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Nos. 2013AP2504-W through 2508-W,
14AP296-OA, and
14AP-0417-W through 0421-W

STATE OF WISCONSIN EX REL. THREE UNNAMED PETITIONERS,
v.
HON. GREGORY A. PETERSON, *et al.*,

STATE OF WISCONSIN EX REL. TWO UNNAMED PETITIONERS,
v.
HON. GREGORY A PETERSON, *et al.*,

STATE OF WISCONSIN EX REL. FRANCIS D. SCHMITZ,
v.
HON. GREGORY A. PETERSON.

**MOTION FOR IMMEDIATE SUPERVISED
RETURN OF PROPERTY AND FOR
CRIMINAL INVESTIGATION**

John Doe Investigative Proceeding in Five Counties,
Hon. David J. Wambach, Presiding
Columbia County No. 13-JD-011; Dane County No. 13-JD-009
Dodge County No. 13-JD-006; Iowa County No. 13-JD-001;
Milwaukee County No. 12-JD-023

Dean A. Strang
STRANGBRADLEY, LLC
10 East Doty Street, Suite 621
Madison, Wisconsin, 53703
[608] 535-1550
Wisconsin Bar No. 1009868
Counsel for Unnamed Movant No.7

Edward H Meyers
STEIN, MITCHELL, CIPOLLONE,
BEATO & MISSNER, LLP
1100 Connecticut Avenue, NW
Suite 100
Washington, DC 20036
[202] 737-7777
Counsel for Unnamed Movant No. 6

Unnamed Movants Nos. 6 and 7, by counsel, now ask this Court to order the following relief, at the Court's earliest opportunity:

A. Under direct supervision of the current John Doe judge, the Hon. David J. Wambach, or of a special master appointed by him or by this Court, immediate return to counsel of all documents and other items retained, in any format, by agents of the John Doe investigation, by their agents or colleagues, or by anyone who obtained access to such documents and items through any agent of the John Doe investigation. The only exception would be the records retained by the United States District Court for the Eastern District of Wisconsin, which unnamed movants will address with that court;

B. Attestation to the John Doe judge in writing, under oath, by each agent of the John Doe investigation that he or she has complied with the preceding paragraph; and

C. Immediate request to commence a criminal investigation into disclosure of materials held under seal or non-disclosure order that appeared in *The Guardian* newspaper in September 2016.

As grounds for this motion, now that this case is concluded in the United States Supreme Court, Unnamed Movants Nos. 6 and 7 show as follows:

1. This Court's earlier orders concerning return and destruction of materials gathered in the John Doe investigations did not anticipate the illegal disclosure of documents to *The Guardian* that occurred or was revealed in September 2016.

2. Both the Milwaukee County District Attorney and the Attorney General have acknowledged that the disclosure of such materials to *The Guardian* constituted a crime. The Attorney General later has acknowledged in a private conversation the possibility of an outside hacker. Regardless of the source or reason for the disclosures to *The Guardian*, those disclosures likely were contempt of this Court's orders and in violation of orders entered by the John Doe judges who preceded Judge Wambach. The disclosures also constituted one or more state-law crimes.

3. The John Doe judge, however, has declined to pursue an inquiry into contempt of court. To date, unnamed movants also are unaware of any criminal investigation.

4. The documents disclosed included some that were unsigned drafts of later filings by the John Doe prosecutors and some others bearing handwritten marginalia likely added by an employee of the GAB, a John Doe prosecutor, or their agents; they included some sealed records never provided to the unnamed movants; and metadata reveal that many of these documents were scanned in the Central time zone on the Friday afternoon before Memorial Day weekend 2016. So there is a strong likelihood that the disclosure of at least some of those documents is attributable to one or more of the John Doe prosecutors or their agents. For that reason, it would be inappropriate to allow one of the five district attorneys involved in the John Doe investigation to conduct the criminal investigation.

5. On the same facts, the former special prosecutor and other members of the John Doe investigative team now have proven

themselves unable to assure compliance with this Court's orders as to disposition of materials they gathered. The leak itself demonstrates, at best, their inability to control disposition of those materials.

6. Further, the former special prosecutor now twice has made public statements decrying the inability to punish people for acts that this Court has determined are not crimes. He continues to resist, in other words, the legal conclusions that the John Doe judge, this Court, and the federal district court in Milwaukee all drew, and that the United States Supreme Court now has left in place.

7. At present, the appropriate venue of a prosecution for illegal disclosure of John Doe materials is unknown. The Attorney General is the only state law enforcement agency with statewide jurisdiction.

8. If in fact a hacker was involved, a possibility the Attorney General lately has suggested, then various of the state's computer networks may be at risk. Legitimate ongoing law enforcement investigations, court records, personal information, and even personal

safety all may be in peril. For that matter, public confidence in the operation of the courts themselves, and of the ability of the government to assure data safety, may be in peril.

9. The privacy and reputations of innocent persons who were named in disclosed documents, or whose documents those were, have been damaged unfairly and unlawfully.

WHEREFORE, this Court should, as soon as practicable, order the relief requested above and set a deadline of not more than 14 days, but no later than November 2, 2016, within which the John Doe judge or a special master must secure compliance by all agents of the John Doe investigation with this Court's order. Every copy or original, in whatever format, of documents or other items gathered in relation to the John Doe investigations must be returned to their original owners within the same time, save the records in the possession of the United States District Court for the Eastern District of Wisconsin.

Specifically, this Court should order:

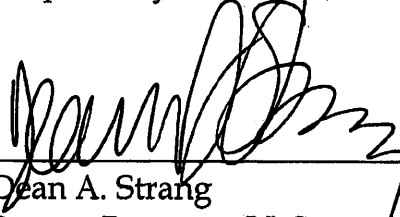
A. Under direct supervision of the current John Doe judge, the Hon. David J. Wambach, or of a special master appointed by him or by this Court, immediate return to counsel of all documents and other items retained, in any format, by agents of the John Doe investigation, by their agents or colleagues, or by anyone who obtained access to such documents and items through any agent of the John Doe investigation. Return should be accomplished within 14 days and in no event later than November 2, 2016. The only exception would be the records retained by the United States District Court for the Eastern District of Wisconsin, which unnamed movants will address with that court;

B. Attestation to the John Doe judge in writing, under oath, by each agent of the John Doe investigation that he or she has complied with the preceding paragraph; and

C. An immediate criminal investigation into unlawful disclosure of materials held under seal or non-disclosure order that appeared in *The Guardian* newspaper in September 2016.

Dated at Madison, Wisconsin, October 7, 2016.

Respectfully submitted,



Dean A. Strang
STRANGBRADLEY, LLC
10 East Doty Street, Suite 621
Madison, Wisconsin, 53703
[608] 535-1550
Wisconsin Bar No. 1009868
Counsel for Unnamed Movant No.7

Edward H Meyers
STEIN, MITCHELL, CIPOLLONE
BEATO & MISSNER, LLP
1100 Connecticut Avenue, NW
Suite 100
Washington, DC 20036
[202] 737-7777
Counsel for Unnamed Movant No. 6