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# Mitch Henck: "Doesn't He Ever Give Up"

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In the '60s television show "The Fugitive," Inspector Gerard was relentless in his pursuit. Dr. Richard Kimbell would often mutter, "Doesn't he ever give up."

Gov. Scott Walker could be whispering that about Dane County District Attorney Ismael Ozanne or four other Wisconsin DAs who could keep the John Doe saga very much alive.

Last Wednesday, the conservative Wisconsin Supreme Court rejected a request from John Doe prosecutor Francis Schmitz to reconsider its July decision to shut down a secret investigation into alleged coordination between outside groups and Walker's campaign during the 2011 and 2012 recall elections.

Perhaps the lone dissenter in the state Supreme Court ruling is taking the torch from Winston Churchill when he told his weary citizens during World War II, "Never given in!" In her defiant opinion on the John Doe ruling, Shirley Abrahamson wrote, "What a mess this course has wrought!"

The wrath of Abrahamson might have influenced the majority enough to stay its previous order that all documents in the John Doe II case be destroyed. Instead, it ordered closed documents in the case to be turned over to the court itself.

That means they won't be destroyed until all appeals are exhausted. Since the court did terminate the position of Schmitz, it will be up to a local district attorney to carry the torch forward. Dane County District Attorney Ismael Ozanne has yet to respond to my inquiries on whether he will appeal the state court's decision to the U.S. Supreme Court.

Last week, Matt Rothschild of The Wisconsin Democracy Campaign called on one or more of the five local DAs who signed off on the John Doe to appeal the case. Rothschild wants the nation's top court to reverse the state court's decision declaring Wisconsin's old law prohibiting coordination between campaigns and issue advocacy groups unconstitutional. Such a ruling would let a future state Legislature change the law back to that again.

The current Legislature has passed a law saying coordination between campaigns and issue advocacy groups is OK. Nonetheless, it's still illegal for groups that run ads saying "vote for" or "vote against" a candidate to coordinate with campaigns.

On this question, Abrahamson wrote in her blistering dissent that the majority opinion had reached an “erroneous conclusion that the special prosecutor never presented evidence of illegally coordinated express advocacy to the John Doe judge.”

“In fact,” Abrahamson wrote, “According to the record, evidence of coordinated express advocacy on which the special prosecutor relies was presented to both the John Doe judge and to this court.” Abrahamson says that provides ‘reason to believe’ a crime was committed by coordinated express advocacy. Accordingly, reconsideration should be granted and the investigation into coordinated express advocacy should continue.”

So if an appeal goes to the highest court in the land, there is no guarantee the Wisconsin Supreme Court would be upheld. In fact, only Florida lets outside groups that run issue advocacy ads coordinate with campaigns the way Wisconsin now does, according to Common Cause. And six states have no regulation on the matter.

The private lawsuits against John Doe prosecutors for alleged heavy handed tactics in denying conservative speech also mean the evidence in the case will not be destroyed for a while. That means the governor and his allies could be looking over their shoulders well into 2016 and beyond.

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