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March 27, 2015

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

Nos. 2013AP2504-2508-W Three Unnamed Petitioners v. Peterson
L.C.#s2013JD11, 2013JD9, 2013JD6, 2013JD1 & 2012JD23

2014AP296-OA Two Unnamed Petitioners v. Peterson
L.C.#s2012JC23, 2013JD1, 2013JD6, 2013JD9 & 2013JD11

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

More than one year after the three John Doe-related proceedings (Three Unnamed Petitioners v. Peterson, Nos. 2013AP2504-2508-W; Two Unnamed Petitioners v. Peterson, No. 2014AP296-OA; and Schmitz v. Peterson, Nos. 2014AP417-421-W; collectively, the John Doe cases) were initiated in the court of appeals and in this court, and months after this court had already put into place a procedure for providing public access to redacted versions of **all** previously sealed documents, Journal Sentinel, Inc., the publisher of the Milwaukee Journal Sentinel, moved to intervene for the stated purpose of asserting its purported right to gain access to the "proceedings" and "records" in this court. We conclude that the motion is untimely, and that it must be denied.

Proceedings in the appellate courts arising out of the pending, five-county John Doe investigation have been ongoing since November 2013, when three unnamed petitioners filed a petition for a supervisory writ in the court of appeals (Case Nos. 2013AP2504-2508-W). In a public order dated November 22, 2013, the court of appeals directed that the writ petition and supporting memorandum be held under seal while the underlying John Doe investigations remained pending and the relevant secrecy orders issued by the John Doe judge remained in effect, or until further order of the court of appeals. With the release of this order, it was plain for all to see that certain documents regarding the John Doe investigation filed in the appellate courts would be maintained under seal, at least temporarily. Indeed, multiple articles and postings on the Milwaukee Journal Sentinel's website, jsonline.com,[1] from November and December 2013 explicitly stated that the filings in the court of appeals were under seal and not available for public inspection.

The court of appeals' final order issued on January 30, 2014, made clear that certain documents in the appellate record would be permanently sealed. The order stated that certain documents needed to remain sealed because they "would identify subjects of one or more of the John Doe proceedings, specific information that has been gathered or is being sought by a subpoena or search warrant, or other details of the investigation." The court unsealed certain documents the parties agreed could be unsealed because they did not disclose any such information. Indeed, with respect to a motion to stay filed in the court of appeals, the court concluded that the motion could be unsealed because it did not "reveal[] any information that would violate a secrecy order," which it concluded was the proper standard for determining whether or not a particular document should remain sealed.

Despite knowing that the court of appeals had initially ordered all documents in the writ proceeding to be sealed and then had kept under seal all documents that contained information covered by the secrecy order issued by the John Doe judge, Journal Sentinel, Inc. never sought to intervene in the court of appeals to argue that the court of appeals was failing to provide adequate public access to the documents filed in that court.

The various proceedings in this court began shortly after the court of appeals issued its January 30, 2014 final order in Case Nos. 2013AP2504-2508-W. First, on February 7, 2014, two unnamed petitioners filed a petition for leave to commence an original action in this court (Case

[1] See "Court filings seek to stop Doe probe into recall elections," dated November 19, 2013, located at http://www.jsonline.com/news/statepolitics/court-filings-target-judge-overseeing-probe-into-conservative-groups-b99145927z1-232536631.html; "Appeals court won't stop secret probe into campaign fundraising, spending," dated November 22, 2013, located at http://www.jsonline.com/news/statepolitics/appeals-court-declines-to-stop-secret-probe-into-campaign-fundraising-spending-b99148909z1-233086001.html; and "Prosecutor and judges file briefs in John Doe case," dated December 26, 2013, located at http://www.jsonline.com/blogs/news/237328331.html, all of which were last visited on March 25, 2015.

No. 2014AP296-OA). Less than two weeks later, the three unnamed petitioners in Case Nos. 2013AP2504-2508-W filed a petition for review of the court of appeals' January 30, 2014 order. Within a couple of days of the filing of the petition for review, the special prosecutor filed his own petition for a supervisory writ in the court of appeals (Case Nos. 2014AP417-421-W). That writ petition soon became the subject of three bypass petitions filed in this court, all of which were filed within a five-day span in April 2014. It was evident from this court's public docket database on its website, www.wicourts.gov, that all of these filings in this court were accompanied by motions to seal and that the filings were indeed being maintained under seal. Once again, Journal Sentinel, Inc. never moved to intervene in this court on the ground that its views on whether filings should be unsealed needed to be heard or public access would be lost.

When this court subsequently granted review in all three John Doe cases in a December 16, 2014 order, the court explicitly addressed the fact that most documents in the three cases had been sealed. The court created a procedure under which original versions or redacted versions of **all** documents that had been maintained under seal would be filed and ultimately be placed into the court's public case file for viewing by all members of the news media and the public. The court established a similar redaction procedure for all of the briefs that the parties would be filing in the coming months. Yet again, Journal Sentinel, Inc. failed to move to intervene to argue that the court's redaction procedures were insufficient in providing public access.

Only after the court asked the parties to submit a report on how oral argument might be handled in these John Doe cases (and on the date the parties' report was due) did Journal Sentinel, Inc. move to intervene to express its views on how this court should provide public access to its proceedings and record. Moreover, by the time Journal Sentinel, Inc. filed its intervention motion, the parties had already filed their proposed redactions of their briefs-in-chief and their previous filings, and the parties were close to completing the written objection process for each others' proposed redactions.[2] Even then, with only slightly more than a month before the scheduled dates for oral argument, Journal Sentinel, Inc. did not provide the court with its arguments on public access. Indeed, its memorandum in support of the intervention motion specifically stated that it was not asking the court to make any decisions on access at that point because, if its intervention motion would be granted, it would make those arguments in the days and weeks to come. Although it failed to recognize this fact, Journal Sentinel, Inc.'s request for the ability to brief public access issues in the coming weeks would have also meant that the court would have been required to provide the parties to these cases with a chance to respond.

[2] The briefing on the merits of the parties was also very close to completion by the time the intervention motion was filed. Indeed, briefing by the parties has now been completed, and the case is ready for decision.

The import of Journal Sentinel, Inc.'s request for additional time to submit its arguments on public access at this late stage in the case is that this court would have been precluded from making decisions on whether to hold oral argument, and if oral argument would be granted, what procedures would be used for the oral argument, until Journal Sentinel, Inc. and the parties had submitted their additional memoranda on these issues. In any event, as set forth in another order being issued today, the court has determined that it will not hold oral argument in these cases. Thus, to the extent Journal Sentinel, Inc. seeks to submit its views on whether oral argument should be open, that decision has, of necessity, already been made, rendering that portion of the intervention motion moot.

To the extent that Journal Sentinel, Inc. seeks to submit its view on access to filings in this court, it is also too late. As noted above, the court already in December of last year created procedures to provide public access to redacted copies of briefs and other filings. It is today issuing another order that rules on the various objections to the redactions, or lack thereof, in the proposed redacted versions of documents already filed by the parties. That order once again requires the parties to submit revised redacted versions of their filings in compliance with the John Doe secrecy orders so that the portions of the filings that do not disclose confidential information can be placed into the public file. Importantly, while Journal Sentinel, Inc. professes that it wants to submit arguments regarding the public's access to documents, its motion never indicates that it objects to the court's redaction procedures. Most importantly, if the court were to grant Journal Sentinel, Inc.'s motion to intervene, the process of receiving its memoranda and the responsive memoranda of the parties would delay by weeks or months the completion of the already ongoing redaction process and the placing of the redacted documents into the public court file, which is the type of public access apparently sought by Journal Sentinel, Inc.

Journal Sentinel, Inc. cites four cases as evidence that Wisconsin courts have "repeatedly" allowed media organizations to intervene on issues of public access. None of those cases, however, involved the time conditions present here, where Journal Sentinel, Inc. seeks to intervene after an appellate court has already created a procedure for providing public access and just weeks before the court will be holding a decision conference on the merits of the case. It first cites In re John Doe Proceeding Commenced by Affidavit Dated July 25, 2001, 2003 WI 30, 260 Wis. 2d 653, 660 N.W.2d 260, but in that case the intervention motion was filed and already decided at the time this court accepted certification at the beginning of the appeal. It also cites State ex rel. Bilder v. Township of Delevan, 112 Wis. 2d 539, 334 N.W.2d 252 (1983), but there the motions to intervene by newspapers were made in the circuit court within weeks of the case being commenced and at the same time a stipulation to seal the circuit court record was being filed in the circuit court. Journal Sentinel, Inc. further cites an unpublished order of the court of appeals allowing it to intervene and ultimately unsealing certain documents in an appellate record in a criminal case arising out of an earlier John Doe proceeding. See State v. Rindfleisch, No. 2013AP362-CR (Wis. Ct. App. Feb. 10, 2014). The intervention motion in that appeal,

however, was filed when the briefing was at an early stage and more than a year before oral argument was held, not just a few weeks prior to the scheduled oral argument dates as was the case here. Finally, Journal Sentinel, Inc. points to the decision of a John Doe judge (not an appellate court) in an earlier John Doe proceeding, who allowed Journal Sentinel, Inc. to intervene. In that situation, however, the John Doe proceeding had already been completed; it was not still pending as is the situation here. Moreover, the issue there was not whether the John Doe judge should unseal documents gathered in an ongoing John Doe proceeding, but whether the judge should order that documents obtained from the county should be returned to the county after the completion of the John Doe proceeding. That is an entirely different issue with entirely different time considerations than presented by the intervention motion filed here.

The dissent criticizes this order as violating the public's right to open judicial proceedings in an unjustified and unprecedented manner. This is simply not correct. It is true that John Doe proceedings, like most other court proceedings, are presumptively open, but this court has clearly recognized that a John Doe judge may exercise discretion to close a John Doe proceeding to the public when there is a compelling reason to do so. See, e.g., State v. Unnamed Defendant, 150 Wis. 2d 352, 359, 441 N.W.2d 696 (1989). Indeed, this court has already recognized that the legislature has made a clear statement of public policy that John Doe proceedings are exceptions from the usual requirement that court records and court proceedings must be open to the public in all respects. See In re John Doe Proceeding, 260 Wis. 2d 653, ¶67 ("The John Doe statute, Wis. Stat. § 968.26, which authorizes secrecy in John Doe proceedings, is a clear statement of legislative policy and constitutes a specific exception to the public records law [Wis. Stat. § 19.35(1)]."). This clear statement of public policy is set forth in the John Doe statute itself, which states that "[t]he examination [in a John Doe proceeding] may be adjourned and may be secret." Wis. Stat. § 968.26(3). The factors a John Doe judge should consider in exercising the discretion to keep a proceeding secret include whether making the John Doe proceeding secret would keep the target of the proceeding or an arrested defendant from fleeing; whether it would prevent targets of the proceeding or other individuals from collecting perjured testimony, tampering with evidence, or otherwise preventing inquiry into the subject matter of the proceeding; whether it would free witnesses from the threat of retaliation for their John Doe evidence or testimony and render them more free in their testimony; and whether it would protect targets and witnesses in the John Doe proceeding by preventing evidence or testimony that may be mistaken, untrue or irrelevant from becoming public. See In re John Doe Proceeding, 260 Wis. 2d 653, ¶60; State ex rel. Newspapers, Inc. v. Cir. Ct., 124 Wis. 2d 499, 508, 370 N.W.2d 209 (1985) (recognizing that there is a public policy interest in protecting a potential defendant's privacy and reputation, which could be jeopardized by opening a pre-charging proceeding (there under Wis. Stat. § 968.02(3)) if no criminal charges result); Wisconsin Family Counseling Services v. State, 95 Wis. 2d 670, 677, 291 N.W.2d 631 (Ct. App. 1980).

If a John Doe judge, in the exercise of that judge's discretion, determines that a John Doe proceeding should be kept secret, some form of appellate review should ordinarily not lead to the disclosure of information that has been ordered by the John Doe judge to be secret. In re John Doe Proceeding, 260 Wis. 2d 653, ¶67 ("It is critical that when a John Doe judge issues a secrecy order pursuant to Wis. Stat. § 968.26, the judge must be assured that secrecy will be preserved when and if the matter reaches an appellate court. Seeking review in the court of appeals must not become a vehicle to undermine the secrecy or integrity of a John Doe proceeding."). When a writ petition, petition for review, or original action is filed either in the court of appeals or in this court, the appellate court should review the materials filed in the appellate court (including potentially materials that originated in the John Doe proceeding) to determine whether they should be maintained under seal in the appellate court. Id., ¶71. While an appellate court is not obligated to seal all documents that include information covered by a John Doe secrecy order, the appellate court should generally lean toward protecting information already ordered to be kept secret. As we noted, "failure [by an appellate court] to protect this information on review would compromise John Doe investigations and encourage frivolous requests for review by disgruntled individuals seeking to expose the details of the underlying proceeding." Id., ¶68. Absent a compelling reason for overturning a John Doe judge's secrecy order, in whole or in part, appellate courts seal those portions of the appellate record that "appear to fall legitimately within the scope of a permissible secrecy order." Id., ¶71.

In summary, it is clear from the writings of its own employees that Journal Sentinel, Inc. knew for more than a year of the sealed nature of filings arising out of the pending John Doe investigation in both this court of appeals and this court, but that Journal Sentinel, Inc. took no action until after the court had already created a redaction procedure to place documents into the public court file and until just weeks before the scheduled oral argument dates. At this late date, granting the intervention motion would unfairly and unjustly delay the court's ability to make needed decisions. Indeed, granting the intervention motion would delay the redaction process and the placing of redacted documents and briefs into the publicly-accessible court file, in clear contradiction to the apparent purpose of the intervention motion. Journal Sentinel, Inc. has simply waited too long to claim that it needs to be heard on issues of public access, which have already been decided by this court. Accordingly,

IT IS ORDERED that the motion to intervene is denied.

ANN WALSH BRADLEY, J., did not participate.

¶1 SHIRLEY S. ABRAHAMSON, C.J. (*dissenting*). Journal Sentinel, Inc., publisher of the Milwaukee Journal Sentinel, seeks to intervene in the three John Doe cases currently under review in this court. Journal Sentinel requests "an opportunity to be heard on important issues of access to [the] documents" on which the parties' numerous petitions to this court are based, to

"oral arguments before the Court," and to "the Court's ultimate opinion(s)" in these cases. The court denies Journal Sentinel's requests on the sole basis of timeliness.[1]

¶2 As members of the public, newspapers have standing to challenge a court's decision to close its records or proceedings.[2] This standing is rooted in the shared right of the news media and the public to access court records and proceedings, which the First Amendment guarantees.[3]

¶3 When a newspaper advocates for openness in a judicial proceeding, it represents both itself and the public at large.[4] In the instant cases, Journal Sentinel therefore acts in part as a surrogate for the public.

¶4 Wisconsin courts have repeatedly allowed newspapers to intervene in cases that are subject to secrecy orders and in cases in which the public's right to attend court proceedings or view public records is at stake.[5] Indeed, this court has previously allowed newspapers to intervene in John Doe cases for the specific and limited purpose of presenting argument on the issue of openness.[6]

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[1] The court's order denying Journal Sentinel's motion to intervene is one of three the court issues today in the John Doe cases. I discuss the other two—one canceling oral argument and one requiring extensive redaction of the parties' briefs—in my dissents to those orders. However, the issues presented in this trio of orders are interrelated and overlapping. For a full picture of the important public interests at stake, my dissents in all three orders should be read together.

[2] State ex rel. Newspapers, Inc. v. Circuit Court, 65 Wis. 2d 66, 69, 73, 221 N.W.2d 894 (1974) (explaining that newspapers, newspaper reporters, and "any citizen and member of the public" have standing to raise the issue of openness).

[3] State v. Pinno, 2014 WI 74, ¶70, 356 Wis. 2d 106, 149, 850 N.W.2d 207.

[4] See State ex rel. Newspapers, Inc. v. Showers, 135 Wis. 2d 77, 81, 398 N.W.2d 154 (1987). See also State ex rel. La Crosse Tribune v. Circuit Court, 115 Wis. 2d 220, 241, 340 N.W.2d 460 (1983) (explaining that the news media's right to open judicial proceedings "transcends the right of a newspaper or its reporter to have access to a courtroom," furthering "the right of the people to an open and responsible government").

[5] See, e.g. Zellner v. Cedarburg School Dist., 2007 WI 53, 300 Wis. 2d 290, 731 N.W.2d 240; In re John Doe Proceeding, 2003 WI 30, 260 Wis. 2d 653, 660 N.W.2d 260; State ex rel. Bilder v. Delavan Tp., 112 Wis. 2d 539, 334 N.W.2d 252 (1983).

[6] See, e.g., In re John Doe Proceeding, 2003 WI 30, 260 Wis. 2d 653, 660 N.W.2d 260 (newspaper's motion to intervene with respect to the issue of secrecy of the appellate record in a John Doe proceeding was granted by this court); State ex rel. Newspapers, Inc. v. Circuit Court, 65 Wis. 2d 66, 73, 221 N.W.2d 894 (1974) (holding that newspapers have standing to challenge secret immunity hearings in a John Doe proceeding).

¶5 In contrast to its past practice, today the court proclaims that it will not hear argument from the media or the public on the important issue of openness in the John Doe cases before it. The court unceremoniously slams its doors (and ears) shut, saying Journal Sentinel "has simply waited too long."

¶6 Timeliness is not "a tool of retribution which can be used to punish a would-be intervenor for allowing time to pass before moving to intervene. . . . [T]he traditional attitude of the [] courts is to allow intervention 'where no one would be hurt and greater justice would be attained.'"[7]

¶7 The court's response to Journal Sentinel's motion endangers the public's perception of the judicial system as fair. "Fairness is essential to our system of justice. . . . It is hard to demonstrate fairness if the courtroom is closed—if citizens who have done nothing wrong are shooed away."[8] Yet the court in the instant cases shoos the public away.

¶8 The court's swift disposal of Journal Sentinel's motion—in conjunction with its concurrent decisions to cancel oral argument and require extensive redaction of the parties' briefs—may, unfortunately, signify the court's intention to dispose of the John Doe cases as a whole in a similarly swift and secretive manner. I cannot join the court in concealing this important litigation from public view.

¶9 I discuss Journal Sentinel's motion and the court's order denying it in four parts.

¶10 First, I find little merit in the order's narrow discussion of timeliness and disagree with the court's determination that Journal Sentinel's motion is untimely. "There is no precise formula to determine whether a motion to intervene is timely."[9] Rather, a court considering the timeliness of a motion to intervention considers "whether in view of all the circumstances the proposed intervenor acted promptly."[10] In my opinion, Journal Sentinel acted promptly under the circumstances presented.

¶11 Second, I conclude that by refusing to give Journal Sentinel an opportunity to be heard on the issue of openness in these proceedings, the order violates the substantive rights of the news

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[7] McDonald v. Lavino, 430 F.2d 1065, 1074 (5th Cir. 1970).

[8] State v. Pinno, 2014 WI 74, ¶78, 356 Wis. 2d 106, 850 N.W.2d 207.

[9] State ex rel. Bilder v. Delavan Tp., 112 Wis. 2d 539, 550, 334 N.W.2d 252 (1983).

[10] State ex rel. Bilder v. Delavan Tp., 112 Wis. 2d 539, 550, 334 N.W.2d 252 (1983).

media and of the public as a whole to open judicial proceedings—a right protected by the constitutions of the United States and Wisconsin, by the Wisconsin Statutes, and by the common law.

¶12 Third, I conclude that by denying Journal Sentinel a chance to be heard on its motion and on the issue of openness without first providing Journal Sentinel with a hearing and an explanation of the court's decision, the court breaches the procedure it has established for ruling on a request to keep court proceedings open.

¶13 Fourth, I disagree with the notion that this court must adopt wholesale the secrecy order issued by the John Doe judge. Regardless of what level of secrecy the John Doe judge saw fit to impose on the John Doe records and proceedings, this court must independently determine the appropriate level of secrecy to impose on this court's records and proceedings. In making this determination, this court would benefit from Journal Sentinel's perspective.

¶14 I would grant Journal Sentinel's motion to intervene. I would listen to what Journal Sentinel has to say about the importance of public access to this court's records and proceedings and about the level of access appropriate in the instant cases. The parties' debate about redaction and oral argument continues. The court should hear from the public.

I

¶15 I begin by addressing the order's one and only basis for denying Journal Sentinel's motion: timeliness.

¶16 Whether a motion to intervene was timely filed is a discretionary determination.[11]

¶17 First, "[i]n exercising its discretion, the court necessarily will consider the time element itself . . . ."[12] However, the time element "should not be judged in a vacuum."[13] The court must decide "whether in view of all the circumstances the proposed intervenor acted promptly."[14]

[11] State ex rel. Bilder v. Delavan Tp., 112 Wis. 2d 539, 550, 334 N.W.2d 252 (1983).

[12] 7C Charles Alan Wright et al., Fed. Prac. & Proc. Civ. § 1916 (3d ed. 2007).

[13] 7C Charles Alan Wright et al., Fed. Prac. & Proc. Civ. § 1916 (3d ed. 2007).

[14] State ex rel. Bilder v. Delavan Tp., 112 Wis. 2d 539, 550, 334 N.W.2d 252 (1983).

¶18 Second, the court must determine "whether the intervention will prejudice the original parties to the lawsuit."[15] Courts have traditionally allowed intervention "where no one would be hurt and greater justice would be attained."[16]

¶19 Third, in exercising its discretion, the court should explore "[t]he existence of unusual circumstances militating either for or against a determination that the [motion to intervene] is timely."[17]

¶20 Because determining the timeliness of Journal Sentinel's motion requires consideration of "all the circumstances,"[18] I begin by setting forth the relevant chronology and background of the instant litigation:

- After the three John Doe cases had been pending before this court for months and months, this court granted review of the cases on December 16, 2014 (about three months ago). Prior to that date, it was unclear whether there would even be John Doe cases in this court into which Journal Sentinel might intervene.

- Although this court issued preliminary redaction instructions to the parties in its December 16, 2014 order, in which the court agreed to hear all three John Doe cases, the parties have continued to dispute the appropriate level of redaction in this court. The parties were filing redaction-related objections when Journal Sentinel moved to intervene and they are still filing motions related to redaction. The issue of redaction was therefore far from settled when Journal Sentinel filed its motion to intervene. It is far from settled even today.

- This court issued an order requesting input from the parties on the manner in which oral argument should be conducted on March 4, 2015. This was the first indication the court had given that it was considering closing all or part of oral argument, and the court had still given no indication that it might cancel oral argument altogether. In response to the court's request, the parties have offered varied and conflicting suggestions about whether and how to hold oral argument and what access to give the public to such argument. This debate is ongoing.

[15] State ex rel. Bilder v. Delavan Tp., 112 Wis. 2d 539, 550, 334 N.W.2d 252 (1983).

[16] McDonald v. Lavino, 430 F.2d 1065, 1074 (5th Cir. 1970) (internal quotation marks omitted).

[17] Stallworth v. Monsanto Co., 558 F.2d 257, 266 (5th Cir. 1977).

[18] State ex rel. Bilder v. Delavan Tp., 112 Wis. 2d 539, 550, 334 N.W.2d 252 (1983).

Thus, like the issue of redaction, the issue of oral argument was far from settled when Journal Sentinel moved to intervene and it is far from settled even today.[19]

- Journal Sentinel's motion to intervene was filed on March 11, 2015—less than three months after the court granted review of these cases, just one week after the court indicated that it might be taking the highly unusual step of closing oral argument, and over a month before oral argument was scheduled to take place.

- Alongside the court's order denying Journal Sentinel's motion to intervene, the court is issuing two additional orders. One requires extensive redaction of the parties' briefs, and one cancels oral argument in the John Doe cases. Together, these three orders effectively exclude the public altogether from these John Doe proceedings. The level of secrecy the court is imposing in the present cases and the manner in which it is imposing it are extraordinary indeed.

¶21 With this chronology and background in mind, I explore the three criteria for determining the timeliness of Journal Sentinel's motion to intervene and conclude that the motion is timely.

¶22 First, under the circumstances presented, Journal Sentinel's motion was filed promptly.

¶23 Journal Sentinel moved to intervene just seven days after the court issued an order requesting input from the parties on the manner in which oral argument should be conducted and the extent of public access that should be granted—topics implicating the fundamental First Amendment right of the public and the news media to access judicial proceedings.[20] Prior to the court's March 4, 2015 order, Journal Sentinel had received no indication from the court that it might close oral argument.

¶24 A motion to intervene filed just seven days after the court notified the parties and the public that it was considering this extraordinary step cannot reasonably be deemed tardy. Indeed, Journal Sentinel's motion to intervene for the purpose of presenting argument on the issue of public access to oral argument in these cases could hardly have been prompter.

¶25 The court's order stresses the fact that Journal Sentinel did not intervene two years ago, when the John Doe cases were being litigated in the court of appeals. So what? Journal Sentinel has the right to challenge this court's closure of this court's records and proceedings independent

[19] For a timeline of this court's orders concerning oral argument in the present cases, see ¶¶19-26 of my dissent to the court's order eliminating oral argument (also issued today).

[20] See State v. Pinno, 2014 WI 74, ¶70, 356 Wis. 2d 106, 149, 850 N.W.2d 207.

of its right to challenge the court of appeals' closure of the court of appeals' records and proceedings. Moreover, one of the John Doe cases before the court is an original action—it was never before the court of appeals, and it was therefore impossible for Journal Sentinel to intervene in that case in the court of appeals.

¶26 Second, the parties would not be prejudiced by Journal Sentinel's intervention. Journal Sentinel can be heard promptly and a decision on public access to the instant cases can be made promptly if the court has the will to do so.

¶27 The parties dispute the appropriate level of openness in these proceedings. Journal Sentinel's presenting argument on the issue of openness would contribute to this ongoing debate. It would also ensure that the court decides the level of secrecy to impose in the John Doe cases with the public's right to access firmly in mind.

¶28 Third, the instant cases present extraordinary circumstances that weigh strongly in favor of a finding of timeliness.

¶29 As previously explained, this court is issuing an order today that cancels oral argument in the instant cases. This is an unusual, if not unprecedented, step. As I discuss here and in my dissent to the court's order canceling oral argument, it is also a step that undermines the public's firmly established right of access to judicial proceedings.

¶30 Courts have previously granted motions to intervene after the parties had submitted a settlement agreement to the circuit court[21] and even after judgment has been entered.[22] Such cases recognize that "'[t]imeliness' is not a word of exactitude or of precisely measurable dimensions."[23] Rather, "[t]he requirement of timeliness must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interest of justice."[24]

¶31 The importance of taking a flexible approach to timeliness is especially acute in the present cases in light of the significance of the public's right to access, which is at stake.

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[21] See State ex rel. Bilder v. Delavan Tp., 112 Wis. 2d 539, 550-51, 334 N.W.2d 252 (1983).

[22] See McDonald v. Lavino, 430 F.2d 1065, 1074 (5th Cir. 1970).

[23] McDonald v. Lavino, 430 F.2d 1065, 1074 (5th Cir. 1970). See also 7C Charles Alan Wright et al., Fed. Prac. & Proc. Civ. § 1916 (3d ed. 2007).

[24] McDonald v. Lavino, 430 F.2d 1065, 1074 (5th Cir. 1970). See also 7C Charles Alan Wright et al., Fed. Prac. & Proc. Civ. § 1916 (3d ed. 2007).

¶32 The court's failure to provide authority to support its conclusion is particularly telling. Although the case law dictates an accommodating approach, the court takes a rigid approach. The court's long recitation of the procedural history of the instant litigation cannot overcome the paltry support in the case law for the court's position on timeliness.

¶33 In sum, I conclude that Journal Sentinel's motion to intervene was timely filed in the instant cases. The court's one and only basis for rejecting Journal Sentinel's motion is not cogent.

II

¶34 I now examine the substantive right to open judicial proceedings, which Journal Sentinel seeks in vain to enforce.

¶35 The right to open judicial proceedings, that is, the right of the public and the news media to attend court proceedings and view court records, is longstanding.[25] It is rooted in the First Amendment to the United States Constitution[26] and is buttressed by the Wisconsin Constitution.[27]

¶36 The First Amendment right to open court proceedings applies to appellate proceedings.[28]

¶37 The presumption under the First Amendment of public access to judicial proceedings can be overcome only if closure serves a compelling interest; there is a substantial probability that this compelling interest would be harmed in the absence of closure; and there are no alternatives to closure that would adequately protect the compelling interest.[29]

[25] State v. Pinno, 2014 WI 74, ¶70, 356 Wis. 2d 106, 850 N.W.2d 207.

[26] State v. Cummings, 199 Wis. 2d 721, 738, 546 N.W.2d 406 (1996). See also Presley v. Georgia, 558 U.S. 209, 212 (2010); Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 516-17 (1984) (Stevens, J., concurring).

[27] State v. Pinno, 2014 WI 74, ¶70, 356 Wis. 2d 106, 850 N.W.2d 207.

[28] United States v. Moussaoui, unpublished disp., 65 Fed. App'x 881, 890 (4th Cir. 2003) (explaining that the First Amendment right to open court proceedings applies to appellate proceedings).

[29] Washington Post v. Robinson, 935 F.2d 282, 290 (D.C. Cir. 1991).

¶38 The constitutional right to open judicial proceedings is reinforced by Wis. Stat. § 757.14 (2013-14), which dates back to 1849.[30] This statute provides that "[t]he sittings of every court shall be public and every citizen may freely attend the same . . . ."[31]

¶39 The text of Wis. Stat. § 757.14 makes clear that the statute governs the sittings of every court. Every court means every court, including, of course, this court.

¶40 The concept of open judicial proceedings embraced by the federal and state constitutions and by Wis. Stat. § 757.14 is further reinforced by the common law.[32] Judicial proceedings in the United States are open to the public not just based on constitutional and statutory law, but also by force of tradition.[33] "Judges deliberate in private but issue public decisions after public arguments based on public records."[34]

¶41 Underpinning the constitutional, statutory, and common law right to open judicial proceedings is a collective recognition of the critical role that public scrutiny plays in our form of government and in the proper functioning of Wisconsin's legal system.[35]

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[30] State v. Pinno, 2014 WI 74, ¶70, 356 Wis. 2d 106, 850 N.W.2d 207. See also State ex rel. Newspapers, Inc. v. Circuit Court, 65 Wis. 2d 66, 73, 221 N.W.2d 894 (1974) ("Where such right of attendance is denied, any citizen . . . has a right to bring an action to enforce the right which [Wis. Stat. § 757.14] so clearly gives."). All subsequent references to the Wisconsin Statutes are to the 2013-14 version unless otherwise indicated.

[31] Wis. Stat. § 757.14.

[32] State v. Pinno, 2014 WI 74, ¶70, 356 Wis. 2d 106, 850 N.W.2d 207; State v. Cummings, 199 Wis. 2d 721, 738, 546 N.W.2d 406 (1996). See also United States v. Moussaoui, unpublished disp., 65 Fed. App'x 881, 885 (4th Cir. 2003).

[33] Press-Enterprise Co. v. Superior Court, 478 U.S. 1, 7-8 (1986); Nixon v. Warner Communications, Inc., 435 U.S. 589, 597-99 (1978); Krynicki v. Falk, 983 F.2d 74, 75 (7th Cir. 1992); In re Reporters Committee for Freedom of the Press, 773 F.2d 1325, 1330-33 (D.C. Cir. 1985).

[34] Krynicki v. Falk, 983 F.2d 74, 75 (7th Cir. 1992).

[35] See, for example, Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 606 (1982), in which the United States Supreme Court stated as follows:

> Public scrutiny . . . enhances the quality and safeguards the integrity of the factfinding process, with benefits to the defendant and to society as a whole. Moreover, public access . . . heighten[s] public respect for the judicial process . . . [and] permits the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self-government.

¶42 "The value of openness in judicial proceedings can hardly be overestimated."[36] "An open courtroom 'is an effective restraint on possible abuse of judicial power' and a deterrent to arbitrary decision-making."[37] It is also a means of protecting the public's broader right "to an open and responsible government."[38] Indeed, the presumption of openness in judicial proceedings "reflects the basic principle that the people must be informed about the workings of their government, and that openness in government is essential to maintain the strength of our democratic society."[39]

¶43 This court has explained that "the great virtue in our Anglo-American court system is that it is open to the public so that all will know that the courts, as instruments of government, are defending the rights of the people and are not suppressing them."[40]

¶44 Thus, the public's right to open judicial proceedings is firmly established and of the utmost importance to both the efficacy and the legitimacy of Wisconsin's judicial system.

¶45 The right is not, however, absolute.[41] Exceptional circumstances may in certain cases justify closed trials, sealed records, secrecy orders, and the like.

¶46 When the public disagrees with a court about whether exceptional circumstances warrant confidentiality in a particular case, the news media may seek to persuade the court that public

[36] United States v. Moussaoui, unpublished disp., 65 Fed. App'x 881, 885 (4th Cir. 2003).

[37] State v. Pinno, 2014 WI 74, ¶41, 356 Wis. 2d 106, 850 N.W.2d 207 (citing In re Oliver, 333 U.S. 257, 270 (1948)).

[38] State ex rel. La Crosse Tribune v. Circuit Court, 115 Wis. 2d 220, 241, 340 N.W.2d 460 (1983).

[39] In re John Doe Proceeding, 2003 WI 30, ¶66, 260 Wis. 2d 653, 660 N.W.2d 260.

[40] State ex rel. La Crosse Tribune v. Circuit Court, 115 Wis. 2d 220, 242, 340 N.W.2d 460 (1983).

[41] In re John Doe Proceeding, 2003 WI 30, ¶66, 260 Wis. 2d 653, 660 N.W.2d 260. See also Nixon v. Warner Communications, Inc., 435 U.S. 589, 598 (1978).

access is in fact appropriate. Accordingly, courts "routinely permit non-parties to intervene for the purposes of challenging motions to seal" and other closure matters.[42]

¶47 As previously explained, newspapers advocating for openness in judicial records or court proceedings represent both themselves and the public at large.[43] Allowing newspapers to intervene on behalf of the public makes sense, as newspapers are often the entities best able to articulate the public's interest in openness and to ensure that courts are apprised of the significance of that interest.

¶48 Moreover, newspapers are in many cases the only available source of advocacy for openness. "Practical realities dictate that very few of our citizens have the ability to be personally present during the conduct of government business. If we are to have an informed public, the media must serve as the eyes and ears of that public."[44]

¶49 Because of the profound importance of the public's right to access judicial proceedings, and because withdrawing any aspect of the judicial process from public view "makes the ensuing decision look more like fiat,"[45] secrecy at any level "requires rigorous justification" by the court imposing it.[46]

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[42] Robert Timothy Reagan, Fed'l Jud. Ctr., Sealing Court Records and Proceedings: A Pocket Guide 20 (2010) (citing Washington Post v. Robinson, 935 F.2d 282, 289, 292 (D.C. Cir. 1991); In re Globe Newspaper Co., 729 F.2d 47, 56 (1st Cir. 1984); United States v. Aref, 533 F.3d 72, 81 (3rd Cir. 1987); In re Knight Publishing Co., 743 F.2d 231, 234 (4th Cir. 1984); Ford v. City of Huntsville, 242 F.3d 235, 241 (5th Cir. 2001); In re. Knoxville News-Sentinel Co., 723 F.2d 470, 475-76 (6th Cir. 1983); In re Associated Press, 162 F.3d 503, 507 (7th Cir. 1998); Phoenix Newspapers, Inc. v. U.S. Dist. Court, 156 F.3d 940, 949 (9th Cir. 1998); In re Tribune Co., 784 F.2d 1518, 1521 (11th Cir. 1986)).

See also United States v. Moussaoui, unpublished disp., 65 Fed. App'x 881, 884 (4th Cir. 2003) (involving a motion to intervene filed by a consortium of media companies seeking to obtain access to certain portions of the record and oral argument on appeal).

[43] "The public has a right to be present [at a judicial proceeding] whether or not any party has asserted the right." Presley v. Georgia, 558 U.S. 209, 214 (2010).

See also Robert Timothy Reagan, Fed'l Jud. Ctr., Sealing Court Records and Proceedings: A Pocket Guide 1 (2010) (citing Nixon v. Warner Communications, Inc., 435 U.S. 589, 596-97 (1978)) (explaining that the public and the news media have a qualified common-law right of access to court proceedings and judicial records).

[44] State ex rel. Newspapers, Inc. v. Showers, 135 Wis. 2d 77, 81, 398 N.W.2d 154 (1987).

[45] Krynicki v. Falk, 983 F.2d 74, 75 (7th Cir. 1992).

[46] Krynicki v. Falk, 983 F.2d 74, 75 (7th Cir. 1992).

¶50 A court seeking to exclude the public from its proceedings has a heavy burden. To justify the closure of a courtroom or the sealing of records under the federal and state constitutions, under Wis. Stat. § 757.14, and under the common law, a court must provide compelling reasons for excluding the public, must seek alternatives to closure,[47] and must tailor its closure order as narrowly as possible.[48] The public should not be "denied the right of access to the court for other than the most weighty and overwhelming reasons."[49]

¶51 Today the court ignores its obligation to justify the secrecy it imposes. The court's failure to adequately explain itself renders its denial of the public's right to open judicial proceedings not just substantively problematic but also procedurally defective. I explore the court's procedural errors next.

III

¶52 I turn to the court's breach of the established procedure for ruling on a request to keep court proceedings open.

¶53 This court has set forth a specific procedure to be followed when a court is considering whether to close court proceedings or records to the public.[50] The court has expressed no compunction about imposing this procedure on other courts in this state. Yet the court refuses to follow this procedure in the instant cases. Do as I say, declares this court, not as I do.

¶54 The procedure this court has prescribed for court closings is as follows.

¶55 First, a court is to exercise discretion regarding closure or sealing.

¶56 The act of excluding the public from John Doe proceedings at the appellate level, like the act of closing any court proceeding, requires the careful exercise of a court's discretion. Because

[47] Presley v. Georgia, 558 U.S. 209, 214-15 (2010).

[48] Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 510 (1984) ("The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.").

[49] State ex rel. La Crosse Tribune v. Circuit Court, 115 Wis. 2d 220, 241, 340 N.W.2d 460 (1983).

[50] The procedure is set forth in State ex rel. La Crosse Tribune v. Circuit Court, 115 Wis. 2d 220, 236-37, 340 N.W.2d 460 (1983), and State v. Pinno, 2014 WI 74, ¶¶69-80, 356 Wis. 2d 106, 149, 850 N.W.2d 207.

the public's right to access should not be taken away lightly,[51] an appellate case should be closed to the public only after careful deliberation. "A balance must be struck between the public's right to be informed about the workings of its government and the legitimate need to maintain the secrecy of certain John Doe proceedings."[52]

¶57 The court should exercise its discretion only after holding a hearing.[53] "The hearing may be a brief one or it may be extensive."[54] The failure to hold any hearing at all, however, is evidence that a court has not exercised discretion and therefore constitutes an erroneous exercise of discretion.[55]

¶58 Second, a court that decides to close its doors to the public must make findings of fact and state them with sufficient specificity to enable a reviewing court to "determine whether the closure order was properly entered."[56] "The failure to expressly exercise discretion on the basis of findings of fact will be deemed an [erroneous exercise] of discretion."[57]

¶59 Third, a court must take care that the record demonstrates that discretion was in fact exercised and that a reasonable court could have reached the same conclusion as the court in question.[58] The record must show that the process by which the court chose to exclude the public was a rational one and should reveal the factors that in the court's view override the presumption of openness in the case at hand.[59] In other words, a court deciding to impose

[51] State v. Unnamed Defendant, 150 Wis. 2d 352, 359, 441 N.W.2d 696 (1989) ("[John Doe] proceedings are presumptively open, although the John Doe judge may in the exercise of discretion close the proceeding to the public for compelling reasons.").

[52] In re John Doe Proceeding, 2003 WI 30, ¶66, 260 Wis. 2d 653, 660 N.W.2d 260.

[53] State ex rel. La Crosse Tribune v. Circuit Court, 115 Wis. 2d 220, 242, 340 N.W.2d 460 (1983).

[54] State ex rel. La Crosse Tribune v. Circuit Court, 115 Wis. 2d 220, 242, 340 N.W.2d 460 (1983).

[55] State ex rel. La Crosse Tribune v. Circuit Court, 115 Wis. 2d 220, 237, 340 N.W.2d 460 (1983).

[56] Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 510 (1984).

[57] State ex rel. La Crosse Tribune v. Circuit Court, 115 Wis. 2d 220, 242, 340 N.W.2d 460 (1983).

[58] State ex rel. La Crosse Tribune v. Circuit Court, 115 Wis. 2d 220, 236-37, 340 N.W.2d 460 (1983).

[59] State ex rel. La Crosse Tribune v. Circuit Court, 115 Wis. 2d 220, 242, 340 N.W.2d 460 (1983).

secrecy should set forth its decision on closure in a manner that enables review of the propriety of the court's exercise of discretion.[60]

¶60 Other courts have imposed similar procedural requirements. The federal court of appeals for the ninth circuit, for example, has stated as follows: "[I]f a court contemplates sealing a document or transcript, it must provide sufficient notice to the public and press to afford them the opportunity to object or offer alternatives. If objections are made, a hearing on the objections must be held as soon as possible."[61] The federal court of appeals for the fourth circuit has cited the ninth circuit's position with approval, adding: "If the [] court believes it is necessary to close the courtroom after hearing objections, it must state its reasons on the record, supported by specific findings."[62]

¶61 In the instant cases, this court ignores the procedure it has established, a procedure recognized and followed by courts across the country. This court fails to provide Journal Sentinel with a hearing, fails to make any findings of facts, and fails to explain why the interest in secrecy outweighs the public's right to access. The court simply turns Journal Sentinel away.

¶62 As this court stated just last year in State v. Pinno, 2014 WI 74, ¶71, 356 Wis. 2d 106, 850 N.W.2d 207, "[w]hat is troublesome here is the [trial] court's failure to appreciate that it could not act alone in addressing [the public's] concerns" about closing the courtroom. So, too, this court cannot act alone in these John Doe cases. This court should listen to what Journal Sentinel and the public have to say.

IV

¶63 Finally, I turn to the discussion in this court's order of this court's supposed obligation to enforce the John Doe secrecy order.

¶64 Responding to my dissent, this court's order asserts that "John Doe proceedings are exceptions from the usual requirement that court records and court proceedings must be open to the public in all respects." The order goes on to explain that "while an appellate court is not obligated to seal all documents that include information covered by a John Doe secrecy order, the appellate court should generally lean toward protecting information already ordered to be

[60] State ex rel. La Crosse Tribune v. Circuit Court, 115 Wis. 2d 220, 236-37, 340 N.W.2d 460 (1983).

[61] Phoenix Newspapers, Inc. v. District Court, 156 F.3d 940, 949 (9th Cir. 1998).

[62] In re Knight Publishing Co., 743 F.2d 231, 234 (4th Cir. 1984).

kept secret. . . ." The order concludes that "[a]bsent a compelling reason for overturning [the] John Doe judge's secrecy order," the secrecy order should be enforced in its entirety.

¶65 I note at the outset that if the court gave Journal Sentinel the opportunity to present argument on the issue of openness, Journal Sentinel might assert "compelling reasons for overturning [the] John Doe judge's secrecy order" in the present cases. By denying Journal Sentinel's motion to intervene, the court denies itself the opportunity to be apprised of any extenuating circumstances that weigh in favor of openness in this litigation.

¶66 Setting aside this hole in the court's analysis, I conclude that there are two primary problems with the discussion in this court's order of this court's supposed obligation to enforce the John Doe secrecy order.

¶67 First, this court's order incorrectly states the presumption: The presumption in John Doe proceedings, as in most court proceedings, is openness.[63] Secrecy in John Doe proceedings "is not maintained for its own sake."[64] Rather, "[t]he policy underlying secrecy is directed to promoting [the] effectiveness of the investigation . . . ."[65] When secrecy does not promote the effectiveness of the investigation, it should not be imposed. In other words, this court should "generally lean toward" giving the public access to its records and proceedings, even in John Doe cases.

¶68 Second, this court's order sets forth the factors that may warrant secrecy in a John Doe proceeding without considering the continued applicability of those factors at this stage in the instant litigation.[66] This court must independently determine whether the justifications for secrecy in John Doe proceedings apply to these cases in this court. This obligation is rooted in the presumption of openness discussed above and in this court's inherent power and

[63] See In re John Doe Proceeding, 2003 WI 30, ¶66, 260 Wis. 2d 653, 660 N.W.2d 260 (recognizing that the presumption of openness applies in John Doe proceedings but explaining that the public's right to be informed must be balanced against "the legitimate need to maintain the secrecy of certain John Doe proceedings"); State ex rel. Newspapers, Inc. v. Circuit Court, 124 Wis. 2d 499, 505, 370 N.W.2d 209 (1985) (holding that a John Doe proceeding is subject to "the same presumption of openness that applies to most judicial proceedings in Wisconsin").

[64] State v. O'Connor, 77 Wis. 2d 261, 283, 252 N.W.2d 671 (1977).

[65] State v. O'Connor, 77 Wis. 2d 261, 281, 252 N.W.2d 671 (1977).

[66] I consider the continued applicability in the instant cases of the justifications for secrecy in John Doe proceedings in my dissent to the court's order requiring extensive redaction of the parties' briefs. For a fuller discussion of the relationship between a John Doe secrecy order and this court's decision to require secrecy in this court's records and proceedings, these dissents should be read together.

responsibility to determine the level of secrecy to be imposed in its own records and proceedings—a power this court's order itself acknowledges. In sum, the court should continue to conceal these John Doe cases from the public only if, and only to the extent that, concealment is still warranted.

¶69 I conclude that the justifications for secrecy in John Doe proceedings do not support enforcement of the sweeping John Doe secrecy order in this court. Thus, I conclude that the presumption of openness prevails. In my opinion, this court should listen to what Journal Sentinel and the public have to say about the level of secrecy—if any—that this court should impose. Journal Sentinel's perspective would inform the court's decision whether and to what extent to conceal each document and record filed in these cases.

¶70 I briefly explain my position.

¶71 This court has explained that secrecy may be warranted in a John Doe proceeding because it serves the purposes of:

1. Keeping knowledge from an unarrested defendant that could encourage escape;

2. Preventing the defendant from collecting perjured testimony for trial;

3. Preventing those interested in thwarting the inquiry from tampering with prosecutive testimony or secreting evidence;

4. Rendering witnesses more free in their disclosures; and

5. Preventing testimony that may be mistaken or untrue or irrelevant from becoming public.[67]

¶72 It is obvious from this list of justifications that secrecy is imposed in John Doe proceedings to further the efforts of the prosecution. Indeed, as previously explained, secrecy is justified in John Doe proceedings only insofar as it "promot[es] the effectiveness of the investigation."[68]

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[67] In re John Doe Proceeding, 2003 WI 30, ¶60, 260 Wis. 2d 653, 660 N.W.2d 260; State ex rel. Newspapers, Inc. v. Cir. Ct., 124 Wis. 2d 499, 508, 370 N.W.2d 209 (1985); State v. O'Connor, 77 Wis. 2d 261, 279, 252 N.W.2d 671 (1977).

[68] In re John Doe Proceeding, 2003 WI 30, ¶61, 260 Wis. 2d 653, 660 N.W.2d 260; State v. O'Connor, 77 Wis. 2d 261, 283, 252 N.W.2d 671 (1977).

¶73 The special prosecutor in the instant cases now favors less, not more, secrecy. Under these circumstances, the court's decision to impose secrecy must be carefully scrutinized.

¶74 It is also obvious that none of the enumerated justifications for secrecy applies to the three John Doe cases currently before this court.

¶75 The objectives of secrecy can only be furthered if secrecy is in fact preserved. The special prosecutor claims that much of the information the secrecy order intended to conceal has been divulged through media leaks, through extensive media coverage of the underlying John Doe investigation and the instant litigation, and within unsealed filings in federal court in related litigation. The special prosecutor argues compellingly that because information subject to the John Doe judge's secrecy order has already been publicly released, public discussion of that information in this court is appropriate. The secrecy genie is, according to the special prosecutor, out of the bottle.

¶76 When the objectives of secrecy are not furthered by continued observance of a secrecy order, this court must respect the presumption of openness and grant the public access to its records and proceedings.[69]

¶77 In sum, the discussion in this court's order of the justifications underlying secrecy in John Doe proceedings and the order's contention that this court should err on the side of following John Doe secrecy orders are unconvincing. In my view, enforcement of the sweeping John Doe secrecy at issue in the instant cases is not warranted in this court.

* * * *

¶78 The court in the instant cases denies the public its right to be heard on the issue of openness without providing the requisite rigorous justification and without following the procedures that this court has itself prescribed for imposing secrecy. The court bases its decision solely on timeliness, coming to the unsupported conclusion that Journal Sentinel "has simply waited too long . . . ."

¶79 In light of the significant constitutional, statutory, and common law rights at stake and in light of the established procedure for determining whether judicial proceedings should be closed, I would grant Journal Sentinel's motion to intervene for the limited purpose of presenting argument on the issue of openness in the John Doe cases pending in this court.

[69] Robert Timothy Reagan, Fed'l Jud. Ctr., Sealing Court Records and Proceedings: A Pocket Guide 22 (2010).

¶80 For the reasons set forth, I dissent.

Diane M. Fremgen
Clerk of Supreme Court

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