

¶307 ANNETTE KINGSLAND ZIEGLER, J. (concurring). During pre-dawn darkness in October 2013, several armed law enforcement officers wearing flak jackets, carrying battering rams, and using bright floodlights executed secret John Doe search warrants in the homes of Wisconsin residents. What was the prosecution searching for? The prosecution was in search of documents and electronic evidence, including personal computers and cell phones, to support alleged violations of Wisconsin's campaign finance law. The warrants sought evidence that had been around for more than four years. The warrants were executed shortly before morning, days after a judge signed them, while it was still dark outside. Law enforcement certainly has, and should have, a great deal of discretion when it comes to how and when a warrant will be executed, but ultimately courts may review the reasonableness of that execution.[59]

¶308 Because these searches were executed in pre-dawn darkness, they are essentially what courts and legal commentators refer to as a nighttime search.[60] Because no Wisconsin law specifically addresses the legality of nighttime searches of private homes, under the existing facts of this case, these pre-dawn searches could raise questions as to whether they would pass constitutional muster. I recognize that because no challenge has been made to the execution of the warrants, the record is without explanation as to why the search warrants were executed as they were. I also recognize that the State might have had a legitimate reason for executing the search warrants pre-dawn in paramilitary fashion.

¶309 I join the majority opinion in all three cases. I write separately to explain that, even if the search warrants were lawfully issued, the execution of them could be subject to the reasonableness analysis of the Fourth Amendment to the United States Constitution and the Wisconsin Constitution's counterpart.[61] A totality of the circumstances analysis could include consideration of, among other things, the timing of the issuance and execution of the warrants, the manner in which the warrants were executed, whether public or officer safety concerns justified the manner of execution, and what type of evidence was being sought.

## I. Fundamental PRINCIPLES

¶310 The Fourth Amendment "contain[s] two separate clauses, the first protecting the basic right to be free from unreasonable searches and seizures and the second requiring that warrants be particular and supported by probable cause." *Payton v. New York*, 445 U.S. 573, 584 (1980). The Fourth Amendment's second clause provides that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." U.S. Const. amend. IV. With respect to the other clause, "[t]he Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution protect '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" *State v. Robinson*, 2010 WI 80, ¶24, 327 Wis. 2d 302, 786 N.W.2d 463 (quoting U.S. Const. amend. IV; Wis. Const. art. 1, § 11).[62]

¶311 "The touchstone of the Fourth Amendment is reasonableness." *State v. Tullberg*, 2014 WI 134, ¶29, 359 Wis. 2d 421, 857 N.W.2d 120 (quoting *Florida v. Jimeno*, 500 U.S. 248, 250 (1991)). "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." *Id.* (quoting *Jimeno*, 500 U.S. at 250). "Constitutional reasonableness relates not only to the grounds for a search or seizure but to the circumstances surrounding the search or seizure's execution." *State v. Henderson*, 2001 WI 97, ¶18, 245 Wis. 2d 345, 629 N.W.2d 613 (citing *Tennessee v. Garner*, 471 U.S. 1, 8 (1985)). "The determination of reasonableness is made by reference to the particular circumstances of each

individual case, and balances the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *Id.* (internal quotation marks omitted) (citations omitted). In other words, "reasonableness" is "determined by balancing the degree to which a challenged action intrudes on an individual's privacy and the degree to which the action promotes a legitimate government interest." *Green v. Butler*, 420 F.3d 689, 694 (7th Cir. 2005) (citing *United States v. Knights*, 534 U.S. 112, 118-19 (2001); *Ohio v. Robinette*, 519 U.S. 33, 39 (1996)). A court determines whether a search was reasonably executed by considering "the totality of the circumstances." *United States v. Banks*, 540 U.S. 31, 35-36 (2003).

#### A. Constitutional Protection of a Home

¶312 "The people's protection against unreasonable search and seizure in their 'houses' was drawn from the English common-law maxim, 'A man's home is his castle.'" *Minnesota v. Carter*, 525 U.S. 83, 94 (1998) (Scalia, J., concurring). "Courts have long extolled the importance of the home, noting that the [Fourth Amendment] was drafted in part to codify 'the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic.'" *State v. Scull*, 2015 WI 22, ¶19, 361 Wis. 2d 288, 862 N.W.2d 562 (quoting *Payton*, 445 U.S. at 601). The United States Supreme Court has noted that "the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" *Payton*, 445 U.S. at 585 (quoting *United States v. United States District Court*, 407 U.S. 297, 313 (1972)). "The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home—a zone that finds its roots in clear and specific constitutional terms: 'The right of the people to be secure in their . . . houses . . . shall not be violated.'" *Id.* at 589 (ellipses added in *Payton*). "That language unequivocally establishes the proposition that '[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Id.* at 589-90 (alterations added in *Payton*) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)).[63]

#### B. Nighttime Search of a Home

¶313 A nighttime search of a home conflicts with the fact that "[a] home is entitled to special dignity and special sanctity." *Holt v. State*, 17 Wis. 2d 468, 477, 117 N.W.2d 626 (1962). "Searches of the dwelling house were the special object of this universal condemnation of official intrusion. Nighttime search was the evil in its most obnoxious form." *Monroe v. Pape*, 365 U.S. 167, 210 (1961) (Frankfurter, J., dissenting in part). "The Supreme Court has consistently recognized that a police search of a residence at night is a greater intrusion upon an individual's privacy interest than an ordinary search." *United States v. Gibbons*, 607 F.2d 1320, 1326 n.15 (10th Cir. 1979). In *Jones v. United States*, the Supreme Court stated that it was "difficult to imagine a more severe invasion of privacy than the nighttime intrusion into a private home . . . ." *Jones v. United States*, 357 U.S. 493, 498 (1958); see also *Coolidge v. New Hampshire*, 403 U.S. 443, 477 (1971) (describing a "midnight entry" of a home as an "extremely serious intrusion"); *United States v. Reed*, 572 F.2d 412, 422 (2d Cir. 1978) (citations omitted) ("[T]he Fourth Amendment protects citizens' reasonable expectations of privacy . . . [and] one's reasonable expectation of privacy in the home is entitled to a unique sensitivity from federal courts."); *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976) (citation omitted) (noting that "the sanctity of private dwellings[ is] ordinarily afforded the most stringent Fourth Amendment protection").[64]

¶314 "At common law, prior to the adoption of the Fourth Amendment, there was a strong aversion to nighttime searches." *United States ex rel. Boyance v. Myers*, 398 F.2d 896, 897 (3d Cir. 1968) (citations omitted). "This aversion was then and is now primarily focused on intrusions into the home." *United States v. Tucker*, 313 F.3d 1259, 1263 (10th Cir. 2002) (citing *Gibbons*, 607 F.2d at 1326). "Nighttime searches were regarded with revulsion [at common law] because of the indignity of rousing people from their beds." *Com. v. Grimshaw*, 595 N.E.2d 302, 304 (Mass. 1992) (citing *Com. v. DiStefano*, 495 N.E.2d 328, 332 (Mass. App. Ct. 1986)). "The significance of this aversion of the common law to nighttime searches is underscored by the Supreme Court's reminder that the search and seizure clause is properly 'construed in the light of what was deemed an unreasonable search and seizure when it was adopted.'" *Boyance*, 398 F.2d at 897 (quoting *Carroll v. United States*, 267 U.S. 132, 149 (1925)). When a home is invaded during pre-dawn darkness of night, special protections should apply because of the sanctity of a home. This is not to say that a home search can never occur in pre-dawn darkness, but when it does, that timing could be considered as a part of the totality of the circumstances reasonableness analysis of the Fourth Amendment.

¶315 Although Wisconsin does not have a statute directing that a judge must determine whether a nighttime search is justified, 23 states have statutory protections that allow a nighttime search only upon a "special showing and authorization." Wayne R. LaFare, *Search and Seizure* § 4.7(b) (5th ed. 2014). Similarly, the Federal Rules of Criminal Procedure implement the essentials of the Fourth Amendment by requiring that a warrant be served "during the daytime, unless the judge, for good cause expressly authorizes execution at another time." Fed. R. Crim. P. 41(e)(2)(A)(ii).[65] The federal rule and these 23 states recognize and codify Fourth Amendment protections against unreasonable nighttime searches and seizures. See *United States v. Searp*, 586 F.2d 1117, 1124 (6th Cir. 1978) (holding that Federal Rule 41's "night search provisions . . . explicate fundamental purposes of the Fourth Amendment" (internal quotation marks omitted) (citation omitted)).[66]

¶316 When a court is confronted with a challenge to a search that is conducted in the pre-dawn darkness of night, it might consider whether the exigencies of the situation justify the greater intrusiveness of a search at this time. A court could look at factors including, but not limited to, the timing of the issuance and execution of the warrants, the manner in which the warrants were executed, whether public or officer safety concerns justified the manner of execution, and what type of evidence was being sought. Law enforcement is certainly endowed with a great deal of discretion regarding how and when to execute a warrant, but ultimately a court could be called upon to review the reasonableness of that execution under a totality of the circumstances analysis.

¶317 Certainly, the necessity of immediate police action may be evident from the facts and circumstances of the situation. Warrant execution in some criminal matters, such as some human trafficking or drug cases, may militate in favor of a warrant being executed at night or in a forceful manner because the criminal activity is likely occurring at night, evidence may likely be lost if law enforcement waits, or dangerous activity is afoot. "It has been held that the danger of destruction or removal of the evidence is sufficient reason for nighttime execution of a search warrant, in part because such circumstances could even constitute exigent circumstances for a search without a warrant." *Tucker*, 313 F.3d at 1265 (citations omitted). See, e.g., *United States v. Howard*, 532 F.3d 755, 760-61 (8th Cir. 2008) (upholding a nighttime search because a confidential informant advised police that drug trafficking occurred in the home "during all hours of the night"); *Fair v. State*, 664 S.E.2d 227, 235 (Ga. 2008) (upholding a 1:15 a.m. search "because the officers knew from experience that the peak time for drug dealers to conduct business was after midnight"). Law enforcement needs a wide berth when determining how and

when to execute a warrant, but under the totality of the circumstances, the execution of the warrant must still be reasonable in order to pass constitutional muster.

## II. The totality of the circumstances

¶318 With Fourth Amendment principles in mind, understanding that the record is not complete because no challenge has been made to the warrant execution, the following discussion will nonetheless endeavor to consider the timing of the issuance and execution of the warrants, the manner of execution, whether public or officer safety concerns existed, and what type of evidence was being sought.

### A. The Timing of the Issuance and Execution of the Warrants

¶319 In the case at issue, Investigator Dean Nickel obtained two secret John Doe warrants from Reserve Judge Barbara Kluka to search the homes of Unnamed Movants Nos. 6 and 7. The warrants were obtained in the course of a secret John Doe investigation.[67] Those warrants and their supporting affidavit did not set forth any particular time at which, or manner in which, the warrants would be executed. Unlike many warrants that must be executed at nighttime for fear of the evidence being destroyed or removed from the location or because of public or officer safety reasons, much of this evidence had been sitting on computers and in cyberspace for years.

¶320 This was not, as sometimes occurs, a situation where a judge was awoken in the middle of the night to issue a warrant because law enforcement needs to execute it promptly in order to seize the evidence. Reserve Judge Kluka signed the warrants at 11:30 a.m. on Monday, September 30, 2013. However, they were not executed until Thursday, October 3, 2013, at approximately 6:00 a.m.[68] "A search warrant must be executed and returned not more than 5 days after the date of issuance." Wis. Stat. § 968.15(1). These warrants were executed three days after they were issued. "The return of the search warrant shall be made within 48 hours after execution . . ." Wis. Stat. § 968.17(1). The warrants were returned on October 4, four days after they were issued and one day after they were executed.

¶321 The warrants were executed in the pre-dawn darkness. On October 3 civil twilight began in Madison at 6:29 a.m. and sunrise began at 6:57 a.m.[69] For all practical purposes, each of these searches was the equivalent of a nighttime search. Because no challenge to the warrant execution has been made, the record lacks any explanation as to why law enforcement did not execute the warrants any time during the preceding 66.5 hours—or more specifically, the 29.5 daylight hours—between issuance and actual execution.

¶322 A nighttime search will often occur shortly after a judge has issued the warrant, as there is some urgency in needing to conduct the search in non-daylight hours. Courts often consider "nighttime" as the time when it is "dark" outside, between sunset and sunrise, between dusk and dawn, or when most people are asleep. See Claudia G. Catalano, Annotation, Propriety of Execution of Search Warrants at Nighttime, 41 A.L.R. 5th 171 (1996). This record, understandably, lacks any indication of why it was reasonable to execute these warrants in this manner, especially since the warrants had been issued three days earlier. The prosecution might have obtained the same evidence in the daylight by waiting a mere hour or two or by executing the warrants in any of the preceding daylight hours. Why did law enforcement execute these secret John Doe warrants days after obtaining them, in the pre-dawn darkness, needing floodlights to illuminate the homes, and with such forceful presence?

¶323 While there may be reasons why the warrants were executed when they were, the current state of the record provides no indication that the prosecution "felt some exigency" so as to necessitate the execution of the warrants in the pre-dawn darkness three days after the warrants were issued. See *United States v. Berry*, 113 F.3d 121, 123 (8th Cir. 1997) (upholding a 12:30 a.m. search for a large quantity of marijuana because the officers "obviously felt some exigency"). See also *Harris*, 324 F.3d at 606 (upholding a nighttime search performed two hours and 15 minutes after the warrant was issued); *Tucker*, 313 F.3d at 1261 (same, one hour and 10 minutes); *Berry*, 113 F.3d at 122 (same, 45 minutes); *Boyance*, 398 F.2d at 897 (holding that a nighttime search performed 90 minutes after issuance of a warrant was unconstitutional because there was no indication that "the evidence within the house would be removed, hidden or destroyed before morning").

#### B. The Manner of Execution

¶324 Courts have also considered the specific manner in which warrants are executed as part of the totality of the circumstances. "The[se] search warrants were executed at approximately 6:00 a.m. on October 3, 2013, in pre-dawn, armed, paramilitary-style raids in which bright floodlights were used to illuminate the targets' homes." Majority op., ¶28. "Deputies seized business papers, computer equipment, phones, and other devices, while their targets were restrained under police supervision and denied the ability to contact their attorneys." *Id.*, ¶29. While there may be reasons why the warrants were executed in the manner that they were, the record lacks any such explanation as the execution was not challenged.

¶325 Although not critical to my analysis, it is worth noting how some news outlets have described these searches. Had a hearing been held on the manner in which these searches were executed, it is uncertain whether the facts established in such a hearing would be consistent with these news reports or whether there is nonetheless "a legitimate government interest" in the execution of the searches. See *Green*, 420 F.3d at 694.

¶326 Reportedly, about an hour before sunrise, police "surrounded" the homes of Unnamed Movants Nos. 6 and 7 and "hit them with floodlights." [70] "Police didn't draw their guns. They didn't have to. Garish light blinded the groggy targets of the secret probe, startling neighbors. The uniforms, the lights, the early hour got everybody's attention." [71] "One of the targets [said] police threatened to use battering rams to break down the front door, but the targets let them in." [72] Each of these pre-dawn searches of the homes of Unnamed Movants Nos. 6 and 7 reportedly involved at least half a dozen sheriff's deputies and at least one official from the Milwaukee County District Attorney's Office. [73] It has been reported that deputies "[s]hout[ed] [] at the front door" [74] and, once inside, continued "yelling and running, into every room in the house." [75]

¶327 Other media outlets described the searches as follows:

The early-morning paramilitary-style raids on citizens' homes were conducted by law-enforcement officers, sometimes wearing bulletproof vests and lugging battering rams, pounding on doors and issuing threats. Spouses were separated as the police seized computers, including those of children still in pajamas. Clothes drawers, including the children's, were ransacked, cell phones were confiscated, and the citizens were told it would be a crime to tell anyone of the raids. [76]

¶328 At least one person who was subjected to a pre-dawn search of his or her residence reportedly described it as "a home invasion." [77] The targets of the pre-dawn searches have described these experiences as "terrifying" and "traumatic." [78]

¶329 Due to the terms of the John Doe secrecy order itself, the targets were instructed not to tell other people about the searches. The search warrants stated: "This John Doe search warrant is issued subject to a secrecy order. By order of the court, pursuant to a secrecy order that applies to this proceeding, you are hereby commanded and ordered not to disclose to anyone, other than your attorney, the contents of this search warrant and/or the fact that you have received this search warrant. Violation of this secrecy order is punishable as contempt of court." Reportedly, "[m]ultiple targets . . . received verbal instructions from investigators about the secrecy order applying to every member of the household." [79] Despite the language of the secrecy order, some have otherwise averred that the targets "were told not to tell their lawyers, or their friends, or their neighbors." [80]

### C. Public and Officer Safety Concerns

¶330 As part of the totality of the circumstances, courts have also considered whether safety concerns of the public or the officers justify the timing and the manner of a warrant's execution. Although a paramilitary-style search in the darkness is undoubtedly justified in some circumstances, the current state of this record provides no indication that Unnamed Movants Nos. 6 and 7 "posed an immediate threat to the safety of the officers or others," were "actively resisting arrest or attempting to evade arrest by flight," or were "themselves violent or dangerous." See *Estate of Smith v. Marasco*, 430 F.3d 140, 150 (3d Cir. 2005) (holding that these facts are important for determining whether a SWAT-type search was reasonable). In the present case, executing the warrants in paramilitary fashion during pre-dawn darkness arguably might have actually increased the risk of injury to the public or the officers. See *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1086 (9th Cir. 2011) ("SWAT officers' nighttime searches . . . both constitute much greater intrusions on one's privacy than ordinary daytime searches and carry a much higher risk of injury to persons and property.").

¶331 A "nighttime police intrusion pose[s] a great threat to privacy, violate[s] the sanctity of home, and endanger[s] the police and slumbering citizens." *Grimshaw*, 595 N.E.2d at 304 (citing 2 W.R. LaFave, *Search and Seizure* § 4.7(b), at 266 (2d ed. 1987)). In the present case, whether any public or officer safety concern justified the pre-dawn searches is unknown because the execution was not challenged. Cf. *United States v. Colonna*, 360 F.3d 1169, 1176 (10th Cir. 2004) (upholding a nighttime search because of the defendant's "prior extensive involvement with law enforcement, the expressed fear of a concerned citizen that [the defendant] would retaliate violently, and the presence of children in the vicinity" during the daytime).

### D. The Evidence

¶332 I turn now to the nature of the evidence being sought. This case is not one where the alleged crime is occurring at night during the search. This is not a drug or human trafficking investigation where it is apparent that the evidence of the crime may no longer be present at the search location if the warrants are not executed promptly. The circumstances of this case do not plainly suggest that waiting until daybreak would have posed a safety risk to the public or officers.

¶333 These pre-dawn searches sought, among other things, electronic evidence, including e-mails and communications stored on cell phones and personal computers.[81] The search warrants sought information from March 1, 2009, to September 30, 2013, the date that the warrants were issued. This evidence, which seemingly had been around for years and likely otherwise exists in cyberspace, did not appear to be "volatile" and no reason is readily apparent to explain why executing the warrants in a more traditional manner, by far less forceful means, would pose any "risk of personal injuries and property damage." See Tucker, 313 F.3d at 1266 (upholding a nighttime search because "there was not just risk of destruction of the evidence but also risk of personal injuries and property damage due to the volatile nature of the chemicals and the process of methamphetamine manufacture").

¶334 While not jugular to the totality of the circumstances analysis, it seems that this electronic evidence was not in "danger of destruction or removal" from the homes before morning. See *id.* at 1265. The process of erasing a file on a personal computer "is time consuming and does not wipe out all data." [82] A cell phone's files may likewise be difficult to erase. "Smartphone forensics experts can retrieve just about anything from any phone," "whether or not a user deleted it from their phone." [83] In fact, the affidavit in support of the warrants to search the homes of Unnamed Movants Nos. 6 and 7 seemed to recognize that the evidence was not at risk of being destroyed, even if deleted. The affidavit itself declared that "computer files or remnants of such files can be recovered months or even years after they have been downloaded onto a storage medium, deleted, or viewed via the Internet." (Emphases added.)

¶335 Even if the computers and cell phones had been totally destroyed, investigators still could have sought to obtain Unnamed Movants Nos. 6's and 7's e-mail messages from third parties, such as Internet service providers or e-mail service providers.[84] Wisconsin law expressly authorizes subpoenas and search warrants to be issued to such third parties. See Wis. Stat. § 968.375. Milwaukee County prosecutors have used these techniques in recent prosecutions of a somewhat similar nature. See *State v. Rindfleisch*, 2014 WI App 121, 359 Wis. 2d 147, 857 N.W.2d 456 (holding that search warrants, which required Google Inc. and Yahoo Inc. to provide evidence from the defendant's personal e-mail messages, were sufficiently particular).

¶336 In fact, previously during this very John Doe investigation, the State did obtain Unnamed Movants Nos. 6's and 7's e-mails from their e-mail service providers. Specifically, on September 5, 2012, the same day that Reserve Judge Kluka commenced this John Doe investigation, she signed a warrant requiring Yahoo Inc. to supply information from Unnamed Movant No. 6's Yahoo e-mail account. Also on September 5 Reserve Judge Kluka signed a similar warrant requiring Charter Communications Inc. to provide information from Unnamed Movant No. 7's Charter e-mail account. Each of these warrants required the production of, *inter alia*, "[t]he contents of all communications stored in the E-mail accounts for the subscriber(s) . . . , including all emails stored in the account, whether sent from or received in the account, including any 'chat or instant messaging,' as well as e-mails held in a 'Deleted' status," from April 1, 2009, to July 1, 2012. Yahoo and Charter complied with the warrants within six weeks and two weeks, respectively. Thus, at least some of the evidence that the prosecution hoped to obtain by searching the homes of Unnamed Movants Nos. 6 and 7 in October 2013 could very well have been duplicative of the e-mail evidence that Yahoo and Charter produced pursuant to the September 2012 search warrants.

¶337 While not required, another avenue of obtaining evidence may have existed through subpoenas *duces tecum*, which could have been served on Unnamed Movants Nos. 6 and 7 as an alternative to the pre-dawn, paramilitary-style searches of their homes. See Wis. Stat. § 968.135. In fact, such subpoenas were issued on other Unnamed Movants. Specifically, on the

same day that Reserve Judge Kluka issued the warrants to search the homes of Unnamed Movants Nos. 6 and 7, she issued subpoenas duces tecum to the other six Unnamed Movants. These subpoenas duces tecum required the production of, inter alia, information regarding Unnamed Movants Nos. 6 and 7. Although law enforcement is not required to obtain information by subpoena instead of a warrant, the type of evidence being sought and the ways in which it may be obtained could possibly be of some significance in the totality of the circumstances test of reasonableness.

¶338 Milwaukee County Sheriff David A. Clarke, Jr. has been vocal in explaining his belief that it was unreasonable and unnecessary to execute these pre-dawn searches in the manner in which they were executed. He said, "[a] simple knock on the door by a couple of suit wearing investigators with . . . one uniform back-up [officer] to verify who they were was all that was necessary to execute this search warrant." [85]

### III. CONCLUSION

¶339 "Constitutional reasonableness relates not only to the grounds for a search or seizure but to the circumstances surrounding the search or seizure's execution." Henderson, 245 Wis. 2d 345, ¶18 (citing Garner, 471 U.S. at 8). [86] "The determination of reasonableness is made by reference to the particular circumstances of each individual case, and balances the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." Id. (internal quotation marks omitted) (citations omitted). "The idea of the police unnecessarily forcing their way into the homes in the middle of the night . . . rousing the residents out of their beds, and forcing them to stand by in indignity in their night clothes while the police rummage through their belongings does indeed smack of a 'police state lacking in the respect for . . . the right of privacy dictated by the U.S. Constitution.'" Gooding v. United States, 416 U.S. 430, 462 (1974) (Marshall, J., dissenting) (quoting S. Rep. No. 91—538, p. 12 (1969)).

¶340 I join the majority opinion in all three cases. I write separately to explain that even if the search warrants were lawfully issued, the execution of them could be subject to the reasonableness analysis of the Fourth Amendment to the United States Constitution and the Wisconsin Constitution's counterpart. A totality of the circumstances analysis could include consideration of, among other things, the timing of the issuance and execution of the warrants, the manner in which the warrants were executed, whether public or officer safety concerns justified the manner of execution, and what type of evidence was being sought.

¶341 For the foregoing reasons, I respectfully concur.

