

Current media reports indicate that “John Doe III” was “not a John Doe at all,” but was solely a GAB ethics investigation. As explained below, this is entirely false. The evidence discussed in the report related to evidence obtained by search warrants and subpoenas under Milwaukee County Case No. 10JD0007, which is John Doe I. As explained fully in the report, “John Doe III” was simply a shorthand description by the report. And all of these materials were co-mingled and mishandled, creating the circumstances leading to the leak.

Since the unsealing of the Attorney General’s report concerning violations of the John Doe secrecy orders, several victims and reporters have posed questions to DOJ regarding the previously unknown investigation labeled as “John Doe III” by the report. DOJ was specifically authorized to release and disclose this information in two separate court orders. Disclosing the existence of “John Doe III” was critical to document the circumstances that allowed the leak to occur in the first place, which was DOJ’s charge from the legislature.

The Milwaukee County District Attorney’s Office initiated “John Doe III” as part of John Doe I. The evidence gathered was done under the John Doe I case number, 10JD00007. The DA’s Office obtained evidence from approximately 2009 to 2012 by way of search warrants, subpoenas, and perhaps other legal processes (such as a wiretap, as explained below).

As far as DOJ can tell from records obtained from the Ethics Commission, the DA’s Office started the investigation by obtaining a 2010 search warrant for several accounts at Box.net, followed by a 2011 search warrant for phone records and emails, a 2012 subpoena to LTSB, the Senate, and the Assembly, and then concluding with several 2012 search warrants and subpoenas mostly to email providers. The DA’s Office also obtained the recordings of one or more phone calls, which could have been obtained by a wiretap, although the records do not specify exactly how these calls were recorded by the DA’s Office.

After the conclusion of the collection of evidence, and the DA’s decision not to file charges, GAB requested that this evidence be turned over. The DA’s Office placed all of its evidence on a hard drive or other portable device and delivered it to GAB. GAB then migrated the DA’s electronic data onto several hard drives, which somehow ended up in a box labeled as “Shane Falk” in the basement of the Ethics Commission.

After this transfer, the “John Doe III” evidence appears to have been re-organized, sorted, and in some cases labeled by GAB as “Opposition Research.” This title, Opposition Research, was used by GAB in at least four separate file locations.

The “John Doe III” records were not kept in such a way as to indicate whether the investigation was “closed” and the allegations unsubstantiated. There was also no indication that this evidence was scheduled to be destroyed as required by the public records law, and certainly not scheduled to be turned over to Special Prosecutor Francis Schmitz in 2016.

Although GAB apparently labeled this investigation as “2012-01 State time campaigning,” GAB did not maintain this evidence separate from other cases, and did, in fact, comingle this evidence with the John Doe II investigation, which was labeled as “GAB investigation, 2013-02 Confidential.”

Shockingly, “John Doe III” was not the only investigation evidence comingled in the Falk Boxes. In fact, “John Doe III” was just the tip of the iceberg of old evidence and allegations maintained by GAB for future use against Wisconsin politicians. For example, one folder located on the same drive as one of the “Opposition Research” folders contained dozens of investigations from 1990–2009. These investigations include evidence and allegations against a “who’s who” of Wisconsin politicians from the time period, including former Governors, cabinet members, legislators, lobbyists, and some of the most recognizable businesses and organizations in Wisconsin.

It appears that under GAB, lawyers and investigators were permitted or perhaps even encouraged to keep closed ethics investigations on hard drives comingled with current investigations. And then, when the investigation did not result in any violation, the GAB employees were allowed to dump them all in a box and place them haphazardly in a basement (see photographs below from July 21, 2017).

Below is a redacted example of the kind of allegation kept on file by GAB, and now Ethics, more than six years after the case was closed, in violation of the record disposition authority (“RDA”) granted in RDA #521-6000, Non-Actioned Complaint Case Files.

Memo to file

7/25/\*\*

From: \*\*\*\* [GAB Staff]

Subject: a lobbyist’s campaign contribution during the first half of \*\*\* to Governor \*\*\*\*”

[An] \*\* article, stated that a lobbyist for the \*\*\* furnished a campaign contribution to Governor \*\*\*\*’s campaign during the first half of \*\*\*. Wis. Stat. 13.\*\*\* prohibits a lobbyist from furnishing a campaign contribution to the Governor unless it is furnished between June 1 and the date of the general election.

After reviewing the Governor's July \*\*\* Continuing Campaign Finance report, it was concluded that \*\*\*, a lobbyist for the \*\*\* did furnish a personal campaign contribution to the Governor on June 20, \*\*\*.

As the contribution was given during a permitted time, the lobbying law was not violated and it is recommended that this questioned activity be closed by the Board.

Although DOJ has collected some of this information as part of the John Doe leak investigation, it is unknown whether the Ethics Commission (or the Elections Commission) still maintains old files on their electronic systems in spite of any RDA requirements to the contrary. One possible reform to be undertaken by the Legislature could be a complete inventory of all investigative files (electronic or hard copy) still remaining at Ethics and Elections contrary to applicable RDAs.

Through the RDA process, and Wis. Stat. §§ 16.61, 19.21, 19.23, the public records law provides for either the destruction of closed ethics investigations or the transfer to the State Historical Society. It appears that GAB did not honor the public records law regarding final disposition of records, and instead kept select files on hand to serve as a library of past allegations to be referenced in some future investigation or dispute. This maintenance and comingling of evidence further supports the conclusion that GAB had been weaponized to achieve partisan advantage.

### **Summary of Evidence Comingled on Hard Drives and Disks from the Falk Boxes**

Folders containing 19 email accounts from "John Doe III"

PDF copies of subpoenas and search warrants from Milwaukee DA's Office under John Doe I, case no 10JD00007

File labeled as "Opposition Research" containing selected emails obtained under John Doe I, case no. 10JD00007

Selected emails and other evidence labeled "hard drive files"

Folder entitled "SRR\_Ethics Migration" containing various financial interest disclosures, internal operating procedures, and records from various ethics investigations in the following numbers:

1990 Investigations – 8

1991 Investigations – 5

1992 Investigations – 14

1993 Investigations - 20  
1994 Investigations – 8  
1995 Investigations – 11  
1996 Investigations – 9  
1997 Investigations – 9  
1998 Investigations – 3  
1999 Investigations – 18  
2000 Investigations – 7  
2001 Investigations – 7  
2002 Investigations – 7  
2003 Investigations – 4  
2004 Investigations – 7  
2005 Investigations – 9  
2006 Investigations – 25  
2007 Investigations – 15  
2008 Investigations – 35  
2009 Investigations - 6

Optical Disk 1. “Doug Backup” Seven Email Accounts, Organized as “Relevant,”  
“Questioned-Subject,” or “Questioned-Time” – 605MB

Optical Disk 2. “Gmail” Six Gmail Accounts – 12.1GB

Optical Disk 3. “Gmail” Nine Gmail Accounts – 11.9GB

Optical Disk 4. “Gmail” Three Gmail Accounts – 7.7GB

Optical Disk 5. “Nate Backup #1” – 558MB

Optical Disk 6. “Nate Backup #2” – 94.2MB

Optical Disk 7. Yahoo emails – 631MB

Optical Disk 8. Yahoo emails – 992MB

Optical Disk 9. Yahoo emails – 550MB

Optical Disk 10. “\*\*\* Vukmir Files” – 199MB

Folders containing various memos and documents related to John Doe II

Folders containing various files on “John Doe III,” including two separate folders labeled “Opposition Research,” and documents from the Milwaukee County DA’s Office.

An audio recording of a Skype conference call among party activists in 2011







