

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

PEOPLE OF THE STATE OF)
ILLINOIS ex rel. EMILY)
FOX,)
)
Plaintiff,)
)
vs.) Case No. 2021-L-53
)
JENNY THORNLEY,)
)
Defendant.)

**HEARING ON THE STATE'S MOTION TO DISMISS THE RELATOR'S
COMPLAINT**

REPORT OF PROCEEDINGS of the hearing held
on the 15th day of February, 2022 before the Honorable
ADAM GIGANTI, Judge of said court.

APPEARANCES:

MS. EILEEN BOYLE PERICH,
Assistant Attorney General
on behalf of the Plaintiff State of
Illinois;

MR. ROBERT M. ANDALMAN,
Attorney at Law
on behalf of the Plaintiff Emily Fox.

REPORTED BY:

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INDEX

WITNESSES: DIRECT CROSS REDIRECT RECROSS

None.

EXHIBITS: MARKED RECEIVED

None.

1 (Whereupon the following proceedings
2 were duly had.)

3 THE COURT: So, this is 2021-L-53. It's entitled
4 People of the State of Illinois, Plaintiff, versus Jenny
5 Thornley, Defendant.

6 Plaintiff is represented by Miss Boyle, and
7 the Defendant is represented by Mr. Andalman.

8 MR. ANDALMAN: Your Honor, if I could correct it a
9 little bit? So, this is a Relator case, so we are -- I
10 actually represent the Plaintiff against Jenny Thornley,
11 who's the Defendant. The State is intervening and
12 asking that the case be dismissed.

13 THE COURT: Sorry. Got it. Okay. I apologize. I
14 was just reading from the caption.

15 All right. We are here on the State's Motion
16 to Dismiss the Relator's complaint, and the parties are
17 ready to proceed?

18 MS. BOYLE PERICH: We are.

19 THE COURT: All right. And it's saying "Miss
20 Boyle," but it's actually Miss Boyle Perich?

21 MS. BOYLE PERICH: Exactly, yep. Boyle Perich.
22 Thank you.

23 THE COURT: Okay. Thank you. I'll change that.

24 All right. You may proceed.

1 MS. BOYLE PERICH: Thank you, Your Honor.

2 In fact, you're right, we are here today on
3 the State's Motion to Dismiss the Relator's complaint,
4 the Relator being Miss Emily Fox, and I'm here, also, to
5 introduce two of my colleagues.

6 Chris Wells is here today also on behalf of
7 the State, and Harpreet Khara, so you'll see their boxes
8 on the Zoom as well.

9 Judge, we'd ask the Court to dismiss the
10 State's Motion to Dismiss for several reasons, but in my
11 remarks, I want to make three points.

12 The first is the standard that's applicable to
13 the State's Motion to Dismiss, and that strongly favors
14 the State's prosecutorial discretion and its decision to
15 dismiss.

16 Second, I'll focus on the legal defects in the
17 Relator's complaint.

18 And third, I'll address the fact that the
19 Relators have not carried their burden to show glaring
20 evidence of fraud or bad faith.

21 So as this Court knows, the Illinois False
22 Claims Act sets forth the standard and the procedures
23 for these types of cases, and how does that happen?

24 First, the Relator files the complaint under

1 seal, which they did in this case, provides the State
2 all of its material evidence supporting those
3 allegations.

4 The State then investigates, which it did a
5 thorough and robust investigation in this case, and then
6 the State comes to a decision, and the decisions are
7 either it intervenes and takes over the prosecution of
8 the case, it moves to dismiss, or it declines and allows
9 the Relator to move forward with the prosecution of the
10 case. All the while, this complaint has remained under
11 seal, and the Defendant has not yet been served.

12 As you know, in this case, the State has made
13 a decision based on its thorough, robust investigation
14 and that the proper course of action for this complaint,
15 Your Honor, is to dismiss.

16 So what does the law tell us about the
17 standard that the Court is to apply in this type of case
18 where the State has moved to dismiss? Well, the statute
19 tells us a lot. It tells us that this is the State's
20 claim to begin with, that it's the State that's the
21 victim of the fraud alleged here, and even if the
22 Relator were allowed to go forward, it's the State that
23 controls the litigation. So, putting all of that
24 together, this is the State's prerogative, it drives the

1 litigation, or it ends it, frankly, and in this case, it
2 has decided the right course of action is to dismiss.

3 If the State, as in this case, has decided to
4 dismiss, that's presumed to be in good faith, and it's
5 presumed to be in good faith even over the Relator's
6 objections.

7 So what are the requirements for the
8 dismissal? The Relator is entitled to notice, which it
9 got in this case, and she is entitled to a hearing, and
10 that's exactly what's happening today. So the Court is
11 required to, based on the *Burlington Coat case*, *Factory*
12 *case*, *Scachitti*, there are numerous Illinois State court
13 cases that the Court can look to that all direct the
14 Court to provide substantial deference to the State's
15 decision to dismiss.

16 Even beyond that standard, Your Honor, I'm
17 going to talk about the legal defects in the complaint
18 that only add to what that standard, that deferential
19 standard that the law provides.

20 So why is the State deciding to exercise its
21 discretion to dismiss this particular case? Well,
22 first, the legal defects. So the first deficiency
23 that's -- that I'd like to talk about is the fact that
24 the State knew, and the State is broadly defined here as

1 all the government entities, the State knew about the
2 allegations alleged in the Relator's complaint, and this
3 makes sense, Your Honor, in the contents of the IFCA
4 statute, because false claims are meant to bring to
5 light allegations of fraud. The IFCA is meant as a
6 safety net. It's sort of the wheels of justice. If the
7 State entities aren't working, you would, you know, the
8 IFCA is the net to catch any fraud that the government
9 isn't aware of.

10 But I'm going to talk about today two reasons
11 and then four events about why this case is
12 out-of-the-gate deficient as it's been alleged in the
13 complaint. So, one is the public disclosure bar, and
14 the second is the government action bar, and these are
15 two parts of the IFCA statute which we have cited in our
16 papers.

17 Under the public disclosure bar, Your Honor, a
18 complaint is barred if substantially the same
19 allegations have been disclosed, in this case, a State
20 report, and then the government action bar is very
21 similar, but it says that if allegations have been
22 previously disclosed in an administrative money penalty
23 proceeding in which the State is a party, then a
24 subsequent false claims case is barred, and it leaves

1 the Court with no discretion.

2 Okay. So therefore, in this case, we have
3 both of these prongs that sort of stop the complaint out
4 of the gate. And why is that? Where did these
5 allegations get exposed? In four different instances,
6 Your Honor, they were exposed.

7 So first, ten months before the filing of the
8 complaint, we have this state report, and that was
9 filed, that was carried out by McGuireWoods and is a
10 very thorough report. You've probably received a large
11 packet of information, most of which was the
12 McGuireWoods, Your Honor. The ISP Merit Board had hired
13 the McGuireWoods Law Firm to investigate the very
14 allegations of time fraud and of resumé fraud that
15 Miss Thornley allegedly committed. So that concluded in
16 July of 2020, like I said, ten months before the
17 complaint was filed, so that knowledge about the fact
18 that there was sufficient evidence of Miss Thornley's
19 fraud was already in the State's hands. That was
20 already knowledge that the ISP Merit Board had, and
21 that's a government entity under the IFCA.

22 What's the second instance? The second
23 instance is five months before the filing of the
24 complaint, there was a Workers Compensation case that

1 was filed. Miss Thornley is the Petitioner in that
2 case, but the State is contesting the fact that she's
3 entitled to benefits, and in fact, I'll mention it one
4 more time, but she -- those benefits were actually
5 terminated, so the State is already aware of the fact
6 that Miss Thornley, based on the alleged assault, is not
7 entitled to workers compensation benefits, so the State
8 has acted in that way.

9 And then thirdly, the Office of the Executive
10 Inspector General was aware of these allegations as
11 well. Two complaints were filed in 2020 by employees of
12 the ISP Merit Board about the allegations in the
13 complaint.

14 And then lastly, the Illinois Department of
15 Insurance, we've cited this in our reply, has said that
16 the allegations that Miss Thornley's Workers
17 Compensation Claim was based on fraud. Those were also
18 disclosed to the Illinois Department of Insurance and
19 that that Department has said, um, that those claims,
20 those allegations of fraud, are in line for
21 investigation.

22 So the picture I want to paint and the
23 accurate picture of facts here, Your Honor, is that
24 there were multiple occasions on which these same

1 allegations were disclosed to different government
2 entities, and now I want to tell you about how those
3 government entities and others have actually taken
4 action on these allegations of fraud, and these just
5 support or add to what the State has decided the right
6 course of action here, and that is to dismiss.

7 So, what has the State done? They prosecuted
8 and indicted Miss Thornley on seven felony counts for
9 timekeeping fraud and official misconduct, and that's a
10 case pending in Sangamon County as you know, Your Honor.
11 That was filed last September in 2021.

12 As I mentioned, the workers compensation case
13 is currently pending where the State is contesting
14 benefits to Miss Thornley. They ended those benefits a
15 couple months ago.

16 And then the third point is that the OEIG, the
17 Office of the Executive Inspector General, has had two
18 complaints in front of them and has taken action. That
19 action is one, it referred back to the ISP Merit Board
20 one complaint and has not closed. As best we know, is
21 still investigating that second complaint.

22 Moreover, just to add to what I've already
23 said about the deficiencies, about the State action,
24 what happened to Miss Thornley? Well, she was placed on

1 administrative leave. The ISP Merit Board hired an
2 independent investigation into those, her allegations.
3 At the end of the investigation, it fired Miss Thornley.
4 She's now being prosecuted, and other entities are
5 investigating various aspects of her fraud.

6 So I would say rest assured that contrary to
7 the Relator's contention in its papers, Miss Thornley's
8 alleged fraud is being addressed, and it's being
9 addressed in the right way, and that right way is not --
10 is not the IFCA.

11 Just a few additional factors, Your Honor.
12 The State has limited resources, as you know as State
13 employees. You know, that's just a fact of the matter,
14 so prosecuting a single individual, additionally, a
15 single individual who has collectibility concerns for a
16 small dollar amount, just doesn't return to the State's
17 treasury the kind of money that justifies what would be
18 a very, you know, extensive investigation, very detailed
19 investigation into Miss Thornley's fraud.

20 It, additionally, would set a very difficult,
21 and frankly, incorrect precedence for the IFCA, which
22 would invite copycat claims from other, you know,
23 employees reporting co-employees' timekeeping fraud,
24 which is -- that's just not what the IFCA is meant to

1 do.

2 Lastly, Your Honor, the Relator hasn't met its
3 burden throughout both, you know, based on the evidence
4 that it submitted with the complaint, and nothing in the
5 papers amounts to glaring evidence of fraud, bad
6 fraud -- or bad faith.

7 And just to focus the Court's attention, it's
8 bad faith about the State's decision to dismiss, so I
9 know that you read the Relator's papers about, you know,
10 allegations that there was sort of some sort of
11 complicity with the Governor's Office or that there was
12 political pressure, but none of those allegations show
13 glaring evidence of fraud or bad faith with respect to
14 the State's decision to dismiss. In fact, they have
15 nothing to do with the State's decision to dismiss, and
16 I talked about today exactly what the State has done
17 based on its thorough investigation and presented all of
18 these reasons why this is just not the kind of case that
19 is proper to go forward.

20 And for all these reasons, I'm happy to answer
21 any questions, but also, would just ask the Court to
22 grant the State's Motion to Dismiss.

23 Thank you, Your Honor.

24 THE COURT: Mr. Andalman?

1 MR. ANDALMAN: Thank you, Your Honor.

2 Miss Perich said if the wheels of justice in
3 the State are not working, the Illinois False Claims Act
4 comes into play, and that's exactly what's going on
5 here, the wheels of justice in Illinois are definitely
6 not working in the case of Jenny Thornley. Nothing in
7 the case of Miss Thornley has gone normally or according
8 to the law.

9 I'd also note that none of the arguments that
10 the State made this morning about the complaint or
11 Miss Thornley were made in its motion. None of them.
12 That motion said nothing about the allegations of the
13 complaint, it said nothing about the basis or rationale
14 for the State's decision making. This motion, which was
15 just a couple pages long, said only that the State had
16 decided for reasons it did not say that the complaint
17 was, quote-unquote, deficient and not worthy of State
18 time or effort.

19 The motion argued that the State had
20 unfettered discretion to do what it liked, and
21 therefore, no explanation was necessary. The Court had
22 to do whatever the State asked it to do. That was the
23 State's opening position in its motion, and it's that
24 kind of sort of ham-handed argument from absolute

1 authority. That's kind of a textbook example of
2 arbitrary and capricious government action. It's
3 prohibited by Illinois law, it is contrary to the U. S.
4 Constitution, but unfortunately, it is how the
5 administration has proceeded in matters related to Jenny
6 Thornley.

7 Only in its reply brief did the State offer
8 some of the arguments, but not even all of the arguments
9 that Miss Perich made today. And even then, the State
10 has been less than forthright, including today, about
11 the facts and the law.

12 That begins with the State's argument in its
13 brief, though Miss Perich didn't mention it today, that
14 the State has unfettered discretion and that the
15 argument that due process constrains the State's
16 actions, this is a quote from their reply brief, has no
17 basis in Illinois law. It's troubling the
18 administration would take the position in court that the
19 constitution doesn't restrain its conduct. Has no
20 application. Of course the constitution applies. It
21 always applies.

22 We cited, the State ignored, the Fourth
23 District statement in the *Ashcroft* case, 83 Ill.3d 938
24 at 940, that, quote, "Substantive due process has been

1 erected by the Supreme Court as the essential bulwark
2 against arbitrary governmental action."

3 They also cited the decision from the Supreme
4 Court, our Supreme Court in Illinois, that due process,
5 of course, is always implicated when the State engages
6 in arbitrary and capricious conduct. They just don't
7 think the constitution applies to them, but it does.

8 As I mentioned, it was only in the reply brief
9 the State articulated or attempted to articulate its
10 rationale for trying to quash this case. There are many
11 decisions of the Fourth District and other Illinois
12 courts holding that issues raised only on reply for the
13 first time are deemed waived.

14 Just to give a couple examples, the
15 *West-Howard* case, Fourth District, 2013 IL APP(4th)
16 120782 at Paragraph 28, or *People versus Sparks*,
17 315 Ill.App.3d 786 at 790. And this isn't just a
18 technical point. The State's tactic effectively
19 deprived Miss Fox of the opportunity to respond in
20 writing to the arguments that were made in its reply
21 brief and today. It's not how normal cases or normal
22 motions proceed, but again, there's nothing normal about
23 the State's conduct when it comes to Jenny Thornley.

24 The fact is that much of what the State has

1 said is inconsistent with the facts as the State knows
2 them to be true. I mean, the primary argument that the
3 State is now making is that Miss Fox's claims are
4 precluded by the public disclosure bar because as
5 Miss Perich argues, the State knew about all these
6 allegations before the lawsuit was filed. The argument
7 at best is disingenuous, because the State knows full
8 well that Miss Fox was the original source of those
9 complaints, and Miss Perich just kind of glosses over
10 that. She says well, you know, there were State
11 complaints that were made to the, um, to the OEIG and so
12 the State knew about it, but she omits the fact that
13 Miss Fox is the one who was making those complaints and
14 is the one who was behind it.

15 In the very section they cite in their reply
16 brief, 740 ILCS 175/4 that contains the public
17 disclosure bar, the statute provides unless the Relator
18 is the original source. They know, and our materials at
19 least submitted demonstrate, that it was in November of
20 2019 that Miss Fox is the one who brought to the State's
21 attention the resumé fraud and the overtime fraud by
22 Miss Thornley. Her boss at the time asked her to put
23 together a complaint that he submitted to the OEIG then,
24 and the OEIG, despite what Miss Perich said, has done

1 nothing with that complaint, so it was made at the end
2 of 2019, and here we are almost through the first
3 quarter of 2022, there has been no report and no action
4 at all by the OEIG. To the contrary, the only thing the
5 OEIG did in response to that complaint that Miss Fox
6 originated was to start an investigation of her on
7 behalf of Miss Thornley.

8 The reply is very short, as was Miss Perich
9 today, on the specifics of how the State learned about
10 these things. She quotes the McGuireWoods report as
11 sort of the beginning of the State's knowledge, but
12 again, that McGuireWoods report only happened based on
13 Miss Fox's disclosures and complaints. Miss Fox told
14 her boss, Mr. Garcia, about that. He made the OEIG
15 complaint she put together for him, and the OEIG, like I
16 said, refused to investigate it.

17 And as far as the McGuireWoods report,
18 Miss Fox spent over 12 hours being interviewed by
19 McGuireWoods. She provided hundreds of pages of
20 documents to McGuireWoods. I did a search, Your Honor,
21 in the McGuireWoods report for the word "Fox," and it
22 shows up 150 times in 133 pages. Miss Fox is the source
23 of the McGuireWoods report, so to say that that's a
24 public disclosure that precludes this case ignores the

1 statutory language in the very section that Miss Perich
2 cites.

3 There's no question that she was the original
4 source. They know that's the law. They litigate these
5 cases, these False Claims Act cases, all the time.
6 They're very familiar with the original source rule.
7 They omitted the omission of that rule, and their
8 discussion to the Court is glaring, and it's telling.

9 Now, what happened after the McGuireWoods
10 report? The State did not jump to action by any means
11 after that report. Just the opposite. No one listened
12 other than Miss Fox's direct supervisor, Mr. Garcia, and
13 there's a whole -- you know, obviously, it's in the
14 media that the legislature basically changed the law to
15 push him out of his job as a result of this. But what
16 happened after the McGuireWoods report came out is that
17 the merit board terminated Miss Thornley for cause for
18 her overtime theft. Nothing to do with the resumé
19 fraud, by the way, which wasn't really addressed. But
20 they terminated her.

21 She had made this workers comp claim in
22 February of 2020. She was on leave then, but it was
23 paid leave, so there were no benefits being paid to her
24 between February of 2020 and the McGuireWoods report

1 coming out in July of 2020.

2 In July of 2020, she was terminated for cause,
3 and so the State says in their brief well, you know, she
4 received benefits for a few months while she was being
5 investigated. That is categorically not true, and the
6 State knows it. She wasn't paid benefits until after
7 the investigation was completed after she was terminated
8 for cause.

9 And how did she get those benefits? How did
10 she get them? It was because she listed as her employer
11 not the Merit Board, which would have said she was
12 fired, but the Office of the Governor, and in that claim
13 when it said who is your direct report? To whom --
14 who's your direct supervisor, she put JB Pritzler and put
15 his personal phone number. And then, the Merit Board
16 didn't find out about the claim until September of 2020,
17 couple months later.

18 She was being paid significant benefits, I
19 think it was like \$10,000 a month at that point, and
20 they said how is it possible that she's now getting
21 benefits after she was fired for cause? Miss Fox had
22 this conversation with CMS, and she was told well, Ann
23 Spillane, the Governor's General Counsel, has been
24 involved in multiple phone calls with us over the last

1 few months about Miss Thornley, and she, Spillane,
2 reversed the termination for the purposes of continuing
3 benefits. It's in our materials. But this is a
4 conversation Miss Fox had.

5 Then she reported that to the OEIG for
6 investigation, and contrary to what Miss Perich said,
7 they refused to investigate it. She kind of glossed
8 that over, too. She said well, they referred it back to
9 the Merit Board. The Merit Board consists of Miss Fox
10 and the General Counsel Mr. Dykstra, an administrative
11 person at this point. Mr. Garcia, I think, was still
12 around at that stage.

13 They didn't have any capacity to investigate.
14 They're not an investigative body. But the Merit Board
15 refused to investigate it. Or I'm sorry, the OEIG
16 refused to, and Mr. Garcia actually wrote a letter back
17 which was included in our materials to the OEIG saying
18 we don't have the capacity to investigate this. This is
19 your job. But no one wanted to touch it because of the
20 evidence. Not speculation, evidence that the Governor's
21 Office had intervened to ensure that this woman, who had
22 been fired for committing fraud against the State,
23 continued to get benefits. Governor's General Counsel
24 Miss Spillane made sure that happened, and the OEIG

1 refused to investigate it.

2 So the State knows that in fact, Miss Thornley
3 received not like just a couple dollars, few hundred
4 dollars, she received over \$70,000 in benefits. They
5 only cut off her benefits after this case was filed,
6 after there started to be media reports, which there had
7 been in Springfield and Chicago, about Miss Spillane's
8 involvement. But what happens because the State's now
9 being shamed or embarrassed by the conduct they cut off
10 the benefits, that doesn't mean that this case at its
11 inception is barred by either public disclosure or
12 administrative action that hadn't happened at the time
13 when the complaint was filed.

14 The State also knows that in that workers comp
15 proceeding, Miss Thornley is the petitioner. The State
16 has not made a claim, a counterclaim, against her. The
17 State is not seeking to claw back the benefits that she
18 received. And, in fact, Miss Fox has been told that
19 that normally doesn't happen, that they don't try to
20 seek that return, and the State cited the workers
21 compensation statute to suggest to the Court that it
22 could have been that the benefits are actually returned
23 to the State, but what they didn't tell the Court is
24 that those Sections, 820 305/25.5(f) and (g), only allow

1 for recoupment of benefits if a claimant is convicted,
2 that's the word of the statute, of fraud. There is no
3 proceeding right now that could lead to the conviction,
4 criminal, that's a criminal word, obviously, of
5 Miss Thornley for the workers compensation fraud because
6 the State isn't pursuing it.

7 And, in fact, the State also knows, I would
8 hope, because CMS was told and the Merit Board was told,
9 that the Assistant Attorney General on that workers comp
10 case had a conflict of interest and couldn't proceed
11 with claims against Miss Thornley. That's what they
12 were told. And it was only two days after the reply
13 brief was filed in this case that the Merit Board was
14 told well, the AG's Office, maybe we can resolve that
15 conflict, and maybe we could look into the possibility
16 of pursuing it, but the AG is looking into the
17 possibility of pursuing a new proceeding eight months,
18 or however long it's been now since this case was filed,
19 does not implicate the, you know, administrative action
20 bar to any action, particularly where Miss Fox, again,
21 was the driving force and the original source for this.

22 Nothing has been done right now as of today to
23 seek a return of those \$70,000 in benefit. The fact is
24 this case should go forward. It is clear that the

1 State -- I want to mention one other thing. I didn't, I
2 forgot to say this, but it's actually one of the most
3 troubling things that we've learned recently.

4 Miss Fox was informed recently that the AG's
5 Office, only since this motion has been pending, has
6 asked CMS to hand-deliver copies of its file to the AG,
7 and they specifically told them don't email it, because
8 we've been receiving FOIA requests. We'd rather not
9 have a record of that transmittal. I mean, when you
10 talk about evidence of bad faith, evidence of conflict
11 all over this case, it is clear that the State
12 administration is too internally conflicted to properly
13 pursue a claim of fraud that goes so directly to the
14 Governor's Office and to his General Counsel.

15 And with regard to the criminal case, she says
16 well, that happened because the complaints were made to
17 the prosecutor's office, again omitting Miss Fox's role
18 in those efforts, first trying to get Thornley
19 prosecuted in Springfield, State's Attorney down there
20 felt conflicted, and finally, to the State Appellate
21 Prosecutor's Office which handles cases where the local
22 prosecutors are conflicted.

23 But the local indictment in that case only
24 covers a tiny fraction of the allegations in this case.

1 It covers about \$10,500, two months' worth of the
2 overtime fraud, versus the \$67,000 identified in our
3 complaint. It makes no effort to recover the hundreds
4 of thousands of dollars Miss Thornley was paid as a
5 result of resumé fraud or the money that she received
6 for false expense claims.

7 There's no merit to the argument that False
8 Claims Act cases are limited to seven-figure cases. The
9 State hasn't cited any precedent for that proposition.
10 But Miss Thornley deprived the State of hundreds of
11 thousands of dollars in undeserved salary, wage
12 increases, overtime, expenses, and workers compensation
13 benefits, and maybe that's not a lot of money to
14 Miss Perich, but hundreds of thousands of dollars of
15 fraud is significant.

16 And in terms of setting a precedent, I don't
17 think there's a lot of precedent for someone who, when
18 she's confronted with resumé fraud, contacts the
19 Governor's wife, says JB needs to know about this, I
20 need help. That's referenced in the McGuireWoods
21 report, someone who can get the Governor's General
22 Counsel to reverse her termination for workers comp
23 purposes so she can get benefits? I mean, what Miss Fox
24 saw in this case was repeated instances of fraud

1 going -- leveraging relationships within Illinois State
2 Government to facilitate that fraud, and so she brought
3 this case.

4 And so again, I go back to what Miss Perich
5 said in her argument. If the wheels of justice in a
6 case aren't working, or in Illinois aren't working in a
7 case, that's when the False Claims Act comes in. This
8 is exactly the case where a Relator's action is
9 necessary because the State prosecuting machinery, the
10 administration's machinery in this case, is trying to
11 bury these allegations, and it requires a Relator. It
12 requires what sometimes is referred to as a private
13 Attorney General to come in, and in an acute case like
14 this where the administration clearly has no interests
15 in pursuing fraud, that goes to its top to try to make
16 things right and make the State whole.

17 The State has put the Court in an extremely
18 awkward position by arguing that you have to be a rubber
19 stamp, that you really have no choice except to have a
20 kind of kangaroo hearing in which case at the end of
21 which you have to rubber stamp whatever they say.
22 That's not the law. Absolutely is not the law. In
23 fact, the Seventh Circuit case that they cite, I don't
24 know how to pronounce this, but D-i-m-z-n-h-c-a case,

1 specifically dates that where the False Claims Act
2 requires a hearing, it has to be a substantive hearing
3 because the law doesn't foresee useless acts by the
4 court. I used to clerk for a judge who would say you
5 know, the Court isn't a potted plant. You're not there
6 just to rubber stamp whatever the State says.

7 Here, there is significant evidence that the
8 State is too conflicted to proceed on the fraud in this
9 case, and we contend that Miss Fox should be allowed to
10 pursue the case herself and that the State's motion
11 should be denied.

12 THE COURT: Thank you.

13 Miss Boyle Perich, any response?

14 MS. BOYLE PERICH: Yes, please, Your Honor.

15 I'd like to encourage the Court, as
16 Mr. Andalman has said, let's focus on the law, and the
17 law is really clear here. So he's provided the Court
18 with a lot of anecdotes about Miss Thornley and about
19 Miss Fox and about what she's heard, and frankly, none
20 of that is in the papers or, um, it has any -- I have no
21 knowledge of that, and I am one who's been overseeing
22 the investigation and in charge of this case, so let's
23 focus on the law.

24 The federal cases that the Relator has cited

1 have no application here. I hesitate to say this, even
2 if they did, there's no evidence of arbitrary and
3 capricious government action, Your Honor. But that's
4 not the law. The law is glaring evidence --

5 (The Zoom connection was lost, and a
6 recess was held during its reconnection.)

7 (The court reporter read back the last
8 two sentences.)

9 MS. BOYLE PERICH: Of fraud or bad faith. That's
10 the only thing that the Court needs to look at, and
11 that's with respect to the State's decision to dismiss.

12 So what Mr. Andalman has focused on in his
13 remarks, Your Honor, is well beyond what the issue is
14 before the Court. He's talked about an original source
15 and whether Miss Fox qualifies. That's not before the
16 Court. That's not an issue. That's long after what the
17 Court is tasked to do today, which is to look at the
18 State's Motion to Dismiss if there is any evidence of
19 fraud, glaring evidence of fraud or bad faith in the
20 State's decision to dismiss; otherwise, the Court is
21 required to grant it, and that's the law.

22 So I'm happy to address the anecdotes that
23 Mr. Andalman focuses on, but just briefly, because as I
24 think we both agree, it's just the law that dominates

1 here and what the Court is tasked to do today.

2 First, the hearing is not a rubber stamp, and
3 we've never said that. The hearing is the last chance
4 for the Relator to convince the State. Keep in mind
5 that this is the State's claim, and it's the State's
6 decision like a voluntary dismissal to move to dismiss,
7 so we're not asking the Court to rubber stamp it, but
8 we're also not asking the Court to, nor can the Court
9 inquire into the State's motivations and reasons for
10 dismissal, and that's exactly what Mr. Andalman is
11 trying to pick apart, but that's not what the Court is
12 asked to do and that's not what the IFCA directs.

13 So like I said, whether Miss Fox is an
14 original source, not at issue. Even if it were, just
15 briefly, she was asked to do this investigation by
16 Mr. Garcia. Who's to say that Mr. Garcia is not the
17 original source? She also did these investigations into
18 her former coworker as part of her governmental duties,
19 so we can disagree about whether or not Miss Fox is the
20 original source, but that's not what we're here today to
21 discuss, we're here simply on the State's Motion to
22 Dismiss and whether the Relator has met its burden to
23 show that the decision to dismiss is made in fraud or
24 bad faith.

1 He talked about whether that the benefits she
2 received were being terminated were -- or she would
3 receive benefits, excuse me, after she was fired for
4 cause. Again, another anecdote. But that's exactly
5 what the Department of Insurance, as we understand it,
6 is investigating, whether or not those benefits were
7 received were based on fraud.

8 And also, just to briefly state, the
9 government's offices and their personnel, they are not
10 defendants, they are not on trial, and what Mr. Andalman
11 has alleged with respect to CMS and other things is pure
12 speculation, and I submit that there's a large gulf
13 between speculation and glaring evidence of fraud or bad
14 faith, and I'm happy to review what the State has done
15 as part of its investigation to not only show that
16 there's no evidence of fraud or bad faith but this
17 decision is actually really well-reasoned and really
18 has -- the State has only come to this decision after,
19 you know, a thorough investigation asking the Court for
20 an extension and doing its due diligence in inquiring
21 into the validity of what Miss Fox has said.

22 And then just two quick points on the workers
23 compensation. Absolutely, we understand what
24 Mr. Andalman is saying about the fact that there's no

1 current counterclaim, but again, that's -- it's -- it's
2 not required that the State be pursuing the money. And
3 actually, it's not precluded from pursuing the money in
4 some other forum or perhaps when this -- the workers
5 compensation case comes to a close. It's simply just --
6 it's not there yet, so we have no knowledge, we cannot
7 discern anything from the status of that workers
8 compensation claim other than the State is obviously
9 contesting those benefits.

10 And then finally, the public disclosure is --
11 well, in terms of the criminal complaint, he's arguing
12 there's not a one-for-one overlap between what the
13 criminal authorities are pursuing and what's alleged in
14 their complaint, but again, going back to the
15 McGuireWoods State report, every single instance of time
16 fraud has been disclosed, so the State knew about it,
17 has taken action. I understand that Mr. Andalman and
18 the Relator disagree that those actions are sufficient,
19 but that's not before the Court, and we'd ask the Court
20 to grant the State's Motion to Dismiss.

21 Thank you, Your Honor.

22 THE COURT: All right. Well, thank you, both.
23 Very much. Well argued.

24 In situations such as these, and I'm sorry, I

1 don't know, I can't recall off the top of my head if I
2 sent you an email, but normally, I send an email out,
3 but if not, I'll tell you now I like to see proposed
4 orders submitted.

5 Can you tell me, did I send that out?

6 MR. ANDALMAN: You did, Your Honor. You did, yeah.

7 THE COURT: All right. Good. And that's -- it's
8 not -- I mean, it's not an order, I just -- it helps me
9 tremendously, so I'm hoping that the two of you will
10 agree to do so?

11 MR. ANDALMAN: Absolutely.

12 MS. BOYLE PERICH: Absolutely, yes.

13 THE COURT: Thank you very much. It helps me
14 tremendously. You have no idea.

15 Is there anything else we could tackle?

16 MR. ANDALMAN: Well, Your Honor, in terms of the
17 order, I mean, typically, I mean, the Court can tell us
18 how you intend to rule and then we'll draft accordingly
19 or am I misunderstanding it?

20 THE COURT: You're misunderstanding it.

21 MR. ANDALMAN: Okay.

22 THE COURT: What it is, it's a proposed order so
23 that I have it from both sides, and what I can then do
24 very simply is go in, clip, paste it, or add or delete

1 as I see fit. It then helps -- once again, I go back to
2 it helps me get out orders timely and in much more
3 detail then I would probably be able to do so with my
4 two-fingers typing, so that's what I ask for. So I make
5 a decision to submit the order for review, I've done
6 that, of course, but it's more of a submit proposed
7 orders ahead of time and then I go in and do what I like
8 to do, and I can tell you that I've had situations where
9 the proposed orders, in draft forms, once again, is sent
10 to me in Word format have been many pages long and
11 others have been one paragraph.

12 MR. ANDALMAN: But it could -- in other words, you
13 don't want -- the government submitted a proposed order
14 with its motion that was simply like, you know, before
15 the Court is the motion of the government, you know,
16 it's hereby granted? Sort of that simple. But we could
17 provide something more than that?

18 THE COURT: Oh, absolutely.

19 MR. ANDALMAN: Okay. And you're asking one on each
20 side, basically?

21 THE COURT: Correct. Right. It's not done
22 jointly. And once again, kind of going back to that,
23 I've had situations where a party will just submit a one
24 paragraph such as that. It's rare, you know, but I

1 would hope that it would be in a bit more detail so once
2 again, I can go in and literally clip, paste, add,
3 delete what I see fit in that Word format.

4 MR. ANDALMAN: Understood.

5 THE COURT: It's not meant for argument. Does that
6 make sense?

7 MR. ANDALMAN: It does.

8 MS. BOYLE PERICH: Yes.

9 THE COURT: Then the other question, then, would be
10 how much time would each of you need to put something
11 together?

12 MR. ANDALMAN: Your Honor, if I could ask for two
13 weeks to do that?

14 THE COURT: Will that be enough time?

15 MR. ANDALMAN: I think so.

16 MS. BOYLE PERICH: That's fine for the State. No
17 problem.

18 THE COURT: In two weeks? Okay. And once again,
19 it's not argument, so it's two weeks from today for both
20 to submit, and I ask you to do it via email to me.
21 Again, I'll say in Word format, because I've had it done
22 more often than not in PDF, and it's a lot easier for me
23 to handle in Word.

24 MR. ANDALMAN: Absolutely.

1 MS. BOYLE PERICH: Would you like an order for
2 today, Your Honor?

3 THE COURT: No, I'll just do a simple docket entry
4 to indicate that we've conducted the hearing and taken
5 under advisement and the parties are to submit proposed
6 orders to the Court within 14 days and then I'll make
7 the decision.

8 MS. BOYLE PERICH: Okay.

9 MR. ANDALMAN: Appreciate your time.

10 MS. BOYLE PERICH: Yes. Thank you very much.

11 THE COURT: Thank you very much.

12 (Which were all of the proceedings held
13 on said date in said cause.)

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1 IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
2 SANGAMON COUNTY, ILLINOIS

3
4 CERTIFICATE OF TRANSCRIPT FROM STENOGRAPHIC NOTES

5
6 I, NANCY E. FLYNN, ILLINOIS CSR # [REDACTED],
7 certify the foregoing to be a true and accurate
8 transcript of the proceedings in the above-entitled
9 cause.

10 [REDACTED]
11 NANCY E. FLYNN, CSR

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14 DATE: March 2, 2022
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0		
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1		
12 [1] 17/18 120782 [1] 15/16 133 [1] 17/22 14 [1] 34/6 150 [1] 17/22 15th [1] 1/13 175/4 [1] 16/16		
2		
200 [1] 1/23 2013 [1] 15/15 2019 [2] 16/20 17/2 2020 [7] 8/16 9/11 18/22 18/24 19/1 19/2 19/16 2021 [1] 10/11 2021-L-53 [2] 1/7 3/3 2022 [3] 1/13 17/3 35/14 217-747-5185 [1] 1/24 25.5 [1] 21/24 28 [1] 15/16		
3		
305/25.5 [1] 21/24 315 [1] 15/17		
4		
4th [1] 15/15		
5		
5185 [1] 1/24 53 [2] 1/7 3/3		
6		
62701 [1] 1/23		
7		
713 [1] 1/23 740 [1] 16/16 786 [1] 15/17 790 [1] 15/17		
8		
820 [1] 21/24 83 [1] 14/23		
9		
938 [1] 14/23 940 [1] 14/24 9th [1] 1/23		
A		
able [1] 32/3 above [1] 35/8 above-entitled [1] 35/8 absolute [1] 13/24 absolutely [6] 25/22 29/23 31/11 31/12 32/18 33/24 according [1] 13/7 accordingly [1] 31/18 accurate [2] 9/23 35/7 Act [6] 4/22 13/3 18/5 24/8 25/7 26/1 acted [1] 9/8		
	back [9] 10/19 20/8 20/16 21/17 25/4 27/7 30/14 32/1 32/22 bad [11] 4/20 12/5 12/6 12/8 12/13 23/10 27/9 27/19 28/24 29/13 29/16 bar [7] 7/13 7/14 7/17 7/20 16/4 16/17 22/20 barred [3] 7/18 7/24 21/11 based [8] 5/13 6/11 9/6 9/17 12/3 12/17 17/12 29/7 basically [2] 18/14 32/20 basis [2] 13/13 14/17 because [14] 7/4 16/4 16/7 19/10 20/19 21/8 22/5 22/8 23/7 23/16 25/9 26/3 27/23 33/21 before [9] 1/13 8/7 8/16 8/23 16/6 27/14 27/15 30/19 32/14 begin [1] 5/20 beginning [1] 17/11 begins [1] 14/12 behalf [4] 1/17 1/19 4/6 17/7 behind [1] 16/14 being [10] 4/4 11/4 11/8 11/8 17/18 18/23 19/4 19/18 21/9 29/2 benefit [1] 22/23 benefits [25] 9/3 9/4 9/7 10/14 10/14 18/23 19/4 19/6 19/9 19/18 19/21 20/3 20/23 21/4 21/5 21/10 21/17 21/22 22/1 24/13 24/23 29/1 29/3 29/6 30/9 best [2] 10/20 16/7	
	B	

B
between [3] 18/24 29/13 30/12
beyond [2] 6/16 27/13
bit [2] 3/9 33/1
board [13] 8/12 8/20 9/12
10/19 11/1 18/17 19/11 19/15
20/9 20/9 20/14 22/8 22/13
body [1] 20/14
boss [2] 16/22 17/14
both [6] 8/3 12/3 27/24 30/22
31/23 33/19
boxes [1] 4/7
BOYLE [6] 1/16 3/6 3/20 3/20
3/21 26/13
brief [8] 14/7 14/13 14/16
15/8 15/21 16/16 19/3 22/13
briefly [3] 27/23 28/15 29/8
bring [1] 7/4
broadly [1] 6/24
brought [2] 16/20 25/2
bulwark [1] 15/1
burden [3] 4/19 12/3 28/22
Burlington [1] 6/11
bury [1] 25/11

C
calls [1] 19/24
came [1] 18/16
can't [1] 31/1
cannot [1] 30/6
capacity [2] 20/13 20/18
capricious [3] 14/2 15/6 27/3
caption [1] 3/14
carried [2] 4/19 8/9
case [54]
cases [9] 4/23 6/13 15/21
18/5 18/5 23/21 24/8 24/8
26/24
catch [1] 7/8
categorically [1] 19/5
cause [7] 18/17 19/2 19/8
19/21 29/4 34/13 35/9
CERTIFICATE [1] 35/4
certify [1] 35/7
chance [1] 28/3
change [1] 3/23
changed [1] 18/14
charge [1] 26/22
Chicago [1] 21/7
choice [1] 25/19
Chris [1] 4/6
CIRCUIT [5] 1/1 1/1 25/23 35/1
35/1
cite [2] 16/15 25/23
cited [7] 7/15 9/15 14/22
15/3 21/20 24/9 26/24
cites [1] 18/2
claim [9] 5/20 9/17 18/21
19/12 19/16 21/16 23/13 28/5
30/8
claimant [1] 22/1
claims [13] 4/22 7/4 7/24 9/19
11/22 13/3 16/3 18/5 22/11
24/6 24/8 25/7 26/1
claw [1] 21/17
clear [3] 22/24 23/11 26/17
clearly [1] 25/14
clerk [1] 26/4
clip [2] 31/24 33/2
close [1] 30/5
closed [1] 10/20
CMS [4] 19/22 22/8 23/6 29/11

co [1] 11/23
co-employees' [1] 11/23
co.sangamon.il.us [1] 1/24
Coat [1] 6/11
colleagues [1] 4/5
collectibility [1] 11/15
come [2] 25/13 29/18
comes [5] 5/6 13/4 15/23 25/7
30/5
coming [1] 19/1
committed [1] 8/15
committing [1] 20/22
comp [4] 18/21 21/14 22/9
24/22
compensation [10] 8/24 9/7
9/17 10/12 21/21 22/5 24/12
29/23 30/5 30/8
complaint [30] 1/11 3/16 4/3
4/17 4/24 5/10 5/14 6/17 7/2
7/13 7/18 8/3 8/8 8/17 8/24
9/13 10/20 10/21 12/4 13/10
13/13 13/16 16/23 17/1 17/5
17/15 21/13 24/3 30/11 30/14
complaints [7] 9/11 10/18 16/9
16/11 16/13 17/13 23/16
completed [1] 19/7
complicity [1] 12/11
concerns [1] 11/15
concluded [1] 8/15
conduct [4] 14/19 15/6 15/23
21/9
conducted [1] 34/4
conflict [3] 22/10 22/15 23/10
conflicted [4] 23/12 23/20
23/22 26/8
confronted [1] 24/18
connection [1] 27/5
consists [1] 20/9
constitution [4] 14/4 14/19
14/20 15/7
constrains [1] 14/15
contacts [1] 24/18
contains [1] 16/16
contend [1] 26/9
contention [1] 11/7
contents [1] 7/3
contesting [3] 9/2 10/13 30/9
continued [1] 20/23
continuing [1] 20/2
contrary [4] 11/6 14/3 17/4
20/6
controls [1] 5/23
conversation [2] 19/22 20/4
convicted [1] 22/1
conviction [1] 22/3
convince [1] 28/4
copies [1] 23/6
copycat [1] 11/22
correct [2] 3/8 32/21
could [8] 3/8 21/22 22/3
22/15 31/15 32/12 32/16 33/12
couldn't [1] 22/10
Counsel [5] 19/23 20/10 20/23
23/14 24/22
counterclaim [2] 21/16 30/1
counts [1] 10/8
COUNTY [3] 1/2 10/10 35/2
couple [5] 10/15 13/15 15/14
19/17 21/3
course [6] 5/14 6/2 10/6
14/20 15/5 32/6
court [43]
Court's [1] 12/7

courts [1] 15/12
covers [2] 23/24 24/1
coworker [1] 28/18
criminal [5] 22/4 22/4 23/15
30/11 30/13
CROSS [1] 2/3
CSR [3] 1/22 35/6 35/11
current [1] 30/1
currently [1] 10/13
cut [2] 21/5 21/9

D
D-i-m-z-n-h-c-a [1] 25/24
date [2] 34/13 35/14
dates [1] 26/1
day [1] 1/13
days [2] 22/12 34/6
decided [4] 6/2 6/3 10/5 13/16
deciding [1] 6/20
decision [17] 4/14 5/6 5/13
6/15 12/8 12/14 12/15 13/14
15/3 27/11 27/20 28/6 28/23
29/17 29/18 32/5 34/7
decisions [2] 5/6 15/11
declines [1] 5/8
deemed [1] 15/13
defects [3] 4/16 6/17 6/22
Defendant [5] 1/9 3/5 3/7 3/11
5/11
defendants [1] 29/10
deference [1] 6/14
deferential [1] 6/18
deficiencies [1] 10/23
deficiency [1] 6/22
deficient [2] 7/12 13/17
defined [1] 6/24
definitely [1] 13/5
delete [2] 31/24 33/3
deliver [1] 23/6
demonstrate [1] 16/19
denied [1] 26/11
Department [4] 9/14 9/18 9/19
29/5
deprived [2] 15/19 24/10
despite [1] 16/24
detail [2] 32/3 33/1
detailed [1] 11/18
different [2] 8/5 10/1
difficult [1] 11/20
diligence [1] 29/20
direct [5] 2/3 6/13 18/12
19/13 19/14
directly [1] 23/13
directs [1] 28/12
disagree [2] 28/19 30/18
discern [1] 30/7
disclosed [5] 7/19 7/22 9/18
10/1 30/16
disclosure [7] 7/13 7/17 16/4
16/17 17/24 21/11 30/10
disclosures [1] 17/13
discretion [5] 4/14 6/21 8/1
13/20 14/14
discuss [1] 28/21
discussion [1] 18/8
disingenuous [1] 16/7
dismiss [26] 1/10 3/16 4/3 4/9
4/10 4/13 4/15 5/8 5/15 5/18
6/2 6/4 6/15 6/21 10/6 12/8
12/14 12/15 12/22 27/11 27/18
27/20 28/6 28/22 28/23 30/20
dismissal [3] 6/8 28/6 28/10
dismissed [1] 3/12

D		
District [3] 14/23 15/11 15/15 docket [1] 34/3 documents [1] 17/20 doing [1] 29/20 dollar [1] 11/16 dollars [5] 21/3 21/4 24/4 24/11 24/14 dominates [1] 27/24 done [8] 10/7 12/16 16/24 22/22 29/14 32/5 32/21 33/21 down [1] 23/19 draft [2] 31/18 32/9 drives [1] 5/24 driving [1] 22/21 due [4] 14/15 14/24 15/4 29/20 duly [1] 3/2 during [1] 27/6 duties [1] 28/18 Dykstra [1] 20/10	expense [1] 24/6 expenses [1] 24/12 explanation [1] 13/21 exposed [2] 8/5 8/6 extension [1] 29/20 extensive [1] 11/18 extremely [1] 25/17	26/9 26/19 27/15 28/13 28/19 29/21 Fox's [4] 16/3 17/13 18/12 23/17 fraction [1] 23/24 frankly [3] 6/1 11/21 26/19 fraud [41] front [1] 10/18 full [1] 16/7
E	F	G
each [2] 32/19 33/10 easier [1] 33/22 effectively [1] 15/18 effort [2] 13/18 24/3 efforts [1] 23/18 eight [1] 22/17 EILEEN [1] 1/16 either [2] 5/7 21/11 else [1] 31/15 email [4] 23/7 31/2 31/2 33/20 embarrassed [1] 21/9 EMILY [3] 1/4 1/19 4/4 employees [3] 9/11 11/13 11/23 employees' [1] 11/23 employer [1] 19/10 encourage [1] 26/15 end [3] 11/3 17/1 25/20 ended [1] 10/14 ends [1] 6/1 engages [1] 15/5 enough [1] 33/14 ensure [1] 20/21 entities [5] 7/1 7/7 10/2 10/3 11/4 entitled [6] 3/3 6/8 6/9 9/3 9/7 35/8 entity [1] 8/21 entry [1] 34/3 erected [1] 15/1 essential [1] 15/1 even [7] 5/21 6/5 6/16 14/8 14/9 27/1 28/14 events [1] 7/11 every [1] 30/15 evidence [17] 4/20 5/2 8/18 12/3 12/5 12/13 20/20 20/20 23/10 23/10 26/7 27/2 27/4 27/18 27/19 29/13 29/16 ex [1] 1/4 exactly [7] 3/21 6/10 12/16 13/4 25/8 28/10 29/4 example [1] 14/1 examples [1] 15/14 except [1] 25/19 excuse [1] 29/3 Executive [2] 9/9 10/17 exercise [1] 6/20 EXHIBITS [1] 2/7	facilitate [1] 25/2 fact [17] 4/2 4/18 6/23 8/17 9/2 9/3 9/5 11/13 12/14 15/24 16/12 21/2 21/18 22/7 22/23 25/23 29/24 factors [1] 11/11 Factory [1] 6/11 facts [3] 9/23 14/11 16/1 faith [12] 4/20 6/4 6/5 12/6 12/8 12/13 23/10 27/9 27/19 28/24 29/14 29/16 false [9] 4/21 7/4 7/24 13/3 18/5 24/6 24/7 25/7 26/1 familiar [1] 18/6 far [1] 17/17 favors [1] 4/13 February [3] 1/13 18/22 18/24 federal [1] 26/24 felony [1] 10/8 felt [1] 23/20 few [4] 11/11 19/4 20/1 21/3 figure [1] 24/8 file [1] 23/6 filed [10] 8/9 8/17 9/1 9/11 10/11 16/6 21/5 21/13 22/13 22/18 files [1] 4/24 filing [2] 8/7 8/23 finally [2] 23/20 30/10 find [1] 19/16 fine [1] 33/16 fingers [1] 32/4 fired [5] 11/3 19/12 19/21 20/22 29/3 Firm [1] 8/13 first [9] 4/12 4/24 6/22 6/22 8/7 15/13 17/2 23/18 28/2 fit [2] 32/1 33/3 five [1] 8/23 FLYNN [3] 1/22 35/6 35/11 focus [4] 4/16 12/7 26/16 26/23 focused [1] 27/12 focuses [1] 27/23 FOIA [1] 23/8 following [1] 3/1 force [1] 22/21 foregoing [1] 35/7 foresee [1] 26/3 forgot [1] 23/2 format [3] 32/10 33/3 33/21 former [1] 28/18 forms [1] 32/9 forth [1] 4/22 forthright [1] 14/10 forum [1] 30/4 forward [4] 5/9 5/22 12/19 22/24 four [2] 7/11 8/5 Fourth [3] 14/22 15/11 15/15 FOX [25] 1/5 1/19 4/4 15/19 16/8 16/13 16/20 17/5 17/13 17/18 17/21 17/22 19/21 20/4 20/9 21/18 22/20 23/4 24/23	Garcia [6] 17/14 18/12 20/11 20/16 28/16 28/16 gate [2] 7/12 8/4 General [10] 1/16 9/10 10/17 19/23 20/10 20/23 22/9 23/14 24/21 25/13 get [8] 8/5 19/9 19/10 20/23 23/18 24/21 24/23 32/2 getting [1] 19/20 GIGANTI [1] 1/14 give [1] 15/14 glaring [7] 4/19 12/5 12/13 18/8 27/4 27/19 29/13 glossed [1] 20/7 glosses [1] 16/9 go [8] 5/22 12/19 22/24 25/4 31/24 32/1 32/7 33/2 goes [2] 23/13 25/15 gone [1] 13/7 good [3] 6/4 6/5 31/7 got [2] 3/13 6/9 government [12] 7/1 7/8 7/14 7/20 8/21 10/1 10/3 14/2 25/2 27/3 32/13 32/15 government's [1] 29/9 governmental [2] 15/2 28/18 Governor [1] 19/12 Governor's [7] 12/11 19/23 20/20 20/23 23/14 24/19 24/21 grant [3] 12/22 27/21 30/20 granted [1] 32/16 gulf [1] 29/12
		H
		hadn't [1] 21/12 ham [1] 13/24 ham-handed [1] 13/24 hand [1] 23/6 hand-deliver [1] 23/6 handed [1] 13/24 handle [1] 33/23 handles [1] 23/21 hands [1] 8/19 happen [2] 4/23 21/19 happened [7] 10/24 17/12 18/9 18/16 20/24 21/12 23/16 happening [1] 6/10 happens [1] 21/8 happy [3] 12/20 27/22 29/14 Harpreet [1] 4/7 hasn't [2] 12/2 24/9 head [1] 31/1 heard [1] 26/19 hearing [9] 1/10 1/12 6/9 25/20 26/2 26/2 28/2 28/3 34/4 held [3] 1/12 27/6 34/12 help [1] 24/20 helps [4] 31/8 31/13 32/1 32/2 here [16] 3/15 4/2 4/4 4/6 5/21 6/24 9/23 10/6 13/5 17/2

H	22/15 22/16 28/9 28/17 29/21 introduce [1] 4/5 investigate [7] 8/13 17/16 20/7 20/13 20/15 20/18 21/1 investigated [1] 19/5 investigates [1] 5/4 investigating [3] 10/21 11/5 29/6 investigation [15] 5/5 5/13 9/21 11/2 11/3 11/18 11/19 12/17 17/6 19/7 20/6 26/22 28/15 29/15 29/19 investigations [1] 28/17 investigative [1] 20/14 invite [1] 11/22 involved [1] 19/24 involvement [1] 21/8 isn't [4] 7/9 15/17 22/6 26/5 ISP [5] 8/12 8/20 9/12 10/19 11/1 issue [3] 27/13 27/16 28/14 issues [1] 15/12	legislature [1] 18/14 less [1] 14/10 let's [2] 26/16 26/22 letter [1] 20/16 leveraging [1] 25/1 light [1] 7/5 like [13] 6/23 8/16 17/15 19/19 21/3 25/13 26/15 28/6 28/13 31/3 32/7 32/14 34/1 liked [1] 13/20 limited [2] 11/12 24/8 line [1] 9/20 listed [1] 19/10 listened [1] 18/11 literally [1] 33/2 litigate [1] 18/4 litigation [2] 5/23 6/1 little [1] 3/9 local [2] 23/21 23/23 long [4] 13/15 22/18 27/16 32/10 look [4] 6/13 22/15 27/10 27/17 looking [1] 22/16 lost [1] 27/5 lot [5] 5/19 24/13 24/17 26/18 33/22
here... [6] 26/7 26/17 27/1 28/1 28/20 28/21 hereby [1] 32/16 herself [1] 26/10 hesitate [1] 27/1 hired [2] 8/12 11/1 holding [1] 15/12 Honor [23] 3/8 4/1 5/15 6/16 7/3 7/17 8/6 8/12 9/23 10/10 11/11 12/2 12/23 13/1 17/20 26/14 27/3 27/13 30/21 31/6 31/16 33/12 34/2 Honorable [1] 1/13 hope [2] 22/8 33/1 hoping [1] 31/9 hours [1] 17/18 how [11] 4/23 10/2 14/4 15/21 17/9 19/9 19/9 19/20 25/24 31/18 33/10 Howard [1] 15/15 however [1] 22/18 hundred [1] 21/3 hundreds [4] 17/19 24/3 24/10 24/14	J JB [2] 19/14 24/19 JENNY [6] 1/8 3/4 3/10 13/6 14/5 15/23 job [2] 18/15 20/19 jointly [1] 32/22 judge [3] 1/14 4/9 26/4 JUDICIAL [2] 1/1 35/1 July [3] 8/16 19/1 19/2 jump [1] 18/10 just [27] 3/14 10/4 10/22 11/11 11/13 11/16 11/24 12/7 12/18 12/21 13/15 15/6 15/14 15/17 16/9 18/11 21/3 26/6 27/23 27/24 28/14 29/8 29/22 30/5 31/8 32/23 34/3 justice [4] 7/6 13/2 13/5 25/5 justifies [1] 11/17	
I	K kangaroo [1] 25/20 Keep [1] 28/4 Khara [1] 4/7 kind [8] 11/17 12/18 13/24 14/1 16/9 20/7 25/20 32/22 knew [5] 6/24 7/1 16/5 16/12 30/16 knowledge [5] 8/17 8/20 17/11 26/21 30/6 knows [7] 4/21 16/1 16/7 19/6 21/2 21/14 22/7	M machinery [2] 25/9 25/10 made [13] 5/12 13/10 13/11 14/9 15/20 16/11 17/1 17/14 18/21 20/24 21/16 23/16 28/23 make [6] 4/11 25/15 25/16 32/4 33/6 34/6 makes [2] 7/3 24/3 making [3] 13/14 16/3 16/13 many [2] 15/10 32/10 March [1] 35/14 MARKED [1] 2/7 material [1] 5/2 materials [3] 16/18 20/3 20/17 matter [1] 11/13 matters [1] 14/5 may [1] 3/24 maybe [3] 22/14 22/15 24/13 McGuireWoods [15] 8/9 8/12 8/13 17/10 17/12 17/17 17/19 17/20 17/21 17/23 18/9 18/16 18/24 24/20 30/15 mean [7] 16/2 21/10 23/9 24/23 31/8 31/17 31/17 means [1] 18/10 meant [4] 7/4 7/5 11/24 33/5 media [2] 18/14 21/6 mention [3] 9/3 14/13 23/1 mentioned [2] 10/12 15/8 merit [14] 8/12 8/20 9/12 10/19 11/1 18/17 19/11 19/15 20/9 20/9 20/14 22/8 22/13 24/7 met [2] 12/2 28/22 mind [1] 28/4 misconduct [1] 10/9 Miss [67] Miss Boyle [3] 3/6 3/20 26/13 Miss Emily [1] 4/4 Miss Fox [21] 15/19 16/8 16/13 16/20 17/5 17/13 17/18 17/22 19/21 20/4 20/9 21/18 22/20 23/4 24/23 26/9 26/19 27/15 28/13 28/19 29/21 Miss Fox's [4] 16/3 17/13
idea [1] 31/14 identified [1] 24/2 IFCA [9] 7/3 7/5 7/8 7/15 8/21 11/10 11/21 11/24 28/12 ignored [1] 14/22 ignores [1] 17/24 IL [2] 1/23 15/15 ILCS [1] 16/16 Ill.3d [1] 14/23 Ill.App.3d [1] 15/17 ILLINOIS [18] 1/2 1/4 1/17 3/4 4/21 6/12 9/14 9/18 13/3 13/5 14/3 14/17 15/4 15/11 25/1 25/6 35/2 35/6 implicate [1] 22/19 implicated [1] 15/5 inception [1] 21/11 included [1] 20/17 including [1] 14/10 inconsistent [1] 16/1 incorrect [1] 11/21 increases [1] 24/12 independent [1] 11/2 INDEX [1] 2/1 indicate [1] 34/4 indicted [1] 10/8 indictment [1] 23/23 individual [2] 11/14 11/15 information [1] 8/11 informed [1] 23/4 inquire [1] 28/9 inquiring [1] 29/20 Inspector [2] 9/10 10/17 instance [3] 8/22 8/23 30/15 instances [2] 8/5 24/24 Insurance [3] 9/15 9/18 29/5 intend [1] 31/18 interest [1] 22/10 interests [1] 25/14 internally [1] 23/12 intervened [1] 20/21 intervenes [1] 5/7 intervening [1] 3/11 interviewed [1] 17/18 into [8] 11/2 11/19 13/4	L language [1] 18/1 large [2] 8/10 29/12 last [4] 10/11 19/24 27/7 28/3 lastly [2] 9/14 12/2 later [1] 19/17 law [20] 1/19 5/16 6/19 8/13 13/8 14/3 14/11 14/17 18/4 18/14 25/22 25/22 26/3 26/16 26/17 26/23 27/4 27/4 27/21 27/24 lawsuit [1] 16/6 lead [1] 22/3 learned [2] 17/9 23/3 least [1] 16/19 leave [3] 11/1 18/22 18/23 leaves [1] 7/24 legal [3] 4/16 6/17 6/22	

M	not [56] note [1] 13/9 NOTES [1] 35/4 nothing [9] 12/4 12/15 13/6 13/12 13/13 15/22 17/1 18/18 22/22 notice [1] 6/8 November [1] 16/19 now [10] 10/2 11/4 16/3 18/9 19/20 21/8 22/3 22/18 22/22 31/3 number [1] 19/15 numerous [1] 6/12	pages [4] 13/15 17/19 17/22 32/10 paid [5] 18/23 18/23 19/6 19/18 24/4 paint [1] 9/22 papers [5] 7/16 11/7 12/5 12/9 26/20 paragraph [3] 15/16 32/11 32/24 part [2] 28/18 29/15 particular [1] 6/21 particularly [1] 22/20 parties [2] 3/16 34/5 parts [1] 7/15 party [2] 7/23 32/23 paste [2] 31/24 33/2 PDF [1] 33/22 penalty [1] 7/22 pending [3] 10/10 10/13 23/5 PEOPLE [3] 1/4 3/4 15/16 perhaps [1] 30/4 PERICH [15] 1/16 3/20 3/21 13/2 14/9 14/13 16/5 16/9 16/24 17/8 18/1 20/6 24/14 25/4 26/13 person [1] 20/11 personal [1] 19/15 personnel [1] 29/9 petitioner [2] 9/1 21/15 phone [2] 19/15 19/24 pick [1] 28/11 picture [2] 9/22 9/23 placed [1] 10/24 Plaintiff [6] 1/6 1/17 1/19 3/4 3/6 3/10 plant [1] 26/5 play [1] 13/4 please [1] 26/14 point [4] 10/16 15/18 19/19 20/11 points [2] 4/11 29/22 political [1] 12/12 position [3] 13/23 14/18 25/18 possibility [2] 22/15 22/17 possible [1] 19/20 potted [1] 26/5 precedence [1] 11/21 precedent [3] 24/9 24/16 24/17 precluded [2] 16/4 30/3 precludes [1] 17/24 prerogative [1] 5/24 presented [1] 12/17 pressure [1] 12/12 presumed [2] 6/4 6/5 previously [1] 7/22 primary [1] 16/2 Pritzner [1] 19/14 private [1] 25/12 probably [2] 8/10 32/3 problem [1] 33/17 procedures [1] 4/22 proceed [5] 3/17 3/24 15/22 22/10 26/8 proceeded [1] 14/5 proceeding [4] 7/23 21/15 22/3 22/17 proceedings [4] 1/12 3/1 34/12 35/8 process [3] 14/15 14/24 15/4 prohibited [1] 14/3 prongs [1] 8/3 pronounce [1] 25/24 proper [2] 5/14 12/19
Miss Fox's... [2] 18/12 23/17 Miss Perich [11] 13/2 14/9 14/13 16/5 16/9 16/24 17/8 18/1 20/6 24/14 25/4 Miss Spillane [1] 20/24 Miss Spillane's [1] 21/7 Miss Thornley [20] 8/15 9/1 9/6 10/8 10/14 10/24 11/3 13/7 13/11 16/22 17/7 18/17 20/1 21/2 21/15 22/5 22/11 24/4 24/10 26/18 Miss Thornley's [4] 8/18 9/16 11/7 11/19 misunderstanding [2] 31/19 31/20 money [6] 7/22 11/17 24/5 24/13 30/2 30/3 month [1] 19/19 months [8] 8/7 8/16 8/23 10/15 19/4 19/17 20/1 22/17 months' [1] 24/1 more [6] 9/4 32/2 32/6 32/17 33/1 33/22 Moreover [1] 10/22 morning [1] 13/10 most [2] 8/11 23/2 motion [18] 1/10 3/15 4/3 4/10 4/13 12/22 13/11 13/12 13/14 13/19 13/23 23/5 26/10 27/18 28/21 30/20 32/14 32/15 motions [1] 15/22 motivations [1] 28/9 move [2] 5/9 28/6 moved [1] 5/18 moves [1] 5/8 MR [3] 1/18 20/16 28/16 Mr. [14] 3/7 12/24 17/14 18/12 20/10 20/11 26/16 27/12 27/23 28/10 28/16 29/10 29/24 30/17 Mr. Andalman [9] 3/7 12/24 26/16 27/12 27/23 28/10 29/10 29/24 30/17 Mr. Dykstra [1] 20/10 Mr. Garcia [4] 17/14 18/12 20/11 28/16 MS [1] 1/16 much [7] 15/24 30/23 31/13 32/2 33/10 34/10 34/11 multiple [2] 9/24 19/24	O objections [1] 6/6 obviously [3] 18/13 22/4 30/8 occasions [1] 9/24 OEIG [12] 10/16 16/11 16/23 16/24 17/4 17/5 17/14 17/15 20/5 20/15 20/17 20/24 off [3] 21/5 21/9 31/1 offer [1] 14/7 office [10] 9/9 10/17 12/11 19/12 20/21 22/14 23/5 23/14 23/17 23/21 offices [1] 29/9 official [2] 1/22 10/9 often [1] 33/22 omission [1] 18/7 omits [1] 16/12 omitted [1] 18/7 omitting [1] 23/17 on [37] once [5] 32/1 32/9 32/22 33/1 33/18 one [17] 7/13 9/3 10/19 10/20 16/13 16/14 16/20 18/11 20/19 23/1 23/2 26/21 30/12 30/12 32/11 32/19 32/23 one-for-one [1] 30/12 only [15] 6/18 13/15 14/7 15/8 15/12 17/4 17/12 21/5 21/24 22/12 23/5 23/23 27/10 29/15 29/18 opening [1] 13/23 opportunity [1] 15/19 opposite [1] 18/11 order [6] 31/8 31/17 31/22 32/5 32/13 34/1 orders [5] 31/4 32/2 32/7 32/9 34/6 original [9] 16/8 16/18 18/3 18/6 22/21 27/14 28/14 28/17 28/20 originated [1] 17/6 other [10] 11/4 11/22 15/11 18/12 23/1 29/11 30/4 30/8 32/12 33/9 others [2] 10/3 32/11 otherwise [1] 27/20 out [10] 7/12 8/3 8/9 18/15 18/16 19/1 19/16 31/2 31/5 32/2 out-of-the-gate [1] 7/12 over [8] 5/7 6/5 16/9 17/18 19/24 20/8 21/4 23/11 overlap [1] 30/12 overseeing [1] 26/21 overtime [4] 16/21 18/18 24/2 24/12	
N	P packet [1] 8/11	
NANCY [3] 1/22 35/6 35/11 nancy.flynn [1] 1/24 necessary [2] 13/21 25/9 need [2] 24/20 33/10 needs [2] 24/19 27/10 net [2] 7/6 7/8 never [1] 28/3 new [1] 22/17 no [25] 1/7 8/1 13/21 14/16 14/19 17/3 17/3 18/3 18/11 18/23 20/19 22/2 24/3 24/7 25/14 25/19 26/20 27/1 27/2 29/16 29/24 30/6 31/14 33/16 34/3 none [6] 2/4 2/8 12/12 13/9 13/11 26/19 nor [1] 28/8 normal [3] 15/21 15/21 15/22 normally [3] 13/7 21/19 31/2		

P	5/22 6/8 12/2 16/17 25/11 26/24 28/4 28/22 30/18	Sections [1] 21/24 see [4] 4/7 31/3 32/1 33/3 seek [2] 21/20 22/23 seeking [1] 21/17 send [2] 31/2 31/5 sense [2] 7/3 33/6 sent [2] 31/2 32/9 sentences [1] 27/8 September [2] 10/11 19/16 served [1] 5/11 set [1] 11/20 sets [1] 4/22 setting [1] 24/16 seven [2] 10/8 24/8 seven-figure [1] 24/8 SEVENTH [3] 1/1 25/23 35/1 several [1] 4/10 shamed [1] 21/9 she [39] short [1] 17/8 should [3] 22/24 26/9 26/11 show [4] 4/19 12/12 28/23 29/15 shows [1] 17/22 side [1] 32/20 sides [1] 31/23 significant [3] 19/18 24/15 26/7 similar [1] 7/21 simple [2] 32/16 34/3 simply [4] 28/21 30/5 31/24 32/14 since [2] 22/18 23/5 single [3] 11/14 11/15 30/15 situations [3] 30/24 32/8 32/23 small [1] 11/16 some [3] 12/10 14/8 30/4 someone [2] 24/17 24/21 something [2] 32/17 33/10 sometimes [1] 25/12 sorry [3] 3/13 20/15 30/24 sort [7] 7/6 8/3 12/10 12/10 13/24 17/11 32/16 source [10] 16/8 16/18 17/22 18/4 18/6 22/21 27/14 28/14 28/17 28/20 Sparks [1] 15/16 specifically [2] 23/7 26/1 specifics [1] 17/9 speculation [3] 20/20 29/12 29/13 spent [1] 17/18 Spillane [3] 19/23 20/1 20/24 Spillane's [1] 21/7 Springfield [3] 1/23 21/7 23/19 St [1] 1/23 stage [1] 20/12 stamp [5] 25/19 25/21 26/6 28/2 28/7 standard [6] 4/12 4/22 5/17 6/16 6/18 6/19 start [1] 17/6 started [1] 21/6 state [84] STATE'S [34] 1/10 3/15 4/3 4/10 4/13 4/14 5/19 5/24 6/14 8/19 11/16 12/8 12/14 12/15 12/22 13/14 13/23 14/12 14/15 15/18 15/23 16/20 17/11 21/8 23/19 26/10 27/11 27/18 27/20 28/5 28/5 28/9 28/21 30/20
properly [1] 23/12 proposed [6] 31/3 31/22 32/6 32/9 32/13 34/5 proposition [1] 24/9 prosecuted [3] 10/7 11/4 23/19 prosecuting [2] 11/14 25/9 prosecution [2] 5/7 5/9 prosecutor's [2] 23/17 23/21 prosecutorial [1] 4/14 prosecutors [1] 23/22 provide [2] 6/14 32/17 provided [2] 17/19 26/17 provides [3] 5/1 6/19 16/17 public [7] 7/13 7/17 16/4 16/16 17/24 21/11 30/10 pure [1] 29/11 purposes [2] 20/2 24/23 pursue [2] 23/13 26/10 pursuing [7] 22/6 22/16 22/17 25/15 30/2 30/3 30/13 push [1] 18/15 put [6] 16/22 17/15 19/14 19/14 25/17 33/10 putting [1] 5/23	RELATOR'S [9] 1/10 3/16 4/3 4/17 6/5 7/2 11/7 12/9 25/8 Relators [1] 4/19 remained [1] 5/10 remarks [2] 4/11 27/13 repeated [1] 24/24 reply [9] 9/15 14/7 14/16 15/8 15/12 15/20 16/15 17/8 22/12 report [17] 1/12 7/20 8/8 8/10 17/3 17/10 17/12 17/17 17/21 17/23 18/10 18/11 18/16 18/24 19/13 24/21 30/15 reported [2] 1/21 20/5 reporter [2] 1/22 27/7 reporting [1] 11/23 reports [1] 21/6 represent [1] 3/10 represented [2] 3/6 3/7 requests [1] 23/8 required [3] 6/11 27/21 30/2 requirements [1] 6/7 requires [3] 25/11 25/12 26/2 resolve [1] 22/14 resources [1] 11/12 respect [3] 12/13 27/11 29/11 respond [1] 15/19 response [2] 17/5 26/13 rest [1] 11/6 restrain [1] 14/19 result [2] 18/15 24/5 resumé [5] 8/14 16/21 18/18 24/5 24/18 return [3] 11/16 21/20 22/23 returned [1] 21/22 reverse [1] 24/22 reversed [1] 20/2 review [2] 29/14 32/5 right [14] 3/15 3/19 3/24 4/2 6/2 10/5 11/9 11/9 22/3 22/22 25/16 30/22 31/7 32/21 ROBERT [1] 1/18 robust [2] 5/5 5/13 role [1] 23/17 Room [1] 1/23 rubber [5] 25/18 25/21 26/6 28/2 28/7 rule [3] 18/6 18/7 31/18	
Q	QUALIFIED [1] 27/15 quarter [1] 17/3 quash [1] 15/10 question [2] 18/3 33/9 questions [1] 12/21 quick [1] 29/22 quote [3] 13/17 14/16 14/24 quote-unquote [1] 13/17 quotes [1] 17/10	S safety [1] 7/6 said [24] 1/14 8/16 9/15 9/19 10/23 13/2 13/12 13/13 13/15 16/1 16/24 17/16 19/11 19/13 19/20 20/6 20/8 25/5 26/16 28/3 28/13 29/21 34/13 34/13 salary [1] 24/11 same [2] 7/18 9/24 SANGAMON [3] 1/2 10/10 35/2 saw [1] 24/24 say [9] 11/6 13/16 17/23 23/2 25/21 26/4 27/1 28/16 33/21 saying [3] 3/19 20/17 29/24 says [6] 7/21 16/10 19/3 23/15 24/19 26/6 Scachitti [1] 6/12 seal [2] 5/1 5/11 search [1] 17/20 second [5] 4/16 7/14 8/22 8/22 10/21 section [2] 16/15 18/1
R	raised [1] 15/12 rare [1] 32/24 rather [1] 23/8 rationale [2] 13/13 15/10 read [2] 12/9 27/7 reading [1] 3/14 ready [1] 3/17 really [5] 18/19 25/19 26/17 29/17 29/17 reasoned [1] 29/17 reasons [6] 4/10 7/10 12/18 12/20 13/16 28/9 recall [1] 31/1 receive [1] 29/3 received [9] 2/7 8/10 19/4 21/3 21/4 21/18 24/5 29/2 29/7 receiving [1] 23/8 recently [2] 23/3 23/4 recess [1] 27/6 reconnection [1] 27/6 record [1] 23/9 recoupment [1] 22/1 recover [1] 24/3 RE CROSS [1] 2/3 REDIRECT [1] 2/3 referenced [1] 24/20 referred [3] 10/19 20/8 25/12 refused [5] 17/16 20/7 20/15 20/16 21/1 regard [1] 23/15 rel [1] 1/4 related [1] 14/5 relationships [1] 25/1 Relator [13] 3/9 4/4 4/24 5/9	

S
statement [1] 14/23
status [1] 30/7
statute [6] 5/18 7/4 7/15
16/17 21/21 22/2
statutory [1] 18/1
STENOGRAPHIC [1] 35/4
still [2] 10/21 20/11
stop [1] 8/3
strongly [1] 4/13
submit [6] 29/12 32/5 32/6
32/23 33/20 34/5
submitted [5] 12/4 16/19 16/23
31/4 32/13
subsequent [1] 7/24
substantial [1] 6/14
substantially [1] 7/18
substantive [2] 14/24 26/2
such [2] 30/24 32/24
sufficient [2] 8/18 30/18
suggest [1] 21/21
supervisor [2] 18/12 19/14
support [1] 10/5
supporting [1] 5/2
Supreme [3] 15/1 15/3 15/4
sure [1] 20/24

T
tackle [1] 31/15
tactic [1] 15/18
take [1] 14/18
taken [4] 10/3 10/18 30/17
34/4
takes [1] 5/7
talk [4] 6/17 6/23 7/10 23/10
talked [3] 12/16 27/14 29/1
tasked [2] 27/17 28/1
technical [1] 15/18
tell [7] 5/16 10/2 21/23 31/3
31/5 31/17 32/8
telling [1] 18/8
tells [2] 5/19 5/19
ten [2] 8/7 8/16
terminated [6] 9/5 18/17 18/20
19/2 19/7 29/2
termination [2] 20/2 24/22
terms [3] 24/16 30/11 31/16
textbook [1] 14/1
thank [11] 3/22 3/23 4/1
12/23 13/1 26/12 30/21 30/22
31/13 34/10 34/11
that [181]
theft [1] 18/18
therefore [2] 8/2 13/21
thing [3] 17/4 23/1 27/10
things [4] 17/10 23/3 25/16
29/11
think [6] 15/7 19/19 20/11
24/17 27/24 33/15
third [2] 4/18 10/16
thirdly [1] 9/9
THORNLEY [27] 1/8 3/5 3/10
8/15 9/1 9/6 10/8 10/14 10/24
11/3 13/6 13/7 13/11 14/6
15/23 16/22 17/7 18/17 20/1
21/2 21/15 22/5 22/11 23/18
24/4 24/10 26/18
Thornley's [4] 8/18 9/16 11/7
11/19
thorough [5] 5/5 5/13 8/10
12/17 29/19
those [18] 5/2 9/4 9/17 9/19

9/20 10/2 10/14 11/2 12/12
16/8 16/13 19/9 21/24 22/23
23/18 29/6 30/9 30/18
though [1] 14/13
thousands [3] 24/4 24/11 24/14
three [1] 4/11
through [1] 17/2
throughout [1] 12/3
time [12] 8/14 9/4 13/18
15/13 16/22 18/5 21/12 30/15
32/7 33/10 33/14 34/9
timekeeping [2] 10/9 11/23
timely [1] 32/2
times [1] 17/22
tiny [1] 23/24
today [16] 4/2 4/6 6/10 7/10
12/16 14/9 14/10 14/13 15/21
17/9 22/22 27/17 28/1 28/20
33/19 34/2
together [4] 5/24 16/23 17/15
33/11
told [8] 17/13 19/22 21/18
22/8 22/8 22/12 22/14 23/7
too [3] 20/8 23/12 26/8
top [2] 25/15 31/1
touch [1] 20/19
transcript [2] 35/4 35/8
transmittal [1] 23/9
treasury [1] 11/17
tremendously [2] 31/9 31/14
trial [1] 29/10
troubling [2] 14/17 23/3
true [3] 16/2 19/5 35/7
try [2] 21/19 25/15
trying [4] 15/10 23/18 25/10
28/11
two [14] 4/5 7/10 7/15 9/11
10/17 22/12 24/1 27/8 29/22
31/9 32/4 33/12 33/18 33/19
two-fingers [1] 32/4
type [1] 5/17
types [1] 4/23
typically [1] 31/17
typing [1] 32/4

U
under [5] 4/24 5/10 7/17 8/21
34/5
understand [3] 29/5 29/23
30/17
Understood [1] 33/4
undeserved [1] 24/11
unfettered [2] 13/20 14/14
unfortunately [1] 14/4
unless [1] 16/17
unquote [1] 13/17
until [2] 19/6 19/16
up [1] 17/22
used [1] 26/4
useless [1] 26/3

V
validity [1] 29/21
various [1] 11/5
versus [3] 3/4 15/16 24/2
very [15] 7/20 8/10 8/13
11/18 11/18 11/20 16/15 17/8
18/1 18/6 30/23 31/13 31/24
34/10 34/11
via [1] 33/20
victim [1] 5/21
voluntary [1] 28/6

W
wage [1] 24/11
waived [1] 15/13
want [5] 4/11 9/22 10/2 23/1
32/13
wanted [1] 20/19
way [4] 9/8 11/9 11/9 18/19
weeks [3] 33/13 33/18 33/19
well-reasoned [1] 29/17
Wells [1] 4/6
West [1] 15/15
West-Howard [1] 15/15
what [42]
what's [4] 6/10 8/22 13/4
30/13
whatever [3] 13/22 25/21 26/6
wheels [4] 7/6 13/2 13/5 25/5
when [8] 15/5 15/23 19/13
21/13 23/9 24/17 25/7 30/4
where [10] 5/18 8/4 10/13
22/20 23/21 25/8 25/14 26/1
32/8 32/23
Whereupon [1] 3/1
whether [6] 27/15 28/13 28/19
28/22 29/1 29/6
which [19] 5/1 5/4 6/8 7/15
7/23 8/11 9/24 11/21 11/24
13/14 18/19 19/11 20/17 21/6
23/21 25/20 25/21 27/17 34/12
while [2] 5/10 19/4
who [9] 11/15 16/13 16/14
16/20 19/13 20/21 24/17 24/21
26/4
who's [4] 3/11 19/14 26/21
28/16
whole [2] 18/13 25/16
whom [1] 19/13
why [4] 6/20 7/11 8/4 12/18
wife [1] 24/19
will [3] 31/9 32/23 33/14
within [2] 25/1 34/6
WITNESSES [1] 2/3
woman [1] 20/21
word [7] 17/21 22/2 22/4
32/10 33/3 33/21 33/23
words [1] 32/12
workers [14] 8/24 9/7 9/16
10/12 18/21 21/14 21/20 22/5
22/9 24/12 24/22 29/22 30/4
30/7
working [5] 7/7 13/3 13/6 25/6
25/6
worth [1] 24/1
worthy [1] 13/17
writing [1] 15/20
wrote [1] 20/16

Y
yeah [1] 31/6
yep [1] 3/21
yes [4] 26/14 31/12 33/8
34/10
yet [2] 5/11 30/6
you [50]
your [27] 3/8 4/1 5/15 6/16
7/3 7/17 8/6 8/12 9/23 10/10
11/11 12/2 12/23 13/1 17/20
19/13 19/14 20/19 26/14 27/3
27/13 30/21 31/6 31/16 33/12
34/2 34/9

Z
Zoom [2] 4/8 27/5