STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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January 30, 2014

Diane M. Fremgen
Clerk of Wisconsin Court of Appeals
110 East Main Street, Suite 215
P. O. Box 1688
Madison, Wisconsin 53701-1688

Re: *State ex rel. Nate A. Lindell v. Circuit Court for Dodge County and the Honorable Joseph G. Sciascia, presiding*
Appeal No. 2013AP2695-W

Dear Ms. Fremgen:

I represent the Circuit Court for Dodge County and the Honorable Joseph G. Sciascia in the above-referenced case. Nate Lindell petitions for a supervisory writ to compel Judge Sciascia to refer his John Doe complaint to the Dodge County District Attorney, pursuant to Wis. Stat. § 968.26(2)(am). The Circuit Court and Judge Sciascia respectfully submit that Judge Sciascia did not clearly violate any plain duty by refusing to refer Lindell's John Doe complaint to the district attorney, and that the Court of Appeals therefore must deny Lindell's petition for a supervisory writ, because Lindell's John Doe complaint fails to satisfy the objective "reason to believe" test. *See State ex rel. Reimann v. Circuit Court for Dane County*, 214 Wis. 2d 605, 618-623, 571 N.W.2d 385 (1997); *Naseer v. Miller*, 2010 WI App 142, ¶¶ 1-11, 329 Wis. 2d 724, 793 N.W.2d 209.

Wisconsin Statute § 968.26(2)(am) provides: "If a person who is not a district attorney complains to a judge that he or she has reason to believe that a crime has been committed within the judge's jurisdiction, the judge shall refer the complaint to the district attorney . . . ." A judge has a mandatory duty to refer a John Doe complaint to the district attorney, however, "only if the **four corners of the complaint** provide a sufficient factual basis to establish an objective reason to believe that a crime has been committed in the judge's jurisdiction." *See Naseer*, 2010 WI App 142 at ¶ 11 (bold added); *State ex rel. Reimann*, 214 Wis. 2d at 624 (a John Doe judge must first determine, from the **face of the John Doe complaint**, whether the complainant has shown

an objective reason to believe that a crime has been committed).[1] The John Doe complaint must "do more than merely allege in conclusory terms that a crime has been committed. The allegation must be supported by objective, factual assertions . . . ." *See State ex rel. Reimann*, 214 Wis. 2d at 618. In conclusion, although the John Doe complaint need not name a particular accused, or set forth facts sufficient to show "probable cause" that a crime has been committed, the complaint "must allege objective, factual assertions sufficient to support a reasonable belief that a crime has been committed." *See State ex rel. Reimann*, 214 Wis. 2d at 623.[2]

In his John Doe complaint, Lindell makes the following allegations of fact. First, he alleges that numerous acts of severe physical and sexual abuse of prisoners occurred at Waupun Correctional Institution (WCI) between January 1 and June 30, 2013, that two supervisory correctional officers either supervised or engaged in this systemic abuse, and that WCI management who knew of the ongoing systemic abuse failed to take any measures to prevent the abuse from continuing to occur. Second, he alleges that a correctional officer (C.O. II "M") impermissibly conducted a body cavity strip search of a prisoner, because only medical staff can conduct such strip searches. Third, he alleges that C.O. II "M" (1) falsely reported that another prisoner referred to another correctional officer as a "bitch" and used profanity, which caused the other correctional officer to prolong the prisoner's denial of clothing and retention on "controlled status," (2) incorrectly told a "rookie" correctional officer that Lindell had to have money in his account in order to make a telephone call, (3) denied Lindell recreation on two occasions, (4) "tore apart" Lindell's cell, left his legal papers in a "messy pile," and refused his request for a pen, and (5) cut Lindell's wrist and tore his skin on one occasion while handcuffing him (causing a "drop of blood" to "ooze out"). Fourth, he alleges that another correctional officer refused his request for medical care and documentation of his wrist injury. Fifth, he alleges that although a prison nurse treated his wrist injury and documented the injury the next day, the nurse refused to provide him with a Band-Aid.

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[1] The John Doe judge may not consider materials extrinsic to the John Doe complaint, including materials that are referenced in but are not attached to the complaint. *See State ex rel. Williams v. Fiedler*, 2005 WI App 91, ¶¶ 24-28, 282 Wis. 2d 486, 698 N.W.2d 294. Accordingly, neither the John Doe judge nor this Court may consider or may take judicial notice of Lindell's blog, which is referenced both in his John Doe complaint and in his petition for a supervisory writ.

[2] Although the line dividing "reason to believe" from "probable cause" may be slight, the two standards are not to be equated, and the John Doe judge may not "weigh the credibility of the complainant or choose between conflicting facts and inferences." *See State ex rel. Reimann*, 214 Wis. 2d at 625; *State ex rel. Williams*, 2005 WI App 91 at ¶ 20. The John Doe judge may permit, but has no nondiscretionary duty to permit, a complainant to provide additional information where the facts alleged in the John Doe complaint are inadequate. *See State ex rel. Reimann*, 214 Wis. 2d at 625; *State ex rel. Williams*, 2005 WI App 91 at ¶ 25.

"Based on the foregoing facts," Lindell alleges that WCI's "administration" is guilty, as a party to a crime under Wis. Stat. § 939.05, of violating the following laws: Wis. Stat. § 940.29 (abuse of residents of penal facilities), § 940.19 (battery), 940.225 (sexual assault), § 946.12 (misconduct in public office), § 947.013 (harassment), and § 940.45 (intimidation of victims). He also alleges that C.O. II "M" is guilty, in relation to Lindell, of violating Wis. Stat. § 940.29 (abuse of residents of penal facilities), § 940.19 (battery), § 946.12 (misconduct in public office), § 947.013 (harassment), and § 940.45 (intimidation of victims).[3]

On August 2, 2013, John Doe Judge Steven G. Bauer issued a written decision (copy attached) which denied Lindell's John Doe complaint and implicitly refused to refer the complaint to the district attorney. Judge Bauer concluded that Lindell did not demonstrate an objective reason to believe that a crime had been committed. Judge Bauer reasoned that Lindell had cited many grievances against employees of the Department of Corrections, that his only allegation involving a physical injury was the cut on the wrist from the handcuff, that handcuffing is a normal part of being a prisoner, and that there was no allegation that the cut was intentional.[4]

On October 28, 2013, on Lindell's motion for reconsideration, John Doe Judge Joseph G. Sciascia issued a written decision (copy attached) which denied reconsideration. Judge Sciascia concluded that Lindell did not demonstrate an objective reason to believe that a crime had been committed. Judge Sciascia agreed with Judge Bauer that the only allegation that could be of concern in a John Doe proceeding was the allegation that Lindell was cut by the handcuff, and that that allegation was not "serious enough" to warrant a criminal investigation.

Then about 10 prosecutions 2 of 8 are invalid

Lindell now seeks a supervisory writ to review the decision of the John Doe judges not to refer his complaint to the district attorney. Although a petition for a supervisory writ is the correct procedure to seek review, *see State ex rel. Reimann*, 214 Wis. 2d at 625-626, Lindell is not entitled to a supervisory writ because the John Doe judges correctly determined that, within

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[3] Lindell also alleges that WCI's "Administration" and C.O. II "M" violated federal criminal laws, but a John Doe judge has no authority to issue a criminal complaint under federal law. *See* Wis. Stat. § 968.26(2)(d).

[4] Judge Bauer also commented that a crime based on the unintentional wrist injury caused by the handcuff would lack "prosecutive merit" and that Lindell's grievances should be handled "via the internal complaint process or civil litigation" and "not [as] a criminal matter." It is conceded, however, that whether a John Doe complaint has "prosecutive merit" is a determination which is made not when deciding whether to refer the complaint to the district attorney under the objective "reason to believe" test, but, rather, after the completion of the John Doe proceeding. *See* Wis. Stat. § 968.26(2)(am), (c) and (d); *Naseer*, 2010 WI App 142 at ¶¶ 6-7. Similarly, whether conduct alleged in a John Doe complaint also may give rise to a grievance or civil litigation is not determinative of whether the alleged conduct also could be a crime for purposes of the objective "reason to believe" test.

the four corners of his John Doe complaint, there is not an objective "reason to believe" that a crime has been committed.

Lindell makes a general allegation in his John Doe complaint that numerous acts of severe physical and sexual abuse of prisoners occurred at WCI between January 1 and June 30, 2013, that two supervisory correctional officers either supervised or engaged in this systemic abuse, and that WCI management who knew of the ongoing systemic abuse failed to take any measures to prevent the abuse from continuing to occur. A John Doe complaint, however, must "do more than merely allege in conclusory terms that a crime has been committed. The allegation must be supported by objective, factual assertions . . . ." *See State ex rel. Reimann*, 214 Wis. 2d at 618. Lindell's allegations are not sufficiently specific. In addition, his reliance on his blog, and his request that the Court take judicial notice of his blog, are of no assistance to him because the objective "reason to believe" test is to be applied only to the four corners of the complaint, *see Naseer*, 2010 WI App 142 at ¶ 11; *State ex rel. Reimann*, 214 Wis. 2d at 624, and without regard to extrinsic materials, *see State ex rel. Williams*, 2005 WI App 91, ¶¶ 24-28.

Judicial Notice

In addition, insofar as Lindell makes a specific allegation that C.O. II "M" conducted a body cavity strip search of a prisoner, strip searches of prisoners are not inherently criminal and lawfully may be performed as reasonably related to the safety and security of the prison. This is true regardless of whether an institutional protocol identifies who should perform particular types of strip searches.

Finally, none of Lindell's other specific allegations can satisfy the objective "reason to believe" standard. This includes the allegations that C.O. II "M" (1) falsely reported a prisoner's statements about another correctional officer (regardless of the impact of the false report), (2) incorrectly told a "rookie" correctional officer that Lindell had to have money in his account in order to make a telephone call, (3) denied Lindell recreation on two occasions, (4) "tore apart" Lindell's cell, left his legal papers in a "messy pile," and refused his request for a pen, and (5) cut Lindell's wrist and tore his skin on one occasion while handcuffing him (causing a "drop of blood" to "ooze out"). It also includes the allegations that another correctional officer refused his request for medical care and documentation of his wrist injury, and that a prison nurse refused to provide him with a Band-Aid. Consequently, because Lindell's John Doe complaint fails to allege sufficient facts to support an objective reasonable belief that any crime has been committed, the John Doe judges properly and lawfully refused to refer his complaint to the district attorney, and his petition for a supervisory writ therefore must be denied.

falsely

In conclusion, the Circuit Court and Judge Sciascia respectfully request that the Court of Appeals enter a final order denying Lindell's petition for a supervisory writ.

Sincerely,

David C. Rice
Assistant Attorney General
State Bar #1014323

Enclosures
c w/encls: Nate A. Lindell
Honorable Joseph G. Sciascia
Honorable Stephen G. Bauer
A. John Voelker, Director of State Courts

Diane M. Fremgen
Clerk, Wis. Ct. of Appeals
P.O. Box 1688
Madison, WI 53701-1688

Re: S.X.R. Nate A. Lindell v. Circuit Court for Dodge County
Appeal No. 2013AP2695-W

Dear Ms. Fremgen:

Pardon the informality of this rebuttal to the respondents convoluted response but I'm rushed and there's little legitimate argument that I need to oppose.

First off, the respondents are not "respectfully" requesting the court to quash this writ. They are doing what they've done in too many other cases, in some of which the court clearly was infuriated by the D.O.C.'s profound disregard for their own laws/regulations and which the W.D.O.J. bafflingly tried to defend.

A brief look at my John Doe Petition[1] will reveal that I did specifically describe one beating and digital sodomy of another prisoner, contrary to A.A.G. Rice's motif that I merely gave a conclusory allegation, then referred the court to my blog post for the specifics. That allegation alone validated my Petition.

But there's more. Wis. Stats. §966.26 does not, anywhere, override the Judicial Notice statute. And incorporations by

F.N.1 Please see my attached declaration, which I'm unable to have notarized, yet will more officially (under WI law) authenticate if this court arranges for a telephonic hearing.

reference are common, permissible litigation practice.

Contrary to A.A.G. Rice's idiotic[2] missummary of the facts in my Petition (pg. 2 of Rice's letter), there was evidence that C.O.II Moungey intentionally injured me with handcuffs: Moungey's statements acknowledging he knew Lindell was helping another prisoner sue Moungey for Moungey's digital sodomy of the other prisoner; C.O. Moungey's statement "That's what ya get;" staff's refusal to document and treat the injury, which Lindell's Petition didn't seek to prosecute, just cited as circumstantial evidence of intent and a guilty state of mind. A.A.G Rice scoffs at the notion that a scratch warrants criminal prosecution — yet such prosecutions have commonly been pursued against prisoners. E.g. Vincent D. Whitaker received 9 years for such a scratch of a Boscobel guard, which this court upheld on appeal; and I too had such a prosecution upheld by this court. (See F.N.1 I can't provide the precise citations).

Personally, I'm for just stabbing the faggots to death. But, as with other gangs in prison, the protocol is to first bring the matter to the shotcaller, which, here, is this court. Please deal with your people, or let me back in WI.

Respectfully submitted,

Dated 6 February 2014

Nate A. Lindell 99582-555
Allenwood U.S.P.
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White Deer, PA 17887
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F.N. 2 I too am dismayed to have repeatedly found that, despite, what, 6 years of higher education, many in the A.G.'s office are either ignorant of Aristotle's Rhetoric or are unethical Sophists, with no regard for doing justice.

Declaration Under Penalty of Perjury of Nate A. Lindell

I, Nate A. Lindell, delare under penalty of perjury that, based on my personal knowledge, the following facts are true, truthful and correct; and I'm willing to testify accordingly in any court.

1. On 3 December 2013, at the Waupun Correctional Institution (W.C.I.), at approximately 3:45 P.M., Cpt. David Core and a Ms. Marwitz (I'm not sure as to the correct spelling) conducted a Program-Review Committee (P.R.C.), at which they recommended I go into federal custody. According to the decision I received, a Mr. Herse in Madison approved that recommendation only minutes after it was made. Both the lateness of the hearing and the quickness with which it was approved were unheard of, atypical, abnormal. In the record for the decision, Ms. Marwitz falsely noted that I agreed to the transfer — in fact, I strongly objected to it, pointing out that it'd obstruct my litigation of several pending and contemplated lawsuits against the W.D.O.C., along with disabling me from helping other prisoners litigate cases I was helping them with. Approximately 6 days later, Lt. Jessie Schneider and Brian Greff — both chief actors in this action — escorted me, in a T-shirt (it was bitterly cold outdoors) from W.C.I.'s Seg. unit, through the yard (it was about a 5-minute walk, as I was in shackles & violently shivering), where I was then picked up and shipped to my current residence. During Lt. Schneider's and Greff's escort — it is unheard of for either and especially both of those supervisors to escort a prisoner anywhere — Lt. Schneider stated to me, "You look cold. Look, he's shivering. He is cold!" and "There won't be any liberal judges in Tennessee or wherever you're going. What're you gonna do when you can't file any more lawsuits?"

2. As I left W.C.I., I informed both Lt. Braemer (I think that was his name) and W.C.I.'s property Sgt., John Dahlke, that

I had multiple suits pending against Wisconsin D.O.C. officials, including this one and would sue if my legal materials were not promptly sent to me, as I needed my property to pursue those cases. Both Lt. Braemer and Sgt. Dahlke amicably assured me I'd get my property. Alas, as of this date, I still haven't received said property and officials here are entirely indifferent to the issue.

3. In this institution I'm in, there is no Wisconsin case-law, statutes, administrative codes, nor other legal reference materials available to me. Despite asking Associate Warden Smith, here, to provide me with this and despite me filing a grievance about the issue (as well as about my missing, forenoted property), such is not provided to me. I only get access to a law computer with strictly federal materials, once a week, for an hour — and I had to threaten to hurt staff to get that.

4. I've wrote W.C.I.'s warden (on 6 Jan. 2014) and then wrote Sgt. Dahlke, telling them that I needed my legal property so I could pursue my suits against them. Alas, I've not yet received a copy nor received my legal property.

5. Based on the foregoing and the circumstances described in my John Doe Petition, I believe that I was sent out of W.C.I. into the B.O.P. in an effort to snuff out my litigation and journalism about the horrendous sexual and physical abuse of W.C.I. prisoners, as well as staff's mistreatment of me.

Executed this 6th day of February 2014

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DISTRICT IV

February 14, 2014

To:

Hon. Joseph G. Sciascia
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You are hereby notified that the Court has entered the following opinion and order:

2013AP2695-W State of Wisconsin ex rel. Nate A. Lindell v. Circuit Court for Dodge County and the Honorable Joseph G. Sciascia, presiding (L.C. #2013IP32)

Before Blanchard, P.J., Lundsten and Higginbotham, JJ.

Nate Lindell petitions for a supervisory writ to compel Judge Joseph Sciascia to refer Lindell's John Doe complaint to the district attorney. *See* WIS. STAT. § 968.26(2)(am); WIS. STAT. Rule 809.51(1). Lindell asserts that his John Doe complaint sets forth reason to believe that a crime has been committed. *See* ***Naseer v. The Honorable James Miller***, 2010 WI App

142, 329 Wis. 2d 724, 793 N.W.2d 209. For the following reasons we grant the supervisory writ of mandamus.

According to Lindell's petition and supporting material, Lindell submitted a John Doe complaint to Judge Steven Bauer alleging misconduct by prison staff. One allegation was that a particular correctional officer, at a specific time on a specific date, while escorting Lindell to recreation, "slapped the handcuffs onto Lindell's wrist, causing Lindell to jerk his hand back in from the pain. Lindell then noticed that his left wrist was cut, the skin torn, and a drop of blood oozed out." Lindell also claimed that the officer told Lindell, "That's what [you] get," and had said to Lindell about an hour previous to the incident, "I saw that suit you did for [another inmate]," referencing Lindell's assisting another inmate in initiating a lawsuit against the officer alleging sexual assault.

Lindell also alleged the following: "Numerous acts of severe physical and sexual abuse of [Waupun Correctional Institution] prisoners in W.C.I's segregation complex … between 1 January of 2013 through June 30th of 2013." Lindell stated that prison staff "knew about this ongoing systemic abuse, yet refused to … tak[e] any measures to prevent such abuse from continuing to occur. In some cases, [identified staff] directly supervised or engaged in this systemic abuse."

Judge Bauer declined to refer the complaint to a district attorney. Lindell sought a substitution of judges, and Judge Sciascia was assigned to this case. Judge Sciascia then made the same determination as Judge Bauer, concluding that the John Doe complaint did not warrant referral for a criminal investigation.

Appendix II – page 2

Under WIS. STAT. § 968.26(2)(am), a John Doe judge "has a mandatory duty to refer a John Doe complaint to the district attorney only if the four corners of the complaint provide a sufficient factual basis to establish an objective reason to believe that a crime has been committed in the judge's jurisdiction." ***Naseer***, 329 Wis. 2d 724, ¶11. If a John Doe judge violates a plain duty under the John Doe statute, a writ is an appropriate remedy. ***Id.***, ¶5.

The State contends that Judge Sciascia did not have a plain duty to refer Lindell's complaint to the district attorney because nothing in Lindell's complaint provided an objective reason to believe that a crime has been committed. The State asserts that Lindell's allegation that an officer cut his wrist with handcuffs does not satisfy the "reason to believe" standard, and that Lindell's claim of physical and sexual abuse is a conclusory allegation that does not rise to the level of an objective, factual assertion. *See* ***State ex rel. Reimann v. Circuit Court for Dane County***, 214 Wis. 2d 605, 623-24, 571 N.W.2d 385 (1997).

We conclude that Lindell's claim that an identified officer cut Lindell's wrist by slapping on handcuffs, along with the claim that the officer made contemporaneous statements indicating a specific motive to hurt Lindell, meets the "reason to believe" standard articulated in ***Naseer***.

In ***Naseer***, 329 Wis. 2d 724, ¶14, we determined that a prisoner's "allegations that a prison guard squeezed his neck to the point of impairing his breathing, without any legitimate purpose for the chokehold, could conceivably support a charge of battery or some other offense." We therefore issued a writ directing the John Doe judge to refer the John Doe complaint to the district attorney. ***Id.***

We are unable to distinguish this case from ***Naseer***. As in ***Naseer***, Lindell's allegation that a correctional officer intentionally caused Lindell physical harm could conceivably support a

charge of battery or some other offense. Because the four corners of the complaint provide "an objective reason" to believe that a crime has been committed, the John Doe judge must refer the complaint to the district attorney.

As to Lindell's allegations that prison staff directly supervised and engaged in acts of physical and sexual abuse in WCI's segregation complex during a specific six-month period, we determine that this is a close call. We agree with the State that the allegations of abuse are general. In any event, we determine that Lindell's allegation that a correctional officer slapped handcuffs on Lindell's wrist, causing pain and injury, together with the alleged statements indicating the act was intentional and in retaliation for Lindell's legal assistance to another inmate, is a more clear-cut allegation of criminal activity. Because the John Doe complaint provides "an objective reason" to believe that at least one crime was committed, the John Doe judge was required to refer the complaint to the district attorney.[1]

Therefore,

IT IS ORDERED that the supervisory writ of mandamus is granted. We direct Judge Sciascia to refer Lindell's John Doe complaint to the Dodge County District Attorney's office.

Diane M. Fremgen
Clerk of Court of Appeals

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[1] The State also addresses Lindell's allegations that correctional officers acted improperly in the following ways: making false reports as to prisoner conduct and conducting strip searches of prisoners; denying Lindell recreation time; and searching Lindell's cell and leaving his papers in a mess. The State asserts that none of those allegations provide reason to believe that a crime was committed. Because we determine that at least one allegation in the John Doe complaint meets the "reason to believe" standard, we need not address the question of whether these additional allegations require referral to the district attorney.

Appendix II – page 4

STATE OF WISCONSIN	CIRCUIT COURT BRANCH 3	COUNTY OF DODGE

In re the Matter of: JOHN DOE

Case No. 13 IP 32
14 JD 5

ORDER REFERRING JOHN DOE COMPLAINT TO DISTRICT ATTORNEY

The Court has received papers it construes as a petition for a John Doe investigation.

Pursuant to Sec. 968.26(2)(a), Stats., the matter is referred to the Dodge County District Attorney. The Clerk shall open a JD file for this matter.

Dated this 19th day of February, 2014.

BY ORDER OF THE COURT

JOSEPH G. SCIASCIA
CIRCUIT JUDGE, BRANCH 3
DODGE COUNTY, WISCONSIN

Distribution:
Dodge County District Attorney
Petitioner

Transferred to DA's office by Clerk of Courts on 2/25/14
(date)

FILED
IN THE CIRCUIT COURT

FEB 19 2014

Dodge County WI
Lynn M. Hron
Clerk of Courts