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January 20, 2017

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*Additional Parties listed on Pages 7-9

You are hereby notified that the Court has entered the following order:

Nos. 2013AP2504-2508-W	<u>Three Unnamed Petitioners v. Peterson</u> L.C.#s2013JD11, 2013JD9, 2013JD6, 2013JD1 & 2012JD23
2014AP296-OA	<u>Two Unnamed Petitioners v. Peterson</u> L.C.#s2012JD23, 2013JD1, 2013JD6, 2013JD9 & 2013JD11
2014AP417-421-W	<u>Schmitz v. Peterson</u> L.C.#s2013JD11, 2013JD9, 2013JD6, 2013JD1 & 2012JD23

The court, on its own motion, addresses the status of documents contained within its files in these three proceedings. With the goal of balancing the need to uphold the secrecy orders entered by the John Doe judges with the ability of the public to view the documents filed in this court, prior to the July 16, 2015 decision in these matters, the court established a procedure whereby the parties were either to state that a particular filing that had been sealed initially could be placed into the public file or to provide a redacted version that could be placed into the public file in the absence of an objection from other parties. The parties, however, failed to address certain of their pre-decision filings pursuant to that procedure, which left some filings under seal without any corresponding version in the public court file. In addition, the court's initial order in

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	2014AP417-421-W	<u>Schmitz v. Peterson</u> L.C.#s2013JD11, 2013JD9, 2013JD6, 2013JD1 & 2012JD23

Case No. 2014AP296-OA directed the clerk of this court to maintain all filings under seal in that proceeding, which resulted in some initial documents in that case being maintained under seal even after the adoption of the redaction/unsealing procedure described above in the court's December 16, 2014 order granting review. Finally, a number of filings subsequent to the court's July 16, 2015 decision have been maintained temporarily under seal pending the court's determination of their status. The court now determines that a version of such filings should be placed into the public file, as set forth in this order. Accordingly,

IT IS ORDERED that the clerk of this court shall place into the public court file the documents identified in Attachment A.

IT IS FURTHER ORDERED that the clerk of this court shall place into the public court file the redacted versions of the documents identified in Attachment B that the court is providing to the clerk of this court with the original of this order. The clerk of this court shall maintain as confidential under seal the original, unredacted versions of the documents identified in Attachment B pending further order of the court.

ANN WALSH BRADLEY, REBECCA GRASSL BRADLEY, and DANIEL KELLY, J.J., did not participate.

¶1 SHIRLEY S. ABRAHAMSON, J. (*concurring in part, dissenting in part*). I favor the release of documents in the John Doe trilogy, and I agree with the release of documents in the instant order.

¶2 I would release more documents than the three justices release today, and I do not agree that all the redactions the court has made (without consultation with the parties) are necessary or consistent.

¶3 I have written previously to protest the secrecy in these cases.¹ Indeed, from July 16, 2015, until November 19, 2015, 33 documents were filed and automatically sealed. More documents were sealed thereafter.

¹ See, e.g.:

- Three Unnamed Petitioners v. Peterson, 2015 WI 103, 365 Wis. 2d 351, 875 N.W.2d 49 (Abrahamson, J., concurring in part and dissenting in part, including list of 33 sealed documents filed from July 16, 2015 to Nov. 19, 2015);
- Order dated Nov. 21, 2016 (Abrahamson, J., dissenting);

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¶4 This secrecy has led me to express repeatedly three concerns relating to the wholesale sealing of the records in the John Doe trilogy.

¶5 One concern is process. The sealing of documents was automatic. Documents were automatically maintained under seal even when the parties did not so request and even when no court order or direction required sealing. No explanation was given to justify automatic nondisclosure to the public. A protocol for sealing and redacting was established in the order dated December 16, 2014, granting court review of the trilogy of cases.²

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- Order dated Dec. 16, 2014 (Abrahamson, J., concurring) (order granting review and accepting original action).

See also Justice David T. Prosser's concurrence to order dated Dec. 16, 2014, in which I joined, stating:

There are significant issues involving the "facts" upon which the parties and this court may rely, i.e., the "record" and its completeness as well as the enormous problem of sealed documents. The order contemplates that disputes relating to redaction of unsealed documents will be decided by this court without providing a blueprint of how or when the court will discharge this responsibility.

² The part of the court's order of December 16, 2014, relating to sealing stated:

IT IS FURTHER ORDERED that on or before February 27, 2015, each party that has previously filed in the court of appeals or in this court any document that has been maintained under seal until the date of this order shall for each such document either file a written statement that the document may be placed into the public court file or file a redacted version of the document in which matters that are covered by the secrecy orders entered by the John Doe Judge or that are otherwise confidential shall be redacted. (This requirement does not apply to documents filed in the court of appeals in Case Nos. 2013AP2504-2508-W.) Each party shall serve on all other parties a copy of the statement that the document may be placed into the public court file or two copies of the redacted version of the previously filed document. All other parties shall have 20 days after the filing of the statement or redacted copies to file a written objection to the statement or the redacted copy, which objects to either insufficient redaction or excessive redaction. Each such written objection must specify which words, sentences or paragraphs the objector either wants to be redacted or unredacted, and must provide reasons for each such objection. If no objections are received within the 20-day period, the clerk of this court will

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¶6 Thus, documents have been sealed for months (sometimes years) without any court review or order. The parties seemed to assume everything was to be sealed and expressed uncertainty about the protocol for sealing and unsealing documents.

¶7 My second concern is substantive. Many documents were sealed that do not fall within the purpose of the John Doe secrecy orders. Without question, they should have been publicly filed. Documents were sealed that were publicly available in federal court or elsewhere; these documents should not have been sealed or redacted in this court's files. Furthermore, some documents could have been filed without sealing but with redactions.

¶8 A third concern is constitutional. Court filings are presumptively open for public inspection. Yet in the John Doe trilogy numerous documents are still veiled in secrecy, as are most of the parties' factual and legal arguments. The secrecy raises significant First Amendment, state constitutional, statutory, and common-law issues.

¶9 Unfortunately, the legitimacy of my concerns is well illustrated by the instant court order.

I

¶10 In December 2014, court established a procedure whereby filings were sealed and the parties were to provide input on the sealing and redacting of documents. The procedure the court established in December 2014 has not been followed, and it was apparently unclear to the parties what procedure they and the court would follow.

¶11 Indeed, three justices on their own motion, without any input from the parties, now determine the secrecy status of documents going back to 2014 and of documents filed as recently as two months ago. The instant order releases documents with no input from the parties.

¶12 Although I strongly favor releasing documents (even if the instant court order is too little and too late), I would follow the procedure the court originally established. If another

place either the original previously filed document (in the case of a statement) or a copy of the redacted version of the previously filed document into the public court file on the third day following the expiration of the 20-day period. If an objection is received, the original document and the redacted versions shall remain under seal until such time as the court rules on the objection and issues a written order directing the clerk of this court to place the original or a redacted version of the previously filed document into the public court file[.]

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procedure is to be adopted by the three justices, that procedure should give the parties the opportunity to object to the court's releasing documents, redacting documents, and retaining sealed documents before the court issues a final order. The parties have something to offer the court. A court should not be so full of itself that it thinks it has all the answers and does not need or want the participation of lawyers and litigants.

¶13 In addition to adopting a fairer, more expeditious procedure in the instant trilogy for sealing, unsealing, and redacting, I conclude that the court should adopt procedures for the future to deal with sealed filings. The John Doe cases are not the only ones presenting issues relating to secrecy. Indeed, in a recent petition for review filed in a civil case in this court, secrecy of documents is requested.

¶14 Other courts have written and published procedures for filing documents under seal. These procedures require a court to consider the parties' arguments for sealing and make a determination on sealing.

¶15 For instance, in some federal district courts, documents may be submitted temporarily under seal, but must be accompanied by a motion for leave to file under seal and an affidavit or motion outlining what specific parts of the filing must be under seal, and setting forth reasons for the sealing. Courts are expected to rule promptly. See, e.g., N.D. Cal. L.R. 79-5 ("[N]o document may be filed under seal . . . except pursuant to a court order that authorizes the sealing of the particular document, or portions thereof. . . . The request must be narrowly tailored to seek sealing only of sealable material . . ."); E.D. Wis. Gen. L.R. 79(d) (requiring a publicly filed motion setting forth the general nature of the material being withheld, including a redacted version, and setting forth facts demonstrating good cause for the sealing).

¶16 The three justices have flipped this process by maintaining documents "temporarily" under seal pending a determination of the court that has not been made for months (or years). Yet the three justices have selectively unsealed documents seemingly on a whim, without requiring any showing of good cause for the sealing, unsealing, or redacting.

¶17 The failure to adopt and use a consistent process in this trilogy for sealing, unsealing, and redacting documents cannot be justified.

II

¶18 The descriptions of the documents to be placed into the public court file, Attachments A and B to the instant order, clearly demonstrate that these documents were unnecessarily sealed. Many sealed documents that are being unsealed today were filed as far back as February 2014. Too many documents have remained sealed for nearly three years.

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Now, all of a sudden they are unsealed. I urged that the documents filed in November 2016 relating to motions before the court be unsealed before the court issued its order on the motions. They were not. Today the documents are made public.

¶19 Many documents that were sealed fall outside the purpose of the secrecy orders.

¶20 Documents such as those, for example, relating to Cindy Archer's federal lawsuit, were sealed, although they are publicly available in federal court.

¶21 In addition, a careful examination of the documents unsealed (but redacted) shows that the redactions are not necessarily consistent from one document to another. A comparison of some redacted and unredacted documents would show that too much has been redacted.

III

¶22 As I have written previously, the presumption is that documents filed in court are open for public inspection. Yet in the John Doe trilogy numerous documents are still veiled in secrecy, as are most of the parties' factual and legal arguments.

¶23 Missing from the order is a list of documents that should be labeled Attachment C. Attachment C would contain a general description of all the documents still being withheld from the public. The Clerk of the Supreme Court has a list of all the filings in the John Doe trilogy. The list runs 32 printed pages. See Wisconsin Supreme Court and Court of Appeals Access (WSCCA) (available on the court's web site at www.wicourts.gov).

¶24 The extensive secrecy in the John Doe trilogy spanning nearly three years raises significant First Amendment, state constitutional, statutory, and common-law issues. Although the participating justices have not had to rule on these legal issues, they are live issues.

¶25 In sum, although I agree that documents should be placed in the public file today, because the procedure followed by the three justices in the John Doe trilogy does not engender confidence in the transparency of court proceedings or in the rule of law, I register a dissent to the court's procedure.

Diane M. Fremgen
Clerk of Supreme Court

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Attachment A: List of Documents to be Placed into the Public Court File as is

Documents filed only in Case No. 2014AP296-OA:

Date Filed	Filed by	Description
02/07/14	Clerk of Supreme Court	Acknowledgement of Filing of Writ/Petition
02/11/14	Supreme Court	Order for response to petition for original action
02/12/14	Attorney Rice	Letter response of Judge Peterson to petition for original action
02/24/14	Clerk of Supreme Court	Returned envelope addressed to Attorney Meyers containing Acknowledgement of Filing of Writ/Petition
02/24/14	Clerk of Supreme Court	Returned envelope addressed to Attorney O'Sullivan containing Acknowledgement of Filing of Writ/Petition
02/24/14	Clerk of Supreme Court	Returned envelope addressed to Attorney O'Beirne containing Acknowledgement of Filing of Writ/Petition
02/24/14	Clerk of Supreme Court	Returned envelope addressed to Attorneys Bresnick, Meyers, O'Beirne and O'Sullivan containing copy of 02/11/14 court order
02/25/14	Michael O'Grady	Notice of Motion and Motion to Intervene of Proposed Intervening Citizen, with affidavit in support, brief in support, cover letter, and envelope
02/25/14	Attorney Schmitz	Motion to Seal response to petition for original action and supporting affidavit
03/19/14	Supreme Court	Order denying Michael O'Grady's motion to intervene
03/19/14	Justice Ann Walsh Bradley	Letter to parties re: recusal
04/08/14	Clerk of Supreme Court	Returned envelope addressed to Attorneys Bresnick, Meyers, O'Beirne and O'Sullivan containing copy of 03/19/14 court order
06/03/14	Attorney Schmitz	Motion to Seal response to petitioners' notice concerning Seventh Circuit decision dated May 21, 2014

Documents filed in all three John Doe Supreme Court proceedings (Case Nos. 2013AP2504-08-W, 2014AP296-OA; and 2014AP417-21-W):

Date Filed	Filed by	Description
02/24/15	Attorney Rice	Motion of Gregory Peterson, Jeffrey Kremers, James Daley, James Duvall, and Gregory Potter to Supplement the Record
03/13/15	Attorney Rice	Letter dated March 13, 2015, re: objection of John Doe Judge and Chief Judges to paragraph 3 of joint report on oral argument
08/04/15	Attorney Schmitz	Special Prosecutor's Motion for Reconsideration and Stay of Decisions and Orders, Memorandum in Support, and cover letter
08/06/15	Attorney Greim	Letter dated August 6, 2015, re: Motion for Reconsideration
08/10/15	Attorney Wilson	Letter to C.J. Roggensack dated August 10, 2015, re: continuation of John Doe Judge Peterson
08/11/15	Attorney Schmitz	Letter to Clerk Fremgen dated August 6, 2015, re: placing of communications between counsel and the court into the court file
08/13/15	Attorney Jacobs	Response of Unnamed Movant No. 1 to Special Prosecutor's Motion for Reconsideration and Stay of Decisions and Orders, with attached cover letter
08/14/15	Attorney Strang	Letter to Participating Justices dated August 14, 2015, re: "John Doe Trilogy, Nos. 13AP2504-W; 14AP296-OA, 14AP417-W, and related cases"
08/14/15	Attorney Wilson	Response of Unnamed Movants 4 and 5 to the Special Prosecutor's Motion for Reconsideration and Stay of Decisions and Orders, with attached cover letter
08/28/15	Attorney Slomowitz	Response of Unnamed Movant No. 2, as Joined by Unnamed Movant Nos. 7 and 8, to Petition for Limited Intervention
08/31/15	Attorney Hansen	Letter to Clerk Fremgen dated August 28, 2015, joining response of Unnamed Movant 2 to petition for limited intervention
08/31/15	Attorney Wilson	Motion of Unnamed Movants 4 and 5 for Immediate Remand to John Doe Judge and Joinder of Pending Responses, with attached cover letter
09/11/15	Attorney Slomowitz	Unnamed Movant No. 2's Response to Weiss's Petition for Limited Intervention, with attached cover letter

10/22/15	Attorney O'Neill	Unnamed Movant No. 2's Memorandum in Opposition to Motion for Reconsideration and Stay, with cover letter and service list
10/28/15	Attorney Slomowitz	Unnamed Movant No. 2's Notice of Statutory Changes, with cover letter and service list
10/29/15	Attorney Rice	Letter to Clerk Fremgen on behalf of J. Peterson dated October 29, 2015, re: effect of 2015 Wis. Act 64
10/30/15	Attorney Schmitz	Letter to Clerk Fremgen dated October 30, 2015, re: intent to respond to Notice of Statutory Changes filed by Unnamed Movant No. 2
11/12/15	Attorney Fertl	Supplemental Memorandum in Support of Petition for Limited Intervention Pursuant to Wis. Stat. §§ 809.13 and 809.63, with cover letter and mailing list, filed on behalf of District Attorney Chisholm, Attorney Landgraf, and Attorney Robles
02/03/16	District Attorney Chisholm	Intervenors' Consolidated Response to Unnamed Movants Opposition to Intervenors' Motion to Amend the Secrecy Orders, with cover letter

Attachment B: List of Redacted Documents to be Placed into the Public Court File (Originals to be Maintained under Seal)

Documents filed only in Case No. 2013AP2504-08-W:

Date Filed	Filed by	Description
02/19/14	Attorney Strang	Petition for Review and Appendix
03/05/14	Attorney Schmitz	Special Prosecutor's Response to Petition for Review and Appendix of the Special Prosecutor
06/25/14	Attorney Strang, et al.	Supplemental Filing on Relationship of GAB and Special Prosecutor
07/14/14	Attorney Schmitz	Special Prosecutor's Response to Petitioners' "Supplemental Filing on Relationship of GAB and Special Prosecutor"
08/15/15	Attorney Strang, et al.	Supplemental Reply on Relationship of GAB and Special Prosecutor

Documents filed in all three John Doe Supreme Court proceedings (Case Nos. 2013AP2504-08-W, 2014AP296-OA; and 2014AP417-21-W):

Date Filed	Filed by	Description
02/23/15	Attorney Schmitz	Letter to Supreme Court dated February 17, 2015, re: "Correction to Statutory Citation in Motion for Recusal and Notice of Ethical Concerns Related to SCR 60.03 and SCR 60.04"
08/07/15	Attorney Greim	Letter to C.J. Roggensack dated August 4, 2015, re: Hon. Neal Nettesheim
08/07/15	Judge Peterson; Chief Justice Roggensack	Email chain between J. Peterson and C.J. Roggensack dated August 5, 2016, re: "Edward Greim re: John Doe Assignments"
08/07/15	Attorney Strang	Letter to C.J. Roggensack dated August 6, 2015, re: John Doe Investigations
08/10/15	Judge Nettesheim; Chief Justice Roggensack	Letter from J. Nettesheim to C.J. Roggensack dated August 8, 2015, re: "Letters of Attorney Edward D. Greim and Attorney Dean Strang"
08/10/15	Attorney Strang	Letter to C.J. Roggensack dated August 10, 2015, re: John Doe Investigations, with attached email printout to Judge Peterson, Judge Nettesheim, and counsel
08/12/15	Attorney Greim; Chief Justice Roggensack	Email from Attorney Greim to C.J. Roggensack dated August 5, 2015, re: "Edward Greim re: John Doe assignments" with prior email chain and attached letter from Attorney Greim to C.J. Roggensack dated August 4, 2015
08/12/15	Judge Peterson; Chief Justice Roggensack	Email from J. Peterson to Attorney Greim dated August 5, 2015, re: "Edward Greim re: John Doe assignments" with prior email chain
08/12/15	Judge Nettesheim; Chief Justice Roggensack	Email from J. Nettesheim to J. Peterson re: "Edward Greim re: John Doe assignments" with prior email chain
08/13/15	Justice Abrahamson	Letter from J. Abrahamson to Clerk Fremgen dated August 12, 2013, re: Letter Regarding John Doe Communications enclosing letter dated August 12, 2015, from J. Abrahamson to "Attached List of Interested Persons" and letter dated July 31, 2015, from Attorney Greim to J. Abrahamson
08/13/15	Judge Nettesheim; Chief Justice Roggensack	Email from J. Nettesheim to C.J. Roggensack dated August 12, 2015, re: "August 10, 2015 Letter From Attorney Strang"

08/14/15	Attorney Schmitz	Letter to Supreme Court dated August 13, 2015, with attachments re: response to prior letters submitted by Attorney Greim, Attorney Strang, and J. Nettesheim
08/14/15	Attorney O'Neill	Unnamed Movant Nos. 2, 3, 6, 7 & 8's Memorandum in Opposition to Motion for Reconsideration and Stay, with attached exhibits
08/19/15	Attorney Knott	Petition for Limited Intervention Pursuant to Wis. Stat. §§ 809.13 and 809.63, with memorandum in support and cover letter, filed on behalf of David Budde and Robert Stelter
08/20/15	Justice Abrahamson	Letter to Clerk Fremgen dated August 20, 2015, re: "Letter Regarding John Doe Communications," with attached email chain from clerk's office to Attorney Schmitz
08/25/15	Attorney Schmitz	Special Prosecutor's Motion to Strike Request for Special Master or, Alternatively, Seeking Leave to File Brief Responding to Special Master Request and Newly Raised Matters, with attached cover letter
09/03/15	Attorney Knott	Petition for Limited Intervention Pursuant to Wis. Stat. §§ 809.13 and 809.63, with memorandum in support and cover letter, filed on behalf of Aaron Weiss
09/04/15	Attorney Schmitz	Reply of Special Prosecutor in support of the motion for reconsideration and stay, with attached cover letter, exhibits, and certificate of mailing
09/04/15	Attorney Schmitz	Amended Filing with Respect to Reply of Special Prosecutor, with attached corrected Exhibit A
10/14/15	Jeffrey Fertl	Petition and Brief for Limited Intervention Pursuant to Wis. Stat. §§ 809.13 and 809.63, with attached exhibits and cover letter, filed on behalf of District Attorney Chisholm, Attorney Landgraf, and Attorney Robles
11/19/15	Attorney O'Neill	Unnamed Movant No. 2's Reply Regarding Notice of Statutory Change, with cover letter
10/13/16	Attorney O'Neill	Unnamed Movant No. 2's Motion for Post-Judgment Relief, with attached exhibits
10/20/16	Attorney Schmitz	Response to Motion for Supervised Return of Evidence and Investigation of John Doe Disclosures
10/27/16	Attorney Schmitz	Prosecutors' Response to Unnamed Movant No. 2's Motion for Post-Judgment Relief, with attached exhibits
11/02/16	Attorney Schmitz	Affidavit Concerning John Doe II Evidence, with attachment, and Index to John Doe II Evidence

11/03/16	Attorney Schmitz	Corrected table and list for Affidavit Concerning John Doe II Evidence
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