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Wisconsin's Shame: 'I Thought It Was a Home Invasion'

David French April 20, 2015 8:00 AM

(Illustration: Roman Genn)

'They came with a battering ram."

Cindy Archer, one of the lead architects of Wisconsin's Act 10 — also called the "Wisconsin Budget Repair Bill," it limited public-employee benefits and altered collective-bargaining rules for public-employee unions — was jolted awake by yelling, loud pounding at the door, and her dogs' frantic barking. The entire house — the windows and walls — was shaking.

She looked outside to see up to a dozen police officers, yelling to open the door. They were carrying a battering ram.

VIDEO: David French Discusses 'Wisconsin's Shame'

She wasn't dressed, but she started to run toward the door, her body in full view of the police. Some yelled at her to grab some clothes, others yelled for her to open the door.

“I was so afraid,” she says. “I did not know what to do.” She grabbed some clothes, opened the door, and dressed right in front of the police. The dogs were still frantic.

“I begged and begged, ‘Please don’t shoot my dogs, please don’t shoot my dogs, just don’t shoot my dogs.’ I couldn’t get them to stop barking, and I couldn’t get them outside quick enough. I saw a gun and barking dogs. I was scared and knew this was a bad mix.”

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She got the dogs safely out of the house, just as multiple armed agents rushed inside. Some even barged into the bathroom, where her partner was in the shower. The officer or agent in charge demanded that Cindy sit on the couch, but she wanted to get up and get a cup of coffee.

“I told him this was my house and I could do what I wanted.” Wrong thing to say. “This made the agent in charge furious. He towered over me with his finger in my face and yelled like a drill sergeant that I either do it his way or he would handcuff me.”

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They wouldn’t let her speak to a lawyer. She looked outside and saw a person who appeared to be a reporter. Someone had tipped him off.

The neighbors started to come outside, curious at the commotion, and all the while the police searched her house, making a mess, and — according to Cindy — leaving her “dead mother’s belongings strewn across the basement floor in a most disrespectful way.”

Then they left, carrying with them only a cellphone and a laptop.

“It’s a matter of life or death.”

That was the first thought of “Anne” (not her real name). Someone was pounding at her front door. It was early in the morning — very early — and it was the kind of heavy pounding that meant someone was either fleeing from — or bringing — trouble.

“It was so hard. I’d never heard anything like it. I thought someone was dying outside.”

She ran to the door, opened it, and then chaos. “People came pouring in. For a second I thought it was a home invasion. It was terrifying. They were yelling and running, into every room in the house. One of the men was in my face, yelling at me over and over and over.”

#related#It was indeed a home invasion, but the people who were pouring in were Wisconsin law-enforcement officers. Armed, uniformed police swarmed into the house. Plainclothes investigators cornered her and her newly awakened family. Soon, state officials were seizing the family’s personal property, including each person’s computer and smartphone, filled with the most intimate family information.

Why were the police at Anne’s home? She had no answers. The police were treating them the way

they'd seen police treat drug dealers on television.

In fact, TV or movies were their only points of reference, because they weren't criminals. They were law-abiding. They didn't buy or sell drugs. They weren't violent. They weren't a danger to anyone. Yet there were cops — surrounding their house on the outside, swarming the house on the inside. They even taunted the family as if they were mere "perps."

As if the home invasion, the appropriation of private property, and the verbal abuse weren't enough, next came ominous warnings.

Don't call your lawyer.

Don't tell anyone about this raid. Not even your mother, your father, or your closest friends.

The entire neighborhood could see the police around their house, but they had to remain silent. This was not the "right to remain silent" as uttered by every cop on every legal drama on television — the right against self-incrimination. They couldn't mount a public defense if they wanted — or even offer an explanation to family and friends.

Yet no one in this family was a "perp." Instead, like Cindy, they were American citizens guilty of nothing more than exercising their First Amendment rights to support Act 10 and other conservative causes in Wisconsin. Sitting there shocked and terrified, this citizen — who is still too intimidated to speak on the record — kept thinking, "Is this America?"

"They followed me to my kids' rooms."

For the family of "Rachel" (not her real name), the ordeal began before dawn — with the same loud, insistent knocking. Still in her pajamas, Rachel answered the door and saw uniformed police, poised to enter her home.

When Rachel asked to wake her children herself, the officer insisted on walking into their rooms. The kids woke to an armed officer, standing near their beds.

The entire family was herded into one room, and there they watched as the police carried off their personal possessions, including items that had nothing to do with the subject of the search warrant — even her daughter's computer.

And, yes, there were the warnings. Don't call your lawyer. Don't talk to anyone about this. Don't tell your friends. The kids watched — alarmed — as the school bus drove by, with the students inside watching the spectacle of uniformed police surrounding the house, carrying out the family's belongings. Yet they were told they couldn't tell anyone at school.

They, too, had to remain silent.

The mom watched as her entire life was laid open before the police. Her professional files, her personal files, everything. She knew this was all politics. She knew a rogue prosecutor was targeting her for her political beliefs.

And she realized, “Every aspect of my life is in their hands. And they hate me.”

Fortunately for her family, the police didn’t taunt her or her children. Some of them seemed embarrassed by what they were doing. At the end of the ordeal, one officer looked at the family, still confined to one room, and said, “Some days, I hate my job.”

#related#For dozens of conservatives, the years since Scott Walker’s first election as governor of Wisconsin transformed the state — known for pro-football championships, good cheese, and a population with a reputation for being unfailingly polite — into a place where conservatives have faced early-morning raids, multi-year secretive criminal investigations, slanderous and selective leaks to sympathetic media, and intrusive electronic snooping.

Yes, Wisconsin, the cradle of the progressive movement and home of the “Wisconsin idea” — the marriage of state governments and state universities to govern through technocratic reform — was giving birth to a new progressive idea, the use of law enforcement as a political instrument, as a weapon to attempt to undo election results, shame opponents, and ruin lives.

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Most Americans have never heard of these raids, or of the lengthy criminal investigations of Wisconsin conservatives. For good reason. Bound by comprehensive secrecy orders, conservatives were left to suffer in silence as leaks ruined their reputations, as neighbors, looking through windows and dismayed at the massive police presence, the lights shining down on targets’ homes, wondered, no doubt, What on earth did that family do?

This was the on-the-ground reality of the so-called John Doe investigations, expansive and secret criminal proceedings that directly targeted Wisconsin residents because of their relationship to Scott Walker, their support for Act 10, and their advocacy of conservative reform.

Largely hidden from the public eye, this traumatic process, however, is now heading toward a legal climax, with two key rulings expected in the late spring or early summer. The first ruling, from the Wisconsin supreme court, could halt the investigations for good, in part by declaring that the “misconduct” being investigated isn’t misconduct at all but the simple exercise of First Amendment rights.

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The second ruling, from the United States Supreme Court, could grant review on a federal lawsuit brought by Wisconsin political activist Eric O’Keefe and the Wisconsin Club for Growth, the first conservatives to challenge the investigations head-on. If the Court grants review, it could not only halt the investigations but also begin the process of holding accountable those public officials who have so abused their powers.

But no matter the outcome of these court hearings, the damage has been done. In the words of Mr. O’Keefe, “The process is the punishment.”

It all began innocently enough. In 2009, officials from the office of the Milwaukee County executive contacted the office of the Milwaukee district attorney, headed by John Chisholm, to investigate the disappearance of $11,242.24 from the Milwaukee chapter of the Order of the Purple Heart. The matter was routine, with witnesses willing and able to testify against the principal suspect, a man named Kevin Kavanaugh.

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What followed, however, was anything but routine. Chisholm failed to act promptly on the report, and when he did act, he refused to conduct a conventional criminal investigation but instead petitioned, in May 2010, to open a "John Doe" investigation, a proceeding under Wisconsin law that permits Wisconsin officials to conduct extensive investigations while keeping the target's identity secret (hence the designation "John Doe").

John Doe investigations alter typical criminal procedure in two important ways: First, they remove grand juries from the investigative process, replacing the ordinary citizens of a grand jury with a supervising judge. Second, they can include strict secrecy requirements not just on the prosecution but also on the targets of the investigation. In practice, this means that, while the prosecution cannot make public comments about the investigation, it can take public actions indicating criminal suspicion (such as raiding businesses and homes in full view of the community) while preventing the targets of the raids from defending against or even discussing the prosecution's claims.

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Why would Chisholm seek such broad powers to investigate a year-old embezzlement claim with a known suspect? Because the Milwaukee County executive, Scott Walker, had by that time become the leading Republican candidate for governor. District Attorney Chisholm was a Democrat, a very partisan Democrat.

Almost immediately after opening the John Doe investigation, Chisholm used his expansive powers to embarrass Walker, raiding his county-executive offices within a week. As Mr. O'Keefe and the Wisconsin Club for Growth explained in court filings, the investigation then dramatically expanded:

> Over the next few months, [Chisholm's] investigation of all-things-Walker expanded to include everything from alleged campaign-finance violations to sexual misconduct to alleged public contracting bid-rigging to alleged misuse of county time and property. Between May 5, 2010, and May 3, 2012, the Milwaukee Defendants filed at least eighteen petitions to formally "[e]nlarge" the scope of the John Doe investigation, and each was granted. . . . That amounts to a new formal inquiry every five and a half weeks, on average, for two years.

This expansion coincided with one of the more remarkable state-level political controversies in modern American history – the protest (and passage) of Act 10, followed by the attempted recall of a number of Wisconsin legislators and, ultimately, Governor Walker.

VIDEO: David French Discusses 'Wisconsin's Shame

Political observers will no doubt remember the events in Madison — the state capitol overrun by chanting protesters, Democratic lawmakers fleeing the state to prevent votes on the legislation, and tens of millions of dollars of outside money flowing into the state as Wisconsin became, fundamentally, a proxy fight pitting the union-led Left against the Tea Party–led economic Right.

At the same time that the public protests were raging, so were private — but important — protests in the Chisholm home and workplace. As a former prosecutor told journalist Stuart Taylor, Chisholm's wife was a teachers'-union shop steward who was distraught over Act 10's union reforms. He said Chisholm "felt it was his personal duty" to stop them.

Meanwhile, according to this whistleblower, the district attorney's offices were festooned with the "blue fist" poster of the labor-union movement, indicating that Chisholm's employees were very much invested in the political fight.

In the end, the John Doe proceeding failed in its ultimate aims. It secured convictions for embezzlement (related to the original 2009 complaint), a conviction for sexual misconduct, and a few convictions for minor campaign violations, but Governor Walker was untouched, his reforms were implemented, and he survived his recall election.

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But with another election looming — this time Walker's campaign for reelection — Chisholm wasn't finished. He launched yet another John Doe investigation, "supervised" by Judge Barbara Kluka. Kluka proved to be capable of superhuman efficiency — approving "every petition, subpoena, and search warrant in the case" in a total of one day's work.

#related#If the first series of John Doe investigations was "everything Walker," the second series was "everything conservative," as Chisholm had launched an investigation of not only Walker (again) but the Wisconsin Club for Growth and dozens of other conservative organizations, this time fishing for evidence of allegedly illegal "coordination" between conservative groups and the Walker campaign.

In the second John Doe, Chisholm had no real evidence of wrongdoing. Yes, conservative groups were active in issue advocacy, but issue advocacy was protected by the First Amendment and did not violate relevant campaign laws. Nonetheless, Chisholm persuaded prosecutors in four other counties to launch their own John Does, with Judge Kluka overseeing all of them.

Empowered by a rubber-stamp judge, partisan investigators ran amok. They subpoenaed and obtained (without the conservative targets' knowledge) massive amounts of electronic data, including virtually all the targets' personal e-mails and other electronic messages from outside e-mail vendors and communications companies.

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The investigations exploded into the open with a coordinated series of raids on October 3, 2013. These were home invasions, including those described above. Chisholm's office refused to comment

on the raid tactics (or any other aspect of the John Doe investigations), but witness accounts regarding the two John Doe investigations are remarkably similar: early-morning intrusions, police rushing through the house, and stern commands to remain silent and tell no one about what had occurred.

At the same time, the Wisconsin Club for Growth and other conservative organizations received broad subpoenas requiring them to turn over virtually all business records, including "donor information, correspondence with their associates, and all financial information." The subpoenas also contained dire warnings about disclosure of their existence, threatening contempt of court if the targets spoke publicly.

For select conservative families across five counties, this was the terrifying moment — the moment they felt at the mercy of a truly malevolent state.

Speaking both on and off the record, targets reflected on how many layers of Wisconsin government failed their fundamental constitutional duties — the prosecutors who launched the rogue investigations, the judge who gave the abuse judicial sanction, investigators who chose to taunt and intimidate during the raids, and those police who ultimately approved and executed aggressive search tactics on law-abiding, peaceful citizens.

For some of the families, the trauma of the raids, combined with the stress and anxiety of lengthy criminal investigations, has led to serious emotional repercussions. "Devastating" is how Anne describes the impact on her family. "Life-changing," she says. "All in terrible ways."

O'Keefe, who has been in contact with multiple targeted families, says, "Every family I know of that endured a home raid has been shaken to its core, and the fate of marriages and families still hangs in the balance in some cases."

Anne also describes a new fear of the police: "I used to support the police, to believe they were here to protect us. Now, when I see an officer, I'll cross the street. I'm afraid of them. I know what they're capable of."

Cindy says, "I lock my doors and I close my shades. I don't answer the door unless I am expecting someone. My heart races when I see a police car sitting in front of my house or following me in the car. The raid was so public. I've been harassed. My house has been vandalized. [She did not identify suspects.] I no longer feel safe, and I don't think I ever will."

Rachel talks about the effect on her children. "I tried to create a home where the kids always feel safe. Now they know they're not. They know men with guns can come in their house, and there's nothing we can do." Every knock on the door brings anxiety. Every call to the house is screened. In the back of her mind is a single, unsettling thought: These people will never stop.

Victims of trauma — and every person I spoke with described the armed raids as traumatic — often need to talk, to share their experiences and seek solace in the company of a loving family and supportive friends. The investigators denied them that privilege, and it compounded their pain and fear.

The investigation not only damaged families, it also shut down their free speech. In many cases, the investigations halted conservative groups in their tracks. O'Keefe and the Wisconsin Club for Growth described the effect in court filings:

> O'Keefe's associates began cancelling meetings with him and declining to take his calls, reasonably fearful that merely associating with him could make them targets of the investigation. O'Keefe was forced to abandon fundraising for the Club because he could no longer guarantee to donors that their identities would remain confidential, could not (due to the Secrecy Order) explain to potential donors the nature of the investigation, could not assuage donors' fears that they might become targets themselves, and could not assure donors that their money would go to fund advocacy rather than legal expenses. The Club was also paralyzed. Its officials could not associate with its key supporters, and its funds were depleted. It could not engage in issue advocacy for fear of criminal sanction.

These raids and subpoenas were often based not on traditional notions of probable cause but on mere suspicion, untethered to the law or evidence, and potentially violating the Fourth Amendment's prohibition against "unreasonable searches and seizures." The very existence of First Amendment–protected expression was deemed to be evidence of illegality. The prosecution simply assumed that the conservatives were incapable of operating within the bounds of the law.

Even worse, many of the investigators' legal theories, even if proven by the evidence, would not have supported criminal prosecutions. In other words, they were investigating "crimes" that weren't crimes at all.

If the prosecutors had applied the same legal standards to the Democrats in their own offices, they would have been forced to turn the raids on themselves. If the prosecutors and investigators had been raided, how many of their computers and smartphones would have contained incriminating information indicating use of government resources for partisan purposes?

With the investigations now bursting out into the open, some conservatives began to fight back. O'Keefe and the Wisconsin Club for Growth moved to quash the John Doe subpoenas aimed at them. In a surprise move, Judge Kluka, who had presided over the Doe investigations for more than a year, recused herself from the case. (A political journal, the *Wisconsin Reporter*, attempted to speak to Judge Kluka about her recusal, but she refused to offer comment.)

The new judge in the case, Gregory Peterson, promptly sided with O'Keefe and blocked multiple subpoenas, holding (in a sealed opinion obtained by the *Wall Street Journal*, which has done invaluable work covering the John Doe investigations) that they "do not show probable cause that the moving parties committed any violations of the campaign finance laws." The judge noted that "the State is not claiming that any of the independent organizations expressly advocated" Walker's election.

O'Keefe and the Wisconsin Club for Growth followed up Judge Peterson's ruling by filing a federal lawsuit against Chisholm and a number of additional defendants, alleging multiple constitutional

violations, including a claim that the investigation constituted unlawful retaliation against the plaintiffs for the exercise of their First Amendment rights. United States District Court judge Rudolph Randa promptly granted the plaintiffs' motion for a preliminary injunction, declaring that "the Defendants must cease all activities related to the investigation, return all property seized in the investigation from any individual or organization, and permanently destroy all copies of information and other materials obtained through the investigation."

From that point forward, the case proceeded on parallel state and federal tracks. At the federal level, the Seventh Circuit Court of Appeals reversed Judge Randa's order. Declining to consider the case on the merits, the appeals court found the lawsuit barred by the federal Anti-Injunction Act, which prohibits federal courts from issuing injunctions against some state-court proceedings. O'Keefe and the Wisconsin Club for Growth have petitioned the Supreme Court for a writ of certiorari and expect a ruling in a matter of weeks.

At the same time, the John Doe prosecutors took their case to the Wisconsin Court of Appeals to attempt to restart the Doe proceedings. The case was ultimately consolidated before the state supreme court, with a ruling also expected in a matter of weeks.

And so, almost five years after their secret beginning, the John Doe proceedings are nearly dead — on "life support," according to one Wisconsin pundit — but incalculable damage has been done, to families, to activist organizations, to the First Amendment, and to the rule of law itself.

In international law, the Western world has become familiar with a concept called "lawfare," a process whereby rogue regimes or organizations abuse legal doctrines and processes to accomplish through sheer harassment and attrition what can't be accomplished through legitimate diplomatic means. The Palestinian Authority and its defenders have become adept at lawfare, putting Israel under increasing pressure before the U.N. and other international bodies.

The John Doe investigations are a form of domestic lawfare, and our constitutional system is ill equipped to handle it. Federal courts rarely intervene in state judicial proceedings, state officials rarely lose their array of official immunities for the consequences of their misconduct, and violations of First Amendment freedoms rarely result in meaningful monetary damages for the victims.

#related#As Scott Walker runs for president, the national media will finally join the *Wall Street Journal* in covering John Doe. Given the mainstream media's typical bias and bad faith, they are likely to bring a fresh round of pain to the targets of the investigation; the cloud of suspicion will descend once again; even potential favorable court rulings by either the state supreme court or the U.S. Supreme Court will be blamed on "conservative justices" taking care of their own.

Conservatives have looked at Wisconsin as a success story, where Walker took everything the Left threw at him and emerged victorious in three general elections. He broke the power of the teachers' unions and absorbed millions upon millions of dollars of negative ads. The Left kept chanting, "This is what democracy looks like," and in Wisconsin, democracy looked like Scott Walker winning again and again.

Yet in a deeper way, Wisconsin is anything but a success. There were casualties left on the battlefield

Yet in a deeper way, Wisconsin is anything but a success. There were casualties left on the battlefield — innocent citizens victimized by a lawless government mob, public officials who brought the full power of their office down onto the innocent.

Governors come and go. Statutes are passed and repealed. Laws and elections are important, to be sure, but the rule of law is more important still. And in Wisconsin, the rule of law hangs in the balance — along with the liberty of citizens.

As I finished an interview with one victim still living in fear, still shattered by the experience of nearly losing everything simply because she supported the wrong candidate at the wrong time, I asked whether she had any final thoughts. "Just one," she replied. "I'm hoping for accountability, that someone will be held responsible so that they'll never do this again." She paused for a moment and then, with voice trembling, said: "No one should ever endure what my family endured."

– David French is an attorney, a writer, and a veteran of the Iraq War. This article first appeared in the May 4, 2015, issue of NR.

namaste

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(from my iPhone)