, on February 13, 2014, Shane Falk directed Molly Nagappala to log into Relativity and download emails seized pursuant to search warrants:

> [p]ull all the stuff we need. Print and we can scan later after we group the stuff appropriately. See Nate and me for specifics on what we need to pull. Essentially anything marked "gold" that Nate did, obviously all your good stuff, and particularly evidence of the coordination of absentee ballot initiative (I think I marked that), CERS/Senate, specific ad language or placement, and other activities besides fundraising.

These very emails turned out to be the Relativity emails that were leaked to *The Guardian* newspaper. **And again, these actions were in direct violation of Judge Peterson's order.**

On February 18, 2014, Molly Nagappala responded, "It would also be helpful to know how you would like this all sorted- i.e. chronologically, or by group…, or some other way." Falk responded, "I would suggest by 501(c)(4) or (6) that is involved and then in that packet by date."

On February 24, 2014, Judge Peterson issued a second order regarding the review of Relativity documents. This order read, "For relief, I am amending the January 27 stay order to provide that while the stay is in effect, the State shall not examine any material secured from any source by legal process such as subpoena or search warrant."

Finally taking action to stop these blatant violations of Judge Peterson's orders, Special Prosecutor Schmitz sent two emails to GAB staff on February 24, 2014, cautioning them not to look at these materials anymore. (1:48 p.m. "we are not to look at any materials"; 1:58 p.m. "no review of anything outside of what is in the record") Within an hour of receiving this email, Shane Falk complained about this order, emailing Schmitz: "[Judge Peterson] is really digging deeper and deeper here

with his orders and perhaps out of professional courtesy you may want to point out to him that even under his statements of law he is really going off base here."

On February 25, 2014, again in violation of the court's order, Nagappala advised the prosecution team at 11:53 a.m. that she had "assembled the best Relativity material that has already been found into little packets divided by subject matter."

She further stated, "I have: Ads- 59 pages Calendars- 66 pages Fundraising- 27 pages Strategy/Advising 27 pages." In addition she reported that she had assembled a file entitled "Prosser." She asked all members of the core prosecution team whether or not they wanted her to print copies of these categorized email packets. These emails were the precise Relativity packets leaked to *The Guardian* that DOJ believes are key to this case.

Shane Falk responded on February 25, 2014, at 11:59 a.m. "Perhaps for the Response to the Petition for Supreme Court Original Action that will be filed today, what is in the Prosser stuff? Is there any contact between [name redacted] and [name redacted]? I know I saw emails between [name redacted] and [name redacted] during the recount but anything prior to the election?"

At 12:04 p.m. Nagappala stated, "See attached (sorry for the lousy formatting, I haven't polished this one) There is one pretty good email from prior to the election; the rest deals with the recount."

Special Prosecutor Schmitz responded to Nagappala at 12:42 p.m via email that "the ruling precludes us from looking at anything unless it is part of or

incorporated specifically in our affidavits. That includes what has been pulled from relativity recently." Molly Nagappala responded to this email from Schmitz by stating "I will stop looking at anything until told otherwise."

Despite this apparent agreement on February 26, it was not until February 28 that Schmitz directed Digital Intelligence to "shut down" Relativity and allow "no further work and specifically no further review or processing of any evidence due to Judge Peterson's 2/24/14 Order."

The next email reference to the five leaked Relativity packets ("Ads," "Calendars," "Fundraising," "Prosser," and "Strategy/Advising") was on March 20, 2014, at 11:57 a.m. Even though a court order was in effect prohibiting GAB staff and attorneys from accessing the Relativity documents, Molly Nagappala emailed the five leaked relativity documents to Shane Falk's Gmail account. As noted below, Nagappala believes that she sent these documents to Shane Falk at his request.[12]

DOJ examined available records to determine where the five leaked Relativity documents were stored after being sent to Shane Falk's Gmail account. At a deposition taken on July 8, 2015, in the civil lawsuit filed in Waukesha County, Shane

[12] Nagappala also sent other emails describing evidence obtained during the John Doe II investigation, including an email on May 12, 2014, detailing wire transfers from bank accounts belonging to Wisconsin Manufacturers and Commerce ("WMC"), bank statements from the Wisconsin Transportation Builders Association, and corporate deposits into the Wisconsin Insurance Alliance. She also sent a summary of WMC's bank accounts on April 23, 2014. In response, Falk wrote, "We may need to sit down and think this through a bit more. We don't have much financial activity for 2012 with just WiCFG." Emails like this suggest that Falk and Nagappala continued to review seized evidence well into April 2014. Judnic and Becker were also copied on these emails and did not object to this review.

Falk stated that in April 2014, his Gmail account was full so he converted his Gmail account to a PST file, saved it to his external hard drive, and then deleted all contents in his Gmail account as of that date. Falk stated that "The hard drive was on my desk. The week I left that was turned over to Nate [Judnic]."

As confirmed by the interviews conducted during the investigation, DOJ believes that the Relativity emails that Nagappala downloaded in February 2014 (labeled "Ads," "Calendars," "Fundraising," "Strategy/Advising, and "Prosser") and transferred to Shane Falk were leaked in their entirety to *The Guardian*. (Any discrepancy in page numbers was the result of duplicate pages or other leaked documents appended to the Relativity emails.)

The interviews further detailed the chain of custody of the leaked Relativity packets and the hard drive that likely contained all of the leaked documents. The Relativity email packets were selected by Nagappala, Falk, and Judnic from the Relativity database, copied by Nagappala to her hard drive, forwarded to Shane Falk's email, and then downloaded to Falk's hard drive. In his interview, Falk said that when he left his employment at GAB he turned the hard drive over to Judnic. Judnic admitted receiving the hard drive from Falk and stated he turned the hard drive over to the Staff Attorney for the Ethics Commission David Buerger. No one from the former GAB staff including Kennedy, Judnic, Falk, Becker, or Nagappala, and no one from the current Ethics commission including Staff Attorney Buerger and Administrator Bell has an explanation for what actually happened to this hard drive.

The following interviews confirm DOJ's conclusion that the leaked Relativity emails, along with the other leaked documents, were located solely on Falk's hard drive, which remains missing.

1. Molly Nagappala

At her interview, Nagappala stated that she was trained on the use of the Relativity database and she used it to examine emails related to the investigation. According to Nagappala, Falk and Judnic also used Relativity but she did not think that Becker or Kennedy ever did. This small group used the word "gold" to mark any email in Relativity that was significant. Nagappala further explained that after Falk asked her to gather the Relativity packets in February 2014, she took whatever she had already marked as "gold" and put it together. Because it was not easy to download from Relativity, Nagappala cut and pasted the documents into a Word document for easy access.

When asked what she did with the email packets downloaded from Relativity, Nagappala said she did not remember printing or transferring them. She stated that they probably just remained on her hard drive. Because of the short time span between the time she asked whether the parties wanted her to print the documents (2/25/14 11:53 a.m.), and the warning from the special prosecutor to stop looking at the Relativity material (2/25/14 12:52 p.m.), Nagappala said that she probably did not print the packets. In fact, she had no recollection of printing them. DOJ investigators did not find any printed Relativity email packets in any of the material located at GAB or turned over to the court.

DOJ investigators showed Nagappala two emails dated March 20, 2014, wherein the Relativity packets had been emailed from her Gmail address to Shane Falk's Gmail address. There is no content to the email—only five attachments entitled "Ads," "Calendars," "Fundraising," "Prosser," and "Strategy/Advising." Nagappala said that she must have sent these attachments to Shane Falk because Falk asked for them. DOJ investigators did not find these attachments on any other emails of any other party.

2. Shane Falk

Falk said he stored all of his John Doe materials on an external hard drive in an effort to keep them off DOA servers. The external hard drive was small and black, always on his desk and always plugged into his computer, not regularly locked up at night, and not password protected. This hard drive did not have Falk's name on it and did not have any unique identifying marks.

Falk did not use his Gmail account for anything other than the John Doe investigation. When he left GAB, Falk gave his Gmail password to Judnic, who changed the password to prevent Falk from accessing the account in the future.

Falk claimed that his Gmail account became "too big" in March 2014, requiring him to download all of his Gmail messages to a PST file. Falk then transferred this PST file to his black external hard drive. He then deleted everything from his Gmail account, wiping it clean of messages before March 2014. In addition to the PST file, Falk said his external hard drive contained all documents he drafted and some

evidence related to John Doe II. Falk specifically remembered giving this hard drive to Judnic when he left GAB.

DOJ learned from Falk that there was no GAB policy about how to handle documents related to the John Doe investigation. He said GAB tried to organize everything a couple of times but the documents were not Bates stamped or otherwise marked. Falk stated that some of the John Doe documents were viewed by GAB staff, investigators, administrators, and board members. He said it was not managed as tightly as he would have liked it to have been although he personally never did anything to raise this issue among GAB management.

Falk stated that there was no centralized location for the records. Falk, Judnic, Kennedy, and Becker all had John Doe II documents in their offices, and Nagappala kept documents stored in her cubicle. GAB was staffed beginning at 7:45 a.m., but there was no security and anyone could walk around the office.

With regard to the Relativity packets, Falk said that he and Judnic examined the emails in Relativity and marked items that were significant with the word "gold." While examining emails, Falk made notations and tried to put items into categories but everyone else examining the emails was doing things differently. In February, 2014, Falk asked Nagappala to put together the Relativity "packets" for him to use in the appeal of Judge Peterson's order. He stated that they never got to use them because Special Prosecutor Schmitz told them to stop using them.

Falk did not specifically remember seeing the Relativity documents marked "Ad-Coordination," "Calendars," "Fundraising-Coordination," "Prosser," or "Strategy-

Coordination." He did not remember getting a paper copy or an electronic copy and had no recollection of these items being emailed to him by Nagappala.

After investigators informed Falk that his hard drive containing the leaked documents was missing from the records of the former GAB, Falk insisted that he did not leak documents to *The Guardian* and did not conspire with anyone else to release documents. He stated that he has not seen his external hard drive since he turned it over to Nathan Judnic. He asserted that he took the confidentiality of the John Doe seriously.[13]

3. Nathan Judnic

Nathan Judnic was a staff attorney at GAB and a member of the core prosecution team. During his interview with DOJ, Judnic said that he worked on court filings and with the emails in the Relativity database. Judnic first became aware of the *Guardian* leak after he received an email from a co-worker. Judnic clicked on the link because he was curious to see what information had been leaked. He recognized that the article contained confidential documents. Judnic did not do any follow-up to see where the leak came from, did not report the leak to law

[13] After the interview, DOJ investigators sought to establish independent evidence that Falk's hard drive had been turned over to Judnic when Falk left GAB in 2014. This fact was confirmed as follows: In 2015, Kevin Kennedy and GAB were sued in Waukesha County by one of the targets of the John Doe investigation. Nathan Judnic was assigned to respond to discovery requests. Judnic reviewed the John Doe materials then in the possession of GAB and turned over several emails from Shane Falk's Gmail account. These emails were dated prior to April 2014. Those emails were only available on Falk's hard drive. Thus, in early 2015, Judnic must have had the hard drive in order to respond to discovery requests. Because of this, it appears that in early 2015 Falk's hard drive was accessed by Nathan Judnic.

enforcement authorities, and never had any in-depth discussions with anyone about the leak.

Judnic said that there was no formal process for keeping or recording the receipt of records by GAB nor was there any official custodian of records. Because no one kept track of the receipt of records, GAB would not be able to provide an inventory of what records it had in its possession, according to Judnic. He stated there was no centralized location where the records were kept for this investigation.

According to Judnic, the Relativity documents were kept in a digital format and not printed. When GAB staff searched through Relativity and found an email that seemed significant, they would flag the email under a certain pre-established category such as "coordinated fundraising," "strategy," or "ads."

Judnic knew that Falk had created a separate PST file that contained all of Falk's Gmails and attachments relating to the John Doe II investigation. Judnic initially stated that he did not know what happened to Falk's records when Falk left GAB. He stated that he did not think he had Falk's records and did not know if the records were turned over.

Judnic later admitted that when Falk left GAB, Falk transferred his records and staff counsel duties to Judnic. This included John Doe II work along with other work that was not related to John Doe II. Judnic stated that he obtained the password to Falk's Gmail and changed it so that Falk no longer had access.

Judnic confirmed that he was responsible for responding to discovery requests in the Waukesha County civil litigation against GAB. After initially stating that he

did not know what happened to Falk's records, Judnic stated that he believed Falk's portable drive was in one of the six to eight accordion files that he previously had in his possession. Judnic recalled seeing a black hard drive with a sticky note containing Shane Falk's name. He stated that he believed that Falk's portable hard drive was put into an accordion folder. He stated that he gave the John Doe II records that he collected to David Buerger. Buerger collected the records and locked them in a cabinet in a hallway.

In a subsequent interview, Judnic further refined his answers, explaining that he downloaded all GAB Gmail accounts and combined them into one or more PST files, and then turned them over to counsel for discovery purposes in the Waukesha litigation. DOJ later obtained these PST files and determined that they included emails from both before and after Falk claimed to have emptied out his Gmail account. This means that, in 2015 at least, Judnic had possession of both Falk's online Gmail account (post-March 19, 2014) and the PST he created of his pre-March 19, 2014, Gmail account.

4. Milwaukee ADAs

DOJ investigators showed the Relativity packets to Bruce Landgraf and David Robles, who both stated that they had never seen the documents. Judnic and Nagappala confirmed that these documents were never transferred or shown to Robles or Landgraf. DOJ investigators checked the records turned over by the Milwaukee DA's office and were not able locate any records from the Relativity database.

5. Kevin Kennedy

Kevin Kennedy, the former director of GAB, stated that he was admitted to the John Doe investigation but claimed that he was not involved in day-to-day operations. He stated that he had a Gmail account, but when he retired in June 2016 he gave the Gmail password to Nathan Judnic. He stated that Nagappala, Judnic, and Falk were the ones who mainly worked with Relativity and that he never logged into Relativity. Kennedy was shown the leaked emails from the Relativity database and he stated that he did not remember having seen them.

6. Jonathan Becker

Jonathan Becker, the Administrator for the Ethics Division of GAB, stated that while he supervised the staff conducting the John Doe II investigation, his involvement was limited to reviewing pleadings and discussing strategy. He stated that he could not remember ever seeing any of the leaked Relativity packets. He stated that toward the end of the John Doe II investigation, all of the records were given to Judnic. During the course of the John Doe II investigation, members of the investigative team kept their own records.

9. Francis Schmitz

Francis Schmitz voluntarily turned over a CD containing his Gmail account to DOJ. He stated that he believed that the leak to *The Guardian* was a crime and spent three hours with the investigators discussing the leaked documents. He stated that he had not previously seen the "ad-coordination", "fundraising-coordination," "strategy-coordination," "Prosser," or "calendar" files. He stated that these documents

most likely came from Relativity and that Nathan Judnic, Shane Falk, and Molly Nagappala did the most work in the Relativity database.

In an effort to comply with the Wisconsin Supreme Court's order, Schmitz collected 17 boxes and three hard drives and turned them over. He stated that he was shown a file cabinet at the former GAB offices that contained John Doe records. He stated that the file cabinet contained 3 or 4 drawers of documents. He collected the relevant documents and the electronic files and submitted them to the Supreme Court. When he left the GAB office, one box of documents was left in the file cabinet. He did not believe that the documents in this box were covered by the court order. Schmitz did not discuss any efforts to locate John Doe materials in the basement or on the former GAB servers.

F. Investigation At Ethics And Discovery Of "John Doe III"

Because DOJ suspected that the leaked documents originated from the former GAB offices, and that Falk's GAB hard drive containing the leaked documents was not turned over to the Wisconsin Supreme Court, DOJ contacted representatives of the Ethics Commission to locate any potential evidence of the leak, including the missing hard drive. DOJ also wanted to ensure that the John Doe II prosecution team relinquished all John Doe evidence.

1. Security at GAB/Ethics

The former GAB office that housed the secret John Doe records is located at 212 East Washington Ave., in Madison. According to Molly Nagappala, the doors to

the office building were unlocked from 7 a.m. to 6 p.m. No key card was required to access the first floor outside access door to the office building during that time frame. The GAB offices were located on the third floor. No key was required to access the office. A person could enter the front door between 7 a.m. and 6 p.m., take the elevator to the third floor, and enter the GAB offices without being required to use a key. There was no security in the building. Kevin Kennedy stated that GAB office doors were open from 7:30 a.m. to either 4:30 or 5:00 p.m. Judnic recalled that the elevators and stairwells at GAB were secured after 4:30 or 5:00. During business hours, the elevators/doors were not locked and could be accessed by anyone.

GAB's storage room was in the basement of the building. The key to the storage room was kept in an unlocked drawer at the front desk. Despite the importance and sensitivity of the evidence that GAB kept in its possession, there was no log kept identifying who went in the storage room or when the storage room was entered. Further, the storage room contained multiple unlocked file cabinets and boxes of various records.

GAB did not install security cameras in its office space or the storage area. The only security cameras on the premises were located in the parking area and on the first floor.

2. Initial Interactions with Ethics

After GAB was disbanded by the Legislature on June 30, 2016, the agency's former space, files, and employees were divided up between Ethics and Elections. Ethics retained the John Doe II investigation materials and worked with Special

Prosecutor Francis Schmitz to collect and divest such materials in October 2016. During this time period, Ethics was run by Ethics Administrator Brian Bell, General Counsel David Buerger, and a Commission with six members chaired by former Attorney General Peg Lautenschlager (who resigned on April 7, 2017).

On January 30, 2017, DOJ contacted Ethics, which presently occupies the former GAB office space and remains custodian of certain GAB files. David Buerger, the staff counsel for the Ethics Commission, stated that he became staff counsel at GAB in early 2016. He said that he did not get involved in the John Doe II matter until he began working with the Special Prosecutor to turn over documents to the Supreme Court. He stated that, in September 2016, Schmitz sent him a letter instructing him not to destroy any John Doe II documents. Upon receipt of this letter, he and Ethics' administrator Brian Bell began to locate and collect the John Doe II documents. He stated that he spoke with Nathan Judnic and found out that the John Doe documents were in a filing cabinet in Judnic's office. Buerger removed these documents from Judnic's office and placed them in a locked filing cabinet in the general office space at Ethics. Buerger was the only person who had the key. Buerger stated that he did not look at or catalog documents that he took from Judnic's office. Judnic turned over approximately two filing cabinet drawers full of mainly paper documents. Buerger stated that he recalled collecting one hard drive and some DVDs/CDs and no other hardware.

Brian Bell also confirmed that shortly after he became the administrator of Ethics in July 2016, he and Buerger began to discuss how to manage the commission's

records. At that time, Judnic had possession of the John Doe II records and Buerger made arrangements with Judnic to transfer all of the records from Judnic's possession into a locked filing cabinet. Bell said that in September or October 2016, Francis Schmitz reviewed the documents and took those he felt were responsive to the Supreme Court order. The remaining documents were left in the locked file cabinet.

During this initial meeting with DOJ, Buerger explained that Ethics only remained in possession of one file-cabinet drawer of John Doe II records. Bell and Buerger said that these few remaining files were likely mostly court pleadings, and they were intentionally left behind by Schmitz. As described in detail below, however, DOJ learned that these were not the only John Doe-related documents remaining at the former GAB offices, and that Ethics actually possessed vast amounts of highly sensitive evidence unsecured in their office space.

Before agreeing to turn over evidence to DOJ, however, Bell and Buerger were particularly concerned with Wis. Stat. § 19.50, which provides, in part, that "no investigator, prosecutor, or employee of an investigator or prosecutor, or member or employee of the commission may disclose information related to an investigation or prosecution under ch. 11." Bell and Buerger agreed to provide access to the remaining John Doe II records, on behalf of Ethics, only if DOJ obtained an order from the John Doe court that explicitly addressed this issue.

DOJ also asked if it was possible that John Doe II documents remained on servers at Ethics. In response, Bell and Buerger agreed to search Ethics' electronic systems to determine if John Doe II documents remained on the system.

That same day, January 30, 2017, the John Doe Judge issued an order directing Ethics to cooperate with the DOJ investigation into the leaked documents. The order also provided that "any communication" with DOJ regarding the leak was exempt under Wis. Stat. § 19.50(2)(b).

3. Evidence Turned Over February 1, 2017: Four Boxes of Records, Four Gmail Accounts, and 1.3GB of Electronic Data Containing John Doe I and II Evidence

On February 1, 2017, Bell and Buerger permitted DOJ agents to take custody of John Doe II-related material from a file cabinet in the third floor office of Ethics. These materials consisted of four boxes of former GAB files related to the John Doe II investigation. These files consisted mostly of pleadings, but also included "documents and data that were the product of an investigation based on an invalid theory under Wisconsin's campaign finance laws," and should have been turned over to the Supreme Court based on its December 12, 2015, order. *Three Unnamed Petitioners*, 365 Wis. 2d 351, ¶ 28.

At this same time, Buerger also turned over to DOJ a list of passwords for four Gmail accounts that had been used by the John Doe II prosecution team members: Nate Judnic, Shane Falk, Molly Nagappala, and Kevin Kennedy. Later that day, DCI agents changed the passwords but otherwise did not view the contents of the Gmail accounts. DOJ obtained a search warrant to review these accounts and determined

that they contained information, evidence, documents, and data derived from the John Doe II investigation, which remained in Ethics' possession despite the December 12, 2015, order of the Supreme Court. No explanation has been provided to DOJ as to why this information, evidence, documents, and data was not collected by the Special Prosecutor.

Buerger also notified DOJ of a file on their system entitled "Badger Doe." DCI agents copied this drive, which comprised 1.318 GB of data, including 637 separate files in 31 folders. The Badger Doe drive, like the boxes of physical files and Gmail accounts, similarly included information, evidence, documents, and data derived from the John Doe II investigation, and remained in Ethics' possession despite the December 12, 2015, order of the Supreme Court. Again, no explanation was provided by any member of the former GAB or any attorney involved in this investigation as to how or why this evidence remained in the custody of anyone other than the Supreme Court following its December 12, 2015, order.

4. Evidence Turned Over March 15, 2017: Two Sets of Documents from Nagappala

Approximately six weeks after turning over John Doe II records to DOJ, Buerger and Bell notified DOJ that they discovered two more sets of documents. These documents had been in the possession of Molly Nagappala, the former GAB staff assistant who directly assisted GAB investigators and attorneys in the course of the John Doe II investigation. The documents were found by her while cleaning out

her desk. She turned them over to Bell. These documents related directly to John Doe II targets, and the maintenance of evidence by attorneys and investigators.

On March 21, 2017, DOJ again met with Buerger and Bell and informed them, based on DOJ's review of the evidence, that DOJ believed additional documents related to the John Doe II investigation still existed at Ethics. They agreed to voluntarily conduct a second search, but did not consent to DOJ agents searching Ethics files.

5. Evidence Turned Over on May 2, 2017: Twelve Electronic Files Related to John Doe II

On May 2, 2017, Buerger and Bell turned over 12 more electronic files related to John Doe II. As with the previous disclosures, GAB did not completely divest itself of these files as required by the December 12, 2015, order of the Supreme Court.

6. The Discovery of John Doe III: Evidence Turned Over on May 23, 2017, Including Three Hard Drives and Ten Optical Disks

DOJ scheduled an interview with former GAB Staff Attorney Nathan Judnic, discussed in more detail above, set for May 24, 2017. The day before Judnic's scheduled interview, Buerger advised DOJ that Ethics had "found a box" of John Doe documents in the basement of Ethics.

Buerger gave DOJ the following explanation: Ethics Administrator Brian Bell was going through "old records" in the basement storage area when he located a large file cabinet with post-it notes on the drawer bearing the name "Shane Falk." Inside the file cabinet were two boxes. The boxes were labeled "GAB investigation files-

closed, 2012-01 State time campaigning" and "GAB investigation, 2013-02 Confidential." Located inside the first box, along with hard copy documents were 3 hard drives and 10 optical disks. Located inside the second box were, hard copy documents and a red flash drive.

DOJ took custody of the Falk boxes that same day, May 23, 2017, which was nearly **four months** after DOJ asked Ethics for all its remaining John Doe materials, and approximately **six months** after all of the John Doe evidence was supposed to be filed with the clerk of the Wisconsin Supreme Court.

Upon reviewing this evidence, DOJ investigators understood these boxes to include evidence directly related to the John Doe I and II investigation. In addition, DOJ also discovered that comingled with this evidence was evidence related to a previously unknown GAB investigation into members of the Republican Party of Wisconsin (hereinafter "Wisconsin Republicans"). For ease of reference, this report will identify this previously unknown investigation as "John Doe III."

In a subsequent interview, Judnic explained that John Doe III started because of an allegation that state employees were campaigning on state time. Judnic said that the Milwaukee County DA had collected evidence "between John Doe I and John Doe II" and then shared it with GAB sometime before November 2013—GAB then

opened investigations labeled as "2012-01" and "2012-02."[14] These files were in the Falk boxes, along with other evidence from John Doe I and II.

Due to the nature of evidence collected, DOJ believes that John Doe III expanded and ultimately became intertwined with the other investigations into Wisconsin Republicans since much of the evidence of John Doe III was comingled with evidence from John Doe II and John Doe I. In fact, a database obtained from the Milwaukee County DA's office describing over 200 search warrants and subpoenas issued between 2010 and 2013 did not make any distinction between evidence from John Doe I, John Doe II, or John Doe III. It appears that prosecutors believed that Wisconsin Republicans were "coordinating" expenditures or campaigning on state time during the 2010 election and the subsequent 2012 recall election, and so prosecutors and the former GAB staff simply shared whatever evidence they could obtain related to Republican campaigning and fundraising. DOJ was not able to discern any limit into this investigation.

Of course, no charges were ever filed resulting from John Doe III, but the nature and scope of this investigation was exceedingly broad and, until now, unknown to the public.

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[14] GAB's investigation files labeled "2012-01" also included dozens of investigation files from different, ostensibly unrelated cases, from 1990–2007. These files, labeled as "SRR_Ethics Migration," included what DOJ believes to be many of the ethics investigations pursued by GAB or its predecessor from this time period. DOJ has been unable to determine why GAB maintained these old files within its "2012-01" investigation file. DOJ believes that many, although not all, of the investigations targeted Republican or conservative state officials or special interest groups typically associated with conservative politics.

The investigation included subpoenas to state officials (such as the Assembly Chief Clerk, Legislative Technology Services Bureau, and the Department of Financial Institutions) and several search warrants executed on the private email accounts of state employees, state officials, and campaign workers and fundraisers associated with Wisconsin Republicans and Governor Walker. In the "Falk boxes," three hard drives in particular contained nearly 500,000 unique emails (from Yahoo and Gmail accounts, for example) and other documents (email attachments, for example) totaling millions of pages. The hard drives included transcripts of Google Chat logs between several individuals, most of which were purely personal (and sometimes very private) conversations. GAB placed a large portion of these emails into several folders entitled, "Opposition Research" or "Senate Opposition Research." DOJ has been unable to determine who labeled these emails as "Opposition Research," what the purpose of this label was, or how these emails were to be used in the future. However, DOJ is deeply concerned by what appears to have been the weaponizing of GAB by partisans in furtherance of political goals. Indeed, it is difficult to conceive why GAB needed any information from GoDaddy.com related to former Republican Senate Leadership Association Chairman Ed Gillespie or why staff attorneys wanted information held by Google for Leonard Leo, Executive Director of the Federalist Society.

As far as DOJ has been able to determine from reviewing the hard drives in the "Falk boxes," John Doe III investigators obtained the complete personal email accounts (in some cases multiple accounts per person), chat and messenger logs,

contact lists, IP login information, and similar information from other cloud-based accounts (such as Box.net) of the following individuals:

1. Jennifer Acker
2. Luke Bacher
3. Dean Cady
4. Nathan Duerkop
5. Tyler Foti
6. Greg Gasper
7. John Hogan
8. Rebecca Hogan
9. Josh Hoisington
10. Ashley Jacobs
11. R.J. Johnson
12. Deb Jordahl
13. Brian Kind
14. Jonathan Klein
15. Kimberly Liedl
16. Emily Loe
17. Lucas Moench
18. Dana Mundell
19. Ryan Murray
20. John Murray
21. Elise Nelson
22. Kyle O'Brien
23. Brian Pierick
24. Nick Perrine
25. Anthony Rallo
26. Dan Romportl
27. Kristin Ruesch
28. Tim Russell
29. Chris Reader
30. Matt Seaholm
31. Cameron Sholty
32. Stephan Thompson
33. Leah Vukmir
34. Andrew Welhouse
35. Jeff Weigand

Because of the very broad nature of the search warrants, the John Doe III investigators obtained emails and chat logs from hundreds and perhaps thousands of

other individuals who corresponded with the individuals listed above. For example, investigators obtained chat logs and/or emails from the following individuals, merely because they corresponded with one or more individuals in the list above: Governor Scott Walker, Speaker Robin Vos, U.S. Senator Ron Johnson, former U.S. Senate candidate Terrence Wall, former RNC Chair Reince Priebus, Congressman Sean Duffy, State Senators Van Wanggard and Howard Marklein, State Treasurer Matt Adamczyk, former Republican Party of Wisconsin Executive Director Joe Fadness, and legislative staffers Tad Ottman, Jenny Toftness, and Adam Foltz.

Many emails obtained did, in fact, include campaign-related conversations and plans. But in addition to campaign-related emails (which were apparently the target of the investigators), a very large portion of emails were personal and completely unrelated to campaigns. As would be expected in most personal email accounts, many of the conversations were private and personal. DOJ investigators were unable to determine why GAB investigators obtained, reviewed, categorized, labeled, and organized private emails of Republican political operatives, state employees, and other related individuals.

The breadth of information and communications contained in the "Falk boxes," apparently as the result of the John Doe III investigation into Wisconsin Republicans, was breathtaking. Just to illustrate this point, the investigators obtained, categorized, and maintained over 150 personal emails between Senator Leah Vukmir and her daughter, including emails containing private medical information and other highly personal information. DOJ was unable to determine why investigators ever

obtained, let alone saved and labeled, over 150 very private and very personal emails between a Senator and her child, or why investigators placed those emails in a folder named "Opposition Research."

The Senator's emails are just one example of tens or perhaps hundreds of thousands of very personal emails located in the "Falk boxes." Listed below are representative samples of emails or email groups collected by GAB, saved, labeled, reviewed, and maintained by GAB, and then placed in the "Falk boxes" for storage:

- Over 1,000 emails between a private bible study group called a "Life Group" at Blackhawk Church in Middleton, Wisconsin. The emails covered such subjects as "LG- He is risen," "LG- helping out Mom," "LG-Game Night," "LG- Spiritual Formation," "LG-The Spirit and Scripture," "LG-New Sermon Series=Rainbows and Sugarplums," and "[Redacted] Requests Prayer."
- Pictures of a woman who was purchasing a new dress, asking the email recipient how the dress looked on her.
- Pictures of a different woman who was considering purchasing some new shoes, asking the email recipient how the shoes looked on her.
- One email was entitled, "Invites for bachelorette party [redacted]."
- A string of 20 emails referencing a "Kenmore Mini Fridge" negotiation over Craigslist.
- An application for an Anchor Bank mortgage, including references to tax forms and information.
- An email thanking the recipient for advice concerning the purchase of a Benelli over/under shotgun at Dick's.
- An email between parents discussing a daughter's need for an OB-GYN.
- An email regarding prescription medications needed.
- A series of Google Chat logs between friends covering a variety of private topics, including whether the writer needs "to lose 20 lbs asap."

- 31 separate emails discussing a Milwaukee Journal-Sentinel reporter.
- Several emails between family members circulating drafts and corrections to a Christmas letter.
- Hundreds of emails about fantasy sports leagues.
- Reviewing just the emails starting with the letter "L," GAB held and reviewed emails concerning a "labor day booze cruise," a "landlord's furniture" issue," a "lawn care issue," an invitation to "let's get together for a drink," a "ladies golf league at Muskego Lake," and a "Ladies Night!"
- Dozens of emails sent to, received from, or regarding radio talk show hosts Mark Belling, Vicki McKenna, and Charlie Sykes.
- Multiple emails containing passwords apparently saved in the senders' inboxes as a way to remember passwords.

Examples like this are legion among the more than 500,000 emails on these GAB hard drives, which were sitting unsecured at Ethics months after the Wisconsin Supreme Court ordered the former GAB to be completely divested of all evidence. Critically, none of the individuals subject to this scrutiny, as reflected on these hard drives, were ever considered targets of the John Doe I or II investigations. The three hard drives were not password protected and could have been accessed by anyone with access to the Ethics basement and even the most rudimentary computer skills. All of the hard drives were seized by DOJ.

Finally, many emails from the "Falk boxes" clearly indicate that Republican staffers, campaign workers, and fundraisers were diligent in separating their state work from their campaign work. Just to illustrate this point, one of the very first emails obtained by the John Doe III investigators, dated November 5, 2009, states as follows:

Hey Dad,

> I'm e-mailing from another account b/c I check the [**redacted**] one frequently at work and cannot have campaign related material on there . . . it's illegal. I don't need to be engaging in those activities. :)
>
> […]
>
> Love you
>
> [**redacted**]

This email is representative of other emails where state workers clearly understood the lessons of the 2002 Caucus Scandal and took many precautions to separate state time from campaign time. As mentioned above, the Milwaukee DA and the former GAB did not bring charges against anyone, despite collecting hundreds and thousands of emails from dozens of state workers over a period of more than four years. DOJ's review of these emails did not indicate any unethical or illegal behavior by any state official, employee, or other Wisconsin Republican apparently targeted in John Doe III.

7. Bell and Buerger's Invocation of Fifth Amendment

On June 7, 2017, DOJ requested another interview with Bell and Buerger regarding the initial recovery of John Doe documents in February and the subsequent disclosures in March and May. On June 8, 2017, Bell and Buerger refused to speak with law enforcement about former GAB documents or the leak and then invoked their Fifth Amendment right to counsel.

On August 31, 2017, Bell was interviewed in the presence of his attorney. He stated that in May 2017, he was trying to review and organize all of the records in

the basement storage space. He stated that while there he discovered boxes which belonged to Shane Falk. He stated that he and Buerger retrieved the boxes, locked them in a file cabinet and later turned the records over to DOJ.

On August 31, 2017, Buerger was also interviewed in the presence of his attorney. He confirmed the statement of Bell with respect to the "Falk boxes."

8. DOJ's Search Warrant at Ethics

Because the missing hard drive's last known location was at the offices of the former GAB, likely in the custody of Judnic or Buerger, and because of the problems described above in gaining access to the John Doe material, DCI special agents executed a search warrant on July 21, 2017, at the offices and storage rooms formerly occupied by GAB. The premises searched were leased by the State of Wisconsin. No persons were arrested or detained. This search was authorized by the John Doe Judge. DCI agents did not locate the hard drive or any other remaining records related to the John Doe II investigation during this search.

9. November 6, 2017, Review at Milwaukee District Attorney's Office

On November 6, 2017, DCI visited the Milwaukee County District Attorney's Office to confirm prosecutors' earlier statements that they had been completely divested of evidence as required by the Supreme Court. They had. The only information remaining at the Office was work product related to the John Doe investigations.

Furthermore, DOJ was also able to confirm that the prosecutors collected evidence from over 218 search warrants and subpoenas, and that the prosecutors drew little formal distinction between John Doe I, John Doe II, and the previously unknown investigation that this report refers to as John Doe III. These records also revealed that the investigation was far broader and included far more subjects and witnesses than previously known to the public. Below is a partial list of these subpoenas and search warrants:

1. 2012-06-25 Warrant for Email - Gmail accounts Gilkes, Keith
2. 2012-06-25 Warrant for Email - Gmail accounts Murray, Ryan
3. 2012-06-25 Warrant for Email - Gmail accounts Werwie, Cullen
4. 2012-06-25 Warrant for Email - Gmail accounts Schrimpf, Chris
5. 2012-06-25 Warrant for Email - Gmail accounts Nardelli, Tom
6. 2012-06-25 Warrant for Email - Gmail accounts Archer, Cynthia
7. 2012-06-25 Warrant for Email - Gmail accounts Walker, Scott
8. 2012-06-25 Warrant for Email - Huebsch and Schutt Huebsch, Michael
9. 2012-06-25 Warrant for Email - Huebsch and Schutt Schutt, Eric
10. 2012-06-25 Warrant for Email - Jensen and Odonnell Jensen, Jodi
11. 2012-06-25 Warrant for Email - Jensen and Odonnell O'Donnell, Jessica
12. 2012-06-25 Warrant for Email - Ruth Gracz Gracz, Greg
13. 2012-07-10 Warrant for Email - Matejov, Scott
14. 2012-08-06 Warrant - Matejov, Scott
15. 2013-09-30 16 Subpoena - Republican State Leadership Committee
16. 2013-09-30 18 Subpoena - Right Direction Wisconsin
17. 2013-09-30 15 Subpoena - Metropolitan Milwaukee Association of Commerce, Inc.
18. 2013-09-30 32 Warrant RJ & Valerie Johnson residence Johnson, RJ
19. 2013-09-30 33 Warrant - RJ Johnson & Coalition Partners LLC office
20. 2013-09-30 34 Warrant Deborah Jordahl – residence Jordahl, Deborah
21. 2013-09-30 35 Warrant office of Deborah Jordahl & Coalition Partners LLC, Jordahl, Deborah
22. 2013-09-30 36 Warrant Keith Gilkes & Champion Group L.L.C. office Gilkes, Keith
23. 2013-09-30 37 Warrant Kelly Rindfleisch – residence Rindfleisch, Kelly
24. 2013-10-08 1 and 1 Warrant O'Keefe, Eric
25. 2013-10-03 Subpoena - Delta Airlines RJ Johnson
26. 2013-10-08 AOL Warrant Johnson, Valerie

27. 2013-10-08 GoDaddy Warrant Johnson
28. 2013-10-08 GoDaddy Warrant Jordahl
29. 2013-10-08 GoDaddy Warrant Ayers, Nick
30. 2013-10-08 GoDaddy Warrant (RSLA) Gillespie, Ed
31. 2013-10-08 GoDaddy Warrant (RSLA) Jankowski, Chris
32. 2013-10-08 Media Systems Affiliates Warrant Rindfleisch, Kelly
33. 2013-10-08 Premier Conferencing Warrant Unspecified
34. 2013-10-11 c Remedial 1 Warrant Digital Evidence - Johnson Residence
35. 2013-10-11 c Remedial 2 Warrant Digital Evidence - Johnson Residence
36. 2013-10-11 c Remedial Warrant Digital Evidence - Gilkes
37. 2013-10-11 c Remedial Warrant Digital Evidence - Jordahl Residence
38. 2013-10-11 c Remedial Warrant Digital Evidnce - Rindfleisch Residence
39. 2013-10-19 Google 'Language' Warrant Johnson, RJ
40. 2013-10-19 Google 'Language' Warrant Eisner, William
41. 2013-10-19 Google 'Language' Warrant Limon, Donna
42. 2013-10-19 Google 'Language' Warrant Rozmalski, Mike
43. 2013-10-19 Google 'Language' Warrant Balden, Jason
44. 2013-10-19 Google 'Language' Warrant McKinley, Carmen
45. 2013-10-19 Google 'Language' Warrant Stessl, Viquie
46. 2013-10-19 Google 'Language' Warrant Preate, Alexandra
47. 2013-10-19 Google 'Language' Warrant Leo, Leonard
48. 2013-10-19 Google 'Language' Warrant Blum, Dan
49. 2013-10-19 Google 'Language' Warrant Conrad, Nathan
50. 2013-10-19 Google 'Language' Warrant Boom, Andrea
51. 2013-10-19 Google 'Language' Warrant Himebauch, Casey
52. 2013-10-19 Google 'Language' Warrant Gilkes, Keith
53. 2013-10-19 Google 'Language' Warrant Matthews, Ciara
54. 2013-10-19 Google 'Language' Warrant Ayers, Nick
55. 2013-10-19 Google 'Language' Warrant Rindfleisch, Kelly
56. 2013-10-19 Google 'Language' Warrant Fraley, Brian
57. 2013-10-19 Subpoena - Anchor Bank Johnson, RJ
58. 2013-10-19 Subpoena - Anchor Bank Johnson, Valerie
59. 2013-10-19 Subpoena - Anchor Bank Jordahl, Deborah
60. 2013-10-19 Subpoena BMO Harris Citizens for a Strong America
61. 2013-10-19 Subpoena BMO Harris Wisconsin Club for Growth
62. 2013-10-19 Subpoena BMO Harris WMC
63. 2013-10-19 Subpoena BMO Harris WMC-IMC
64. 2012-06-25 Warrant for Email - Gmail accounts Hiller, John
65. 2012-06-25 Warrant for Email - Kitty Rhoades Rhoades, Kitty
66. 2012-09-05 Warrant - Free Conference Call Unspecified
67. 2012-09-05 Warrant Charter - Jordahl, Deborah
68. 2012-09-05 Warrant Time Warner - Stitt, Mary
69. 2013-09-30 27 Subpoena - Mary Stitt and Associates Stitt, Mary

70. 2013-09-30 28 Subpoena - Jed Sanborn, CPA LLC Sanborn, Jed
71. 2013-09-30 29 Subpoena - Carol A. Valley, CPA SC Valley, Carol
72. 2013-09-30 30 Subpoena - Americans for Prosperity – Wisconsin
73. 2013-09-30 26 Subpoena - Doner Fundraising, Inc.
74. 2013-09-30 02 Subpoena - Club for Growth
75. 2013-09-30 03 Subpoena - Wisconsin Club for Growth, Inc.
76. 2013-09-30 20 Subpoena - Wisconsin Right to Life, Inc.
77. 2013-09-30 04 Subpoena - Eric O'Keefe (WiCFG)
78. 2013-09-30 05 Subpoena - Eleanore C. Hawley (WiCFG)
79. 2013-09-30 06 Subpoena - Charles Talbot (WiCFG)
80. 2013-09-30 07 Subpoena - Citizens for a Strong America
81. 2013-09-30 08 Subpoena - John Connors (CFSA)
82. 2013-09-30 09 Subpoena - Valerie Johnson (CFSA)
83. 2013-09-30 10 Subpoena - Jessika Stauffacher (CFSA)
84. 2013-09-30 11 Subpoena - Virginia Marschmann (CFSA)
85. 2013-09-30 02 Subpoena - Club for Growth
86. 2013-09-30 12 Subpoena - Wisconsin Manufacturers and Commerce, Inc.
87. 2013-09-30 13 Subpoena - WMC – Issues Mobilization Council, Inc.
88. 2013-09-30 14 Subpoena - James Buchen (WMC & IMC)
89. 2013-09-30 17 Subpoena - Republican Governor's Association
90. 2013-09-30 19 Subpoena - United Sportsmen of Wisconsin Inc.
91. 2013-09-30 21 Subpoena - Wisconsin Family Action, Inc.
92. 2013-09-30 22 Subpoena - Friends of Scott Walker
93. 2013-09-30 23 Subpoena - Republican Party of Wisconsin
94. 2013-09-30 24 Subpoena - Committee to Elect a Republican Senate
95. 2013-09-30 25 Subpoena - William Eisner and Associates, Inc.
96. 2012-09-05 Warrant Gmail - 10 addresses Thompson, Stephan
97. 2012-09-05 Warrant Gmail - 10 addresses Gilkes, Keith
98. 2012-09-05 Warrant Gmail - 10 addresses Walker, Scott
99. 2012-09-05 Warrant Gmail - 10 addresses Hogan, Pat
100. 2012-09-05 Warrant Gmail - 10 addresses Evenson, Tom
101. 2012-09-05 Warrant Gmail - 10 addresses Boom, Andrea
102. 2012-09-05 Warrant Gmail - 10 addresses Rindfleisch, Kelly
103. 2012-09-05 Warrant Gmail - 10 addresses Blum, Dan
104. 2012-09-05 Warrant Gmail - 10 addresses Ayers, Nick
105. 2012-09-05 Warrant Gmail - 10 addresses Evenson, Tom
106. 2012-09-05 Warrant Yahoo - Thompson and Johnson Thompson, Stephan
107. 2012-09-05 Warrant Yahoo - Thompson and Johnson Johnson, RJ
108. 2013-10-08 GoDaddy Warrant (Johnson Jordahl Nick Ayers)
109. 2013-10-19 Subpoena - Anchor Bank (Richard Valerie Johnson Coalition)
110. 2012-09-05 Subpoena - Kammer Anchor Bank Coalition Partners
111. 2012-09-05 Subpoena - Kammer Anchor Bank Johnson, RJ
112. 2012-09-05 Subpoena - Kammer Anchor Bank RJ Johnson and Ass.

113. 2012-09-12 Subpoena - BMO Harris one account CFSA
114. 2012-09-12 Subpoena - BMO Harris two accounts CFSA
115. 2012-09-12 Subpoena - BMO Harris two accounts WiCFG
116. 2012-10-18 Warrant - Free Conference Call Unspecified
117. 2012-10-18 Subpoena - Erickson - Free Conference Call Unspecified
118. 2012-10-18 Subpoena - ATT 6 numbers Unknown
119. 2012-10-18 Subpoena - ATT 6 numbers Garvin, Robert
120. 2012-10-18 Subpoena - ATT 6 numbers Sheehy, Timothy
121. 2012-10-18 Subpoena - ATT 6 numbers Wornson, Bryon
122. 2012-10-18 Subpoena - Cellco 3 numbers zSee Special Issues
123. 2012-10-18 Subpoena - Cellco 3 numbers Schimming, Brian
124. 2012-10-18 Subpoena - Cellco 3 numbers Langenohl, Anthony
125. 2012-10-18 Subpoena - Sprint zSee Special Issues
126. 2012-10-18 Subpoena - US Cellular Unknown
127. 2012-10-18 Subpoena - Charter 4 numbers Rindfleisch, Kelly
128. 2012-10-18 Subpoena - Charter 4 numbers Schutt, Eric
129. 2012-10-18 Subpoena - Charter 4 numbers MGE Energy, Inc.
130. 2012-10-18 Subpoena - Charter 4 numbers Charnitz, Mary
131. 2012-10-18 Subpoena - Mid Plains Telephone Buchen, James
132. 2012-10-18 Subpoena - TDS Hamilton Consulting Group
133. 2012-10-18 Subpoena - US Cellular Unknown
134. 2012-12-17 Subpoena - Charter Communications Schutt, Eric
135. 2012-12-17 Subpoena - U.S. Cellular 2 Numbers Hogan, John
136. 2012-12-17 Subpoena - ATT 5 numbers Murray, Ryan
137. 2012-12-17 Subpoena - ATT 5 numbers Johnson Jordahl,
138. 2012-12-17 Subpoena - ATT 5 numbers Johnson, RJ
139. 2012-12-17 Subpoena - ATT 5 numbers Villa, James
140. 2012-12-17 Subpoena - ATT 5 numbers Doner, Kate
141. 2012-12-17 Subpoena - ATT Midwest Rindfleisch, Kelly
142. 2012-12-17 Subpoena - BMO Harris WMC
143. 2012-12-17 Subpoena - BMO Harris WMC-IMC,
144. 2012-12-17 Subpoena - Century Link Johnson, RJ
145. 2012-12-17 Subpoena - Free Conference Call Unspecified
146. 2012-12-17 Subpoena - Line 1 Communications Unspecified
147. 2012-12-17 Subpoena - Mid Plains Buchen, James
148. 2012-12-17 Subpoena - Mid Plains Gilkes, Keith
149. 2012-12-17 Subpoena - Sprint Huebsch, Michael
150. 2012-12-17 Subpoena - Verizon Walker, Scott
151. 2012-12-17 Subpoena - Verizon Gilkes, Keith
152. 2012-12-18 AOL Warrant - Huebsch, Michael
153. 2012-12-18 Free Conference Call Warrant - Unspecified
154. 2012-12-18 Gmail Warrant - Baker, Brian
155. 2012-12-18 Hotmail Warrant - Seaholm, Matt

156. 2012-12-18 Line 1 Communications Warrant - Unspecified
157. 2012-12-18 Yahoo Warrant - Grebe, Michael
158. 2013-01-24 Warrant - Arkadin with attach Unspecified
159. 2013-01-24 Subpoena - Arkadin with attach Unspecified
160. 2013-02-15 Warrant Arkadin 2 re RGA Unspecified
161. 2013-02-15 Subpoena Arkadin 2 re RGA Unspecified
162. 2010-06-29 Warrant (Wild West Domains) Morse, Dan
163. 2010-08-12 Warrant - Gmail - Fadness, Joe
164. 2010-10-19 Warrant - Rindfleisch, Kelly
165. 2010-11-09 Wild West Domains - Warrant Morse, Dan
166. 2011-01-24 Warrant - Yahoo Werwie, Cullen
167. 2011-01-24 Warrant - Gmail Werwie, Cullen
168. 2011-01-24 Warrant - Gmail Loe, Emily
169. 2011-01-24 Warrant - 2 Wild West Domains Gilkes, Keith
170. 2011-01-24 Warrant - Gmail Rindfleisch, Kelly
171. 2011-01-24 Warrant - GoDaddy Walker, Scott
172. 2011-01-24 Warrant - GoDaddy Gilkes, Keith
173. 2011-01-24 Warrant - Yahoo Nardelli, Tom
174. 2011-01-24 Warrant - Time Warner Nardelli, Tom
175. 2011-02-17 Return of Warrant - Paratech Premises Warrant Nardelli, Tom
176. 2011-04-11 Warrant - Gmail - Fadness, Joe
177. 2011-04-28 Warrant re Gmail Thompson e-mail Thompson, Stephan
178. 2011-04-28 Warrant re Midnet Media e-mail Thompson, Stephan
179. 2011-06-15 Warrant Gmail in re BoxNet for Hogan, John
180. 2011-06-15 Warrant Gmail in re BoxNet for Jacobs, Ashley
181. 2011-06-15 Warrant Gmail in re BoxNet for Ruesch, Kristin
182. 2011-06-15 Warrant Gmail in re BoxNet for Romportl, Daniel
183. 2011-06-15 Warrant Gmail in re BoxNet for Murray, Ryan
184. 2011-06-15 Warrant Gmail in re BoxNet for Loe, Emily
185. 2011-06-15 Warrant Maelstrom Leah Vukmir Hoisington, Josh
186. 2011-06-15 Warrant Yahoo re BoxNet for Hoisington, Josh
187. 2011-06-15 Warrant Yahoo re BoxNet for Thompson, Stephan
188. 2011-06-15 Warrant Yahoo re BoxNet for Duerkop, Nathan
189. 2011-06-15 Warrant Yahoo re BoxNet for Seaholm, Matt
190. 2011-06-15 Warrant Yahoo re BoxNet for Johnson, RJ
191. 2011-07-11 Warrant Google Gmail Ruesch, Kristin
192. 2011-07-11 Warrant Time Warner Archer, Cynthia
193. 2011-07-26 Warrant yahoo email Hoisington, Josh
194. 2011-09-13 Warrant Archer Gmail and Hiller Gmail Archer, Cynthia
195. 2011-09-13 Warrant Archer Gmail and Hiller Gmail Hiller, John
196. 2011-10-10 Subpoena Anchor Bank (RJ Johnson statements and deposits)
197. 2011-10-10 Subpoena Anchor Bank (RJ Johnson statements and deposits) RJ Johnson and Associates

198. 2011-10-10 Subpoena Anchor Bank (RJ Johnson statements and deposits) Coalition Partners
199. 2011-10-10 Subpoena Anchor Bank (RJ Johnson statements and deposits)
200. 2012-02-17 Warrant Gmail - 21 addresses Rallo, Anthony
201. 2012-02-17 Warrant Gmail - 21 addresses Welhouse, Andrew
202. 2012-02-17 Warrant Gmail - 21 addresses Reader, Chris
203. 2012-02-17 Warrant Gmail - 21 addresses Liedl, Kimberly
204. 2012-02-17 Warrant Gmail - 21 addresses Foti, Tyler
205. 2012-02-17 Warrant Gmail - 21 addresses Nelson, Elise
206. 2012-02-17 Warrant Gmail - 21 addresses Duerkop, Nathan
207. 2012-02-17 Warrant Gmail - 21 addresses Klein, Jonathan
208. 2012-02-17 Warrant Gmail - 21 addresses Hogan, Rebecca
209. 2012-02-17 Warrant Gmail - 21 addresses Moench, Lucas
210. 2012-02-17 Warrant Gmail - 21 addresses Hogan, John
211. 2012-02-17 Warrant Gmail - 21 addresses Jacobs, Ashley
212. 2012-02-17 Warrant Gmail - 21 addresses Murray, Ryan
213. 2012-02-17 Warrant Yahoo -Liedl, Kimberly
214. 2012-02-17 Warrant Yahoo -Welhouse, Andrew
215. 2012-02-17 Warrant Yahoo -Seaholm, Matt
216. 2012-02-17 Warrant Yahoo -Hoisington, Josh
217. 2012-02-17 Warrant Yahoo -Thompson, Stephan
218. 2012-02-17 Warrant Yahoo -Duerkop, Nathan

Apart from these subpoenas and search warrants, DOJ was unable to determine whether other evidence was collected in the John Doe I, II, or III investigations.

10. November 10, 2017 Disclosures from Ethics

In late October 2017, DOJ investigators learned that former GAB attorneys had used certain naming conventions to refer to the John Doe II-related investigations, including 2013-02, 2012-01, and 2012-02. DOJ immediately contacted Ethics. Buerger and Bell indicated that they still had custody of electronic files with these file names.

On November 10, 2017, Buerger and Bell turned over 4.8 GB of information, comprising approximately 2,500 electronic files and two more boxes of papers related

to these file names. The electronic files included some secret John Doe II materials, including emails and evidence obtained during the John Doe I investigation. Although this November 2017 production of documents by Ethics did not contain a complete set of leaked documents, the documents did contain a substantial number of leaked documents in both electronic and hard-copy format. Just as with DOJ's preceding interactions with Ethics, many of the documents disclosed by Ethics should have been turned over to the Wisconsin Supreme Court, but never were.

IV. Conclusions

A. The Leak Was A Crime

DOJ has determined that the leak was, in fact, a crime. Based on the *Guardian* article itself and the nature of the documents, at least one person intentionally removed the documents from the former GAB offices and disclosed those documents to *The Guardian*. Although DOJ did not learn the precise details about how the crime was committed or by whom, there is probable cause to believe that one or more of the following statutes was violated: Misconduct in Public Office, Wis. Stat. § 946.12; Violation of a Secrecy Order, Wis. Stat. § 968.26(4)(d); Disclosure of Personal Information, Wis. Stat. § 19.80(3); Theft, Wis. Stat. § 943.20(1)(b); Receiving Stolen Property, Wis. Stat. § 943.34; Unauthorized Access of Data, Wis. Stat. § 943.70; Contempt of Court, Wis. Stat. § 785.03(1)(b); Unauthorized Release of Records or Information, Wis. Stat. §§ 19.50 and 19.58(4).

B. The Motivation Of The Leaker Was To Influence The U.S. Supreme Court

The leaked documents were published by *The Guardian* just 11 days before the U.S. Supreme Court was set to consider the prosecution team's petition for certiorari. *The Guardian* article states, "The nation's highest judicial panel is expected to announce within days whether or not it will take the case." Furthermore, metadata from the leaked documents indicate that it is probable (but not definitive) that some of the documents were actually leaked in May 2016. (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.) This fact further bolsters the case for the U.S. Supreme Court being the prime motivation for the leak because the Court originally was scheduled to decide the petition in May 2016. Perhaps most importantly, the nature of the leaked documents indicates an intent by someone—likely a lawyer—to respond directly to the Wisconsin Supreme Court's decision in *Two Unnamed Petitioners*. Only someone with an intimate knowledge of the case, a knowledge of campaign finance law, and familiarity with the leaked documents would know which documents to leak that would respond directly to *Two Unnamed Petitioners*.

C. The Leak Did Not Come From The Wisconsin Courts

The leaked documents could not have come from the Wisconsin Supreme Court, Court of Appeals, circuit court system, or any employee of the court system.

The courts and clerks with access to the John Doe II court files and evidence did not have access to all—or even most—of the leaked documents.

First of all, the court system did not have access to the Relativity email packets before the leak. DOJ examined all documents filed with the court and did not locate any documents matching the Relativity packets.

Moreover, many of the leaked documents are drafts and unsigned motions, briefs, or affidavits. The court files were examined and it was determined that these leaked draft documents were never filed and do not bear the stamp of the court system.

Finally, some of the cover letters are addressed simply to Francis Schmitz and were copies of documents sent from the targets to Francis Schmitz, not the original letters sent to the courts.

D. The Leak Did Not Originate From Any District Attorney's Office Or Francis Schmitz

Although Francis Schmitz and the Milwaukee ADAs had access to all the court filings, including drafts, and all of the evidence, DOJ was able to rule out these individuals as suspects. The Relativity packets were not shared with any district attorney's office or the special prosecutor and these parties did not have access to the leaked Relativity documents.

E. The Leak Originated From The Former GAB

The key to this investigation remains that the five unique packets of Relativity documents were created by Molly Nagappala, sent to Shane Falk via Gmail, and placed on Shane Falk's hard drive along with all of the other leaked documents.

Falk told investigators that he gave this hard drive to Judnic, and Judnic confirmed this in a separate interview. Judnic said that all of the John Doe II materials were ultimately turned over to David Buerger, who took over custody of the John Doe II investigation materials after GAB was disbanded. Francis Schmitz made an effort in October 2016 to collect some of these materials from the former GAB offices and file them with the Court, but as seen above, his efforts were unsuccessful. The hard drive subsequently disappeared, and is now either physically with *The Guardian*, destroyed, or hidden by the perpetrator of the crime. Although probable cause certainly exists to believe that a crime was committed, DOJ does not currently possess proof beyond a reasonable doubt necessary to convict any particular person of a criminal offense at this time.

F. The Partisan Atmosphere At GAB Contributed To The Leak

GAB attorneys represented themselves to the Milwaukee ADAs and to the special prosecutor as experts in the field of campaign finance law. The Milwaukee ADAs and the special prosecutor relied on the advice of GAB attorneys in proceeding with the investigation. After reviewing the emails exchanged between the attorneys at GAB, it is apparent that GAB attorneys had prejudged the guilt of Governor Walker, Wisconsin Republicans, and related organizations that they were

investigating and this dramatically influenced their ability to give competent legal advice.

GAB attorneys did not act in a detached and professional manner. The most reasonable inference is that they were on a mission to bring down the Walker campaign and the Governor himself.

In November 2013, Shane Falk wrote to the special prosecutor:

> Please keep up the great work and stay strong. Remember, in brief, this was a bastardization of politics and our state is being run by corporations and billionaires. This isn't democracy to say the least, but due to how they do this dark money, the populace never gets to know. The cynic in me says the sheeple would still follow the propaganda even if they knew, but at least it would all be out there so that the influences on our politicians is clearly known.

Because the attorneys for GAB (none of whom were experienced criminal prosecutors) prejudged the evidence and what it meant, they had difficulty accepting that their interpretation of the law was wrong. After receiving the motions from the attorneys for the targets and actually reading the applicable case law and statutes, the Milwaukee ADAs and the special prosecutor began to doubt the validity of the case. The attorneys for GAB were incredulous that the prosecutors were doubting GAB legal advice. When ADA Robles questioned Falk on a point of campaign finance law, Falk told Robles, "I am not engaging in this anymore. We are the experts on campaign finance laws. It is clear that your office has some difficulties understanding and applying it correctly."

When discussing the motion to quash filed by the attorneys for the targets, Falk stated, "These arguments are all baloney. The attorneys just don't know what

their clients did. They likely don't have the full facts." Falk claimed that the attorneys for the targets ignored applicable case law and a GAB formal opinion. He claimed that the attorneys for the targets violated ethics rules by not being candid with the court and by not identifying contrary authority. He claimed that the attorneys did not understand the trouble their clients were in. He criticized Attorney Rick Esenberg who at that time taught election law at Marquette University Law School, stating "Esenberg doesn't know what he is talking about . . . . We are very familiar with Esenberg too and we should not be concerned about his understanding of campaign finance laws."

After reviewing a motion from the attorney for the Friends of Scott Walker, Falk commented "Wow. He really doesn't understand campaign finance law." Falk ironically stated, "There is the reality of the law and what they (attorneys for the targets) think the law should be. They conflate the two and misrepresent the reality." Of course, it was Falk and others at GAB who did not understand the law as explained by the Supreme Court in *Three Unnamed Petitioners*. Moreover, no piece of John Doe II or III evidence reviewed by DOJ suggests illegal or unethical conduct.

On January 10, 2014, when Judge Peterson quashed the John Doe subpoenas and warrants, GAB attorneys blamed the court rather than their own misinterpretation of the law. Falk stated, "I knew he [Judge Peterson] was bad news from the start, but even I didn't anticipate this." On January 10, 2014, Shane Falk sent an email to the core prosecution team regarding the court's order stating, "This

is a bad joke, right? Are you serious? This is so pathetic, it is almost funny." On the same date, Attorney Nathan Judnic wrote,

> I'm not a conspiracy theorist by nature, but something does not smell right here. He's just wrong, but the order and decision are so poorly written, it's hard to decipher where he went wrong. Dismissing controlling precedent because he doesn't think it would hold up anymore based on a convoluted argument as to why it's distinguishable made by WiCFG - with basically no explanation other than saying campaign finance law has developed over the past 15 years - well no shit.

This "poorly written" decision was affirmed by a majority of the Wisconsin Supreme Court.

In June 2014, after discussing the case with attorneys for the targets, it is apparent that the special prosecutor also properly had doubts about the continued viability of the investigation. Upon the advice of his attorney, Schmitz released a statement indicating that Scott Walker was not the target of the investigation. This brought apoplectic rebukes from GAB attorneys. Shane Falk accused the special prosecutor of lying to the press and providing fodder for talking heads. Jonathan Becker, the attorney supervising Nathan Judnic and Shane Falk, told the special prosecutor, "I am thoroughly disgusted by your proposed press statement." He told Schmitz that he was "rewriting history" and that Schmitz should "man up." He stated, "This just sickens me." Kevin Kennedy replied to this email directing Becker to review Schmitz's invoice. The next day, Kevin Kennedy sent the special prosecutor a lengthy email disputing portions of his bill. These words and actions by individuals supposedly part of a "non-partisan" governmental body demonstrate to DOJ that some or all of these individuals did not maintain the kind of objectivity that is

expected of officials legitimately investigating potential civil campaign law violations. Indeed, it is to the Legislature's credit that it disbanded GAB following this sordid tale.

G. GAB's Mishandling Of Evidence Created The Opportunity For The Leak Of Records

Had GAB taken simple precautions in securing the records, the leak of documents could have been avoided. GAB attorneys should have been aware that unsecured evidence was an easy target for theft or could be misplaced and lost. These are lessons that even the most junior prosecutors and investigators know and thus take very seriously.

The information that was given to GAB was not handled in a secure fashion. DOJ cannot even determine what documents GAB had in its possession at one point in time in order to account for them. There was no custodian assigned to account for this evidence. There was no log created that listed the confidential documents that were delivered to the office. The records relating to the John Doe investigation were not kept in a centralized location. The physical documents and the hard drives were left unsecured on desks. The digital evidence was spread among hard drives, network drives, Gmails, cloud-based databases, Dropbox, and flash drives. The hard drives that contained most of the confidential work product were not even password protected.

The dysfunctional record-keeping at GAB is illustrated by the collection of Shane Falk's John Doe materials. According to Judnic, he collected Falk's records and

placed them in six to eight accordion files. Judnic stated that he then turned the records over to David Buerger who claimed that he put them in a file cabinet. While DOJ has no specific information to contradict these statements, the fact that there was no contemporaneous log or one sole evidence custodian in control at GAB renders these memories almost meaningless.

The special prosecutor collected most of the records and submitted them to the Supreme Court. Because of mismanagement, however, hundreds of thousands of confidential documents were left in the basement in violation of a Supreme Court order. This is true even though staff made at least two prior searches of the premises. At this time, there is no way to know when those items were placed in the basement or by whom. The key was kept at the front desk of the agency. Although this basement storage area contains confidential records, there was no log kept of who accessed the storage area or when any person may have done so. In the end, instead of receiving full cooperation from the former GAB staff, a team of DOJ agents had to obtain a search warrant and execute it to make sure that no documents were still in the agency's possession.

Moreover, after the leak of documents to *The Guardian*, no action was taken by any member of the Ethics Commission or the Elections Commission to notify law enforcement. This is particularly egregious because at the time of the leak, only former members of GAB would have known that the leaked documents came from their office. Equally as troubling was the fact that no former member of GAB seemed remotely concerned or anxious about the leak.

Because the evidence was not kept in a secure manner, DOJ is not able to identify beyond a reasonable doubt who had access to the records, when the records were accessed, the location from where the records were taken, or who stole them. Accordingly, identifying the leaker or leakers is simply not possible at this time.

H. Members Of The Prosecution Team Still May Not Have Fully Divested Themselves Of All Records Relating The John Doe Investigation

This report has documented efforts made by DOJ to verify that all members of the prosecution team have fully divested themselves of John Doe records.

DOJ has discovered that not all John Doe material has been turned over to the Supreme Court by the Special Prosecutor. In addition to all the materials collected by DOJ that were never turned over by the prosecution team, several accounts remain active and contain John Doe evidence that was ordered to be surrendered to the Supreme Court. DOJ will describe these accounts in a separate letter to the John Doe Judge.

V. Final Recommendations

Given the importance of the issues presented by this report, the actions of the former GAB, and the failure of the Special Prosecutor (and the Ethics Commission) to first secure and then divest everyone of the John Doe documents, DOJ recommends that this report be unsealed and open to the public, consistent with its motion to unseal.

Under separate cover, DOJ will provide the necessary evidence for the Court to take the following actions:

- Refer Attorney Shane Falk to the Office of Lawyer Regulation for knowing and repeated violation of Judge Peterson's January 27, 2014, order;
- Initiate contempt proceedings against the following individuals to remedy violations of orders of the John Doe Judge and orders of the Wisconsin Supreme Court, as more specifically outlined in a separate letter to the John Doe Judge:
  - Former Special Prosecutor Francis Schmitz
  - Former GAB employee Kevin Kennedy
  - Former GAB employee Shane Falk
  - Former GAB employee Molly Nagappala
  - Former GAB employee Jonathan Becker
  - Elections Commission Counsel Nathan Judnic
  - Milwaukee ADA David Robles
  - Milwaukee Administrator James Krueger
  - Milwaukee DA Investigator Robert Stelter

DOJ will file this report with the Clerk of the Wisconsin Supreme Court if the John Doe Judge unseals it. In any event, DOJ will file all of the previously undisclosed evidence referenced in this report collected during the course of this investigation

with the Clerk of the Wisconsin Supreme Court under seal. Following this filing, DOJ will be completely divested of all evidence collected during this investigation.

WISCONSIN DEPARTMENT OF JUSTICE



Date: December 5, 2017

ATTORNEY GENERAL BRAD D. SCHIMEL
Wisconsin Department of Justice
17 West Main Street
Madison, WI 53707

STATE OF WISCONSIN | BEFORE THE JOHN DOE JUDGE

In the Matter of a John Doe Proceeding

Columbia County Case No. 13 JD 11
Dane County Case No. 13 JD 9
Dodge County Case No. 13 JD 6
Iowa County Case No. 13 JD 1
Milwaukee County Case No. 13 JD 23

ORDER

Based on the foregoing, and for good cause shown,

IT IS HEREBY ORDERED that the Report of the Attorney General to be unsealed. DOJ may release this report and otherwise make it publicly available. This order is also unsealed. It may be released and made publicly available.

DOJ may file under separate order a letter concerning the proposed remedies, which will be considered in due course by the undersigned.

DOJ may also file the report with the Clerk of the Supreme Court, and then completely divest itself of all evidence or secret materials gathered by DOJ during this investigation by delivering such materials to the Clerk of the Supreme Court to be handled according to the Wisconsin Supreme Court's order.

The Attorney General and his designees may, in their discretion, discuss any detail of DOJ's investigation or other matter referenced in this report, including the actions and communications of the former GAB and other members of the prosecution team. DOJ shall not, however, disclose any personal, confidential, privileged, or otherwise secret information (for example e-mails, phone records, financial records, confidential communications, or any other electronic information) belonging to or referring to any specific individual(s) or group(s) investigated by the former GAB, the special prosecutor, or the Milwaukee County District Attorney's Office during the above-captioned John Doe proceedings.

12-6-17
Date

William F. Hue
John Doe Judge