The Unpublished Chapter
Hope and Despair

At the recommendation of my editor, much of the material in this chapter was omitted from the book to keep the story focused on the more interesting issues dealing with Scott Walker and Brad Schimel's lack of ethics. It deals primarily with the ugliness of state personnel actions and the abuse of power and authority by the governor and attorney general in pursuit of their own agendas at the expense of someone else's career. Namely mine. However, it should also serve as a warning to those classified civil servants who might be asked to answer the call to leadership by politicians. If they could do this to a cabinet secretary with an unblemished record of service, they can do it to anyone, unless the legislature steps in to fix things.

Walker and Schimel will undoubtedly claim that I am nothing more than a disgruntled former employee. They will also make claims about being fired for encouraging a state employee to evade the public records laws. However, my bet is you will never hear them discuss what that "record" was or why it even existed. The fact was that the documents were nothing more than my transfer appeal, which outlined their violations of state law, state policies and abuses of authority and my letter to the governor's chief of staff, Rich Zipperer. No wonder they don't mention them. The media took the bait and ran, but never did dive into the more important question of why those documents were required in the first place.

At the end of the day, the transfer appeal, my letter to the chief of staff and my conversations with the governor would have never been necessary if the governor and the attorney general had simply obeyed the law and state policy. I imagine that at some point Scott Walker will want to ask Brad Schimel "Why didn't you just give him his job back, like the law required?" Instead, they conspired to create a fall-guy and wave their arms about public records issues, when they are the ones that created the basis for those records.

Schimel's position that I "Directed a high-ranking state official to destroy a public record" was false, intentionally vague and misleading. Initially, he tried to lead people to believe that the "record" was my transfer appeal document. Unfortunately, Schimel soon realized that the governor's chief of staff acknowledged in his letter to me that he knew the transfer appeal document was a draft and therefore not subject to open records laws. So, his next move was to claim that the "record" was the actual letter to Zipperer and not the transfer appeal document. That was a convenient mid-stream switch, but it did not match Schimel's allegations. As you will see, I refer to "it" twice in the document, meaning the appeal document and not "this" referring to the letter. For Schimel, obfuscation was the key to a darker intention he had; to give his friend my job. Here is the letter that Schimel claimed to be the "public record", which involved nothing more than privately sharing my opinion with the governor's chief of staff, and it resulted in ending my career:

Hi Rich,

I know that you didn't want me sending this electronically or to the office because of the records issue, so I elected instead to send it to your home in writing and would ask that you feel free to shred it once you've looked it over. Nobody will know that I sent it and this is strictly between you and me.

I understand the concern the administration has over creating records Rich, but I can't let that harm me or my family worse than we've already been harmed.

As an attorney, I'm guessing that you would want to know how strong your position is before you advocate for me or the boss. If you don't, then you won't be prepared to press forward on solid ground. As the governor said to me the other day, "it's time for Brad to step in here and make the right decisions and stop letting his staff make them for him. This is just wrong." What I'm seeking is nothing more than what the law guaranteed me when I took the DOC job.

You and I both know that this is strictly a personal issue between Matthews and Connell in trying to keep Matthews in place. I also know they have been talking to JB, who tried this same stunt with Jim Warren when he was administrator and Jim just elected to retired. JB is still pissed at me because I didn't promote his wife into the chief legal position and went to Eric in an attempt to override me. That's where his great advice stems from and I would rather not dredge that all up. They are trying to push me the same way and I know that Connell made the comment "he'll probably just leave and go get a police chief job somewhere". I won't be doing that and have at least 10 more years to work.

My proposed solution is at the end of the document, but you should read it all since you and the boss are both mentioned in it. I kept those references to a minimum intentionally. I absolutely do not want to file a law suit or engage attorneys in any way Rich, I just want to go back to the job I should have never left. But if I'm forced to advocate for myself, it will be with the usual effort I put into everything. Thanks Rich and I appreciate anything you can do to fix this mess.

Ed

What in that letter could be seen as information that would justify ending a 30-year public servant's career who had never received so much as a verbal warning in his entire career? Was there vital state agency information in it? Of course not, but that is why *you will never hear Walker or Schimel say <u>what the record was</u> that they keep trying to allude to*. It's part of their continued efforts to deceive the public. Unfortunately, the media never asks that follow up question and accepts the veiled dishonest comments of the two highest elected officials in the state.

Did I direct the chief of staff to do anything? No, I simply said he could do what he wanted with it since it was a draft. When I said that it was "strictly between he and I and nobody needed to know about it", that was relative to a comment Zipperer made to me the day before on the phone when I told him that he should read the draft because it outlined the restoration laws. His response was "Wouldn't that look great, you having to brief me on the law". You see, Zipperer was a lawyer and he didn't want to be embarrassed telling the governor that I had to brief him on the law.

Walker and Schimel were most concerned with the opening sentence of my letter to Zipperer, where I alluded to their manic propensity to avoid creating records. They were hyper sensitive to that issue in light of Secretaries Bildsten and Jadin coming out publicly on the governor and his administration's aversion to creating records. What they should have given more attention to was the end of the letter that said "*But if I'm forced to advocate for myself, it will be with the usual effort I put into everything."* They don't understand determination that isn't tied to donations or lobbyists. They don't stand to defend themselves, they let other groups pay someone to do that for them.

Very troubling was the fact that Schimel chose to assign Paul Connell, who is Deputy Attorney General as I write this, as the person to "investigate" the matter and ultimately to organize the plan to terminate me. Even the most simple-minded prosecutor would know that you don't assign the investigation to someone who is named in the material being investigated. Connell was obviously prejudice against me as his name is mentioned in the letter to Zipperer. However, common sense had nothing to do with this; it was all about controlling the outcome. The DOJ could not take the chance of having an outside, neutral and detached investigation being done. Why? Because they could not take the chance that someone would see the case for exactly what it was. Political assassination.

We had started down the path in pursuing my complaint with the Wisconsin Employment Rights Commission (WERC) in hopes that truth, the law and long-standing state policies would persevere. The commission is made up of three commissioners, who are political appointees of the governor and beholden to him for their jobs. Typically, they could do their jobs without any concern of running afoul of the governor's office. My case however was not typical, and in fact, nothing like it had ever been before the commission. The WERC's mission is broad but includes hearing appeals of state employee personnel actions.

In normal cases, the WERC staff attorneys would hear the case and make their recommendations to the commission for approval. Those attorneys were career civil servants who understood the intricacies of state personnel law. Prior to my case, the full commission had not heard a case in years, but as I would find out, exceptions would be made just for me.

On April 8, 2016, a week before I was terminated by the DOJ, I went to the Wisconsin Employment Relations Commission to deliver my final version of the transfer appeal. When I arrived, the lady at the desk was very nice. I told her that I was dropping off a transfer appeal, and she asked what my name was. I told her, and she gave me a half-smile, saying, "We were wondering when you would be coming in." I had questions about how the process worked, as I had never been personally involved with the WERC. She asked if I would like to talk with one of the staff attorneys, and I said that would be great.

One of the staff attorneys came out to greet me, and we went into the conference room to talk. I explained that I was appealing the transfer the DOJ had initiated against me through a constructive demotion and ending my law enforcement career. He fully understood the issues, as he had been following it all in the media. He just shook his head and said, "We have no idea what these people are thinking about. The law is clear on this."

He then advised me that the full commission had already decided, before I even submitted my appeal, that they would personally conduct the hearing and render judgment. The hair on the back of my neck stood up when I heard that because I now faced the prospect that three political appointees of the governor, the same guy that wanted me and my issues to disappear, and the same political party as the attorney general, would be the only ones hearing my case and judging my credibility.

The system I was forced into was controlled top to bottom by politicians who wanted me gone. Why would they suddenly insist on going outside the norm and hearing my case personally? The answer seemed obvious. They needed to control the process and the finding, start to finish, leaving no room for an independent and neutral person to see the case for what it was.

I left the WERC and called Dan Bach to tell him what I had learned. Dan shared my concerns, and we spoke about the appeal process. Dan was always an honest broker of the truth and a friend. He told me

that I might want to consider just walking away because he had seen firsthand how nasty the DOJ could be and knew they would stop at nothing to destroy me. In hindsight, I wish I had done exactly that. However, I didn't see any alternative to fighting, because they had already done the damage to my family and me through the media. I had to try and set the record straight. Dan was honest enough to tell me that employment law was not his area of expertise, and he would understand if I wanted to look for an attorney that would better serve my family and me.

The following Friday the DOJ followed through on their blackmail threat to either agree to a "negotiated disposition" or they would terminate me. They stripped me of over 2,000 hours of *earned* sick time, which we needed to pay for my family's health care when I retired. I could never understand how they could take away time I *earned* and deprive me of that *earned* benefit. Because that is exactly how you accumulate sick time according to state personnel rules, you *earn* it. But that was only one loss in the many we would suffer as Walker and Schimel worked to destroy my career, my reputation, and my future.

One of Dan Bach's last acts as my attorney on the case was participating in a conference call with the WERC and the DOJ to discuss scheduling of the hearing. Dan advised that it made sense to have the transfer appeal and the termination appeal heard together, explaining that they were both inextricably bound together. If the DOJ had not blatantly violated the state's restoration laws and policies, then there would have been no letter to Zipperer, no appeal, no action at all. The DOJ objected and insisted that the termination be heard and decided first, arguing that if my termination was upheld, then the rest didn't matter. The chicken and the egg. Obviously, it all mattered to me, but they wanted a narrow focus to limit our ability to bring out the truth.

The WERC, not surprisingly, sided with the DOJ even though my transfer issues occurred first and led to the appeal, and my transfer appeal was filed before the termination occurred. The WERC cited their own "*policy"* that required both sides to agree if cases were to be consolidated. So, as a result of the WERC's self-established "policy", that I could never find documented anywhere, the DOJ would have their way and limit what the WERC would have to consider. Very convenient.

When I started looking for an attorney who could represent us, Lester Pines immediately came to mind. Lester was very well known in Wisconsin, and I had the opportunity to watch him in action when he represented labor unions in the arguments before the Wisconsin Supreme Court on Act 10. He was also the recommendation of several attorneys and former judges that I had spoken with.

I went to the website for Lester's firm and followed the links to his personal page. There he was, with his experience and credentials laid out, and in large bold letters below his name was one word: UNDETERRED. That one word convinced me that we needed Lester. I was warned that he was not cheap, but he produced results. So, I wasted no time in contacting his office and arranged to meet with him. When I hung up the phone, I felt a warm sensation run through my body. It was a feeling I had not had in months. It was refreshing. It was hope.

I went to meet with Lester and explained everything that had happened. He is an incredibly good listener and took notes on our discussion. He empathized with me about the nightmare that my family and I had been dragged through. During our conversation, Lester made it clear that we had two separate battles ahead of us. The first would be the legal issues, and the second would be the "public relations" efforts in response to the intentionally misleading media statements and actions the DOJ had been engaging in. That was music to my ears, as the true story was not being told. He also said that we

would need to get out of the state court system as soon as possible because the Republicans owned the supreme court and would appeal all the way up to get their way.

He explained that he wanted to review the case and get back with me. I then asked him if he could take the case on a contingency basis, as my family lived check to check with three kids in college and bills to pay. Besides, this was a clear-cut case of David and Goliath, which would likely be high profile and seemed like the type of case that a famous "undeterred" attorney might want to take. He said he needed to speak with his partners first.

When I left Lester's office, I was convinced that he was the right man for the job. He had explained that the DOJ's violations of the state restoration laws and violations of state policies were slam dunks. He further explained that no matter how bad they tried to make me appear, they terminated a longstanding state employee with an unblemished record for what amounted to a desperate letter begging for the governor to step in and address the violations of law the DOJ was engaging in. He felt that, at the very least, termination was a gross overreach.

A couple of days later, I received an email from Lester saying that he was willing to take my case, but he could not do it on a contingency basis. He advised that he would need a $15,000 retainer but did not think there was any way his representation costs would get that high. I felt my stomach sink as hope was evaporating before my eyes. After a night of discussions with my family and a few close friends, I called one of my closest friends in the world, a man who had been my father's best friend and had been a second dad to me since I was a boy. Without hesitation, he said, "Call him back and tell him you want him to take the case. I'll wire him the funds." My eyes teared up as I thought about what he had just done without hesitation, but that was how he was. He had been like that my whole life. He had also been a big Scott Walker supporter, but not anymore. And he would make sure that all of his friends who were Walker supporters would know the truth also. I called Lester and told him that we would go forward, and we set up another meeting to discuss the strategy.

When I went to that meeting, Lester introduced me to Susan Crawford, whom I had previously known as Governor Doyle's legal chief and the very person who explained the restoration laws to me when I was apprehensive about taking the appointment as administrator of Wisconsin Emergency Management. It was nice to see another face I had worked with in the past.

Susan was always a straight shooter, albeit a little cold in her delivery. She had reviewed the documents I had sent over, and she agreed with Lester that the transfer issues were clear-cut law and policy violations by the DOJ. She thought the termination issues would be trickier because of the way the DOJ had obviously been spinning the story that I was trying to encourage someone to evade the open records laws. She said that the termination appeal would have to be "perfect" because we would have only one bite at the apple with the WERC. Lester agreed that we could not afford to lose at the WERC because if it went to a court appeal, the court could only consider the record created at the WERC. We had to bring our very best and most convincing case to the WERC and make it count.

Before we had engaged Lester, in June 2016, I had also filed a whistleblower complaint with the Department of Workforce Development (DWD) that I had started while still working with Dan Bach. The DWD was the same state agency that had rejected my application for unemployment, stating that I had been terminated for cause and therefore not eligible without a hearing. How surprising. It was ironic that in the assigned seats of the cabinet meetings, I sat right next to the DWD secretary and had enjoyed many conversations with him. Now I was toxic.

The basis of the whistleblower complaint was simple. The Wisconsin statutes say that a state employee *"may not be retaliated against for disclosing information regarding a violation of any state or federal law, rule or regulation, mismanagement or abuse of authority in state or local government, substantial waste of public funds or a danger to public health or safety."*

There was a caveat, however. *"Before disclosing information to anyone other than an attorney, collective bargaining representative or legislature, the employee must do one of the following: disclose the information in writing to the employee's supervisor, or, disclose the information in writing to an appropriate governmental unit designated by the Equal Rights Division."*

In my case, I had repeatedly advised the governor and chief of staff while they were my supervisors, that the attorney general was violating state law, state polices and abusing his authority. I had provided that to them in writing and orally. I had also advised Connell, my future supervisor at that time, and his room full of attorneys on the ambush conference call that I believed they were violating state laws, state policies, and that the attorney general was abusing his authority. Lastly, the DOJ was made aware, in writing, by coming into possession of my draft appeal that Zipperer sent to them, that I was alleging violations of state laws, violation of state policies, and abuses of authority by Schimel.

Once I had engaged Lester and Susan as my attorneys, they stepped in and answered the list of questions sent to me four months after I had filed the complaint by the DWD Equal Rights investigator who was assigned my case.

In a letter to the investigator on November 9, 2016, Susan noted: "Wall observed mismanagement, abuses of authority, and violations of state law by his supervisors at the DOJ. He disclosed the information first to his supervisors." She concluded by stating that the evidence was clear that "the Department of Justice terminated Wall in retaliation for making protected disclosures under the Whistleblower Act."

It would be months before the DWD Equal Rights Division would respond, but when they did, we were pleasantly surprised. The investigator sent us a letter saying they had found "probable cause" that the DOJ violated the Whistleblower Protection Act by retaliating against me. More hope! The letter from the DWD opened by stating:

There is probable cause to believe the State of Wisconsin Department of Justice may have violated the Whistleblower Protection Law, sec. 230.80—230.89, Stats., by:

A. Taking any retaliatory action because the Complainant Lawfully disclosed, or the Respondent believed the Complainant had disclosed, information under sec. 230.81, Stats.

But that turned out to be false hope. The DOJ subsequently filed a motion to dismiss, and the administrative law judge granted that motion without so much as a hearing on the matter. Shocking. The administrative law judge, who worked for the governor's appointed cabinet secretary, dismissed my appeal citing two issues. First, there was a recent Wisconsin Supreme Court decision concerning a DOJ supervisor who had her case dismissed. The DOJ had taken that case all the way to the Supreme Court to get the decision they wanted. The argument in that case was focused on the fact she had notified her supervisors that she suspected law violations and misuse of public funds by Attorney General J.B. Van Hollen. The DOJ contended that because they already knew about her claims, and disagreed, stating that her information was nothing more than her opinions. This would be the same argument the DOJ would use in my case, even though the laws and policies were crystal clear.

The fact that I had raised the concern that they were violating state restoration laws, state policies, and abusing authority was irrelevant in their mind since they were already aware of it but disagreed with me. In other words, as long as they knew they were violating the law and could twist it into something else, telling them about it didn't constitute a whistleblower action. Essentially, the Wisconsin Whistleblower law had become useless.

The second reason the judge dismissed my whistleblower case was a definitional loophole. There was a carveout in the law that said if you were in an appointed position in the unclassified service, then you were not technically a state employee and had no standing. That was shocking in and of itself. The idea that as an appointed person in state service you were not "technically" a state employee was absurd. You collected a paycheck from the state. You had full benefits from the state. You earned retirement, sick time, vacation time, and personal time from the state. You did business for the state, and your business cards indicated you worked for the state. The loophole was particularly absurd in my case since I was a long standing civil service employee who was on approved leave of absence from my position and, therefore, according to the Department of Administration, still in active state service as a state employee.

Why was this loophole in there? Because the law was written by politicians who would be making those political appointments, and they didn't want anyone having legal standing to question them if there was a violation and they wanted to fire them. It was another example of politicians protecting themselves. How much more powerful could a complaint about violations of state law and policies be than one raised by the head of a state agency in a cabinet position?

Having lost my whistleblower case without so much as a hearing, and not able to afford taking it to court on appeal, all we had left was my termination appeal at the WERC. The WERC advised us they wanted to have a conference call to discuss the logistics of the case and administrative matters. WERC Chairman James Scott, Lester, Susan, me, and some DOJ attorneys were on that call. Lester advised them that we would be calling three different character witnesses, and the DOJ objected.

The DOJ stated that my character witnesses were not pertinent to the case as the only thing they would be arguing would be the question of whether termination was appropriate, and they had no intention of questioning my credibility. Chairman Scott added, "Mr. Wall was appointed by Governor Walker, the same governor that appointed those on this commission, to run his biggest cabinet agency, so I think he comes through the door with pretty good credibility." Lester made the decision at that point to only use one of my character witnesses so as to not annoy the WERC.

Scott then said, "Mr. Pines, I'm not telling you how to argue your case, but it sounds to me like the DOJ is going to limit the scope of their case to a single question: Is it enough to terminate a state employee because they may have violated the open records law?" He then asked a rhetorical question along the lines of, "If someone misinterpreted the open records law, is that enough for them to lose their job?" Scott's tone of voice made it seem as though he was not inclined to agree with the termination being appropriate.

Scott also pointed out that he was presently involved in a lawsuit dealing with open records, as were the attorney general and the governor. He asked another rhetorical question when he said, "If we lose those cases, should we lose our jobs over how we interpreted the law?"

In hindsight, I think that this was where the battle was lost on my appeal. I believe we were duped by the DOJ and the WERC. Lester and Susan agreed with Chairman Scott's assessment and decided at that point that they would focus their entire prosecution of my case on the single issue that termination was too severe. This tact worried me greatly because of what Lester and Susan had explained to me. We had to bring our best case—our *whole* case. If we limited the arguments on my case to a single question, then they would not have to consider the plethora of violations the DOJ had committed in their reckless pursuit to push me out of the agency.

If we had made the WERC consider the *full* list of things that the DOJ had done, it would have forced them to address those issues in their deliberations and decision. They call it the scale of justice for a reason. You put as much pertinent information on your side of the scale that you can. The list of wrongs included:

- Guarantees by the DOJ and the governor of my restoration if I accepted the DOC appointment
- The laws and state policies concerning restoration that had been blatantly violated
- The truth behind Lincoln Hills that the DOJ used against me
- Punitive and unprecedented administrative leave provisions that included:
    - Not to be issued a state employee ID card (as required by state policy)
    - Not to enter into any DOJ facility
    - Not to have contact with any DOJ employees
    - Not to take any action as a DOJ employee
    - Not to be issued any DOJ equipment or phone
- Removal from my civil service law enforcement position without just cause or due process
- No warning given by DOJ of their "investigative interview" as required by state policy
- No advisement of right to counsel before being interviewed
- No investigation beyond a single question being asked
- Connell leading the investigation when he was named in the document he was investigating
- DOJ violated the open records law *twice* in efforts to claim I attempted to evade the same law
- Connell's misleading comments about his involvement in decisions and actions
- Historical method of avoiding public records by the governor's office
- False statements by the attorney general and his staff
- Zipperer's acknowledgment that I offered to bring the draft appeal to his office
- Zipperer's acknowledgement that he knew the document was a draft
- No specific information provided for me to defend against before termination

Was it any wonder that both the DOJ and the WERC wanted us to focus on a seemingly simple single question when so many things should have been part of the equation? If they had been forced to address the plethora of issues listed above, they could not so easily escape their responsibility.

Part of the process for preparing for the hearing was conducting depositions. Naturally, I wanted to depose the governor and the attorney general, but the WERC said they would be limiting that ability based on *their* interpretation of the need. My guess was they wouldn't see the need to put their political friends and employer through depositions.

Lester ultimately decided that it would be to our advantage to try and keep the governor's office somewhat friendly, based on a few conversations he had with someone in their legal office. My experience with the governor's office had taught me that when they were talking quietly and seemed

to be supporting you, that a knife to the back was in your immediate future. Unfortunately, I did not understand that if we did not call Walker or Schimel to be deposed or testify, that they would never be called because of the way the WERC appeal process was structured. Aside from making disparaging or evasive comments in the press, they would never have to testify under oath about the truth. Not pressing the issue of calling the two men who were at the basis for all of the actions we were engaged in was in hindsight a mistake. There would be nothing on the record to hold them accountable for, which was just the way they liked it. No records, no problems.

The key depositions that we would take were from Senior Counsel Paul Connell, Deputy Attorney General Andy Cook, and the governor's Chief of Staff, Rich Zipperer. Many important things came out of those depositions that underscored the mission they were on.

The first to be deposed on August 25, 2015, was Deputy Attorney General Andy Cook. I hadn't met Andy before the depositions and found him to be a pleasant enough fellow for the very limited time I would be near him. I would hear later from DOJ staff that they found him to be intolerable and mean at heart. He seemed nervous to be in the deposition, but Lester put him at ease. The deposition went on for quite a while, and many salient points came out. In this one, Cook reflects on the DOJ's actions in undermining the restoration laws and the effort they put into convincing Zipperer that they felt they were on solid ground in doing so:

Lester: *Tell me what you remember you said to Mr. -- well, tell me what you said to Mr. Zipperer and what he said to you.*

Cook: *It was generally a call from Mr. Zipperer to me, wondering if we had looked at the restoration laws.*

Lester: *Mr. Zipperer called you?*

Cook: *Correct -- or -- he and I speak almost daily. So, I can't recall if he called me, but it was -- he was the one that began the conversation.*

Lester: *Tell me what you remember that he said.*

Cook*: Again, wondering if we had looked at -- I'm talking about the reassignment, not the restoration, but after -- asking if we had looked at those laws to determine if we could do that.*

Lester: *And what did you say?*

Cook: *I said we had many attorneys looking at it and that we felt that we were able to do it.*

Lester*: How many attorneys looked at it?*

Cook*: I can't recall.*

Lester: *Was it that complicated that numerous attorneys needed to look at the question of whether he could be placed in the position that he was placed in other than as the administrator of DCI?*

Cook: *No, not that complicated.*

Lester: *And what was the conclusion as to why the state was allowed to do that -- why the department was allowed to do that?*

Cook: *Again, based on our reading of Chapter 230, we felt we had the authority to do it.*

Lester: *Okay. Do you recall anything else about the conversation with Mr. Zipperer? He said, have you looked at the laws? What did you say?*

Cook: *I said, Yes. We looked at them. We felt comfortable.*

Lester: *Anything else in the conversation?*

Cook: *No.*

Is there any doubt as to why I became panicked and wrote the desperate letter to Zipperer? There shouldn't be, because the fears that I had were all playing out behind the scenes. As Cook explained it, they had an army of lawyers interpreting the laws to meet their needs, and the governor's office was just checking to see if they were comfortable with what they were doing. No support, no interjection, and most importantly, no records of the exchanges.

Lester also examined the issue involving the release of the records to the press in violation of the public records laws:

Lester: *And this document, Exhibit 19, was a document that was generated in the course of the disciplinary proceedings with regard to Mr. Wall, correct?*

Cook*: Correct. Correct.*

Lester: *And you're aware of a requirement in the open records law that a person be given notice about the release of documents that are generated during a disciplinary proceeding, correct?*

Cook: *Correct.*

Lester: *And Mr. Wall wasn't given notice of this, was he?*

Cook: *No.*

Lester: *Before it was released?*

Cook: *No.*

Essentially, in this exchange, the deputy attorney general admitted under oath that the DOJ had intentionally violated the open records laws, which he was aware of, not once, but twice in an effort to influence public opinion. So, my question was this: Who investigated those intentional violations of the open records laws? When were they terminated? Because you had terminated me and I had not actually violated the law. It would come out later that it was likely none other than Paul Connell, who is now the Deputy Attorney General.

At the end of Cook's testimony in the WERC hearing in front of the governor's appointees, Lester drove home a significant point about Schimel making the comment that I had "directed" Zipperer to shred a public record:

Lester: *If it gets too warm in here, feel free to take your jacket off.*

Cook: *Okay.*
(There was a pause for several seconds)

Lester: *Did I just tell you to take your jacket off?*

Cook: *No.*

Lester: *If you go to a party, someone says feel free to have some hors d'oeuvres, are they directing you to eat the hors d'oeuvres?*

Cook: *No.*

Lester: *No further questions.*

DOJ Attorney Benske: *I can't top that.*

Chairman Scott: *I have one question for you. If paragraph -- if the first paragraph in the appellant -- and I get to ask speculative questions. If the first paragraph of the mail was not included, would you have discharged Mr. Wall?*

Cook: *If the attachment had not been included?*

Chairman Scott: *No, the first paragraph of the letter, of the Dear Rich letter.*

Cook: *I think that was the most substantial portion of this, but it's not the only factor.*

Chairman Scott: *I understand that. But were the other things sufficient to warrant discharge I guess is another way to put that question?*

Cook: *It's hard to answer without consultation with my attorneys and internally.*

Lester had driven home the point that telling someone to feel free to do something was not a direction of any kind. It was Commissioner Scott, though, that saw the crux of the issues when he asked if a simple paragraph was not in the letter, would there have been cause to terminate. Cook could not answer the question without consulting his attorneys and others. However, Lester had another point that was very pertinent:

Lester: *If something is a draft under the open records law, it's not a releasable document, right?*

Cook: *If it's a true draft, correct.*

So, in effect, the DOJ had made their public comments that I was advocating for the destruction of a public record while admitting that a draft was not a releasable document under the open records laws. Bingo.

Paul Connell was deposed next, which also happened on August 25, 2015. Paul was pale, looked very nervous, and was constantly fidgeting throughout the deposition. I would hear later from a friend at the DOJ that he was visibly upset with having to testify in deposition and did not want to go. Some of the highlights included:

Lester: *You subsequently learned that the secretary of the Department of Corrections is not a civil service position?*

Connell: *I don't know -- because I worked in the federal system for so long, I don't pretend to understand a lot of the state stuff. But based on what happened with Secretary Wall, as I understand it, all the cabinet secretaries are appointed by the governor, and not at-will, but they are at-will. I mean, if they can be asked to resign at any point, I guess that makes it an at-will position, in my mind.*

Lester: *And the division administrator of the Division of Criminal Investigation is a civil service position, correct?*

Connell: *That's beyond the scope of my understanding of the law. It's my -- my understanding is that is an appointment that the attorney general can make. Whether, when the attorney general is elected, there's somebody already there, he can replace that person, and the person who's there has the right to the same job classification -- this is where I'm getting outside my comfort zone. I've all learned this more recently. So, whoever -- for instance, when General Schimel was elected, Mr. Matthews was the head of DCI. He was the division administrator. He had been appointed by the prior attorney general. If General Schimel wanted to, he could move Mr. Matthews what I would call laterally or sideways, so long as he's in the same job classification at the same pay, and put in his own person.*

Lester: *Were you aware when you -- are you aware that Mr. Wall had restoration rights to his position as the division administrator of the Division of Criminal Investigation?*

Connell: *It's my understanding that he had the right to restore to DOJ, and when he restored, he had to go back into the job number or seat, or whatever you want to call it, for the division administrator for DCI for a day, and then the attorney general, as I indicated in my last answer, <u>had the right to put his own man or woman into that job.</u>*

Therein lay the first problem. Schimel had decided that the DCI administrator position was in fact an unclassified political appointment that he could change at will, in spite of what the law and historical precedence clearly stated. Schimel and his closest advisors felt that the laws of restoration did not protect a civil servant's restoration beyond returning to their position for <u>*a single day*</u> before being subjected to career-ending movement. For over three years I had maintained my law enforcement training requirements, weapons qualifications, emergency driving certification, etc., as I had been instructed by the DOJ to do, and that was not so I could be placed in my law enforcement position *for a day*! But their opinion was not based on the law; it was based on the position that the Van Hollen administration had taken against Jim Warren, as Connell stated:

"I have a recollection of having a phone call -- I'm sorry, not phone call. I have a recollection of talking to the prior deputy attorney general during the transition between J.B. Van Hollen and General Schimel, and Kevin St. John talking to me about this issue and that it was their view, which informed our view, that the head of DCI, the division administrator, so long as they were kept at the same rate of pay and same classification, they could be transferred to another position within DOJ or even out of DOJ to another cabinet agency if the other secretary agreed, and you basically do a swap of employees at that level."

So, you had the former deputy attorney general, who worked for the former attorney general who was mad at me for not giving his wife a higher paying state job, advising that the civil service DCI Administrator position could be morphed into a political appointment. This simply supported what Schimel intended to do all along, as Connell alluded to above. He was twisting the law, the intention of the legislature and decades of precedence to establish what he felt was ***his right*** to make the DCI administrator position into an unclassified political appointment. Schimel had it in his mind that he wanted one of "his" people to take my civil service position to make sure he had ultimate control over the agency that was supposed to be neutral and detached. The laws were his to construe and he had a building full of lawyers to support him.

Also troubling were Connell's slippery wiggles about not really understanding the system, when in fact he was the person authoring and controlling all of the movements against me in spite of civil service rules and policies. He obviously did not understand them, but that didn't stop him from ignoring them to achieve their ultimate goal of opening the position for someone else. I heard from friends in the DOJ that Connell authored all of the letters and documents in my case and would take them into the Human Resource Director and say "sign this". All to create the appearance of oversight and involvement by long time professionals in state service.

In fact, Schimel took it even further on October 16, 2016 and removed the sitting DCI administrator, Dave Matthews, to open the spot up for his longtime friend who drove him around during the campaign and would subsequently be named as his transition director, Brian O'Keefe. Taking a page from the same book they used with me, DOJ released information that was intended to taint Matthews' leadership credentials. Then two days later Schimel announced that he forced Matthews out of his civil service law enforcement career into a position they created just to shelve him. Schimel was simply underscoring that he had decided that the law was his to manipulate at will. Schimel's decision was based on his desire for a "different management style". Read that as "someone who does what I tell them to do".

The way they handled Matthews removal was another case of "shock and awe" as they had done with me. I am told they called him to an unannounced meeting in Schimel's office in the capitol, and there told him that he was being removed from his position and demanded that he turn in his gun and credentials on the spot. They would then have him escorted back to the DOJ building by his own special agents and placed him on paid administrative leave, removing him from the building under a black cloud. This was so emblematic for what Schimel was; sneaky, underhanded and without concern for the lives he stepped on. It was another move to intimidate someone they wanted out of their way into leaving a career they had built their lives on.

I heard afterward that Matthews went out on medical leave for a period of time before retiring quietly and walking away. He saw what Schimel had done to me and was not likely interested in the devastation that he knew they would bring. Lives and careers mean nothing to unscrupulous politicians who have their own agenda. Civil servants are expendable at the hands of limited term employees who

are elected to positions of power. Is there any wonder that Act 10 was so visceral for dedicated civil servants?

Ultimately, Brad Schimel and his appointed minions successfully transitioned the DCI into a politically controlled enforcement arm of the attorney general and not a single legislator raised their hand to question it. Hopefully, someday they will take the initiative to pass legislation that insures this can't happen again, because they may be the next target of an investigation if the DCI administrator cannot stand up to political pressure.

Sadly, Brian O'Keefe was someone I considered a friend and who I went to bat for to get a political appointment under Van Hollen. Unfortunately, he turned out to be nothing more than another political crony who would feed on the carcass of friendship to nourish his own lust for power and control. The legacy for O'Keefe will be that the DCI became nothing more than a political tool for the attorney general on his watch. O'Keefe was not a career DCI employee and did not dedicate his life to that agency and the ideals that drove people to go through the rigorous application process to join. He was not a state civil servant, so those ideals meant nothing to him. Unfortunately, those realizations are some of the most painful to look at, especially in light of the public statements that the DOJ had made for years to assure the public that the DCI was indeed neutral, detached and run with integrity. But these turned out to be just words to create an illusion.

2009–2011 Biennial Report under Van Hollen:

The Department is supervised by the attorney general, a constitutional officer who is elected on a partisan ballot to a 4-year term. The attorney general appoints the deputy attorney general, the executive assistant, the department's division administrators, and the director of the Office of Crime Victim Services. *With the exception of the administrator of the Division of Criminal Investigation, which is a classified position, all of these positions serve at the pleasure of the attorney general.*

2016–2017 Budget Submission under Schimel:

DCI is headed by the Administrator. The Administrator is a civil service, classified sworn law enforcement position who is appointed by the Attorney General. As a civil service appointment, the position term is indefinite and not an "at will" appointment.

Back in the depositions, Lester asked Connell about the decision to put me on paid administrative leave even after transferring me out of my law enforcement career:

Lester: *And was there a reason why he was on administrative leave even in the program and policy manager position?*

Connell: *My recollection was the concern would remain the same, that he would be in the building working, still in the elevator with agents, agents he might have hired and promoted. I don't know what the computer access situation is from the Division of Law Enforcement Services, as far as getting access to DCI's systems and reports that might pertain to Lincoln Hills. So, my best recollection would be that in order to protect the integrity of the Lincoln Hills investigation, the former secretary of Corrections, who's restored to a job at DOJ, is going to be kept at arm's length until the Lincoln Hills thing wraps up, so that the public can have confidence in that investigation.*

Lester: *He was being paid, though, right?*

Correct. *It's my understanding, that's correct.*

Lester: *Are you aware of whether anybody made any inquiry about why it was that Mr. Wall, who had been the secretary of Corrections and came back to Justice, wasn't working but was getting paid?*

Connell*: Inquiry by the press?*

Lester: *Anybody.*

Connell: *I seem to recall at least one press inquiry along those lines. I don't have a real good recollection of that. We get a lot of press questions every day, and sometimes they come into my orbit, and sometimes they don't.*

Lester: *I mean, if Mr. Wall had not been terminated, and the investigation of Lincoln Hills is still ongoing, and he would still have been paid but wouldn't be doing any work, right?*

Connell: *Correct.*

Lester: *Even to this day?*

Connell: *Correct.*

Lester: *And nobody here at the Wisconsin Department of Justice has a clue of when that investigation is going to end, do they?*

Connell: *We're not in the lead anymore.*

Lester: *It could be years, right?*

Connell: *Conceivably, it could be years.*

In fact, I would still be out on paid leave as I write this book. With the elections just around the corner, there is no sign that the case will be closed any time soon, which is just that way they wanted it. Get them to their next 4-year paycheck.

If I had been placed in the Division of Law Enforcement Services in the position they demoted me to, I would have had no access to the DCI records system and they knew that. More importantly, Connell's concern about me having access to reports on Lincoln Hills was certainly a top concern for him and Schimel. Not because of what I could do, but because of what I would find. There was nothing I could have done to the investigation, because it had already been sent to the FBI, and the reports would have been entered into the DCI records system, which can't be changed without automated time and identity stamping any document accessed. Their real concern was the lack of information I would have found and the timeline of events. And interestingly, Connell knew from experience at the U.S. Attorney's office that sending the Lincoln Hills case to the feds would tie it up for years, as they wanted.

With regard to the decision to release the records concerning the disciplinary investigation in violation of the open records laws before I even had my pre-disciplinary meeting, Connell had this to say:

Lester: *At this point, on the 15th of March 2016, had this letter been made public?*

Connell: *I don't recall.*

Lester: *Had it been released by the Department of Justice to anybody?*

Connell: *I don't recall because I don't have anything to do with public records releases…*

Yet, in the hearing before the WERC, while on the witness stand, Connell testified about his instructions to Johnny Koremenos, DOJ's public information officer, on an open records request by Patrick Marley of the Milwaukee Journal Sentinel:

Connell Email:
"We can try to answer questions related to former secretary Ed Wall being back here, although I think this story has run its course, but I think the question today from Marley presents the perfect opportunity to punt this story line to USDOJ/FBI and to make sure that Marley understands that we are washing our hands of this. But to answer your specific question, how does this sound as a draft response? We cannot comment on any specifics of the investigation at LH. Now that the FBI and USAO are leading this investigation, we will no longer be commenting on Lincoln Hills. You may have more luck reaching out to DOC to get answers to the questions you present today."

In fact, Connell had much to do with open record responses, and Andy Cook testified in deposition that he believed it was Connell that oversaw public record responses. However, nobody could answer who authorized the release to the press of my records in violation of the law. Convenient. This also begged the question that if the DOJ had "punted this story" to the U.S. DOJ, then why couldn't they bring me back in my position since the agency was no longer investigating Lincoln Hills?

Lastly, Connell admitted this in the depositions regarding the determination of a public record and shredding:

Lester: *And then it goes on to say "I would ask that you feel free to shred it once you've looked it over."*

Connell: *All right?*

Lester: *Now, from your prior testimony, you consider that to be a significant statement, right?*

Connell: *Yes.*

Lester: *"Would ask that you feel free to shred it once you've looked it over." Okay? And did you interpret that as a direction by Mr. Wall to Mr. Zipperer that he shred the document?*

Connell: *A direction?*

Lester: *Yes.*

Connell: *No.*

Lester: *And you would agree that he left it up to Mr. Zipperer to determine whether he should shred it or not, correct?*

Connell: *Yes.*

Lester: *And if it wasn't a public record, there would have been no reason why Mr. Zipperer couldn't shred it, right?*

Connell: *I would agree that if this was not a public record, Mr. Zipperer would have been free to do what he wanted with it.*

So naturally, my interpretation of what a public record was would have had *everything* to do with the manner with which I sent the document and the comments I made. However, it would turn out that Connell, the third in charge of the DOJ and senior counsel to the attorney general, did not really care what my intentions were and he also apparently did not fully understand the open records laws either:

Lester: *Okay. But you are the special counsel to the attorney general in the state of Wisconsin, right?*

Connell: *Senior counsel.*

Lester: *Senior counsel, excuse me.*

Connell: *That's okay.*

Lester: *And in that capacity, you are familiar with the public records law of the state of Wisconsin?*

Connell: *I have, I would say, a good working knowledge, as well as folks I turn to when I have specific questions.*

Lester: *And you are aware that a draft document is not a public record, correct?*

Connell: *The law in this area is somewhat in flux, and given my things I work on, there's been some cases in this area recently about drafts dealing with the Wisconsin Idea I seem to remember recently from Dane County Circuit Court and I haven't read in a while. That sounds right, Mr. Pines, but I'm not -- that sounds like -- I don't think you're trying to trick me, but that sounds correct, but I don't know that I would agree with that for sure without doing some research.*

Lester: *And I'm not trying to trick you, but the issue of what's a draft and what isn't a draft is sometimes difficult to determine, correct?*

Connell: *That I would agree with, in light of the state of the law.*

There you have it. Not only could the attorney general's primary advisor not determine what was a draft and what was not, but he would have to do some research to make a determination. Yet Schimel and his appointees would draw their own conclusions on a law they didn't really understand and use it as a pretext to end my career. They expected me to understand the law better than they did, and I wasn't a lawyer!

On August 26, 2015, it would be Walker's Chief of Staff, Rich Zipperer's turn to be deposed. This is when it became obvious that the governor's office and the DOJ were in collusion:

Lester: *Do you recall talking with Secretary Wall about issues related to Lincoln Hills?*

Zipperer: *Yes.*

Lester: *Can you estimate on a number of -- the number of occasions that you did so?*

Zipperer: *My best guess would be dozens, would probably be the best number I could put on it.*

Lester: *At any time did Secretary Wall express to you concern about the pace of the investigation that was being conducted by the Wisconsin Department of Justice with regard to Lincoln Hills?*

Zipperer: *I don't recall that.*

Lester: *What if any concerns do you recall that he did express to you about the investigation at Lincoln Hills?*

Zipperer: *About the investigation?*

Lester: *Yes, about the investigation that was being conducted, purportedly, by the Wisconsin Department of Justice.*

Zipperer: *Okay. I don't recall him raising any concerns about the investigation. You mean about -- I'm assuming your question is about how DOJ was handling the investigation?*

Lester: *Yes.*

Zipperer: *I don't recall him raising concerns there.*

That answer left me speechless, and I just stared at Zipperer. It was an outright lie, and he knew it. I also couldn't help but note that he was using "I don't recall" rather than saying "No." To say that we had spoken dozens of times about Lincoln Hills would be accurate. But, to suggest that we never discussed the DOJ's poor investigation was beyond belief as that was the source of ***most*** of the conversations. Why else would I have spoken to him dozens of times? To talk about how great everything was going? How pleased we were with DOJ's foot dragging and the happiness we felt over the skyrocketing expenses? When asked about his or the governor's feelings on the job I had been doing, he had these observations:

Lester: *Did you have any concern -- did you have any concerns about Mr. Wall's, Secretary Wall's conduct with regard to the investigation at Lincoln Hills?*

Zipperer: *With regard to the investigation, no. It was always an ongoing kind of management discussion about what were the best options, how do we address the issues, what was the best path forward.*

Lester: *Did you have any criticisms of how Secretary Wall was handling his job in relation to Lincoln Hills?*

Zipperer: *I think we had kind of raised some concerns, and I go back to the meeting with Secretary Neitzel, Secretary Wall, and myself, that the issues -- you know, ongoing issues and ongoing questions were not being resolved, and I had raised concerns to Secretary Wall that potentially, you know, a change in leadership at Corrections might just be the type of dynamic that could help resolve the issues there. So as far as a specific action of which he had taken that I had disagreed with, no. It was a general consensus, you know, feeling that perhaps a change could achieve a better result.*

The concerns that Zipperer alluded to discussing with me were only ever mentioned at the last meeting they had with me when they wanted to discuss leadership change because the governor's numbers were down, and he was having trouble raising money. Not one time before that had he ever expressed any concerns over my handling of the situation. The only concerns he and the governor had were not about fixing Lincoln Hills; the concerns were the governor's exposure to criticism and the effects it would have on the polls and fund raising. But perhaps the most important thing that Zipperer had to say was this:

Lester: *Taking a look at the first paragraph on the letter from Mr. Wall to you, DOJ-E-90.*

Zipperer: *DOJ-E-90.*

Lester: *Can you review that. Just take a moment to review that paragraph.*

Zipperer: *Sure.*
(Witness examines document)

Lester: *All right. Have you had a chance to review it?*

Zipperer: *More or less, yes.*

Lester: *You didn't believe that Mr. Wall was directing you to, directing you to shred the document?*

Zipperer: *No.*

It all boiled down to the simple fact that the person receiving the note at the center of my termination did not believe I was instructing him to shred the document, despite what they would let play out in the media without so much as a word in defense. Connell and Cook who initially claimed that I was directing Zipperer to shred the document now testified behind closed doors that I hadn't directed anyone to do anything, but they would not say that to the press. They also testified that draft documents were not releasable and my document was a draft as Zipperer clearly understood and admitted as much in his letter back to me.

Yet, Schimel said that he had learned that I had "directed" someone to shred a document he would portray as a "public record" despite it being a draft. So, with all of that, why wouldn't the DOJ even ask the person receiving the note if they felt they were being directed to shred a public record? Because it would have interfered with their mission. In fact, the DOJ never interviewed Zipperer or anyone else in their "investigation".

They did not consider the fact that they were effectively demoting me or that they were harming my career and retirement. They did not ever ask to see my personnel folder to determine if I had ever had a disciplinary action before. They never considered progressive discipline and did not base their decision on the law, personnel policies, or other factors. The DOJ's basis for terminating me was that Schimel had declared open records as one of his political priorities, and their twisted interpretation that I was attempting to get someone else to evade the law was the fabrication for why I should lose my job. Schimel and Walker, who both fought their own battles to conceal open records, would then relish using that same law as their weapon of choice against me.

In the last question posed to me by my attorneys, they asked why the experience of being transferred out of my law enforcement career was so difficult for me.

I paused for a few moments and could feel tears welling up inside. I explained that I had decided over 30 years before that I would devote my life to law enforcement and public service. When I had guns pulled on me and was slashed with a knife, these politicians were not there to help me decide if I would stay in law enforcement. When I had bones broken and cuts stitched up, these politicians were not there to help me decide if I would stay in law enforcement. When I was cut out of my state police cruiser after being rammed by a fleeing felon at over 100 miles per hour, these politicians were not there to help me decide if I would stay in law enforcement. When six of my friends died in the line of duty and I stood in tears at their funerals, these politicians were not there to help me decide if I would stay in law enforcement. And when my wife and I had those painful discussions about my health, safety, and the future of our family, none of them were there to help my family decide what would be best for us. With all of that, I didn't understand what gave them the right to end my law enforcement career after all the sacrifices we had made, without so much as a conversation with me to discuss why.

By the time I finished explaining, my eyes were wet and I couldn't look up at my wife Debi, who was sitting there watching me with tears in her eyes. She knew what we had gone through, she knew what we had sacrificed, and she understood the damage of having my career ripped from my heart by ruthless, self-serving politicians.

The hearing itself, limited as it was, went well, at least that was my feeling, which was shared by my wife and our attorneys. We thought that the commission got it based on how the hearing ended:

Chairman Scott: *Mr. Wall, when you had your phone conversation with Mr. Zipperer before you sent…*

Wall: *The letter?*

Chairman Scott*: Exactly, yeah.*

Wall: *Yes, sir.*

Chairman Scott: *You indicated, I believe, that Mr. Zipperer said that he would not give you his personal email, correct?*

Wall: *Yes. He didn't say I'm not going -- he just said I don't want anything on my personal email.*

Chairman Scott: *All right. And you also proposed sending your draft appeal to the WERC to him and he indicated that he didn't want it laying around at the –*

Wall: *Governor's office.*

Chairman Scott: *-- Governor's office.*

Wall: *I offered to deliver it or mail it to him.*

Chairman Scott: *And during the conversation that you had -- was that one conversation?*

Wall: *Yes.*

Chairman Scott: *During that conversation, did Mr. Zipperer ever make reference to the public records law or public records concerns?*

Wall: *No, he did not. The only thing he said to me was -- when I said I could bring it to the office, he said I don't want a record hanging around -- laying around down here is what he said, laying around down here.*

Chairman Scott: *So, when you sent your letter, the cover letter –*

Wall: *Yes.*

Chairman Scott: *-- the personal note to Mr. Zipperer and you said I know you didn't want me sending this electronically or to the office because of the records issue, that was your surmise?*

Wall: *Oh, yeah, he didn't want a copy laying around, yes.*

Chairman Scott: *But the reference to the term records issue –*

Wall: *Was just having a document.*

Chairman Scott: *Not public records?*

Wall: *No, sir, not public records.*

Chairman Scott: *Well, then why did you make a reference to shredding the documents then?*

Wall: *I just said he could basically do what you want with it because I knew that when I filed it, it would be a public record. And quite candidly, I wanted it to be a public record because it detailed what was happening to me. So, I basically just for kind of the same reason don't have a copy of a draft laying around. I only wanted the final version to go in, and I knew it would become a public record. I didn't care what he did with it. That was just my way of saying shred it if you want, I don't care what you do with it.*

Chairman Scott: *And you decided to use the term shred rather than throw it away.*

Wall: *Throw away, tear up, whatever. It just was the same thing. I didn't care what he did with it. I just wanted to -- because it was a draft, I expected he would offer me edits on it or tell me what he agreed with or didn't agree with and then -- and as a matter of fact, I went so far since I didn't hear*

from him, I sent him a second version with edits I had already made, and that's what he sent back to me. So, it was a draft in my mind and I was inviting him to comment on it.

Chairman Scott: *And in your mind at that time, February of 2016, you understood, or your understanding was that a draft was not an open record?*

Wall: *Yes, sir.*

Chairman Scott: *Is that what you're telling me, under Wisconsin law?*

Wall: *That was -- I heard that forever in my career that, oh, if it's a draft, don't worry, it's not a record.*

Chairman Scott: *Okay. I don't have anything else.*

After one and a half days of testimony, the salient issue that Scott wanted clarification on was my understanding of the open records law and my intentions in sending the letter and draft to Zipperer. The answers were simple. My understanding was that drafts were not public records as the law states, and my document was a draft that was subsequently changed many times, and my intention in sending it to him was so he would have the information despite his aversion to having records. Period. Nothing nefarious, no desire to avoid any laws, just a man desperate to save his career and family's future.

Scott should have been more concerned with what prompted me to send that letter and the draft; the violation of restoration laws and state policies. He already knew the answer to that question but used a loophole to avoid having it placed before the commission because he knew where it would lead based on legal precedence. The DOJ could not get around its violation of my restoration rights and the WERC would make sure that Schimel and their boss, the governor, were protected from that harsh light.

The WERC hearing was scheduled for three days but finished early since my attorneys had determined we were only arguing one single point about termination being too severe. It was agreed beforehand that each side would file written closing briefs.

As the hearing drew to a close and we had gone off the record, Scott appeared perturbed. He stated that he wanted to discuss scheduling for closing written arguments. The state's attorney, Ann Benske, started saying that she had a trial coming up in October and that maybe in November she would have time, when Scott cut her off abruptly. He said, "Ms. Benske, this case is very simple, and we will not be extending it for months. I suggest that you start writing your closing arguments today. The state will have seven days to file their closing, and Mr. Pines will have seven days to respond. We will have a week for responses, and the commission will rule within three days of receiving all documents."

Based on Scott's questions at the conclusion of the hearing and his rather short tolerance for Ann Benske's intention to drag the process out, it seemed obvious to us that he had made up his mind. When we left the hearing and were walking back to our cars, Lester agreed that it looked good for our case. He was impressed with the closing questions that Scott had asked and felt that those simple questions underscored how ridiculous this case had become. We left the hearing hopeful that we had won, even though I had wished we argued all the issues that DOJ had done wrong. Why? It wasn't just about winning the case; it was about the entire story being told.

Since Lester and Susan had decided that the strategy would be to only argue our case on the single issue of whether termination was too severe, we left the rest of the issues out of the case before the

WERC. Unfortunately, despite referring to them during the hearing, neither Lester or Susan moved the depositions of Cook, Connell, and Zipperer into the record so the judge could read them in any future appeal. The scales of justice would not be burdened with the total weight of my arguments, but rather only with a single question, which I remain convinced created a single point of failure for us.

Despite Chairman Scott's stated short timetable, the commission would not render its decision for 11 weeks after it received the documents. It was a decision against me, and when we read it, we were devastated. How could this commission go from obviously understanding what had happened to me to finding against me? And why did it suddenly go from "We will render a decision within three days" to 11 weeks? I believed then and still do now that the only answer was someone, either the governor's office or the DOJ, had intervened with the governor's appointees that make up the commission. But who could know for sure? Because I am quite confident there would be no records.

Interestingly, before the case went before the WERC hearing, Assistant Attorney General Corey Finklemeyer was required to disclose that he was close personal friends with one of the commissioners and he withdrew from arguing the case. As the supervisor of that unit, Corey ultimately assigned Ann Benske to argue the case in his place.

When Lester and Susan called to tell me the WERC had dismissed my appeal, the panic attacks began again. Lester and Susan were also shocked at the decision and were particularly concerned with the complete lack of analysis done by the commission. Lester suggested that my wife and I come down to meet with him the next day, which we did.

Lester and Susan were really concerned with the complete lack of analysis done by the WERC commissioners. They had apparently disregarded most, if not all of our case and the testimony they had heard. It was baffling from a legal standpoint, but from a political standpoint it made perfect sense. Make it all disappear with little room for analysis.

One of our biggest frustrations was that we had not even attempted to engage in the public relations battle that Lester had pointed out as a primary concern in our first meeting. The story was not getting told and it felt to my wife and I like money was the reason. We were also concerned with the cost of the legal representation, which would ultimately reach $100,000 dollars.

Our only course of action was to appeal the WERC decision to the Dane County District Court. Susan suggested that we just walk away and accept our defeat, pointing out the cost we had incurred so far. She told us that winning in district court was even more remote than winning in the WERC because the court would have to give great deference to the WERC and could only consider the record presented to the WERC. I wanted to scream, "That's why we should have argued the entire case!"

My wife and I were so angry that the entire system was trampling us and nobody seemed to believe we were worth the time. The list of wrongs was so long, and the injustice of the system was beyond comprehension. We finally asked Lester what he would do if it were him. Would he appeal it to the district court knowing what he did and the obvious issues he raised about the WERC decision? He thought about it for a moment and said he would probably appeal it to the court. I was glad to hear that, and once again, we took a deep breath and hoped for a positive outcome.

The review hearing before the Dane County District Court was heard by Judge Everett Mitchell, a new judge who had recently been elected. Typically, the judge handling these cases would simply review the record and documents submitted in the case. On occasion, a judge might schedule a hearing on a

matter for clarification or further inquiry. However, the judge was limited in his purview in that he could only accept the WERC's determination on the credibility of the witness based on the testimony *they* had heard and was required to give great deference to the WERC findings. He would never hear the story from me or be able to judge my credibility himself. He would never be allowed to hear from the governor or the attorney general to judge their credibility. This was not an appeal where my attorneys and I could expect a neutral and detached assessment of the evidence and my credibility.

In our minds, it had never been a due process system because everything that mattered involving my case was left to the political appointees of the WERC, and not real judges who would be concerned with truth and intent. There was no chance to have my case heard by a jury of my peers, but rather, it was thrust into a political sausage grinder who had clear reasons for wanting it to disappear. The WERC and the DOJ had both represented in the early conference call that my credibility was not in question, yet, at the end of the process, that was the only thing that was in question, and they made sure they had eviscerated it. Now, all the judge would be able to consider was the single question the WERC had addressed and could hear nothing else. No totality of circumstances. No examination of the many wrongs that the DOJ had done.

Susan Crawford called me and advised that Judge Mitchell had scheduled a hearing, and he wanted to address two issues: What was his statutory authority to overturn the WERC's decision? How did the DOJ's decision to transfer me out of my position impact the actions after?

On the surface, this gave us great hope. It seemed like the judge was seeing the issues surrounding what the DOJ had done to me. But we had been left at the altar of hope too many times in this case to get optimistic.

On the day of the hearing, my wife and I met with Lester and Susan at Lester's office. Lester came out to talk with us and discussed the points he wanted to make. I asked him to please bring up the point that I had tried to deliver my draft appeal to Zipperer at his office and that Zipperer had acknowledged that very fact in his letter back to me. Lester seemed surprised, and I felt a twist in my gut. I asked him if he had Zipperer's letter to me where he acknowledged that I had offered to deliver the draft to his office, where it would have necessarily become a record, and where *he stated he knew it was a draft*.

He quickly left to go back to his office and look. I turned to my wife, and she saw the concern in my eyes. How could he not know about this critical point after these long months? The specific line that was so important in the letter from Zipperer said:

"In addition, there was no need to send our office a draft pleading relating to an employment issue between you and the Wisconsin Department of Justice."

Lester came back with the letter, and Susan joined us as we entered the elevator. I expressed my concern that this was an extremely salient point because the entire argument of the WERC and DOJ was that I was trying to evade public record laws, and that letter acknowledged that I tried to deliver it to them and they knew it was a draft. Lester seemed surprised by the letter and asked Susan if she had seen that section? To which she responded that she had. The reason that this was so important to me was that I had been asking that they address this point in all the previous briefs.

At the time of the hearing, Judge Mitchell advised that this was the first case of this nature that he had heard, and he was very attentive to the questions and responses. Lester made his points on the law but

was not mentioning the letter. I was at the table with Lester and Susan, and I leaned over to Susan saying, “Remind him about the letter. We have to mention that letter.”

Susan held up her hand to silence me and just said, “This is his strategy.” I glanced back at my wife sitting just behind us, and she knew what I was concerned about.

I would learn later that attorneys have great latitude in determining their “strategy”, and the court gives great deference to the attorney if a client later questions if those tactics were against their best interest. I’m sure it was designed so that the uneducated and inexperienced non-lawyers could not second-guess their attorney’s vast knowledge and experience in the court. The letter I felt was so important was never mentioned.

The DOJ presented their version of events, which continued to try and paint me like some dark, shady character who was trying to evade the open records laws. They made the argument that the forced transfer and demotion to policy and program manager was still a very highly placed DOJ position and that terminating me was the only course of action. How could the attorney general have a man like me in such a highly placed position with the cloud of trying to evade the public records laws hanging over his head? A cloud that they had violated the law to create. It was all so sleazy.

The WERC attorney argued that the court could only consider the WERC record and the findings of credibility made by the commission. She stated that all the things that my attorneys were raising were nothing more than red herrings and that the statutory authority of the court was very narrow and limited. She was right, but what I heard her explaining was that the entire system was established so that people who had been wronged could not have their case heard by a jury or an impartial arbiter of facts. What she clearly explained was that the only people who could judge me were the governor’s appointees.

Ultimately, the court upheld the WERC decision but did take the time to comment on the limitations imposed on the court by the law. The court pointed to the DOJ argument that I had intentionally attempted to evade the open records law as part of its decision, which was the very issue I had been begging my attorneys to address throughout the case with Zipperer’s letter that acknowledged my true intent and the fact the document was a draft.

When we heard the court’s decision against us, our hearts were heavy. Lester and Susan recommended not going any further, primarily because we could not afford it. The DOJ had done what they always do by trying to bankrupt anyone that goes against them with their building full of lawyers. What made it particularly painful was that once upon a time, I had been in that building, worked with those lawyers, laughed with them, broke bread with them, and shared stories of our lives. We moved our family across the country so I could work in that building and serve the citizens of Wisconsin. The attorneys who would be tasked with arguing the case against me were just doing what they were told, and I hold no grudge against them. Once upon a time they were my friends and, believe it or not, I still consider them that today. Hopefully, somewhere in their hearts, they knew the injustice that had occurred. Like me, they were pawns used by unethical politicians who were intent on achieving their agenda using Schimel’s Department of Injustice.