

1 STATE OF ILLINOIS )  
 ) SS:  
2 COUNTY OF C O O K )

3  
4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CRIMINAL DIVISION

5 THE PEOPLE OF THE STATE )  
OF ILLINOIS, )  
6 )  
Plaintiff, )  
7 )  
vs. ) No. 93 CR 01003-01  
8 )  
ROOSEVELT MYLES, )  
9 )  
Defendant. )

10

11 REPORT OF PROCEEDINGS had before the HONORABLE  
12 CAROL M. HOWARD, Judge of said court, on the  
13 27th day of June, A.D., 2022.

14 APPEARANCES:

15 HON. KIMBERLY M. FOXX,  
State's Attorney of Cook County, by:  
16 MR. TODD DOMBROWSKI,  
Assistant State's Attorney,  
17 On behalf of the People;

18 MR. SAMUEL KENNEDY, Attorney at Law,  
On behalf of the Defendant;

19

20 MR. STEVEN MANDELL, Attorney at Law,  
MR. BRIAN SAUCIER, Attorney at Law,  
On behalf of nonparties Discovery Channel  
21 and Painless Television Inc.

22

23 KRISTEN M. PARRILLI, CSR, RPR  
Official Court Reporter  
Criminal Division  
24 CSR: #084-004723

1 THE COURT: This is the case of Roosevelt  
2 Myles. Can the parties please put their names into  
3 the record?

4 MR. KENNEDY: Yes, Judge. Samuel Kennedy for  
5 Mr. Myles, who is present.

6 THE COURT: Can you spell your last name for the  
7 court reporter, please?

8 MR. KENNEDY: K-E-N-N-E-D-Y.

9 MR. DOMBROWSKI: Your Honor, good afternoon. For  
10 the record, Assistant State's Attorney Todd Dombrowski,  
11 D-O-M-B-R-O-W-S-K-I.

12 THE COURT: Thank you. This is a hearing on the  
13 nonparties' motion to quash the State's subpoena. I  
14 think all the parties have agreed that -- well, the  
15 nonparties have asserted a reporter's privilege, and  
16 all the parties agree that the nonparties do in fact  
17 qualify as reporters and so the State has filed a  
18 motion to divest reporters of that privilege or the  
19 nonparties to divest themselves of the reporter  
20 privilege.

21 So basically we're here, Mr. Dombrowski, to  
22 discuss the issue concerning your motion or application  
23 to divest them of the reporter's privilege.

24 MR. DOMBROWSKI: Yes, your Honor.

1 THE COURT: You may proceed.

2 MR. DOMBROWSKI: Judge, I think we need to --

3 THE COURT: Oh, I'm sorry. Where is Mr. Myles?

4 MR. MANDELL: No, your Honor. Mr. Mandell, Steve  
5 Mandell, on behalf of nonparties Discovery Channel and  
6 Painless Television Inc.

7 THE COURT: Okay.

8 MR. MANDELL: Thank you.

9 THE COURT: Oh, you -- Thank you.

10 THE DEFENDANT: Roosevelt Myles.

11 THE COURT: Okay. And you're here with your  
12 counsel, too; is that correct?

13 THE DEFENDANT: Yes.

14 THE COURT: And counsel for Mr. Myles, can you put  
15 your name into the record?

16 MR. KENNEDY: Yes. Again, it's Samuel Kennedy,  
17 K-E-N-N-E-D-Y.

18 THE COURT: Thank you.

19 MR. DOMBROWSKI: Your Honor, thank you very much.

20 Judge, on the last court date, which was  
21 May 3rd of this year, the nonparties and I had -- as  
22 well as your Honor had a great discussion about the  
23 State's subpoena and the materials that it is  
24 requesting and the reasons why, so I will not try to

1 rehash that -- those arguments as we already have them  
2 on the record.

3           But as the Court noted, it wished -- it  
4 wished to have the State file an application for  
5 divestment, which the State has done so. And the  
6 reasoning, your Honor, has not changed. And, in fact,  
7 there's just a couple additions since the last court  
8 date which the State will expound upon further in its  
9 argument.

10           So as we have said, the People have been  
11 trying to get unaired material from the Discovery  
12 Communications limited liability company of their  
13 Internet-based episode of "Reasonable Doubt," Episode  
14 6, "It Wasn't Me," which was an episode featuring  
15 Mr. Myles and a discussion of his case, post-conviction  
16 as well.

17           Now, what has obviously -- portions of what  
18 have -- of what was recorded aired on the  
19 Internet-based platform, but as the nonparties do  
20 concede, there are unaired materials in there. The  
21 State is wishing to have the divestment of the  
22 reporter's privilege for those unaired materials in  
23 that there is a pending post-conviction case currently  
24 going on in which we are going to a third-stage hearing

1 to where those materials are necessary in the discovery  
2 process for several different reasons.

3 So first of all, number one, as the State has  
4 pointed out, under Illinois Supreme Court Rule 412(c),  
5 it is the requirement of the State to tender to the  
6 petitioner, that's Mr. Myles and his lawyer Mr. Kennedy  
7 and Ms. Bonjean, any exculpatory information that it  
8 has, as we've all said, that the State has in its  
9 possession. Well, the State --

10 THE COURT: Let me stop you for one second, then,  
11 because you just said that that Rule 412 requires you  
12 to tender all exculpatory information that the State  
13 has in its possession. You do not have this  
14 information that you are seeking in your possession --

15 MR. DOMBROWSKI: No, I --

16 THE COURT: -- do you?

17 MR. DOMBROWSKI: -- do not.

18 THE COURT: So would that rule apply to the  
19 situation?

20 MR. DOMBROWSKI: Yes, it would. Absolutely, your  
21 Honor. And as I have stated, for example, in this sort  
22 of situation or in a situation for example that I've  
23 used before where the Illinois State Police will send  
24 the State a letter that says, We have gone through our

1 records, and in this one particular case during our  
2 testing of whatever the material was, there was either  
3 an error in the peer review, there was a slide that was  
4 contaminated, there was a slide that got broken  
5 somehow, so there is some exculpatory information. And  
6 this happens from time to time years later, after a  
7 case is all done and over with. The same situation  
8 that we have in this particular case where the  
9 conviction has been done, the sentencing has been done.

10           Now, it is not -- it is not only the  
11 obligation of the State to simply turn over that letter  
12 to the defense and go, Here, our obligation is  
13 complete. In that situation, 412 would require and  
14 does require the State to go further to where it has --  
15 it knows of information and so therefore it must obtain  
16 that information to tender to the defense. The end  
17 result as to what will happen is not the issue. The  
18 issue is does the State -- is the State complying with  
19 412(c) in that is it going through the process of  
20 making sure, even years later, that the State is  
21 tendering exculpatory information to the petitioner.  
22 In this --

23           THE COURT: Excuse me for one second.

24           MR. DOMBROWSKI: Yes, Judge.

1           THE COURT: I do have a question concerning the  
2 hypothetical that you just posed. You posed a  
3 hypothetical in which the State Police had information  
4 that you or the State didn't have in its control, but  
5 in that situation, the State Police was an agent of the  
6 State's Attorney's Office or of the State; is that  
7 correct?

8           MR. DOMBROWSKI: Well, I -- I don't believe that  
9 the Illinois State Police would be. The forensics  
10 unit, Judge, in that particular matter would be an  
11 ag- -- would be a so-called agent of the State in that  
12 particular -- I mean ...

13          THE COURT: You do have a working relationship  
14 with the State --

15          MR. DOMBROWSKI: Well, that is correct.

16          THE COURT: -- the State Police --

17          MR. DOMBROWSKI: Obviously, yes.

18          THE COURT: -- for review and that you regularly  
19 rely on that to conduct your forensic testing; is that  
20 correct?

21          MR. DOMBROWSKI: That's correct, but in --

22          THE COURT: And that's not the situation you have  
23 here with the nonparties in this case --

24          MR. DOMBROWSKI: Well --

1 THE COURT: -- is that correct?

2 MR. DOMBROWSKI: Well, with the State Police,  
3 Judge, the State does not just automatically get  
4 information. It still has to subpoena information or  
5 send out a subpoena to get that information. It's not  
6 like they're next door to us and we just walk over and  
7 get their file or whatever it may be.

8 They are a separate agency to which  
9 information must be gotten by a subpoena. And that's  
10 the same thing here where we're seeking to get  
11 information and we're doing that by a material witness  
12 subpoena.

13 Now, as I said, it is the process, Judge, to  
14 where the State needs to make sure that it has complied  
15 with 412(c) and that if it knows that there is unaired  
16 material that exists, which as I've said the parties --  
17 the nonparties will admit that there is unaired  
18 material, it is the duty of the State, as the People  
19 have submitted, to get that information to review to  
20 make sure that there is nothing further there that  
21 needs to be tendered.

22 THE COURT: So you don't really know if there's  
23 anything of an exculpatory nature in this unaired  
24 material, you're basically just speculating; is that



1 correct?

2 MR. DOMBROWSKI: Well, I'm not -- I wouldn't say  
3 I'm speculating, Judge, because the aired material --  
4 The reason why I say I don't speculate is because we  
5 have not heard from the nonparties that there is  
6 nothing further in regards to the witnesses that the  
7 State seeks.

8 It could be very easy for the nonparties to  
9 say, This is a moot point because we can explain to the  
10 Court that there is nothing else of these witnesses  
11 that are there. Now, we have not heard that. What we  
12 have heard is a straight -- a good word is -- well, I  
13 should say just a straight assertion of the privilege,  
14 saying, This is unaired material, therefore reporter's  
15 privilege applies.

16 Now --

17 THE COURT: Does the aired material itself say for  
18 example that at least one of the witnesses that you're  
19 seeking notes on did not agree to an interview?

20 MR. DOMBROWSKI: I -- That's -- That's not on the  
21 aired material, Judge.

22 THE COURT: Okay. So you have received a copy of  
23 the aired material; is that correct?

24 MR. DOMBROWSKI: Yes, Judge. Yes.

1 THE COURT: You can continue.

2 MR. DOMBROWSKI: Thank you, Judge.

3 So the second reason, Judge, is under 413,  
4 Illinois Supreme Court Rule 413. In 413, which mimics  
5 to a point the post-conviction discovery case law that  
6 we have, to where if there is good cause in regards to  
7 information, that the Court can order the defense to  
8 turn over information to the State.

9 Now, that's how it works in post-conviction  
10 discovery because obviously there's not an automatic  
11 right to this but the State would have to show good  
12 cause as to why it needs to be received.

13 Again, that does work in combination with  
14 412(c) because we would like to make sure that we  
15 comply with that pursuant to the Illinois Supreme Court  
16 and so we ask through 413 because of 412(c). And  
17 that's what we did when the State asked for -- in the  
18 petition for material witness subpoena.

19 Now, the information obviously beyond the  
20 State's requirement under the Illinois Supreme Court  
21 Rules also goes to the actual third-stage evidentiary  
22 hearing itself. The reason being is that, A, number  
23 one, the State would like to have any additional  
24 information for the purposes of cross-examination

1 because, as we have stated and displayed in our  
2 application, that this is, whether it's a trial,  
3 whether it's a post-conviction proceeding, especially  
4 in this particular matter, we are in a truth-seeking  
5 process. There needs to have -- Both parties and the  
6 Court need to have all the information present before  
7 it to make sure that the hearing is transparent, that  
8 all the parties have all the information that exists,  
9 because not onl- -- because this is an actual innocence  
10 third-stage hearing as well as an ineffectiveness of  
11 trial counsel, and so therefore cross-examination is of  
12 the utmost importance to show to the Court not only  
13 factual information but also to question the witnesses  
14 that will be presented so your Honor can judge the  
15 credibility of these witnesses.

16 Now, what the State is asking for is not  
17 going above and beyond the people that are contained  
18 within this case. There is no fishing expedition that  
19 the State is going on. It's asking for one single  
20 episode regarding the petitioner himself and regarding  
21 the witnesses that have already testified at trial.  
22 Well, let me take that back. Regarding Ms. Morris  
23 who's already testified at trial. And Mr. Hooker is  
24 going to be testifying pursuant to the witness list

1 that was presented at the third-stage hearing, and  
2 apparently Ms. Morris will be testifying as well.

3 Now, beyond the Supreme Court Rules, beyond  
4 the purposes for cross-examination, it's also -- we're  
5 requesting the divestment of this information because  
6 the State does have a motion for discovery on file.  
7 And the motion for discovery does ask for any prior  
8 statements of witnesses that will be testifying.

9 Now, when the State filed this motion, when  
10 the State asked for unaired material, the petitioner's  
11 counsel told the Court that it -- that it did not have  
12 that in its possession, that it did not investigate as  
13 to what was -- as to what was in the unaired portion  
14 and told the court flat-out -- not your Honor, but the  
15 previous trial judge -- told that court flat-out that  
16 it would not attempt to subpoena that information and  
17 it would not do so even under the judge ordering  
18 Petitioner's counsel to do so.

19 THE COURT: Okay. I read that transcript. It  
20 appears that Petitioner's counsel basically was saying  
21 that they were aware that a reporter's privilege  
22 existed and they didn't think that there was a basis  
23 for divesting the reporter of that privilege. And so  
24 generally -- basically what we're here to do today is

1 to determine whether or not you set forth your case  
2 under the statute 735 ILCS 5/8-901 through the end,  
3 whether you set forth a case that would warrant this  
4 Court divesting the reporters of their privilege, and  
5 so I need you to focus your argument on that --

6 MR. DOMBROWSKI: Yes.

7 THE COURT: -- and the requirements of the  
8 statute.

9 MR. DOMBROWSKI: Well, that's -- I mean, that is  
10 the whole purpose, Judge, is, one, we have an issue  
11 where we have a party, the defense, and that's the  
12 petitioner and his attorneys, that do not wish to  
13 comply with the State's motion for discovery, do not  
14 wish to attempt to get any information.

15 And then, after the May 3rd of this year  
16 hearing that we had, files with the Court what's  
17 called -- what they called a motion to clarify that  
18 said that they have no interest whatsoever in the  
19 unaired material. Now, the interest would be in  
20 compliance with the State's motion for discovery. The  
21 double standard that's contained within that motion for  
22 clarification is that the petitioner says we do not  
23 wish to investigate and we do not wish to look to  
24 see -- for any further statements of our witnesses who

1 will be testifying, but if the State goes ahead and  
2 does it, we want to make that the State is -- that we  
3 are not asking for this and in conjunction with the  
4 State, but if the State gets the material, then we want  
5 that material as well.

6           So what we do, your Honor, is that we have a  
7 party that is -- doesn't even want to attempt to comply  
8 with the State's motion to dismiss, tells the Court  
9 that it is not going to even attempt to get the  
10 material because it doesn't want to have to deal with  
11 what we're doing right now and the argumentation and  
12 the service of dealing with divestment of reporter's  
13 privilege, and the only thing left is that the State is  
14 now having to do all of this because the petitioner  
15 does not wish to do so.

16           THE COURT: Well, couldn't this mean that the  
17 petitioner has reviewed the law and made a  
18 determination or made its determination that the law is  
19 not in favor divesting the reporters of their privilege  
20 in this instance?

21           MR. DOMBROWSKI: That's not their choice, your  
22 Honor. They have an obligation because the State has a  
23 motion for discovery on file.

24           THE COURT: They re- --

1 MR. DOMBROWSKI: It should have been -- The way  
2 this should have worked is that the petitioner's  
3 counsel should have gone through this process and  
4 served upon Discovery and served upon Painless  
5 Productions a material witness subpoena, and it should  
6 be them stepping up here stating that in order to  
7 comply with the State's motion for discovery, that they  
8 need that information. There's nothing in any case law  
9 or there is nothing under any of the Supreme Court  
10 Rules that says that a person can reject or not comply  
11 with the motion for discovery simply because it would  
12 take some work.

13 Now, if -- Let's -- Because your Honor has  
14 brought this up, what if -- what if this was on the  
15 other foot? What if that there was information that  
16 the State said, Well, it's too difficult to get, so  
17 we're not even going to try. There would be an uproar  
18 by everyone in this building and outside this building  
19 and you would have many, many people criticizing the  
20 State for not attempting to get information.

21 This is the petitioner's case. They are the  
22 one who filed the petition. They are the one who has  
23 the burden of proof in this case. The roles here are  
24 reversed. And it is very interesting, as I said, that

1 the petitioner here has said, We have all the  
2 information we need, we don't want to get any more  
3 information, so we'll comply only a little bit but we  
4 won't fully comply or even attempt to or even  
5 investigate to find out because we just don't want to,  
6 because we have enough. And that's not the way, Judge,  
7 that it works.

8 THE COURT: Mr. Dombrowski.

9 MR. DOMBROWSKI: Yes, your Honor.

10 THE COURT: I've asked you to focus your argument  
11 on the statute and whether or not you met the  
12 requirements for the statute that would warrant this  
13 Court divesting the reporters of their privilege.  
14 You've sort of turned your argument on its head and now  
15 you're saying, Well, the petitioner didn't do  
16 everything that it could have done. I'm going -- I  
17 want to redirect you back to the statute and --

18 MR. DOMBROWSKI: Yes.

19 THE COURT: -- ask you to explain or convince the  
20 Court why you think you've met all the requirements of  
21 the statute.

22 MR. DOMBROWSKI: Well, all -- everything that I've  
23 talked about so far goes to the relevance, Judge. And  
24 obviously that's one thing that we have to determine,



1 is this relevant. The information that the State is  
2 seeking, is it relevant.

3 THE COURT: Well, what specific information is the  
4 State seeking?

5 MR. DOMBROWSKI: The State is seeking the unaired  
6 material that was created and that was not broadcasted  
7 in the production of this episode of "Reasonable  
8 Doubt," Episode 6, "It Wasn't Me."

9 THE COURT: So what do you think is in that  
10 material that would help your case?

11 MR. DOMBROWSKI: Judge, that material, first of  
12 all as I've said can, number one, is relevant because  
13 the State does have to comply with the Illinois Supreme  
14 Court Rule.

15 THE COURT: But do you --

16 MR. DOMBROWSKI: As --

17 THE COURT: -- even know that material contains  
18 anything that was not in the portion that was aired?

19 MR. DOMBROWSKI: Judge, the State has -- As the  
20 Court had mentioned and had asked the State to go ahead  
21 and try to interview those -- the witnesses involved in  
22 this matter, and the witnesses refused to provide an  
23 affidavit of any sort, so the State has exhausted all  
24 of its sources in order to obtain or try to learn of

1 the content of this information without actually  
2 needing the content from Discovery or -- and/or  
3 Painless Productions.

4 THE COURT: Has the State tried --

5 MR. DOMBROWSKI: And that's what we talked  
6 about --

7 THE COURT: -- to depose the witnesses?

8 MR. DOMBROWSKI: I'm sorry, Judge. My apologies.

9 Judge, obviously as the Court can see by the  
10 investigator's reports that were attached, Mr. Hooker  
11 was completely unavailable and did not make himself  
12 available to the State, so, no, the State could not  
13 depose Mr. Hooker, as well as because it's not only  
14 that he does not want to talk to us, but also because  
15 of the time limit that we had on this matter. And  
16 number two, Ms. Morris, this was a telephone  
17 conversation and we're assuming that it was Ms. Morris  
18 on the other end of the telephone. Obviously we do not  
19 know that for a hundred percent sure, so -- and, again,  
20 there is not time to depose Ms. Morris.

21 The Court on May 3rd asked the State to go  
22 out and attempt to get an affidavit from these  
23 individuals and make contact with these individuals and  
24 that's what -- the State has complied with what the

1 Court was asking for. The negative results being that  
2 obviously if we don't have anybody who can tell us what  
3 is on the unaired material or any unaired material of  
4 their conversations in regards to this episode, that's  
5 the reason for production of the unaired material, the  
6 relevance being compliance with the Supreme Court Rules  
7 and for -- to make sure that there are no other prior  
8 statements of these witnesses that are on there for the  
9 purposes of cross-examination, for the purposes of  
10 compliance with the discovery motion that is out there.

11 So what we are trying to do, Judge, for the  
12 relevance of this case is to make this hearing as  
13 transparent as possible so that there is nothing out  
14 there that somebody could come back later on and say  
15 Oh, well there was this information that was on this  
16 and the State never tried or attempted to get it, the  
17 petitioner never tried to attempt to get it. This is  
18 the situation that we are in.

19 So all -- What I am asking for is relevant to  
20 this case, it's relevant to the practice of litigating  
21 these types of cases. We have tried and exhausted all  
22 of our sources, not -- not only in finding who has  
23 possesses -- or I'm sorry, who possesses this media,  
24 but also as the Court noted, we went back out and we

1 attempted to interview the two witnesses testifying  
2 at -- who will be testifying at the hearing because the  
3 Court wanted to see if they would engage in  
4 conversation with the State. They did not wish to. As  
5 I said, even Mr. Hooker could not be found. Therefore,  
6 Judge, this is the only way for the State to -- to get  
7 the content of this information. And we can't verify  
8 anything unless we actually have the unaired content  
9 itself.

10 As to the allegation, this is not an issue  
11 that is a Federal or State security concern. I mean,  
12 this is a criminal trial. As I said, Ms. Morris has  
13 already testified at the trial. She is on the record.  
14 Mr. Hooker in the past has talked with people.  
15 Obviously he was on the episode itself in the  
16 broadcasted portion.

17 THE COURT: Was Ms. Morris in the broadcasted  
18 episode?

19 MR. DOMBROWSKI: No, Judge.

20 THE COURT: So was there any indication on the  
21 episode whether or not Ms. Morris agreed to be  
22 interviewed?

23 MR. DOMBROWSKI: On the video itself? I don't  
24 believe so, Judge.

1 THE COURT: And do you have any indication that  
2 she did not agree to be interviewed?

3 MR. DOMBROWSKI: Well, that was the statement that  
4 was -- that was given over the phone to the  
5 investigator.

6 THE COURT: So --

7 MR. DOMBROWSKI: As the investigator report  
8 reflects, the person on the telephone said that she  
9 didn't want to be -- that she wasn't interviewed, so  
10 that's the only way I could answer that question.

11 THE COURT: And has the State -- I'm noting that  
12 the hearing date of the third-stage hearing in this  
13 case is set for August 29th. That's approximately two  
14 months away. Couldn't the State try to depose the two  
15 individuals that you're speaking to depose, Mr. Hooker  
16 and Ms. Morris, before the hearing date?

17 MR. DOMBROWSKI: Judge --

18 THE COURT: I'm asking that because the statute  
19 requires to you exhaust all remedies, and that is one  
20 remedy provided by the Post-Conviction Act that has not  
21 been attempted.

22 MR. DOMBROWSKI: Well, on the last court date, the  
23 State said that -- the Court itself wanted the State to  
24 go out and attempt to get an affidavit from each of

1 these witnesses. That -- That is -- That was a direct  
2 order from the Court. Now we've complied with that  
3 direct order in attempting to do so and we've tendered  
4 to the Court the results of that.

5 THE COURT: I understand that your investigator  
6 made two or three attempts to reach the witnesses. Two  
7 attempts to meet one -- to reach one witness and I  
8 think one attempt to reach the other witness. But I'm  
9 not sure that that's what's required under the statute  
10 in terms of exhausting all your remedies.

11 MR. DOMBROWSKI: Well, but that was the discussion  
12 that your Honor and the State had on the last court  
13 date and your Honor said that your Honor wanted us to  
14 make sure to try to attempt to get an affidavit because  
15 the Court wanted us to make sure to exhaust its  
16 sources. Now, I'm not -- So I'm not understanding the  
17 Court today in that the Court is now asking for us to  
18 do something else which it --

19 THE COURT: What --

20 MR. DOMBROWSKI: -- it didn't ask on the last  
21 court date. And, yes, we did set a hearing date, but  
22 that was at persistence of the petitioner's counsel  
23 because he wanted a court date. So if the Court is now  
24 wishing the State to do something else, then it's going

1 to probably take a little longer.

2 THE COURT: No, the Court is asking the State to  
3 follow the statute and do what the statute requires.  
4 The Court did not limit the State to try -- to  
5 interviewing the witnesses. If you tried to interview  
6 the witnesses and that didn't work, then under the  
7 statute you should go to the next step, and the next  
8 step would be perhaps seeking a deposition subpoena and  
9 trying to depose those witnesses and requiring them to  
10 come into court to be deposed, if necessary.

11 My question is has the State complied with  
12 the statute? You're asking me to divest the reporters  
13 of their privilege. The statute set forth procedure  
14 that you have to follow before I can grant that  
15 request, and that's under the assumption that Illinois  
16 law applies. Illinois law is less strict than  
17 California law. But under the assumption that Illinois  
18 law applies, you still have to follow requirements of  
19 the statute. And you're only talking about necessary  
20 or the truth function -- or the truth-finding function.  
21 You're not considering the balance that the Court has  
22 to weigh between that function and the reporter's  
23 privilege.

24 MR. DOMBROWSKI: Well, I -- Judge, I am. I do

1 disagree with that because there is a balancing. And  
2 what was discussed on the last court date was in order  
3 to comply with the section of exhausting its sources,  
4 the State [sic] said that the State should go ahead and  
5 try to interview these witnesses to get an affidavit  
6 from them as -- as to deal with the section of  
7 exhausting the sources.

8           Now, the State has tried to do that. Now the  
9 Court is coming and saying, Well, the State should  
10 depose -- or try to depose. Well, there's no guarantee  
11 in regards to the deposition as to whether or not these  
12 people would be again accepting service. As we know,  
13 Mr. Hooker did not make any contact with the State  
14 whatsoever, was not present when the investigators went  
15 to where he lived.

16           As to Ms. Morris, again, she was not present.  
17 The people who answered the door did not have any  
18 information as to where she was, I believe, and the  
19 only contact was through the phone. So there is no  
20 indication that these individuals if they, A, could be  
21 served, and, B, even if they were served would appear  
22 for a deposition. This would take time. As your Honor  
23 has said that there's already a hearing date that has  
24 been set in this matter, so that hearing date would



1 then probably have to be moved to a further time in  
2 order for the State to now comply with what the Court  
3 is requesting, so the issue is has the State exhausted  
4 everything? Yes. Is there -- Is there any indication  
5 that it would be easier to depose these individuals?  
6 And the answer is no, there is no indication whatsoever  
7 of that.

8           So once again, Judge, it is a fact that the  
9 only way that we're going to resolve this -- these  
10 issues that are relevant to this case is to divest --  
11 have the divestment so the State can review the unaired  
12 material.

13           THE COURT: So how do you respond to the cases  
14 cited by the nonparties filings? One of the cases  
15 involved a criminal matter and the court there found  
16 that even though it was a murder case, I think it was  
17 involving the case of People v. McCullough, the State  
18 had not exhausted all other sources for the information  
19 and had not met the requirements under the statute.  
20 How do you respond to the case law?

21           MR. DOMBROWSKI: Well, Judge, first of all, as to  
22 that, again, the State has complied and has exhausted  
23 its resources. And the Court has even told the State  
24 that in order for this Court to deal with the issue of

1 exhausting resources, to go out and have the State try  
2 to interview these witnesses and get an affidavit from  
3 them.

4 THE COURT: You keep saying that the -- or keep  
5 trying to suggest that the Court told you that your  
6 responsibilities would be solved or completed if you  
7 tried to interview the witnesses and they did not  
8 cooperate. But the statute provides other means for  
9 you to obtain information from the witnesses. The  
10 statute provides the means of that position of deposing  
11 them. So if you're serious about contacting the  
12 witnesses and getting this information from them, it  
13 seems like you would exhaust all of the remedies set  
14 forth in the statute before trying to convince the  
15 Court that you've exhausted your options.

16 MR. DOMBROWSKI: And, yeah, well, I would submit,  
17 Judge, that the transcripts show that the Court was  
18 telling the State to go ahead and interview these  
19 witnesses and attempt to get an affidavit from them.

20 THE COURT: The transcripts --

21 MR. DOMBROWSKI: So --

22 THE COURT: -- will show that the Court was  
23 telling the State to try -- or to make an attempt to  
24 satisfy requirements of the statute, one way to do that

1 would to be to interview the witnesses. That was not  
2 the only way to do it. If you're serious about  
3 exhausting the remedies set forth in the statute, then  
4 you would have to try each remedy that's set forth in  
5 the statute.

6 MR. DOMBROWSKI: Well, Judge, I would submit what  
7 the Court is saying today is different than what it was  
8 ordering the State to do on May 3rd.

9 Now, again, as I've said, there is no showing  
10 here even after just trying to attempt to contact these  
11 witnesses and try to -- try to talk to them, that they  
12 would accept service for a deposition, even if we were  
13 able to get service on them that they would appear for  
14 that deposition. So the purpose of attempting to do a  
15 deposition, Judge, is -- there's been no showing that  
16 trying to do a deposition would gain any information in  
17 this matter from these witnesses. If they're not going  
18 to talk to the State when we're simply going out there  
19 to try to interview them, then there seems to be no  
20 indication that they would, A, again be available or  
21 present themselves for a deposition.

22 So if the Court wants the State to do a  
23 deposition or at least attempt to do a deposition,  
24 surely we will, we'll comply with the Court; but as

1 shown, these witnesses are not -- have not demonstrated  
2 that they are willing to talk to the State.

3 THE COURT: Anything else?

4 MR. DOMBROWSKI: As I said, Judge, in addition to  
5 this, the requirements in the application must  
6 demonstrate that there isn't any Federal or State  
7 safety concern here regarding -- and there isn't. This  
8 was a criminal trial. There are no secrets of any  
9 Federal or State concern that would be here.

10 And in addition, your Honor, I would say that  
11 it is in the response that was filed by the nonparties,  
12 the nonparties cite that it is not -- that there are  
13 some times where they will assert privilege that  
14 somehow will go against the truth-seeking process.  
15 Their reasoning for that is for the proper, shall we  
16 say, operation of a reporter or media in this situation  
17 in order for them to do their job. But in this  
18 particular situation, as I've said, we are dealing with  
19 an issue where somebody is coming before the Court and  
20 saying that I'm actually innocent.

21 And there's a second claim, as I said,  
22 ineffectiveness of trial counsel. The transparency,  
23 Judge, for the public's concern, the transparency for a  
24 proper, fair hearing demands the divestment in this.

1 And as I've said, the relevant points as to why it is  
2 necessary in this case, the sources have been  
3 identified specifically. The people have exhausted all  
4 of its methods in trying to not -- finding other  
5 sources of the media material itself. And as we've  
6 been talking about, the witnesses that we're concerned  
7 with simply don't want to cooperate.

8 As the Court has noted, and as -- and it said  
9 to the petitioner's counsel at one point, perhaps if  
10 they had tried to get this information, we wouldn't be  
11 in this situation. The California lawyer who  
12 represents Painless Productions said in their filings,  
13 Well, if the defense was asking for this material, then  
14 we might not be objecting so much.

15 The fact is is that it does seem that the  
16 nonparties here are simply objecting to tendering this  
17 information simply because it's the State. In this  
18 particular situation, the State is not the bearer of  
19 burden and the State is not trying to convict anybody.  
20 The conviction has been made. The sentence has been  
21 given. And in this particular case, the sentence has  
22 been served. All we're trying to seek here is a  
23 transparent hearing to where we know for certain that  
24 all the information that could be used has been given

1 to both sides. The petitioner himself will not comply  
2 with this. The State has had to take it on upon  
3 themselves, and all the investigations and processes  
4 the State has been doing shows that the only other way  
5 in order for us to have a transparent hearing for the  
6 public to know that justice has been done is to have  
7 Discovery and Painless turn over the unaired portion  
8 for review.

9 THE COURT: Thank you.

10 MR. DOMBROWSKI: Thank you, Judge.

11 MR. MANDELL: Is this okay, your Honor?

12 THE COURT: Only while you talk.

13 MR. MANDELL: Thank you. Thank you, your Honor.

14 Again, Steve Mandell on behalf of Discovery and  
15 Painless Television.

16 The statute's clear and it's detailed  
17 requirements. One, the State has to show specific  
18 information sought. Two, the relevancy to the  
19 proceedings. Three, a specific public interest which  
20 would be adversely affected if the information were not  
21 disclosed.

22 The State has come nowhere close to meeting  
23 its burden. Let's start with requirement number one,  
24 the specific information sought. What the State has

1 asked for, quote, unaired footage regarding the  
2 audio/video material, broadcasted or non-broadcasted,  
3 for the Internet-based show Reasonable Doubt, closed  
4 quote.

5 First of all, to clarify the record,  
6 Discovery is a cable channel. This appeared on cable  
7 television. It's not Internet-based. I don't know  
8 where that comes from.

9 But putting that aside, the State has not  
10 identified any testimony, they just say the outtakes,  
11 right? Your Honor asked counsel pointblank, Do you  
12 know that there's any exculpatory information in the  
13 outtakes? He didn't answer it because he doesn't know.  
14 He may be hoping, he may be speculating, but he cannot  
15 identify any information in those outtakes.

16 Let me give you an example. The documentary  
17 filmmaker who filmed the January 6th breach of the  
18 Capitol, if he were to be subpoenaed for information,  
19 footage on the breach of the eastern door to the  
20 Capitol, that's specific, okay? Not just, I want all  
21 your outtakes.

22 So -- And the Illinois Supreme Court, we  
23 cited a case on this, right? It says, Neither will the  
24 unsupported speculation of counsel as to what the

1 witness would say suffice. Rather, in making the offer  
2 of proof, counsel must explicitly state what the  
3 excluded testimony would reveal and may not merely  
4 allude to what might be divulged by the testimony.

5 Let's talk about the second issue, relevance  
6 to the proceeding. The State can't say what the  
7 relevance of information is because they don't know  
8 what the information is. Again, they're speculating.

9 And in terms of the public interest involved,  
10 okay, first of all, the State has to show that this  
11 information is essential to the public interest, right?  
12 The only thing the State says is truth-seeking. Well,  
13 if that were the only standard, you'd never have a  
14 privilege because the State could always say, Well,  
15 okay, it's part of the truth-seeking function, right?  
16 He has not identified any public interest. And we  
17 cited the Cagney case for that.

18 I'm not going to really spend much time on  
19 Rules 412 and 413 because it's clear the State has no  
20 obligation to hand over what it doesn't have. And the  
21 notion that it should go out and engage in discovery  
22 battles with third parties just so it can get  
23 information to hand over to the defendant just makes no  
24 sense.



1           THE COURT: How do you respond to the State's  
2 hypothetical concerning the State Police and its duty  
3 to turn over any exculpatory information that the State  
4 Police may have in response to a DNA subpoena, for  
5 example?

6           MR. MANDELL: Well, I think your Honor hit the  
7 nail on the head. I mean, the State is the State,  
8 okay? And one agency -- If it's in the possession of  
9 the State, even though it may be a different agency, I  
10 don't think the State could say, Oh, well that's a  
11 different agency. We don't have to turn over  
12 exculpatory information. That situation just doesn't  
13 apply in this case. It's not even close.

14          THE COURT: I have another question for you.

15          MR. MANDELL: Sure.

16          THE COURT: The State has just argued that you  
17 could give a simple response saying that the outtakes  
18 had no additional information, or although the State  
19 may want to review the outtakes themselves to verify  
20 your statement to that effect, but the State's Attorney  
21 just said that if you indicated or gave a written  
22 response indicating that there -- some of the  
23 witnesses, for example Ms. Morris, refused to testify  
24 or refused to submit to an interview by the third

1 parties, that would satisfy the inquire concerning  
2 Ms. Morris. And if the outtakes don't have any  
3 information above and beyond what's in the aired  
4 portion which you've already tendered to them, then  
5 that basically is enough to satisfy their request for  
6 this additional information. Why can't you just give  
7 straightforward answers to their inquiries like that?

8 MR. MANDELL: Okay. Well, first of all, what the  
9 media does, what a journalist does in his or her  
10 editorial discretion is protected, right? So if they  
11 chose to interview someone or chose not to interview,  
12 that is protected information and it's none of the  
13 State's business.

14 I will say, and your Honor I think was  
15 perceptive about this, the program itself says that  
16 Octavia Morris refused to talk to them and so there are  
17 no interviews or outtakes of Octavia Morris.

18 As far as Michael Hooker, he's in the program  
19 and he's interviewed. And if your Honor saw that, I  
20 think that the State has more than adequate information  
21 to cross-examine him, right? He admitted to a foggy  
22 memory. He admitted to being friends with -- with  
23 Mr. Myles. They don't need to invade the privilege in  
24 order to be able to effectively cross-examine him.

1           THE COURT: Just so the record is clear, I myself  
2 have not viewed the material that I think is available  
3 on Amazon. I had my staff attorney review it and she  
4 was the one who informed me about the statement  
5 concerning that Octavius Morris. I specifically did  
6 not want to review anything except what's admitted into  
7 evidence in this case.

8           But in order to make a determination as to  
9 whether or not the reporter's privilege should be  
10 divested, I do need to know the extent to which the  
11 documentary actually or thoroughly interviews people  
12 that it did interview. And all I know is that a  
13 certain group of people were interviewed and that  
14 Octavius Morris declined to be interviewed, and since  
15 that is one of the witnesses that the State is most  
16 concerned about, I just wanted the record to be clear  
17 that it appears that she didn't submit to an interview  
18 by the third parties.

19           MR. MANDELL: That's correct, your Honor.

20           THE COURT: Is that correct?

21           MR. MANDELL: That's correct. I'd also like to  
22 correct something else the State's Attorney said during  
23 his argument. First of all, during the last hearing,  
24 remember we had a discussion about perhaps the Court

1 looking at some of these things in camera, right? But  
2 the Court specifically said that, I will review the  
3 outtakes after Mr. Dombrowski presents the Court with  
4 the results of the interviews or depositions of the  
5 witness, okay? So the Court never instructed him or  
6 ordered him what to do, whether it be get an affidavit,  
7 but it did raise the possibility of him taking  
8 depositions. And what's more -- That's on page 34 of  
9 the transcript.

10 What's more, on page 36 of the transcript,  
11 the Court said, This is what I'm gonna do: I'm gonna  
12 continue the matter for approximately three weeks.  
13 That should give Mr. Dombrowski an opportunity to  
14 exhaust all of the means necessary to come up with the  
15 information that he thinks may be in the outtakes.

16 Okay. Three weeks. And he basically did  
17 nothing other than send an investigator to Mr. Hooker's  
18 house who left a business card and said, Give me a  
19 call. I mean, I've been practicing for 30 years.  
20 That's just astounding to me. He could have come to  
21 the court and said, You know what?

22 What's worse, he issued -- he goes to the  
23 court and has the court issue a subpoena to discovery  
24 and goes to Maryland to argue that. He then has the

1 court issue a subpoena to Painless Television and goes  
2 to California to -- to argue that. You think maybe he  
3 could walk across the street and ask the court to issue  
4 a subpoena to Mr. Hooker who's the direct source of  
5 information? And if he really wanted -- like, he --  
6 The State talks about, Well, jeez, what if they don't  
7 show up for their deposition? I mean, there's a remedy  
8 for that, right? It's called contempt. It's called  
9 body attachment, whatever.

10 The fact that the State would sit here and  
11 argue that they've exhausted all means, right, and the  
12 cases talk about -- in one case the prosecution was  
13 ordered to take 64 depositions, right? Here, or the  
14 McCullough case that your Honor referred to, right,  
15 that was a Grand Jury investigation. And the Appellate  
16 Court reversed a divestiture because the State didn't  
17 take three depositions, right?

18 Here -- And look at those investigator  
19 reports. Okay, they went to -- they went to Hooker's  
20 house and talked to his sister. And then the report  
21 says, and we made some other attempts to go to his  
22 house to find him, right? They don't say what -- when  
23 the attempts were, what they did, who they talked to.  
24 And they don't really say that they tried to find him,

1 they just went to his house.

2           And the same thing -- I mean, I'm not going  
3 to spend time with Octavia Morris because she was never  
4 interviewed, but -- so the -- the State hasn't even  
5 come close to exhaustion.

6           And, respectfully, counsel pays no -- he  
7 gives no respect to the reporter's privilege. It's all  
8 just about what the State wants and that's why he  
9 didn't cite -- Here he is seeking to divest the  
10 privilege under the Act. He didn't cite one single  
11 case interpreting the Act.

12           Let me just look at my notes, your Honor.

13           He said there's been no showing that trying  
14 to do a deposition would solve the problem. Well, it's  
15 not anybody's burden but the State's to show  
16 exhaustion. And your Honor gave him ample time. And  
17 I'm sure that if they came back and said, Your Honor,  
18 the deposition can't be for another week, your Honor  
19 would have extended the deadline, right? But they  
20 didn't do that, and it's too late, Judge. We've been  
21 talking about this for months now and they just haven't  
22 done it.

23           And I think there's no -- there's no  
24 prejudice to the State for just going ahead with this,

1 right? They have the broadcast version. They have the  
2 interview of Mr. Hooker. They have ample information  
3 with which they can cross-examine him.

4 Let me just make sure I've -- Okay.

5 In re Special Grand Jury Investigation, Illinois  
6 Supreme Court case that we cited here, right, involved  
7 a Grand Jury information into who leaked confidential  
8 court records, right? The Court said, We think it's  
9 clear that the statute requires more than a showing of  
10 inconvenience to the investigator before a reporter can  
11 be compelled to disclose his sources.

12 Here, the State has not showed anything other  
13 than inconvenience.

14 THE COURT: Anything else?

15 MR. MANDELL: I think that's it, your Honor. If  
16 the Court has no questions, I think that --

17 THE COURT: I have no additional questions.

18 MR. MANDELL: You know, we're talking about First  
19 Amendment protections here, right? And the reporter's  
20 privilege serves more than just preserving the pipeline  
21 of information from confidential sources to the press,  
22 right? It also prevents the State from using the  
23 media, using journalists as their investigative tool.

24 They talked to Octavius Morris. They can

1 find Hooker, I'm sure. He's got an FBI number. He's  
2 got an IR number. They know how to find him, your  
3 Honor.

4 And so for all those reasons, I think it's  
5 important to recognize that this is an extremely  
6 important right and shouldn't be divested without  
7 serious consideration or a very essential need.

8 THE COURT: Thank you.

9 MR. MANDELL: Thank you.

10 THE COURT: Mr. Dombrowski, this is your request  
11 to divest the reporters of their privilege so you get  
12 the last word.

13 MR. DOMBROWSKI: Thank you, Judge.

14 Judge, you just heard from counsel and all  
15 counsel says is because there's a reporter privilege,  
16 it -- the State cannot get the information. As I said,  
17 the only thing that the nonparties here have cited as  
18 to the basis for not complying is that, Well, we don't  
19 have to comply because there is a reporter's privilege  
20 out there, Judge, and somehow this would affect  
21 reporters and it would affect our clients.

22 First of all, we haven't heard anything about  
23 how this would negatively affect discovery, how it  
24 would negatively affect Painless Productions, how it



1 would negatively affect Mr. Hooker or Ms. Morris or the  
2 petitioner himself or anyone else.

3           The only thing that they say and the only  
4 reason that they're -- that in their opposition that  
5 they filed is they simply say that we don't have to  
6 turn something over simply because it's a court case  
7 because we don't have to worry about the truth-seeking  
8 process. Well, they may not have to worry about that,  
9 but the State does.

10           It's interesting that they are up here  
11 arguing that they know what the State needs. That's  
12 interesting. But that won't hold up in regards to  
13 whether or not we are having a transparent hearing, a  
14 public transparent hearing so the public knows that  
15 when people come before the Court who are saying that  
16 they are actually innocent, when they have witnesses  
17 that they will present who decide to talk to media,  
18 that in fact that the information that is presented is  
19 a complete information so everybody knows that we're  
20 going to be able to do a transparent hearing.

21           That's not as counsel has just said their  
22 issue, but they can hold and they can talk about what  
23 the State needs and what the State doesn't need, and  
24 they can talk about how an investigator should work and

1 how they shouldn't work. But they are not the State.  
2 They are not an investigative company. We have not  
3 heard about anybody having any background in State  
4 prosecution so that they can make these just conclusory  
5 statements.

6           What we have simply heard from them is in  
7 their filings beratement referring to the  
8 investigator's from the State's Attorney's Office as  
9 Keystone Cops. Beratement is not a way to advance  
10 opposition that demonstrates that there is some sort of  
11 cause for the reporter's privilege.

12           THE COURT: Mr. Dombrowski, there is beratement in  
13 their filings, which I overlook, but there's also case  
14 law there. There's also statute there. Do you have  
15 any case law in support of your position?

16           MR. DOMBROWSKI: Well, Judge, as the State has  
17 said many a times, the nonparties have not cited any  
18 cases involving post-conviction cases. And a  
19 post-conviction case is different than a Grand Jury  
20 proceeding. It's different than a trial -- criminal  
21 trial --

22           THE COURT: Do you have any cases citing  
23 post-conviction proceedings --

24           MR. DOMBROWSKI: I have --

1 THE COURT: -- that are in your favor?

2 MR. DOMBROWSKI: I have done the research, Judge,  
3 and I have seen not one post-conviction case with the  
4 reporter's privilege.

5 THE COURT: Do you have any cases not involving  
6 post-conviction proceedings that support your position?

7 MR. DOMBROWSKI: Judge, the cases that have been  
8 cited do support the People's proceed- -- the People's  
9 position, because what cases that counsel has cited are  
10 not applicable in the background and the reasoning  
11 behind the holdings of those cases.

12 Citing general case law is not supportive of  
13 their position. They cite to cases that involve libel  
14 cases or defamation cases. That's not what we're  
15 dealing with here.

16 THE COURT: They also represent cases that involve  
17 criminal matters.

18 MR. DOMBROWSKI: That's true. And the standard of  
19 ruling for libel and defamation is different than in,  
20 say, a criminal case. And in a criminal case, the  
21 cases that they have cited are not in regards to the  
22 proceedings and do not have the same situation that the  
23 parties are in as what we have here in the  
24 post-conviction matter. That --

1           THE COURT: But the statute itself doesn't make a  
2 distinction concerning criminal cases or civil cases or  
3 post-conviction cases, it just refers to the Court and  
4 any type of case.

5           MR. DOMBROWSKI: Well, Judge, it -- in a  
6 post-conviction case, it definitely is different than a  
7 criminal case and therefore the relevant portions and  
8 the exhaustion portions and the identification of  
9 sources portions, Judge, are different in the  
10 post-conviction matters. There is not one case that  
11 they have cited, Judge, that talks about in a  
12 post-conviction matter the State's obligation under the  
13 Illinois Supreme Court Rules.

14                   There is not one case that they cite that  
15 deals with post-conviction discovery which is what  
16 we're dealing with. We're not doing investigations  
17 here like in a Grand Jury proceeding. We are doing  
18 post-conviction discovery. And that is the whole  
19 difference, Judge.

20                   I mean, obviously I can't explain why there  
21 are no post-conviction cases out there. I've done  
22 Lexis searches. They simply are not there, which means  
23 that nobody has decided to appeal and bring them before  
24 an Appellate Court to make a ruling, or to bring them

1 before the Illinois Supreme Court to make a ruling.  
2 That's not supposed -- That cannot be held against the  
3 State, Judge, in this particular situation.

4           We are not using the non -- we are not using  
5 the nonparties here, Discovery or Painless, as an  
6 investigation tool. What we are doing is that we have  
7 a party who is -- who has failed to comply or even  
8 investigate themselves an issue and we are simply  
9 trying to complete the discovery process under  
10 post-conviction discovery. We have demonstrated that  
11 there's good cause in order to do this. And then on  
12 top of it with the reporter's privilege, we have shown  
13 that it is relevant, that it is specific information  
14 that we have been seeking from the very beginning, even  
15 with the issuance of the material witness subpoena, it  
16 has been specific. We have been talking about specific  
17 instances, and simply the matter is, Judge, is that we  
18 have these -- the nonparties here and they are simply  
19 saying we do not wish to comply.

20           If it was the defense asking for this  
21 information, it would be different. But we do not wish  
22 to help the State or comply with the State. Okay.  
23 They've made their point. They made their position.  
24 But does that mean that they -- that the rationale of

1 simply, Well, you're the State so we're not going to  
2 help you, is that a rationale that is covered under the  
3 reporter's privilege?

4           They offer nothing else, no other reason.  
5 We're not talking about compelling people who are  
6 unknown. We're not talking about divesting information  
7 that would be secretive in any process or that would  
8 harm anybody or anything like that. We are simply  
9 trying to make sure that we have an impartial, fair,  
10 transparent post-conviction hearing.

11           I mean, this -- If -- Again, if the shoe was  
12 on the other foot and the petitioner was up here asking  
13 for the divestment, we've heard from -- we've heard  
14 from the -- we've heard from the nonparties as I said  
15 in California that it would -- that it might be  
16 different. They admit that they are treating the  
17 petitioner in a different framework than the State.

18           Again, the State is not here to prosecute  
19 anyone. It is not here to try to convict someone.  
20 That is already done. The State is now the defendant.  
21 The State is now on -- before this Court being the  
22 respondent where the petitioner is saying that there  
23 was something wrong with the trial that the State  
24 conducted, meaning the one attorney -- the attorney was

1 ineffective for not calling Mr. Hooker, and that there  
2 was an issue regarding Ms. Morris in regards to a  
3 detective who was part of a lineup.

4           The fact of the matter is, Judge, is that the  
5 information that the State is seeking is simply so it  
6 can comply with the Supreme Court Rules to make sure --

7           THE COURT: Mr. Dombrowski.

8           MR. DOMBROWSKI: Yeah, I'm sorry, Judge.

9           THE COURT: You're repeating --

10          MR. DOMBROWSKI: I'm repeating myself.

11          THE COURT: -- yourself over and over and over  
12 again.

13          MR. DOMBROWSKI: I'm sorry, Judge.

14          THE COURT: Thank you.

15          MR. DOMBROWSKI: My apologies.

16                 But this is the crucial reasoning, Judge,  
17 that need -- that -- for the reason as to divest the  
18 reporter's privilege. And for the nonparties to play  
19 this important, important reasonings down and going,  
20 Well, it's not that important, they have enough. There  
21 is no case law that they've cited that says that the  
22 State only has to have enough as to the other party's  
23 opinion. So they have not shown anything, Judge,  
24 that -- as to why the reporter's privilege here should

1 not be divested, and they simply just say, Well,  
2 reporter's privilege. But they have no underlying  
3 reasoning for it. The State does and it has told the  
4 Court many a times as to why.

5 So, therefore, Judge, the State is asking you  
6 to divest the reporter's privilege for these extremely  
7 important reasons to make sure of a transparent  
8 hearing, to make sure that we can proceed to a hearing  
9 where the Court will be allowed to hear all the  
10 information that is available and so nothing is hidden  
11 from the parties or from this Court.

12 THE COURT: Thank you.

13 The Court finds in applying the reporter's  
14 privilege statute, 725 ILCS 5/8-901 through 909, that  
15 the State has not satisfied requirements of the  
16 statute. The State has not set forth the specific  
17 information that is sought and why that information is  
18 relevant to the proceedings. The State cannot say with  
19 any amount of specificity exactly what they are  
20 seeking. They refer to the general truth-seeking  
21 function but that is not enough specificity under the  
22 statute. The State has not indicated why the  
23 information that was already tendered is not enough to  
24 satisfy the protection of the public interest. The



1 State has already received a copy of the aired portions  
2 of the documentary. And the State simply has not met  
3 the third requirement that requires you to exhaust all  
4 available sources of the information.

5 Under the statute, the State must prove by a  
6 preponderance of the evidence that they have  
7 required -- or satisfied all the requirements of the  
8 statute. They have failed to do so. So their motion  
9 or application to divest the reporters of their  
10 privilege is denied. Motion to quash the subpoenas is  
11 granted.

12 Are there any other issues that we need to  
13 address before -- not regarding the nonparties, but now  
14 the ones who are the parties in this proceedings,  
15 Mr. Myles and the State? We have an August date for  
16 hearing. Is there anything else that we need to  
17 address before that August third-stage hearing date?

18 MR. KENNEDY: Judge, I don't believe that there's  
19 anything that we need to address. I would just state  
20 for the record that I believe that we've complied with  
21 our discovery obligations and I was replying to the  
22 prosecutor's point otherwise.

23 THE COURT: I'm going to give the parties an  
24 interim status date. Today is June 27th. I'm going to

1 give you a date at the end of July, probably July 29th  
2 via Zoom, to make sure that everything is in place for  
3 the third-stage hearing that is set for August 29th.

4 MR. KENNEDY: I'm sorry, Judge. I didn't catch  
5 the date.

6 THE COURT: The next court date in this matter is  
7 July 29th via Zoom.

8 MR. DOMBROWSKI: Judge --

9 THE COURT: For final status.

10 MR. DOMBROWSKI: Judge, can we do a non-Friday  
11 date, please, because I have a Bridgeview call on  
12 Fridays?

13 THE COURT: What about July 28th?

14 MR. DOMBROWSKI: The 28th would be fine, Judge,  
15 yes.

16 THE COURT: July 28th.

17 And just so the record is clear, I was  
18 applying the Illinois statute. Under California  
19 statute there would be an absolute privilege. I was  
20 applying the Illinois statute. So under either  
21 statute, the California or the Illinois statute, the  
22 State had failed to carry its burden. And the Maryland  
23 and New York statute this Court finds did not apply  
24 because there was not sufficient contact under the

1 Illinois law involving such matters. So in this  
2 Court's opinion, it was a matter -- it was a question  
3 of whether or not the California statute or the  
4 Illinois statute apply, and this Court finds that the  
5 State has failed to meet its burden either under the  
6 Illinois or the California statute.

7 MR. DOMBROWSKI: Yes, your Honor.

8 MR. MANDELL: Thank you, your Honor.

9 (Whereupon the above-entitled cause  
10 was continued to July 29, 2022.)  
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1 STATE OF ILLINOIS )  
 ) SS:  
2 COUNTY OF C O O K )

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4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
5 COUNTY DEPARTMENT - CRIMINAL DIVISION

6 I, Kristen M. Parrilli, an Official Court  
7 Reporter for the Circuit Court of Cook County,  
8 Illinois, Judicial Circuit of Illinois, do hereby  
9 certify that I reported in shorthand the proceedings  
10 had on the hearing in the above-entitled cause; that  
11 I thereafter caused the foregoing to be transcribed  
12 into computer-aided transcription, which I hereby  
13 certify to be a true and accurate transcript of the  
14 proceedings had before the HONORABLE CAROL M.  
15 HOWARD, Judge of said court.

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KRISTEN M. PARRILLI, CSR, RPR  
CSR No. 084-004723  
Official Court Reporter  
Circuit Court of Cook County  
County Department  
Criminal Division

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Dated this 6th day  
of July, A.D., 2022.