

IN THE CIRCUIT COURT FOR THE TWENTY THIRD JUDICIAL CIRCUIT
DEKALB COUNTY, ILLINOIS

People of the State of Illinois,)	
Plaintiff,)	
)	
vs.)	11 CF 454
)	
Jack D. McCullough,)	
Defendant-Petitioner)	

PEOPLE'S ANSWER TO DEFENDANT'S PRO SE PETITION UNDER 735 ILCS 5/2-1401

NOW COME the People of the State of Illinois, by and through Richard H. Schmack, State's Attorney in and for the County of DeKalb, and in answer to Defendant's Petition do state as follows:

1. Following review of all the evidence contained in discovery and as presented in the Application for Warrant on June 29, 2011, to two separate DeKalb County Grand Juries on October 8, 2010, and August 19, 2011, at the trial in 2012, as well as newly discovered evidence, acting in compliance with 3.8(h), the People are ethically compelled and constrained to admit the existence of clear and convincing evidence showing Defendant to have been convicted of an offense which he did not commit.
2. Said rule, in the section entitled "Special Responsibilities of a Prosecutor" states that, "When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.
3. This mandatory rule requires action to remedy a wrongful conviction, even if no petition were pending, and even if the Court had not ordered the People to answer this petition. Therefore, a report pursuant to RPC 3.8(g) and 3.8(h), detailing the facts and circumstances that require the following admissions has been filed, and is incorporated in this Paragraph, as though fully set forth herein.
4. The People admit that the FBI accurately concluded, following an extensive and thorough investigation in 1957, that Maria Ridulph was abducted near the corner of Center Cross and Archie in Sycamore, Illinois between 6:45 p.m. and 7:00 p.m. on December 3, 1957.
5. The People admit that this conclusion was based upon interviews conducted within 10 days of Maria Ridulph's abduction with Police Chief William Hindenberg, Kathy Sigman, Charles Ridulph and seventeen other relatives, neighbors, friends or acquaintances of Maria Ridulph and Kathy Sigman who were identified as having seen or heard them during the period between six p.m. on December 3, 1957, and Maria's disappearance.
6. The People admit that there was not then, nor is there now, a reasonable hypothesis for, or evidence supporting, an earlier time for the abduction in either the 1957-1958 material including the July 27,

1958 Illinois State Police memorandum from Troopers Fraker and Bales to Lt. Toffant, or in any subsequent witness interviews or evidence obtained in the 2008-2010 State Police investigation.

7. The People admit that at 6:57 p.m. December 3, 1957 a collect telephone call was placed in Rockford from a pay telephone assigned number 2-9297 to a Sycamore telephone assigned number 3257, that the operator recorded the name of the caller as "John Tassier", that the call was accepted and lasted for two minutes.
8. The People admit that Rockford number 2-9297 was then assigned to a pay phone in the lobby of the United States Post Office located at 401 South Main Street, Rockford, Illinois (Southeast corner of Main and Green in downtown Rockford), and that Sycamore number 3257 was then assigned to the home of Ralph and Eileen Tessier at 227 Center Cross Street, Sycamore, Illinois.
9. The People admit that Defendant is the son of Eileen Tessier, and was then known as John Tessier, and that there is no reasonable basis to claim that this call was not made or that it was made by someone other than the Defendant.
10. The People admit that the FBI accurately concluded in 1957 that it is an absolute physical impossibility for anyone to have placed a collect call from inside this public building in Rockford, Illinois at 6:57 p.m. and also to have participated in the abduction of Maria Ridulph in Sycamore, and that there was nothing incorrect about their conclusion that Defendant was not involved.
11. The People admit that Defendant met with Air Force Reserve Colonel Theodore Liebovich and Tech Sargent John Froon some time between 7:15 and 7:30 p.m., in the same building where the telephone was located.
12. The People admit that the Illinois State Police investigators assigned to this case were in possession of all the 1957 FBI and 1958 ISP reports as of July 3, 2010 and knew or should have known of the facts set forth in Paragraphs 4 – 11 at the time they traveled to Seattle, WA to interview Defendant in 2011.
13. The People admit that, unintentionally on his part, the affidavit for search and arrest warrant prepared by Cloyd Steger of the Seattle Police Department on June 29, 2011, contained the patently incorrect assertions that Maria Ridulph disappeared prior to 6:15 p.m. and that she was not seen by anyone other than Kathy Sigman after 6:00 p.m., as well as numerous other inaccurate or misleading statements, detailed fully in the report incorporated into Paragraph 3.
14. The People admit that said affidavit should have contained the true time of Maria Ridulph's abduction, as determined by the FBI in 1957, and set forth earlier in this paragraph, since all of that information was in the possession of the Illinois State Police at the time the warrant was requested, and that this affidavit therefore resulted in a fraud upon the Washington Court.
15. The People admit that 1957 FBI interviews with the Ridulph family and Sycamore Police Chief Hindenberg and DeKalb County Sheriff's Department records, included in both the FBI and ISP

investigations, prove that the disappearance was first reported to the police between 8:00 p.m. and 8:10 p.m. on December 3, 1957.

16. The People admit that the Grand Jury and trial testimony of Defendant's sister, Katherine Tessier Caulfield, that a search involving dozens of police cars took place a little after 7:00 p.m. at the corner of DeKalb and Center Cross is patently inaccurate, although she likely observed such a search between 9:00 and 9:30 p.m.
17. The People admit that the Appellate Court's reliance on Caulfield's false testimony in determining that the collect call, and subsequent contact between the Defendant and military personnel between 7:15 and 7:30 p.m. would not necessarily constitute an alibi, was entirely misplaced.
18. The People admit that at the time Caulfield's testimony was presented to the Grand Jury, prosecutors and investigators knew or should have known that she could not have observed a search involving police until at least 8:20 p.m.
19. That at the time of Caulfield's trial testimony, the prosecutors also knew or should have known it was false, as to the time, and were ethically obligated to correct her testimony under RPC 3.3(a)(3).
20. The People admit that Kathy Sigman Chapman's identification of a black-and-white photograph of Defendant's head as being the head of the unknown subject "Johnny", who presumably was Maria Ridulph's murderer, cannot be accurate because Defendant was in Rockford at the time of the abduction.
21. That, having been in possession of the FBI reports since July 3, 2010, the Illinois State Police investigators knew, or should have known, that Defendant could not have been involved in Maria Ridulph's murder at the time they prepared the photo array, obtained approval for its use from prosecutors, and showed it to Kathy Sigman Chapman.
22. The People admit that the identification is tainted for the following reasons:
 - A. Kathy Sigman stated in 1957 that "Johnny" was missing a right eye-tooth, but none of the photos, including Defendant's, show a person missing a right eye-tooth.
 - B. The other five photographs were posed images from a Sycamore High School yearbook, while Defendant's was not.
 - C. Defendant's photo has a black background while the other five photos have a light background.
 - D. Defendant is not wearing a suit-coat while all the other subjects were.
 - E. Defendant was a relatively nearby neighbor of the Ridulphs and Sigman, and his and his family's names appear on an FBI list of neighbors, while the other five subjects apparently lived elsewhere in the Sycamore School District, but were not listed as neighbors.
 - F. Kathy Chapman inaccurately denied ever picking out someone else from a line-up as being "Johnny", when she testified at trial.

G. In fact, she had identified one Thomas Rivard, who was later cleared, as being identical to "Johnny", in a line-up conducted at the Dane County Jail in Madison, Wisconsin in 1957.

H. Defendant was six inches taller and 12 years younger than Rivard and bore little to no objective resemblance to him.

I. Owing to Kathy Sigman's identification of Rivard, the FBI filmed him and exhibited these films to all the investigators involved in the case, the Ridulph and Sigman families, and at numerous businesses in the Sycamore area, and developed dozens of ultimately fruitless leads.

J. There is no indication in the FBI record that any of the people who viewed this film, many of whom clearly had some acquaintance with Defendant, ever indicated that he bore any resemblance to Rivard.

23. The People admit that defense counsel attempted to bring out the material regarding Rivard and was barred from doing so based on the erroneous ruling that this material was inadmissible hearsay, when it was all actually non-hearsay declarations, recorded in admissible ancient documents, subsequently ruled admissible by the Appellate Court.
24. The People are constrained to admit that at the time of the procuring the arrest warrant, seeking indictment, and presenting the People's case at trial all of the prosecutors were, or should have been, aware of all the materials contained in discovery, and knew, or should have known, that Defendant could not have been involved in the abduction and murder of Maria Ridulph.

WHEREFORE, in the interest of justice, and pursuant to my ethical and professional obligation under RPC 3.8, I do, as State's Attorney of DeKalb County, on behalf of the People of the State of Illinois admit the facts as set forth above and do:

A. Join in Defendant's pro se motion to set aside the judgment of guilty in this cause, as compelled by my RPC 3.8(h) obligation to seek remedy of wrongful convictions.

B. Confess that the warrant for Defendant's arrest was procured through an affidavit that contained false and materially misleading statements (As detailed in the accompanying Rule 3.8(g) and 3.8(h) report).

C. Confess that the indictment of Defendant was procured in part through the introduction of false and/or misleading testimony. (As detailed in the accompanying Rule 3.8(g) and 3.8(h) report).

D. Join in Defendant's motion for appointment of counsel, pursuant to my obligations under RPC 3.8(g) and 3.8(h).



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**RULE 3.8(g) and 3.8(h) REPORT OF THE STATE'S ATTORNEY OF DEKALB
COUNTY AND DISCLOSURE TO THE COURT AND DEFENDANT**

INTRODUCTION

The purpose of this report is to present to the Court, under RPC 3.8, 3.8 (a), 3.8 (g) and 3.8 (h), a summary of any and all facts known to me which create either a reasonable likelihood or clear and convincing evidence that the Defendant was convicted of an offense he did not commit, and which mandate a Disclosure to the Court and the Defendant.

Rules 3.8 (g) and 3.8 (h) have only been in effect in Illinois for three months, so there is little precedent for a report such as this. The purpose and spirit of these new rules is obvious. They address with clarity the tragedy of wrongful convictions and provide a clear guide for prosecutors in evaluating a claim of actual innocence. I have concluded that a prosecutor is bound to consider personal knowledge and experience in life as well as the discovery in a case. The prosecutor is not a court, and is not bound by any prior determination of fact, if he or she knows that determination to be incorrect, wherever that knowledge originates. In short, the prosecutor can never leave his or her common sense out of the equation. The progress of a case from charging, through pre-trial, trial, appellate and post-judgment phases never lessens a prosecutor's primary obligation to seek justice, rather than conviction.

The pivotal question in this case has always been whether or not the Defendant, assuming he had a car on December 3, 1957, could possibly have gotten from the west side of Sycamore to downtown Rockford within an incredibly limited timeframe. If impossible to accomplish, *then he cannot be guilty*, regardless of any other evidence presented against him. If he cannot be guilty, then all the other evidence must necessarily be either false, whether or not intentionally or accidentally fabricated, or irrelevant.

In this analysis I could not ignore my personal knowledge, from many hundreds of trips from Sycamore to downtown Rockford, for both personal and professional reasons, over the last twenty-five years. Likewise, no other prosecutor or investigator could justifiably have ignored simple mathematics and local geography, in evaluating whether Defendant might have been involved in this crime.

Because of its voluminous nature this report begins with a summary and is divided into two major sections. The first deals with evidence supporting innocence. The second is a summary of apparent due process violations.

SUMMARY

Following a review of over 6 months, my conclusion is that the only arguably credible evidence against Defendant was the fact that Mary Catherine (Kathy) Sigman Chapman on September 9, 2010, picked a black and white 'head-shot' photograph of Defendant, as he appeared in 1957, from an array of black and white photographs of other men of similar age, as the individual who said his name was Johnny and who was the last person seen with Maria Ridulph on December 3, 1957.

Although the line-up was found acceptable by the trial Judge and the Appellate Court it would not have been compliant with the reformed line-up procedures now in effect, because the officer administering the test knew the suspect's identity. In any event, despite Defendant's photo having a black background, while all the others were white, and Defendant's photo being the only one that was clearly not a formal yearbook photo with the individual wearing a coat, the line-up was ruled not unduly suggestive. Ancient documents, previously improperly ruled inadmissible, also show Defendant to be the only pictured individual in the array who was on the FBI list of immediate neighbors.

Presumably Ms. Chapman earnestly believes that she identified Maria's killer, as opposed to the only neighbor in the array, when she stated, "from the best of my memory and recollection from that night, that is him". However, when she viewed this array, the investigators possessed a substantial volume of Federal Bureau of Investigation, Illinois State Police and Sycamore Police Department reports, predating the re-opening of the more recent investigation, totaling at least 2,794 pages. These reports contain no support that Defendant was ever a viable suspect or that Ms. Chapman should ever have been shown Defendant's picture.

These reports do include a substantial record of interviews with Ms. Chapman and her mother, the entire Ridulph family and numerous neighbors which assisted both the FBI and the ISP in establishing a reliable time frame for Maria Ridulph's disappearance. This time frame, uncontradicted by any other reliable statements, shows it was physically impossible for Defendant to have been in or even close to Sycamore at the time of the abduction.

The evidence always showed that Maria Ridulph disappeared between 6:45 and 6:55 p.m., and that Defendant made a collect phone call to his parent's home from a pay phone in the lobby of the United States Post Office at 401 South Main Street in downtown Rockford at 6:57 p.m. that same evening.

Whether Defendant got a ride home from Rockford from his step-father, as he and his parents told the FBI in 1957, or whether he hitch-hiked, as he has since claimed, is irrelevant. Whether he kept his date with Jan Edwards Swafford that night, or if this occurred the next night, is also irrelevant. Even more immaterial is whether Pam Smith Long got a piggyback ride in 1952

from Defendant or whether it might have been from her then neighbor Irvin "Peanut" Shott, known as "Commando".

Additionally, 1957 interviews with Ms. Chapman, reveal that Defendant did not match her description in any but the loosest sense, and differed in numerous significant details. These reports completely contradict statements made under oath by law enforcement and others to Judge Heavey in Seattle and to two separate Grand Juries in Sycamore, to a degree that renders both the arrest and indictment of Defendant highly suspect. Again, the exculpatory nature of these reports, in the possession of the Illinois State Police, were, or should have been, well known to investigators at the time of these misleading presentations.

These reports contain material that casts doubt of the testimony at trial by Charles Ridulph, Mary Catherine Sigman Chapman, Katherine Tessier Caulfield, Jeannie Tessier, Pamela Smith Long and Cheryl Wiley Crane. This material should have been available to refresh their recollection of certain events which they had clearly forgotten. In the case of some of these witnesses, their testimony before the Grand Jury and more recent statements to investigators, also appear to contradict their trial testimony. I believe most, if not all, of these witnesses, testified to the best of their recollection in 2012, about events in 1957. However, some obviously and glaringly inaccurate testimony is among evidence that was deemed reliable and significant by both the trial judge and the Appellate Court.

For example, the Appellate Court held that Defendant's Rockford phone call, and his subsequent meeting that night with military personnel, were irrelevant to establish an alibi, and that their exclusion was not in error, because of the persuasive testimony of Katherine Tessier Caulfield that she was returned home by her father at 7:00 p.m. on December 3, 1957 to find a police search for Maria already in full swing. As will be seen below, this testimony is patently false in light of ancient records which were barred from evidence, in error, and other ancient documents only recently uncovered which would certainly have been admissible. Knowing the extent of demonstrably inaccurate and misleading testimony presented at trial, I cannot grant deference to prior judicial decisions based on this evidence. Intentional or accidental, this testimony resulted a fraud on both the Trial Court and the Appellate Courts.

Finally, an informant who was permitted to testify under an alias has since filed pleadings, some under oath, which imply that he committed perjury in the trial, and that prosecutors knew and encouraged this.

This report will address this evidence in accordance with the following outline:

Section A.

1. Sequence of events based on witness interviews in 1957 and 1958.
2. State's apparent 2012 theory of case.
3. Conclusion.

Section B.

1. Inaccuracies in affidavit for warrant.
2. Inaccuracies in Grand Jury testimony.
3. Testimony of Mary Catherine (Kathy) Sigman Chapman.
4. Testimony of Charles Ridulph.
5. Testimony of Katherine Tessier Caulfield.
6. Testimony of Jeannie Tessier.
7. Testimony of Pamela Smith Long.
8. Testimony of Cheryl Wiley Crane.
9. Testimony of "John Doe".
10. Conclusion.

A-1. Sequence of Events Based on FBI and ISP Witness Interviews in 1957 and 1958.

Maria Ridulph and Kathy Sigman were playing at or near the corner of Archie Place and Center Cross Streets (Illinois Route 23) between 6:00 and 7:00 p.m. on December 3, 1957. Both lived on Archie Place, Maria at 616, and Kathy at 644 1/2. Some time prior to 7:00 p.m. Kathy went home briefly and, upon returning to the corner, could not find Maria and reported this to Maria's parents and siblings.

The Ridulph and Sigman families, and neighbors, began to look for Maria in the immediate vicinity. At some time during the interval between 7:00 and 7:15 p.m. Kathy Sigman made her mother and Maria's family aware that she had left Maria with a male stranger. The Sycamore Police and DeKalb County Sheriff's Office received reports, according to the Sheriff's Department records, at around 8:10 p.m. A search, involving an increasing number of police and volunteers went on through the night to no avail. The Illinois State Police received word after 10:00 p.m.

The FBI heard of the disappearance the next day from broadcast radio, and dispatched agents from the Rockford and Chicago offices during the day on December 4, 1957. At around 7:00 p.m., once Maria had been missing for 24 hours, the FBI assumed jurisdiction and took control of the investigation.

On December 4th and over the next several days, FBI Special Agents interviewed dozens of people in the neighborhood as well as Sycamore Police Chief Hindenberg. The FBI identified approximately twenty witnesses who had seen and/or heard Maria and/or Kathy during the period between 6:00 and 7:00 p.m. that night. Those individuals, along with their addresses are as follows:

Kathy Sigman – 644 1/2 Archie Place
Florabelle Sigman – 644 1/2 Archie Place
Michael Ridulph – 616 Archie Place
Frances Ridulph – 616 Archie Place
Patricia Ridulph – 616 Archie Place
Kay Ridulph – 616 Archie Place
Charles Ridulph – 616 Archie Place

Randy Strombon – 610 Archie Place
Merideth Strombon – 610 Archie Place
David Strombon – 610 Archie Place
Kenny Davy – 644 Archie Place
Bobby Roy Peifer – 644 Archie Place, 2nd floor
Martha Ann Peifer – 644 Archie Place, 2nd floor
H. E. “Tom” Braddy – 121 Fair Street
Stanley Wells – 508 Center Cross
Mrs. Stanley Wells – 508 Center Cross
Thomas Cliffe – 503 Center Cross
Aldena Cliffe – 503 Center Cross
Larry Wilkins – 628 Roosevelt Court

Their accounts reveal the following:

Thomas and Aldena Cliffe lived at the corner of Archie and Center Cross. Their front yard had a large tree, where neighborhood children played frequently. At approximately 5:45 p.m. Mr. Cliffe telephoned Tom Braddy, at Standard Oil on North Main Street, to obtain a heating fuel delivery. Braddy said he arrived at about 5:50 p.m. and set up his hoses. His truck had three tanks, so he had to switch the hose twice during the delivery process. This took until around 6:15 p.m. He told the FBI that Maria and Kathy began playing around the tree while he was there. They played in the yard and jumped and skipped around his hoses. He was acquainted with both girls and spoke with them while making his delivery. Kathy Sigman’s statements in 1957 confirm this. He told the FBI in 1957 (and ISP in 1958) that he looked at his watch when he left at 6:15 p.m. He said that no one else was with the girls when he left. In his 1958 interview with ISP he noted passing a service station going back to his fuel depot and the time on its clock was 6:20 p.m. The distance back to his business would be slightly more than one mile. It seems likely, though not certain, that this gas station was Tige Hoffman’s Texaco at 531 DeKalb Avenue (Now the location of Sycamore Fire Station #1)

Kathy Sigman and her mother said that Kathy left home to meet Maria Ridulph at 6:02 p.m. Kathy told the FBI that the unknown subject who called himself Johnny arrived about 15 minutes after Braddy left.

Frances Ridulph told the FBI that Maria went outside at around 5:50 p.m., after calling Kathy to tell her that Maria had permission to play outside. Frances Ridulph and Kay Ridulph told the FBI that Frances drove Kay to a voice lesson between 6:00 and 6:05 p.m., and they both saw Maria and Kathy in front of the Ridulph home walking in the direction of the corner. Both saw Braddy’s fuel truck as well. At about 6:05 p.m. David Strombon passed Braddy’s truck at the corner and pulled into his driveway between the Ridulph’s and the Cliffe’s.

Kay’s voice teacher Madge Wright was at 216 1/2 West State Street in downtown Sycamore. She told the FBI the lesson was from 6:15 to 7:15 p.m., and to her recollection Kay arrived and departed roughly on schedule. This was consistent with Kay Ridulph’s interviews with the FBI, and with her diary, which indicates that she returned home at 7:30 p.m. (Diary as reported in a deleted scene from the 48 Hours report on the case).

At about 6:15 p.m. Frances came home, and saw Maria and Kathy on the corner by the tree. Maria called and waved, and there was no one else there. She was uncertain regarding whether the fuel truck was still there. Once inside she began reading a newspaper in her bedroom.

At 6:25 p.m., after dinner, Randy Strombon left his home and went next door to visit Charles Ridulph and listen to records. This time was verified by the FBI, in 1957, in interviews with Merideth Strombon, Randy Strombon and Charles Ridulph. This time seems consistent with the times Randy Strombon finished his paper route and his father returned home prior to dinner.

At 6:30 p.m. the television shows "Cheyenne" and "Name That Tune" came on the air following local newscasts on the ABC and CBS networks, respectively. (Several witnesses, including Michael Ridulph and Meredith Strombon, based their recollection of the times when events occurred upon the fact that they were watching one of these television shows).

Michael Ridulph read newspapers in the living room until turning on the television at 6:30 p.m. His recollection, four days after his daughter's disappearance, was that he was watching "Cheyenne", "Jim Bowie" or some other "frontier program" when he last saw Maria in the home. The FBI determined then, and reference material confirms today, that the three network shows airing at 6:30 p.m. on December 3, 1957 were "Cheyenne", "Name That Tune" and "Nat King Cole".

At approximately 6:30 p.m. Kenny Davy, 19, Bobby Roy Peifer, 19, and Martha Ann Peifer, 15, drove down Archie Place and turned north onto Center Cross. They saw the girls, with no one else around, at the corner. Davy lived at 644 Archie Place, in front of the Sigman home and was assisting the recently married Peifers in moving from 108 North Avenue to the upstairs apartment of his parents' home. Davy was well acquainted with both girls and remarked to the Peifers that they were neighbors. The girls, in fact, had visited his mother in the Davy home around 4:00 p.m. that day. All three confirmed the circumstances and time in separate FBI interviews. Davy resides in Florida and was interviewed by telephone in 2011 by investigators regarding the Defendant, but was apparently never questioned concerning his 1957 statements.

Based on the foregoing, it was shortly after 6:30 p.m. when the girls were approached by an unknown subject. Kathy maintained that he was a complete stranger. According to Kathy in 1957 (and 2012), he approached on foot from the south. He spoke with both girls for some period of time. He gave Maria a piggyback ride west to the area of the garage in the rear of 515 Center Cross. After the piggyback ride, he asked the girls if they liked to play with dolls, and said he would give Maria another piggyback ride if she would return with a doll. According to Kathy, Maria left and went to her home, later returning with a doll.

Mrs. Stanley Wells, who lived on the east side of the street at 508 Center Cross told the FBI that she saw two children and a short adult standing on the west side of Center Cross, sometime after 6:30 p.m.

Frances Ridulph said Maria returned home at 6:40 p.m. and came into the bedroom to ask her about taking a doll outside. Following some discussion about which doll to take, Maria went into the living room to select a doll.

Michael Ridulph recalled Maria coming in while he was watching television, after 6:30 p.m., and going to a corner of the living room where she kept her toys. Charles Ridulph told the FBI that this occurred sometime after 6:30 p.m. as well, and it appears that it certainly occurred after Randy Strombon had been there for some period of time.

Maria returned with the doll, according to Kathy. "Johnny" looked at the doll, then gave Maria another piggyback ride towards the garage and returned. At about this time Kathy asked "Johnny" the time and he said it was 7:00 p.m. She later told the FBI that his watch had a sweep second hand, so it seems he may have actually showed her the time on his watch.

Kathy said she then decided to go home and get her mittens because her hands were becoming cold, and Maria stayed with "Johnny". When Kathy returned Maria and "Johnny" were gone. She went to the Ridulph house looking for Maria. Frances Ridulph said in one interview that this occurred at 6:45 p.m., but Mrs. Sigman estimated Kathy came home to get her mittens between 6:50 and 6:55 p.m. Other interviews with Frances put Kathy's first visit, in search of Maria, at 6:50 to 6:55 p.m.

Told by Charles Ridulph that Maria was not inside, Kathy returned to the corner and was met by her brother, Carl Edward Sigman who intended to join the girls to play. After briefly searching they returned to the Ridulph home. Kathy was able to convince the Ridulphs that Maria was indeed missing, but did not mention the strange man.

Michael Ridulph went to the front door calling for Maria. David Strombon reported leaving his house at 6:58 p.m. and hearing Michael calling. Merideth Strombon confirmed the time based on the fact that "Name That Tune" had just ended when her husband went out.

Michael Ridulph likewise estimated that it was 7:00 p.m. when he was calling for Maria from his doorway and saw Kathy and Carl Edward still on the street. Mrs. Sigman recalled Kathy and Carl Edward returning home and sending them back out to look for Maria at 7:05 p.m.

At 6:57 p.m. a collect call was placed from a pay telephone in Rockford, Illinois having the number 2-9297, to the Ralph Tessier home at 227 Center Cross. The operator recorded the caller's name as John "Tassier", and the charges were accepted at the Tessier residence in Sycamore. A call lasting until 6:59 p.m. ensued. This call was confirmed by the FBI in an interview on December 9, 1957 with Dan Schaeffer, the general manager of the local Sycamore-Ogle Telephone Company.

The Defendant told the FBI Special Agents Burton and Mellot, on December 8, 1957, that he had made a collect call to his parents' home from Rockford at around 7:00 p.m. to solicit a ride home, and both his step-father, Ralph Tessier, and his mother, Eileen Tessier, confirmed this in a separate interview with the same agents.

Also at around 7:00 p.m. Mr. and Mrs. Wells and Elmer Westberg of 412 Center Cross reported hearing a "shriek or a scream". Larry Wilkins, age 11, of 628 Roosevelt Court said he saw Kathy and Maria walking east on Archie Place at around 6:40 p.m. and saw Kathy alone walking west between 6:50 and 7:00 p.m. The FBI confirmed that the area of the Ridulph and

Sigman homes was visible from the Wilkins' back yard, and Mrs. Wilkins confirmed that Larry went outside after 6:30 p.m. accompanied by the children of her dinner guests, the Taylors. After 7:00 p.m. Frances and Michael Ridulph began to search the immediate vicinity. According to Merideth and Randy Strombon and Charles Ridulph, the boys asked to take flashlights to search for Maria. Mrs. Strombon gave permission, at 7:20 p.m. and began searching herself. Kay Ridulph returned home at 7:25 p.m. and began searching. Around 7:30 p.m. Kay, Randy and Charles stopped at the Sigman home, obtaining more information about "Johnny".

Ultimately, Frances and Patricia Ridulph went to the Sycamore Police to report Maria as missing, and spoke to Police Chief William Hindenberg. Interviews with Frances, Patricia and Hindenberg confirm that this occurred around 8:00 p.m. There is no record of anyone else calling the police that night, or of any witness claiming to have done so. The Sheriff's Department record of calls documenting Chief Hindenberg's report of the abduction puts that call as having been made at 8:10 p.m.

According to the Defendant and his parents, he was picked up in Rockford by Ralph Tessier around 8:00 p.m., and they returned to Sycamore some time after 9:00 p.m. Between 7:15 and 7:30 p.m. Defendant had contact with an Air Force reserve officer and a Tech Sergeant and left some paperwork with the Sergeant. The FBI interviewed Defendant's recruiter, Staff Sergeant Jon Oswald, on December 10, 1957.

Oswald identified these individuals as Colonel Theodore Liebovich and Tech Sergeant John Froom, and confirmed their contact with Defendant on December 3, 1957. Oswald also described his meeting with Defendant on the following day. At that time Oswald had the paperwork that Defendant had left with Froom the previous night.

There are no reports, whatsoever, in the FBI or ISP archives that support any theory by which the abduction took place earlier than 6:45 p.m. The FBI, the ISP and the Sycamore Police all considered this to be a reliable estimate of the time for decades.

There is nothing in any report in any other ancient document, or in any evidence uncovered since the case was reopened to suggest that Defendant did not place a collect call from Rockford at 6:57 p.m. There is no suggestion that he did not have contact with Liebovich and Froom around 7:15 p.m. on December 3, 1957.

Indeed, the investigators assured Judge Heavey, of King County, Washington, and the DeKalb County Grand Jury that these events occurred, and insisted this account was accurate when questioning Defendant in 2011, despite Defendant's inability to recall these events at all.

Downtown Rockford is between 34 and 42 miles from Sycamore, depending on choice of routes. Defendant's involvement in Maria's disappearance and murder is a physical impossibility unless every witness statement gathered from family and neighbors are completely wrong. This fact leads inescapably to the conclusion that these reports alone create a likelihood of wrongful conviction as outlined in RPC 3.8 (g), and are indeed clear and convincing evidence of innocence under RPC 3.8 (h).

Copies of these reports, together with a time line prepared by myself are attached as Exhibit 1.

A-2. 2009 – 2012 Illinois State Police and Prosecution Time Line For Crime.

Despite full knowledge of the above material, investigators assigned in 2008 apparently settled on a hypothesis which they believed made it possible for Defendant to have been involved. This hypothesis was never presented in open court. It appears drawn entirely from certain selected portions of the ISP and FBI records from 1957 and 1958. The 2010 and 2011 Grand Jury transcripts, the 2011 complaint for search warrant, a 2013 CNN documentary entitled “Taken”, and the book “Footsteps in the Snow” published in 2014, reveal this hypothesis to be substantially as follows:

Maria’s kidnapping occurred between 6:15 and 6:30 p.m., rather than between 6:45 and 7:00 as determined in 1957. This posited time frame is apparently based on only three things.

First, Tom Braddy, who everyone agrees saw the girls on the corner, told the Illinois State Police in July, 1958, that he left Archie and Center Cross around 6:15 p.m., dropped his fuel truck at his business on North Main Street and then returned to his home on Fair Street in his pick up truck. Between the Cliffe home and North Main, a distance of about one mile, he passed a service station with a clock that read 6:20 p.m. (See memorandum in Exhibit 1.)

Second, Clayton West, a bus driver for the DeKalb – Sycamore Bus Company told the FBI on December 4, 1957, that when driving his route on December 3, 1957, at 6:30 pm, he passed the corner and did not remember seeing anyone.

Third, Katherine Tessier told investigators (in 2008) that she had been taken to a 4-H Federation Christmas Party by her father and when they returned from DeKalb, sometime between 7:00 and 8:00 pm, she observed a search already in progress including numerous police vehicles. According to her, Ralph Tessier was already aware that the search was for Maria.

The investigators, as revealed to CNN, concluded from these three facts alone, that Maria disappeared no later than 6:20 p.m., although offering no apparent reason for the selection of that time in particular, as opposed to 6:29, for example.

They assumed the accuracy of the FBI reports regarding the collect telephone call to the Tessier home at 6:57 p.m. from Rockford, and concerning interactions between John Tessier and Air Force Reserve Colonel Liebovich at the Rockford Post Office. They attempted to locate Col. Liebovich, but were advised that he was in a nursing home and his memories would not be reliable. They did not make a report of this, or did not provide one to the prosecution, as it is not included in discovery, but Liebovich’s nephew, Rockford attorney Theodore Liebovich, disclosed it to Crystal Harrolle, investigator for the DeKalb County Public Defender’s Office, and recently confirmed this in writing. (Exhibit 2)

This hypothesis necessarily presumed the call to have been made from a payphone in Rockford at some unknown location on the south side of that city, according to the interview with CNN.

(Exhibit 2A) If the call were indeed made from a downtown location near, or in, the Post Office at 401 South Main Street, it would have been impossible to have abducted Maria and gotten to this pay phone by 6:57. The posited time frame of 43 minutes requires Defendant to have taken Maria almost immediately after Kathy turned her back to go to her home. Then, assuming that the ISP's conclusion in 1958 were accurate, he would have had to take her across the back yards and vacant lots between Archie and DeKalb Avenue in the dark, in the snow, from Center Cross Street to a vehicle that he had parked on Fair Street. He would then have to get her into the vehicle and drive to downtown Rockford. Once in Rockford he would have to find a parking space near a pay phone, park, get to the phone and place the 6:57 p.m. call. This is manifestly a physical impossibility, given the distance between the two locations, even in broad daylight on a sunny summer day. At night, in the year's first snowfall, strictly on a two-lane poorly lit road it is incredible.

However, if the call came from a pay phone close enough to Rockford to have phone number 2-9297, yet close enough to Sycamore to reach by 6:57 p.m. the Defendant's involvement is not impossible, merely extraordinarily improbable.

Since proof of the 1957 location of the phone bearing number 2-9297 would conclusively determine the exact whereabouts of Defendant at 6:57 p.m. on December 3, 1957, the People recently obtained issuance of a subpoena duces tecum directed to Illinois Bell Telephone Company d/b/a AT&T Illinois, land-line telephone provider for Rockford, requesting that information. This subpoena was served, via email, on the legal department of Illinois Bell on December 22, 2015.

Illinois Bell has now provided proof that (815) 962-9297 was assigned to the pay phone in the lobby of the building at 401 South Main Street in Rockford from at least 1976 until 2001.

(Exhibit 4) There is no plausible reason to think that this number was assigned elsewhere in 1957, instead of the place the Defendant always said he made the call. In 1957 the Rockford Office of the FBI was also located at 401 South Main Street, which would make it very easy for them to verify the number of the pay phone in the lobby of their own building, although this is not documented in their reports.

Interestingly, sometime prior to the trial, the ISP investigators did indeed look into the location of the pay phone. The phone number 2-9297 would clearly now be 962-9297. They contacted the Rockford Park District, the owners of the former post office building. They determined that there had once been a pay phone in the lobby, and that the Park District had become the responsible party upon becoming owners of the building. The Park District had financial records from the time this phone was still in operation, but the investigators say they were unable to ascertain the number that was assigned to that phone.

Investigators also contacted the successor company of the "Sycamore-Ogle Telephone Company" (either Verizon or Frontier), which was the company that recorded the collect call in 1957, according to verbal information recently provided by the Illinois State Police. They failed to document this in any report, and it does not appear that the ISP ever chose to make inquiry of AT&T.

David Rutherford and Jan Herbert, employees of the Rockford Park District, have told me, and the Public Defender's Office, that they did, in fact, locate the telephone number and provide it to investigators. A copy of my email communication with them is attached hereto as Exhibit 3.

Although we now know the time-line hypothesis to be impossible due to the telephone's location, there were always major reasons to doubt it. If the kidnapping occurred late enough for this supposed car trip to Rockford to have begun after 6:30 p.m., the time window is 27 minutes, and it becomes impossible for the Defendant to have gotten to a pay phone anywhere in Rockford. This explains the arbitrary speculation of "no later than 6:20", as opposed to "no later than 6:29".

Moreover, the failure of a bus driver traveling south on Center Cross, at 6:30, to see two small girls playing "duck the headlights" proves, not that the girls weren't there, just that they were invisible to traffic moving southbound on Center Cross, like the bus driver. But they would have been visible to Kenny Davy and the Peifers because they were traveling eastbound on Archie Place.

The next step was that the Defendant, after completing his telephone call at 6:59 p.m., got in the car and drove to downtown Rockford hoping to drop off paperwork with an individual who turned out not to be there. Fortuitously, he made contact with others who got the paperwork to the recruiter with whom he eventually met the following day. This contact occurred between 7:15 and 7:30 p.m., according to FBI interviews from 1957. These matters were acknowledged as factually correct to the Grand Jury, and they logically must have happened, in order for Staff Sergeant Oswald's account to the FBI to have made any sense at all.

This improbable scenario, disproved through new evidence, was the thin reed upon which investigators balanced their choice to create a photo array and show it to Kathy Sigman. The only real evidence to support a theory of Defendant's guilt is that his name is John and his sisters claimed he owned a sweater. In this hypothesis, inexplicably, the abductor lied about the time of day to Kathy, and went on to commit this unspeakable atrocity, but reliably provided his own true first name.

Why consider the FBI reports so reliable regarding Tom Braddy, Clayton West, Colonel Liebovich, and John Oswald, and yet ignore the interviews with so many other people who claimed to have seen Maria in Sycamore as late as 6:40 p.m.? The State police have never provided an explanation, persuasive or otherwise, for discounting the credibility of all the other people interviewed by the FBI and ISP in 1957 and 1958, as documented in the previous section of this report.

The third "fact" which supported an "early abduction" theory is the 52-year-old recollection of Katherine Tessier concerning her activities. If she returned to Sycamore at 7:00 pm, as she testified, to find a heavy police presence, the abduction certainly occurred earlier. The Appellate Court accorded her testimony great weight, or assumed the trial judge did. The Grand Jury was also advised that Ralph Tessier told Katherine the police were searching for Maria. If he knew of her disappearance before going back to the Farm Bureau in DeKalb, the whole neighborhood must have been out searching by 6:45 pm.

While her statement about her activity may well be true, Ms. Tessier was clearly mistaken about the time these events occurred by about two hours. The Christmas Party almost certainly started around 7 or 7:30 pm, and ended around 9 or 9:30 pm. This conclusion is based on two, independent sets of ancient documents.

First, the FBI and ISP records contain the DeKalb County Sheriff's Department record of the call from Sycamore Police coming in at 8:10 pm. This time was supported by FBI interviews with Chief Hindenberg and Frances Ridulph the day after the abduction. It would have been impossible for a search with a large police presence to have been underway anytime before 8:30 pm at the earliest. It would have also been impossible for Ralph Tessier to have known what the search was about at 7:00 pm, but quite possible if it was much later. Only Katherine Tessier testified at trial about a search around 7:00 pm. Kathy Sigman was adamant at trial that she did not meet with police earlier than 7:30 or 8:00 pm.

Second, Katherine Tessier told the Grand Jury that she tried to investigate the time of the party through the Farm Bureau, but that they had no records. She was wrong about that. The Farm Bureau newsletter included notes on youth activities for each month, and these are, of course, admissible ancient documents. The relevant portions of these newsletters are attached as Exhibit 5.

The newsletter for December 1957 indicates the party was scheduled for December 3, 1957, but lists no time. The January, 1958 newsletter describes the party, but not the time. However, the 1956 newsletter shows that year's December Federation meeting at 8:00 pm and the 1958 newsletter shows it at 7:30 pm. The regular Federation meeting in September and October of 1957 were at 8:00 pm and the January, 1957 meeting was at 7:30 pm. No newsletter in 1957 or 1958 lists a Federation meeting or activity starting earlier than 7:30 p.m.

Listing of times is admittedly sporadic, but given that the previous meetings in the fall of 1957 were at 8:00 pm, and the Christmas parties in both 1956 and 1958 were much later, it seems highly likely that an uncommonly early start for the 1957 party would have been noted somewhere.

Beyond this record, common sense and knowledge of the community dictate that the meeting/Christmas party occurred much later. Unlike Katherine Tessier, most 4-H members were rural youth. After arriving by school bus at their homes throughout the county around 4 pm, they would have had to perform chores and complete homework before obtaining rides from their parents to the party at the central location in downtown DeKalb. Taking that into consideration it is easy to see why the meetings were typically later, and there is no reason to think the December 1957 meeting would have departed from this model.

The newsletters also identified the names of the 1957 and 1958 Presidents of the 4-H Federation, and the Public Defender's Office recently contacted them. Neither was present for this event, but local attorney and DeKalb County Hearing Officer Ronald Klein and former County Board President Roger Steimel both recall consistent 7:00 – 8:00 start times for Federation meetings. (Exhibit 5)

Finally, published reports indicate that modern investigators apparently misconstrued the July 27, 1958 memorandum from Troopers Fraker and Bales to support the idea that Maria Ridulph disappeared earlier than the FBI had concluded. Nothing in the memo indicates this. (See Exhibit 1) Based on interviews with Aldena Cliffe and Tom Braddy (which slightly contradict their statements to the FBI) about the time of a telephone call between the two of them, the State Police concluded in 1958, "That it was known that a man was with Maria at a much earlier time than was indicated by previous reports."

When read in context the real meaning of this sentence is that the Ridulphs and their neighbors might have become aware as early as 7:10 that a man had been with Maria, as opposed to not becoming aware of that fact until 7:25 or later. It does not indicate that the man had actually been with Maria earlier than 6:30 – 6:45 p.m., just that adults might have become aware of it sooner after 7:00 pm than the FBI originally believed.

Regrettably the State Police completely misread this statement.

A-3. Conclusion.

While people in 1957 had to regularly set their watches, and might sometimes be a few minutes off, they set those watches in reliance on television, radio, and telephone company information. Then, as now, people needed to be on time, and before cell phones connected directly to the internet, the watch on your wrist or the clock on the wall were indispensable resources which people strove to keep accurate.

There were three television networks, and their programming might, on rare occasions, start late, but it never started early. Everyone knew that. You could set your watch by it and people did. Mike Ridulph and Merideth Strombon were not mistaken about what they were watching. Tom Braddy's watch or the gas station clock were not off by more than a few minutes. There is no reason to think Frances and Kay Ridulph did not know when they left home or when they got back. There is no reason to think any of their neighbors were wrong about when they saw the girls alone, or that Kathy was wrong when she said 'Johnny' arrived about 15 minutes after Braddy left. There is no reason to think that the girls' interactions with 'Johnny' could have taken less than ten minutes, at the least.

Based on a thorough 1957 investigation by the FBI, in conjunction with local and state authorities, followed up by the State Police in 1958, there does not appear to be any rational basis to believe that Maria Ridulph was kidnapped any earlier than 6:45 on December 3, 1957. Nothing uncovered since then undercuts that conclusion.

Based on investigation at the time, and the records of the Illinois Bell Telephone Company obtained by subpoena last month, the Defendant was at 401 South Main Street in Rockford, Illinois, on a collect phone call from 6:57 to 6:59 p.m. on December 3, 1957. He then had contact with military personnel in that same building between the time of the phone call and 7:30 p.m.

No one can cover the distance from the west side of Sycamore to downtown Rockford in 12 minutes, so Defendant's involvement in the murder of Maria Ridulph is a physical impossibility.

Even if, against all available reliable evidence, the kidnapping began almost instantly after Braddy left the area, when both he and Frances Ridulph observed the girls to be alone on the corner at 6:15, Defendant's involvement would still be impossible.

If Defendant were "Johnny", he might by chance have observed the girls while driving after Braddy left. Assuming this was as early as 6:13, he had to drive his car to some remote location like Fair Street (as the State Police assumed), park, and walk back along DeKalb Avenue so as to approach the girls from the south on Center Cross as Kathy reported. This would have required him to:

1. have seen the girls after 6:13 p.m.,
2. driven around the block, parked and exited his vehicle on Fair Street (6:15 p.m.),
3. walked south to DeKalb Avenue, east on DeKalb Avenue to Center Cross, then north up Center Cross, on snow-covered sidewalks, to where the girls were playing (6:18 p.m.),
4. engage the girls in conversation and give Maria a piggy-back ride (6:23 p.m.),
5. wait on the corner with Kathy while Maria went home to get her doll (6:26 p.m.),
6. engage in more conversation with both, and give Maria another piggy-back ride (6:29 p.m.),
7. speak with Kathy before she left to get her mittens (6:30 p.m.),
8. walk with Maria back to Fair Street, or some other location where his car was secreted, and get into his car with her. If she was conscious and walking with him he'd be going at a seven year-old's pace. If she was unconscious, or getting a piggy-back ride, he'd have been carrying her (6:33 p.m.).

9. He would then have to drive out of town to downtown Rockford, before the existence of Interstate 39 and Bypass US 20. (I made this trip after sunset on December 30, 2015 in clear conditions traveling 60-65 mph in rural areas and around 40 within Rockford in 45 minutes and 53 seconds. My route was the one which my personal experience indicates to be the fastest and most direct, being State Route 64, to Old State Road, to West County Line Road, to Lindenwood Road, then north on Kilbuck Road to Baxter, west on Baxter which turns into Beltline going across the south end of the Rockford Airport to Kishwaukee Road, following and then crossing the Rock River to get on Main Street (State Route 2) going downtown to 401 South Main). In the dark, in the first snow fall of the year, I would expect it to take a little longer, but if driving incredibly recklessly through the entire trip, averaging 100 mph, in both urban and rural areas, it would still take at least 25 minutes. That doesn't take into account the

possibility of being behind a slower moving vehicle and needing to wait for an opportunity to pass. (6:58 p.m. if averaging 100 mph, 7:19 p.m. if driving prudently).

10. Locate a parking place and park his car in downtown Rockford, and walk into the Post Office (7:21 p.m.).

11. Place an operator assisted collect call using the Rockford Illinois Bell operator and the local Sycamore operator and get connected (7:23 p.m.).

Others might think they know a slightly faster route to Rockford, or think one could somehow travel more quickly in 1957, but the absolutely shortest route involves traveling up Cherry Valley Road, through the town of Cherry Valley, then almost 7 miles through urban areas to Downtown Rockford, and this is still a distance of 34 miles. Driving on a straight rural interstate at 100 mph, it would still take 20 minutes to travel that distance, as opposed to driving through small towns and a big city shortly after rush hour on snowy two lane highways crossing other roads and numerous railroad grade crossings. I have attached Google Map searches showing the distance and estimated travel times for several alternative routes to 401 South Main Street, Rockford. (Exhibit 7)

One need not have any experience in traveling from Sycamore to Rockford to recognize that if anyone had set out to safely travel to Rockford in time to be inside the Downtown Post Office by 6:57 p.m. they would have had to leave around the time that Kathy and Maria went out to play, not 15 to 30 minutes later, as Kathy testified at the trial in this case.

In summary, there is no realistic theory under which Defendant could have been the unknown subject 'Johnny' and it was completely irresponsible for anyone who was conversant with the distance from Sycamore to Rockford to have even suggested it as a possibility.

B-1. Inaccurate Information Provided in The Affidavit For Search And Arrest Warrant

The warrant to search Defendant's home, and to arrest Defendant, was issued by Judge Michael Heavey of King County on June 29, 2011, based upon a sworn affidavit prepared by Seattle Detective Cloyd Steger. Steger obviously lacked any personal knowledge. His affidavit consisted entirely of double hearsay from the Illinois investigation and hearsay drawn from the ancient documents, or Illinois investigators' characterization of them. The use of hearsay in such an affidavit is perfectly legal, but it does have to be real hearsay and not speculation. This affidavit is attached hereto as Exhibit 8. (SAO 3752-57)

The affidavit contains the following materially incorrect and misleading statements:

1. "They were last seen playing at about six p.m. (Kathy and Maria)

The FBI reports show Kathy had not even left home at 6:00 p.m., and that the girls were seen playing by Tom Braddy until 6:15 p.m., by Frances Ridulph and Kay Ridulph on the way to the corner between 6:00 and 6:05 p.m., by Frances Ridulph upon returning at 6:15 p.m., and by Kenny Davy and Mr. and Mrs. Peifer at 6:30 p.m. Two children and an adult, not identified, but likely the girls and "Johnny", were seen by Mrs. Wells after 6:30 p.m. The 1958 ISP report

places Braddy as leaving shortly before 6:20 p.m. with the girls still playing by themselves. No contrary statement exists, so Steger's statement was not hearsay but inaccurate speculation.

2. "She (Kathy) returned at about six-fifteen. Maria and Johnny were gone."

There is no basis for this statement. In 1957, both Kathy and her mother estimated that this event occurred after 6:50 p.m. Frances Ridulph estimated it at 6:45, at the earliest, and also offered some slightly later estimates.

Nothing in the narrative prepared by ISP investigator Hanley, nor his or investigator Kot's field notes, reflect any statement by Kathy during her 2010 interview that suggests a major departure from her 1957 statements. (SAO 1123)

The significance of this cannot be overestimated, as it would be virtually impossible to drive to downtown Rockford by 6:57 p.m. if one did not leave Sycamore before 6:15 p.m., even if not also kidnapping and murdering someone, as set forth previously in this report.

3. "Within a few days the FBI became involved. Agents assisted in the investigation and conducted a number of witness interviews. The agents sent daily reports to J. Edgar Hoover, who took a personal interest in the case. (The daily reports still exist and have been acquired by investigating detectives in the last two years.)"

Actually, the FBI did not simply assist, they took over the case on the very next day. More than two dozen agents were active in the community. The FBI archive contains far more than the daily reports to Hoover. There were hundreds of witness interviews conducted and documented. This statement creates the implication that all the statements in the affidavit are admissible hearsay consistent with the FBI reports, or at the very least that they are supported by something in the reports.

As seen with the previous "6:15" statement, this created a horribly false implication. It is difficult to imagine any judge issuing a search or arrest warrant if he or she had not assumed that the statement in the affidavit were supported by these FBI reports, as opposed to actually being in almost complete contradiction to those reports.

4. "(Agents were able to later verify that a collect call was made to the Tessier home from a payphone in Rockford from 6:57 to 6:59 p.m.)"

When read with the false time line, this exculpatory fact appears inculpatory. If the affidavit had disclosed the true time that Kathy returned to the corner (between 6:50 and 6:55), then this fact would not have been misleading, and should logically have led to a rejection of the search warrant application.

5. "(Agents also interviewed Tessier's sister Katherine Tessier Caulfield... She said that Ralph dropped her off... at about 7:00 p.m., and picked her up about an hour later, which would preclude him from driving to Rockford at the time alleged. She remembered that when they got home, there were several police cars and emergency vehicles in the area.)"

Katherine Caulfield had previously described these supposed events to agent Hanley, and testified about them at a Grand Jury proceeding in 2010. She later testified about them at the trial in 2012. Each time she spoke of the events, she incorrectly described them as occurring earlier in the evening. At trial she testified that her father took her to DeKalb around 5:00 p.m. and then returned a little after 7:00 p.m. She told the Grand Jury, on October 8, 2010, that it was "around like dinnertime because they had food there, you know, like, you know, Sloppy Joes and that kind of stuff." And that "He took me over to DeKalb and dropped me off, and then he would be back like an hour and a half or so to pick me up." She never provided a time, certainly not 8:00 p.m.

The narrative of her interview with the ISP also shows no estimate of an actual time, other than "early evening", so there was no known basis at all for claiming she was taken to DeKalb at 7:00 p.m. and returned an hour later.

Returning from DeKalb at eight would indeed have made it impossible for Ralph to have gone to Rockford at seven to pick up John. However, if Ralph had brought Katherine home at seven, he could easily have then gone to Rockford and picked up John by eight. So this misstatement makes Ralph, John and Eileen's account appear impossible, when it is, in fact, perfectly plausible. Any person reading this paragraph would be misled by this false characterization of Katherine's account.

Of course, as set forth earlier, it now seems for more likely that Ralph and Kathrine traveled to DeKalb around 7:00 but returned around 9:00 or 9:30 pm., not 8:00. Again, this time frame arguably allows for the possibility of Ralph traveling to Rockford and back while Katherine was in DeKalb.

6. David Frederick's recollection of seeing John Tessier's car in town between 2:00 and 3:00 p.m. was described as "vivid".

At David Frederick's earlier Grand Jury testimony on October 8, 2010, the following exchange occurred regarding that event:

"Q: Would you have seen his car in town that day?

A: Possibly.

Q: Alright. And do you recall what time you would have seen his car in town that day?

A: No.

Q: Okay. Do you remember being interviewed by some members of the Illinois State Police recently?

A: Oh, yes. Yes.

Q: Okay. Would you have told them that you'd seen his car in town between 6:00 and 6:30 p.m. that day?

A: I don't remember what I said." (Page 84 Grand Jury of 10/8/2010)

7. "She (Kathy) immediately pointed to the photo of Tessier, and said, 'That's him.'"

The narrative account from the State Police indicates that Kathy at first excluded three photos, then a fourth, and then took some time looking at Defendant's photo and one other before selecting Defendant. This is consistent with her later trial testimony.

8. "Sigman told the detective that she did not know John Tessier at the time of this incident or afterward."

This is simply not true. There is no record anywhere that indicates that anyone ever asked Kathy Sigman if she knew John Tessier prior to the completion of the complaint for warrant and his arrest. The CNN report "Taken" and "Footsteps in the Snow" clearly states she did not learn the name of the man in the photograph until he had been arrested. However, Katherine Tessier Caulfield offered the following testimony to the Grand Jury on October 8, 2010.

"Q: Okay. To your knowledge did John know Maria Ridulph?

A: Yes, he did.

Q: Alright. How many times would he have met her?

A: I don't know. You know, we all played on the street back then. Nobody, you know, everybody kind of went from neighborhood to neighborhood, there was nothing to be afraid of, so, I don't know how many times he would have seen her." (Page 34 Grand Jury of 10/5/2010)

Moreover, Katherine also told the State Police (SAO 1024) that John was a close friend of Kenny Davy (Kathy Sigman's next door neighbor). The State Police were also well aware, by the time they went to Seattle, that Maria and Kathy were close friends and frequent visitors to the home of Johnny Peterson, the Tessier's back yard neighbor, during the summer and fall of 1957. (SAO pages 2697, 2796, 2797, 2794). The FBI had confirmed this detail with Florabelle Sigman, Kathy Sigman, Frances Ridulph, Johnny Peterson and his mother, and Ralph, Eileen and Robert Tessier.

Therefore, at the time the affidavit was prepared, the Illinois State Police knew that Kathy Sigman had no idea whose photo she had selected, and had never been asked about John Tessier. They also knew of ample evidence that John Tessier at least could have been recognizable to Kathy Sigman from other, innocent, neighborhood encounters.

In conclusion, John Tessier was arrested as the result of a warrant signed by a judge who was misinformed about numerous key details. There was no basis at all for the time line provided to the judge, and the wealth of information pointing to a much later abduction was concealed from him.

Obtaining a warrant using demonstrably inaccurate information violated Defendant's Fourth Amendment rights. The failure of at least one of the three Public Defenders who were Defendant's lead counsel at various times to pursue suppression of this illegal arrest and any evidence flowing therefrom, cannot be considered effective under any rational standard. The same should be said for the Appellate Defenders failing to raise ineffective assistance of counsel.

B-2. Inaccurate and Misleading Grand Jury Testimony.

The prosecution's presentations to the Grand Jury on October 8, 2010 (Exhibit 8), and on August 19, 2011, when the indictment was returned, included considerable testimony that was clearly erroneous and misleading, and excluded a significant amount of clearly exculpatory evidence.

The only live witness on August 19, 2011, when the indictment was actually returned, was ISP Investigator Brion Hanley, although Assistant State's Attorney Julie Trevarthan also improperly provided certain unsworn "testimony".

This Grand Jury was then provided with transcripts of all the witnesses who testified before the 2010 Grand Jury, and instructed to read them. This procedure offered no guarantee that every Grand Juror would actually read every portion of every transcript.

Nevertheless, assuming they all read and understood the earlier testimony, the indictment was returned based on the live presentation of August 19, 2011, and the transcripts from October 8, 2010. The transcripts, when compared to 1957 and 1958 reports, and to subsequent trial testimony, contain a significant amount of demonstrably inaccurate and misleading testimony and argument.

At page 7, Brion Hanley testified that, immediately after being unable to find Maria, Kathy returned home and told her mother. He states, "At that point her mother calls the police, and the police come." While this may be what Kathy Sigman remembered in 2010, Hanley should have known that it was inconsistent with her 1957 account. FBI reports clearly show that Maria's disappearance was reported by Frances Ridulph and Patricia Ridulph in person at the Sycamore Police Department around 8:00 p.m., not by Florabelle Sigman by telephone, almost immediately after the event. At trial, Kathy still thought her mother reported the disappearance but remained adamant that the police arrived at 7:30 or 8:00. (Trial transcript Page 42, Testimony of 9/11/12)

He goes on to state "... and the police came; and at that time, that is the first time that she told any adult or any law enforcement authority that they had interaction with a stranger."

He knew, or should have known, this to be inaccurate, based on reports which he had in his possession since July 3, 2010. Kathy first disclosed "Johnny" to her mother sometime between 7:05 and 7:15 p.m., between fifteen to thirty minutes after Maria disappeared, and provided a fairly detailed account to her own mother, Kay Ridulph, Charles Ridulph and Randy Strombon sometime around 7:30 p.m. This is based on the times Charles, Randy and Meredith Strombon provided for Charles and Randy going out to search (7:20 p.m.) and Kay returning home from voice lessons (7:25 p.m.). There is also an indication that Florabelle Sigman advised Frances Ridulph of the stranger in a phone call at approximately 7:10 to 7:15 p.m. Frances Ridulph was the first to report this to law enforcement based on both the Sheriff Department report (SAO 15) and FBI interviews with Chief Hindenberg. Kathy Sigman certainly did not first report it to Sycamore Police, nor did the Police come to her home in response to a call from Mrs. Sigman.

On page 8, he was asked if Kathy had given a description and Hanley testified, "he's a tall, skinny guy, about 18 to 20 years old. He had a gap in his tooth (sic). He had blond, sandy blond wavy hair. And she also said that he would play in his hair almost like a nervous reaction. He also was wearing a multicolored sweater that was blue, orange, green and red, and that she wasn't really sure of his pants, but she described the sweater very vividly."

At the time of testifying Hanley knew, or should have known, that his account varied significantly from Kathy's original description on December 3, 1957. The "Sheriff's Office Report of Call" states, "Johnny wearing yellow, blue, green sweater, gray hat, blond hair" and as being a "white male age 20 – 24", clearly based on information provided by Chief Hindenberg, the first law enforcement agent to interview Kathy. (SAO 15)

On December 4, 1957, Hindenberg was interviewed by FBI Special Agent Jerome Nolan. Nolan reports that he said, "Kathy had pointed out a policeman who is 6-foot-tall as being the height of the unknown subject. As to weight, Kathy had picked out another policeman who weighed 180 pounds and stated the unknown subject was that heavy". He said, "Kathy said the man took off his hat, and that he had blond, wavy hair that fell in his face when he took his hat off, and he brushed the hair back with his hand. Kathy states that the unknown subject was wearing a green, blue and yellow sweater, a gray hat, no coat and that Kathy told (him) the man was between 24 and 25 years old." (SAO 2658)

If Kathy did describe the sweater vividly, it was not very close to the sweater Hanley described to the Grand Jury, nor was there any discussion of a "nervous habit", a person aged "18 – 20", a skinny person, or a gap in his teeth.

On December 7, 1957, SA Robert Wilson interviewed Kay Ridulph who had spoken with Kathy at 7:30 p.m. on December 3rd, about an hour before Chief Hindenberg's arrival. According to Kay, "Kathy described the man as white, blue pants, said his name was Johnny, age 24, and the man told them he was not married. Kathy said he talked "like we used to" which Kay took to mean "like a hillbilly as the Sigman's talk in that fashion."

On December 4, 1957, Kathy provided a more detailed description to Special Agent Francis J. Duffin. "Johnny" was a white male, approximately 5'8" in height (based on the man being two inches taller than her father Henry Sigman, who was 5'6"), very thin, with a thin face, between 25 and 35 years old based on her opinion that SA James Sheehan, age 32, was "about" Johnny's age, having light brown and very curly hair, not long but protruding from under his gray felt hat. She described him as having even, pretty teeth, but missing the right upper eyetooth. He had no visible tattoos or facial hair and did not wear glasses. His dress was described as: (a) gray felt hat, blue jeans with pockets in the back and a thick sweater that had many designs, small in size, colors green, blue and yellow; round metal watch on left wrist, with metal band; may have had shirt open at collar sticking up through sweater, which came high up on neck. Did not fold over like a turtleneck, but definitely not V-neck. May have had horse emblem on shiny buckle of his thin belt. He had "no accent, but talked in a high voice."

Hanley could have provided this highly detailed description to the Grand Jury, but did not do so. It should be noted that Kathy's description varied only in minor details over the following weeks, none of which was disclosed to the Grand Jury.

On December 6, 1957, Kathy told Special Agents Johnson and Baker that his teeth were "large and yellowish" with none missing. She also said his belt buckle had no horse after all and his belt was two inches wide. His watch as had a "sweep secondhand". On December 7, 1957, she stated that the right eyetooth was "definitely missing" after all, maybe there was a horse on the belt buckle, and his teeth were "nice" and only slightly yellow. On December 14, 1957, she told Agent Duffin that "Johnny" did not "talk with any accent" and (SAO 2691) stated she did not recall telling Kay Ridulph or Chief Hindenberg that "Johnny" spoke with the same accent her family used when they moved to Sycamore from Otisco, Indiana eleven years earlier. Otisco is in southeastern Indiana, about 30 miles north of Louisville, Kentucky. (Defendant was born in Belfast, Northern Ireland and immigrated to Sycamore at the age of 6, so he would certainly not talk like a hillbilly). Hanley had obtained Defendant's medical records by that time, and knew he was not missing any teeth when he enlisted.

Hanley's testimony concerning Defendant begins on page 9, and is drawn from FBI reports. Hanley wrongly stated that the Sheriff's Office received an anonymous call from a woman who "stated that a male individual named Tacheer is the one that kidnapped Maria Ridulph."

According to FBI Special Agent Nolan, the anonymous caller who contacted the Sheriff's Office on December 6, 1957, simply stated, "That a boy named Treschner, age about 20, blond hair, lived in the neighborhood of the victim". It was not until December 10, 1957, that Sheriff's Deputy George Gould advised Special Agent Burton that, "the Treschner previously reported was in fact a Tessier family... He stated that he did not have any reason to suspect any member of the Tessier family... other than the fact that the oldest Tessier boy is named John, and meets the general description of the unknown subject."

On page 10 Hanley goes on to state that the FBI determined that John Tessier was the person the caller was referring to and then went to speak with his parents, Ralph and Eileen Tessier. This was misleading because the FBI went to the Tessier home on December 8, 1957, not due to the anonymous call, but as part of the general canvass of the neighborhood. Agents Mellot and Burton went to the Tessier home and interviewed Ralph, Eileen and Robert Tessier. All three advised that Kathy and Maria were frequent playmates of Robert's and that they all knew the girls well. The Tessiers stated that the girls also frequently played with a neighbor named Johnny Peterson at the Peterson home, the back yard of which borders the Tessier back yard. (Peterson and his mother were later interviewed and they, and the Ridulphs and Sigmans, confirmed the fact Maria and Kathy frequently played at the Peterson's)

In the course of this visit, apparently unprompted by the FBI, Ralph Tessier "advised that he had discussed with his wife, Eileen, the fact that their son John Tessier might fall under suspicion as he is approximately 5'8" tall, 19 years of age, has blond hair, and his first name is John". It is clear that the subsequent FBI investigation of Defendant was prompted by his parents, not the anonymous caller, because the Tessier investigation was almost concluded before Deputy Gould again spoke with Agent Burton on December 10th. Hanley knew or should have known all this when he testified, as all this material is found on the *very same page* of the FBI reports. A copy of the entire Section of the FBI Report dealing with this investigation is attached hereto, in Exhibit 1.

Hanley goes on to inaccurately state that "The parents told law enforcement that John was home all night long. They were certain that he was in the house and home with them." In fact, both Ralph and Eileen, from the beginning, told the FBI that John Tessier was in Rockford, that he was in the process of enlisting in the military, that he had called at around 7:10 p.m. to get a ride. Eileen said that Ralph had gone to Rockford and picked John up at around 8:00 p.m. The same Agents made contact with John Tessier (described by his birth name John Samuel Cherry) on that same date, at the Tessier home at 227 Center Cross. He provided them with a detailed account of his activities between the morning of December 2nd and the night of December 3rd.

Hanley's testimony on pages 11 and 13 was a very abbreviated version of Defendant's account to the FBI, omitting a vast amount of detail. The entire report could easily have been read to the Grand Jurors. Defendant's whereabouts that night were absolutely critical and this would have been a valuable piece of information for the Grand Jury.

On page 13, in response to questions by ASA Trevarthan, Hanley told the Grand Jurors that Defendant had been unable to provide the names of a stranger he had met on the train, or the names of the Air Force Reserve personnel he encountered that evening, implying that this was somehow odd.

However, in a subsequent interview with Staff Sgt. Jon Oswald, conducted on December 10, 1957, FBI Agent John Roberts confirmed all the major details of Defendant's account, including the actual names of Colonel Liebovich and Sgt. Froom. Oswald had obviously spoken with Liebovich and Froom, and had clearly obtained Defendant's paperwork from Froom prior to meeting with Defendant on December 4, 1957. He in fact provided numerous details regarding Defendant's appearance and demeanor on the evening of December 3, 1957, which could have only have come from those individuals.

Despite that, the only testimony Hanley offered about Oswald's interview with Roberts were minor details reflecting unfavorably upon Defendant. In particular Hanley spoke of Defendant's bringing up the disappearance of the Grimes sisters in Chicago in 1957, as if it were random. Omitted, however, was the fact that this came up when Oswald took a phone call from his landlady, a Mrs. Grimes. In any event, rather than disclosing to the Grand Jury that the Oswald interview contained virtually nothing but exculpatory information, the prosecution limited the presentation exclusively to the few, odd, and vaguely unsettling observations relayed by Oswald.

This maneuver took advantage of the admissibility of hearsay in Grand Jury proceedings by leading a witness to selectively introduce certain information from an FBI investigation, which had actually cleared Defendant, to cast a false impression of guilt in the minds of the Grand Jurors. The FBI report, which was completely exculpatory, was not disclosed to the Grand Jury, and then barred from evidence at the actual trial.

On page 17, Hanley testified about his initial interview with Janet Tessier in 2008.

Hanley said Janet told him that Eileen said “Do you remember Maria Ridulph?” and “Well, John is responsible for her abduction and murder”, and that she just had to tell somebody before she died.

Janet actually told the October, 2010 Grand Jury that Eileen said, “Janet, those two little girls, the one that disappeared, John did it. John did it and you have to tell someone”, while Mary Pat Tessier Hunt said, “What I recall she said ‘He did it’, which we both took as her confession that John killed Maria.” Mary Pat also testified to the Grand Jury that her older sisters had suspected John of this crime for years, and that she had been aware of those suspicions for at least a decade.

On page 20, Hanley testified regarding December 3, 1957, that according to Katherine Tessier, “earlier that day, Ralph took Katherine to a 4-H meeting in DeKalb... On their way back ... there was police activity all over. She asked her father what had happened and he said Maria has been abducted or they can’t find Maria.” Although a more or less accurate paraphrasing of what Katherine had told him in an interview, and what Katherine testified to on October 8, 2010, he knew or should have known that there could not have been police activity in the area until after the report was made to the police at 8:10 p.m.

Police and prosecutors are permitted to present hearsay to a Grand Jury, but they must have a good faith belief that the hearsay is accurate. Since the first report of Maria’s disappearance to law enforcement was at 8:10 p.m., it is impossible for Katherine Tessier’s account to be true. It should not have been presented.

On page 21 the following exchange occurred:

Q: And was there anybody else in the house present on that evening?

A: No, there was not. And while we interviewed Katherine, she couldn’t believe that she overheard her mother Eileen and Ralph telling the police that John was home; she couldn’t believe that they would tell them that because John was not home and both Katherine and Jean (sic) both stated he was not home that night. And Jean, I don’t think she said she saw him for a few days after December 3rd.

Hanley knew, or should have known, that the FBI reports did not list Katherine and Jeanne as being present during the interview with Ralph and Eileen, and that Ralph and Eileen in fact never told the FBI that John was at home throughout the evening and night. While reliable hearsay is admissible at a Grand Jury, no witness should present hearsay that he knows to be incorrect.

On page 23 and 24 Hanley discusses an interview that he had with David Frederick. He related that Frederick, in 2009, recalled seeing John Tessier’s car on the afternoon of December 3, 1957. He also related that Frederick stated he had searched for Maria on the night of December 3, 1957 along with Jack Maness and Dennis Twadell and that John was nowhere to be found. At the time Hanley knew or should have known that Frederick had told the Grand Jury in 2010 that he could not recall telling Hanley anything about the Defendant’s car. It is of course

possible that Frederick's memory had failed in the year since the interview. However, Hanley also should have been aware that the FBI interviewed Frederick in 1957, and at that time he denied searching for Maria at all on December 3, 1957, and indeed said he did not even hear of her disappearance until arriving at school on the morning of December 4, 1957. (SAO 2759)

In light of these glaring inconsistencies it is difficult to characterize anything that Frederick said in 2009 or 2010 as reliable.

On page 24, ASA Trevarthan, in a question, asserted that Defendant claimed to have searched with David Frederick and the witness agreed. In fact, in 1957, Defendant never said he searched with Frederick. The only person he identified as having searched with was an individual with the last name Manis (sic).

On page 25, Hanley also claimed that Defendant had said that he searched with Dennis Twadell, which was not true, and that Twadell, on March 22, 2010, had denied searching with Defendant. Twadell actually said he did not search at all on December 3, 1957, with anyone. According to Hanley's original report, Twadell said that Frederick had called him around 8:00 p.m. to go out and search and that he, Maness, Frederick and Defendant had gone to the police station and were then sent home, as being too young. At first, Twadell said Defendant rode a bike to the police station, then that he drove his car. However, before the interview was concluded Twadell had decided that Frederick and Defendant were not there at all.

Since the original FBI reports show Frederick to have been at a St. John's Lutheran Church Father-Son Dinner, as verified by his father and the pastor, from 6:30 to 9:00 p.m., he certainly did not call Dennis Twadell at 8:00 p.m. Since Defendant was in Rockford around 7:00, he certainly did not drive his car to the Sycamore Police Station at 8:00 p.m., and Dennis Twadell certainly did not see this car at that time.

Hanley then testified, "That Dennis also stated that he saw John's car that afternoon of December 3rd." In truth, according to Hanley's own reports, Twadell, in a single interview said Defendant rode a bike, drove a car, and wasn't there at all. In a subsequent interview on March 29, 2010, Twadell denied seeing Defendant at any time on December 3, 1957. He also returned to the story of Frederick being at the police station, which remains inconsistent with Frederick's version of events in both 1957 and 2010. Finally, the day before Hanley testified, Twadell told him he did see Defendant's car on December 3, 1957, after all. But when called at trial he never testified about seeing the car. Clearly, Twadell's memory was completely unreliable.

On pages 40 and 41 Hanley testified about Pam Long's story concerning a piggyback ride she received from an individual who may have been the Defendant and her father's response to this piggyback ride, which supposedly occurred when Pam Long was "10, 11 or maybe younger". Hanley was immediately asked if Defendant's age was 18 on December 3, 1957, which he confirmed. Hanley knew at the time he testified that the alleged piggyback ride had occurred years prior to Maria's abduction and that the true age difference between Pam Smith Long and Defendant is 4 years, 2 months, but this was never clarified this for the record.

Brion Hanley's field notes reflect that the piggyback ride occurred "4-5 years before Maria's incident", which would have put Pam at 8 or 9, and Defendant at 12 or 13. Larry Kot's field notes reflect that it was 5-6 years earlier and Pam as being 6 or 7, which would have put Defendant at 10 to 12.

Their field notes as well as the narrative reflect that Pam knew the individual who gave her the piggyback ride by the nickname of "Commando", and that she did not know his last name was Tessier, until recently. Nothing in these reports indicates that she thought of "Commando" as being the step-grandson of her next-door neighbor Eugene Tessier, until she read of Defendant's arrest shortly before her call to the tip-line in July of 2011.

Hanley knew, or should have known, that there was another, different individual who lived about one block from Pam Smith Long who was known by the nickname "Commando". This individual was also known for giving girls piggyback rides, left Sycamore for Florida on December 4, 1957, and was thoroughly investigated by the FBI. Kot's field notes clearly reflect knowledge of this individual, because they contain a reference to a 1950 green Oldsmobile including its license plate number. This individual, now deceased, drove a 1951 two-tone green Oldsmobile, with the same license plate noted in Kot's field notes. He drove this car to St. Petersburg, Florida on December 4, 1957. He was described in two newspaper accounts at the time as being nicknamed Commando. He was 21 years old at the time, seven years older than Pam Smith Long. He was considered such a strong suspect that the Florida FBI obtained tissue samples and fingerprints for comparison. The investigators did not explore their obvious suspicion that Pam might have been confusing this individual with Defendant. If they did, it was omitted from their narrative report, and they did not disclose their suspicions, which were simply kept out of the knowledge of the Grand Jury.

The Grand Jury was then given the 90-page transcript of the October 8, 2010 Grand Jury testimony to review and a recess was taken. The witnesses at the earlier proceeding had been Brion Hanley, Jack Maness, Katherine Tessier Caulfield, Jeanne Tessier, Janet Tessier, Mary Hunt and David Frederick. Then First Assistant William Engermann had made the presentation. John Farrell, who has since been indefinitely suspended from the practice of law for dishonesty, was the State's Attorney at the time.

In his testimony to the Grand Jury on October 8, 2010, Hanley had testified to most of the same things he told the August 19, 2011 Grand Jury. He truthfully stated that the girls were playing outside around 6:00 p.m. after dinner, then went on to describe, more or less accurately, the sequence of events, without affirming any particular times. He described "Johnny" much as he would in 2011, leaving out numerous details from the 1957 reports, while adding the non-existent details of a gap in the teeth, and the compulsive hair brushing. This time the sweater was described as orange, green, yellow and red.

He stated that Kathy's mother had called the police, and that Ralph Tessier had told the police that the Defendant was home the whole time. As previously noted these statements are not true. Not to belabor the point, but Hanley had been in possession of the full FBI archives for three months and frequently quoted it accurately.

The testimony of Jack Maness was essentially that he did not recall searching with the Defendant on the night of Maria's disappearance or the day after, and did not recall finding a cache of pornography, as Defendant had told the FBI in 1957. However, he also testified that his memory was affected to some degree by a brain tumor. This was largely consistent with Hanley's summary of Maness' recollections as presented in 2011, except that Hanley omitted the brain tumor.

Some of the testimony of the Defendant's sisters may be inaccurate, because it varies from Hanley's accounts in his reports and / or their own subsequent testimony at trial. To avoid redundancy these matters will be dealt with in the forthcoming sections that cover trial testimony.

Issues concerning the reliability of David Frederick's testimony were already discussed in connection with Hanley's summary of Frederick's testimony of August 2011.

Following the recess, the Grand Jurors returned and posed some questions.

An explanation was sought, on Page 47, for the variations between David Frederick's statement to the Grand Jury and Hanley's account of his interview with Frederick. ASA Trevarthan offered the unsworn statement, not referring to anything in evidence, that "He is the one that has a brain tumor. So he will remember something one minute, and the next thing he doesn't, but then he will remember it again five minutes later. Yeah, he has a brain tumor, that's the problem." Even if Trevarthan had been sworn, the discovery contains no basis for her statements. Quite apart from the procedural irregularities, Trevarthan was also in no position to diagnose the particular effect of Frederick's brain tumor on his memory, or offer any opinion as to which memories were correct. If, indeed, Frederick did have a brain tumor that affected his memory, why did the prosecution choose to include his testimony at all? Of course, she was likely confusing Frederick with Maness, who actually had testified that he had a brain tumor.

On page 54, after several questions about an unused train ticket which the ISP had obtained from Janet Edwards Swafford, the following exchange occurred.

"Grand Juror: You do have that one (train ticket), okay. You don't have the one from Chicago back. How did he get to Chicago?

Witness: (Hanley) We don't know.

Ms. Trevarthan: We believe he drove.

Grand Juror: And the Army said he was in Chicago?

Witness: He was in Chicago the morning, yes."

Further discussion revealed that both Trevarthan and Hanley were convinced that the Defendant was in Chicago on the morning of the 3rd, and that he did exactly what he told the recruiter he did, up until sometime around noon.

Then a Grand Juror, on Page 56 at line 17 asks:

“You are saying that you think he drove in?

Hanley: Well, he didn’t take the train in because we have the ticket.

Trevarthan: That’s the only other logical way that he could have gotten there unless he walked. I don’t think he walked to downtown Chicago from Sycamore.

Grand Juror: Approximately what time did Maria go missing?

Hanley: It was around, a little bit after 6:00.”

This last exchange was fraught with misleading and inaccurate statements. Trevarthan was mixing unsworn testimony, unattributed hearsay, and misleading argument throughout.

The fact that the prosecution possessed an unused train ticket from Rockford to Chicago in no way proves that the Defendant did not use another train ticket to take a train from either DeKalb or Rockford to Chicago on December 2nd, or that he might not have taken a bus from DeKalb or Sycamore. He could not, however, have taken a train from Sycamore to Chicago, as passenger service from Sycamore had stopped in 1956. Moreover, despite Hanley’s testimony, there is absolutely no evidence that someone did not give him a ride to Chicago, or some intermediate train or bus station, on December 2nd.

In any event, the supposition that he drove is just that, supposition. It appears solely to be based on the clearly absurd notion that the only way one can get to Chicago is to take a train from Rockford or drive a car from Sycamore.

The final, most obvious, and most critical inaccuracy is Hanley’s baseless speculation that Maria disappeared at “a little bit after 6:00”. As has been previously shown, the FBI, the ISP and the Sycamore Police concluded five decades earlier, based on a serious review of numerous witness statements, that Maria was last seen by Kathy between 6:45 and 6:55 p.m.

While “a little bit after 6:00” is certainly inexact, no rational person could mistake 6:45 for “a little bit after 6:00”. This could be viewed as the capstone in an effort to obtain an indictment by almost systematic concealment of the truth from the Grand Jury. It was at best an unacceptable exercise in legal gamesmanship, and could be construed as the unethical procurement of a criminal indictment without probable case in violation of RPC 3.8(a).

The failure of the Public Defender’s Office to at least pursue dismissal of the indictment based on the manner in which the Grand Jury proceeding was conducted cannot be described as anything but ineffective under any rational standard. The same can and should be said about the Appellate Defender.

Trial Testimony Which is Contradictory to the Evidence Contained in 1957 Reports or Testimony at the Grand Jury.

B-3. Testimony of Mary Catherine (Kathy) Sigman Chapman:

Page 12, Line 8, "The corner had a street light on it."

Multiple investigators reported in 1957 that there was no street light at the corner. The nearest streetlight was at the corner of Center Cross and Center Street, in the same location as today. A 1957 newspaper photograph of the corner admitted into evidence on the State's motion shows no street light.

Page 12, Line 16, Kathy testified that a man approached from the south.

Page 13, Line 13, "This man had a slender face with hair that had a flip in the side – in the side of it and he had large teeth."

This testimony should have been open to cross-examination using the actual description of "Johnny" that Kathy provided to the FBI in 1957, and described in full in the previous section.

Specifically, Kathy described "Johnny's" hair as wavy or curly, not having a "wave", and she only said his teeth were big once and then recanted that statement, in 1957.

Page 13, Lines 9-10, Kathy described at great length how well lit the corner was due to the street light on the corner. As previously noted, all reports from 1957 indicate there was no street light there.

Page 13, Line 20, "The man was wearing a sweater with lots of colors in it." While "lots" is not terribly specific, both the FBI reports and the original report to the Sycamore Police all consistently report only blue, green and yellow.

Page 14, Lines 18-24, Kathy testified that "Johnny" gave Maria a piggy-back ride down Center Cross to the south, returning north to the corner. All of Kathy's statements to the FBI involved both the first and second piggy-back rides as being to the west, back to the Johnson's garage and then returning to Center Cross Street.

Page 15, Lines 18-20, Kathy testified to observing "Johnny" in the light cast by the street light on the corner. Again, there was no streetlight on that corner.

Page 16, Lines 13-21, Kathy testified that as soon as Maria returned with the doll Kathy went home to get her mittens. Kathy told the FBI that after "Johnny" examined the doll he offered Maria another piggy-back ride, which she accepted. This ride followed the same route to the Johnson's garage and back. Then Kathy asked "Johnny" the time. Then Kathy returned home to get her mittens. Defense counsel was barred from raising these omissions.

Page 17, Line 17, to Page 18, Line 8, Kathy testified about returning to find Maria gone, and going to the Ridulph home where Charles Ridulph said Maria had not returned home, and that Kathy should go out and look some more.

This testimony was consistent with what Kathy told the FBI in 1957.

Page 18, Line 9,

Q: Were you able to find Maria?

A: No, I did not find her.

Q: After you looked for her the second time and couldn't find her what did you do next?

A: I went home to my parent's home.

This account varies in almost every detail from what Kathy told the FBI in 1957. In 1957 she stated that as she was first walking back to the corner from the Ridulph home, she was joined by her brother Carl Edward Sigman, age 10, and they both searched for Maria. Still not finding her, they returned to the Ridulph home, not their parent's. This time they were able to convince the Ridulphs that Maria was missing. Kathy and her brother were still at the Ridulph home when Michael Ridulph went to the door and began calling for Maria.

The FBI reports indicate that Tom Braddy was at the corner until approximately 6:15 p.m., and that the girls were interacting with him during that period. Kathy then said "Johnny" did not approach until fifteen minutes after Braddy left. These details were entirely omitted from her testimony in 2012, and defense counsel was unable to refresh her recollection due to the errant order in limine.

Cross Examination of Kathy Sigman Chapman.

At page 31, line 6-11, Kathy indicated that she and Maria were not permitted to go to Ferguson's store. The Public Defender was not permitted to use the 1957 statement of Florabelle Sigman, Francis Ridulph and Bernie Ferguson to impeach these statements.

At page 32, line 22, Kathy actually testified that the game of duck the cars went on for 15 minutes that night.

At page 34, she says they were there 15 – 20 minutes, a half an hour. As previously noted, this trial testimony is entirely inconsistent with the "6:15" statement in the application for search warrant, but not inconsistent with her original statement to the FBI.

At page 41, line 15, Kathy denied picking anyone out at a line-up she attended in Madison, Wisconsin. She had testified previously that she remembered being taken to Wisconsin, volunteering that it was Madison. She remembered that her father was there and described the manner in which the line-up was conducted. The Public Defender was barred from introducing the FBI report from 1957, which should have been admissible, and which detailed her picking out an individual named Thomas Rivard as being identical to the unknown subject "Johnny".

Rivard was not the suspect, but was a "filler" who was then in the Dane County Jail. The FBI quickly concluded, due to an alibi, that he was not "Johnny", but given Kathy's certainty that he was identical with "Johnny", they took a film of him that was subsequently shown to hundreds, if not thousands, in an effort to develop suspects who appeared similar to Rivard. Both Henry Sigman and Charles Ridulph named individuals they considered similar, but both were cleared. Neither they, nor anyone else who viewed the film, ever mentioned John Tessier.

The FBI agents described Rivard as: 35 years of age, 5 foot 4.5 inches tall, and 156 pounds, with dark blond, wavy (bushy) hair.

In addition to Rivard, Kathy had already indicated that William Crego, of Kingston, appeared very similar to "Johnny" after viewing him in a line-up. She told Special Agent Auerbach that the disparity was more in Crego's voice than in his appearance. The FBI described Crego as follows: 30 years old, 5 foot 6 inches tall, light brown hair, medium to long.

The Public Defender was unable to introduce into evidence the extreme dissimilarity between those individuals and Defendant, or to impeach the credibility of the witness when she denied ever picking anyone in a line-up because the FBI reports had been wrongly declared inadmissible.

B-4. Trial Testimony of Katherine Tessier Caulfield

Page 78, line 7, Witness testified that Defendant did not know, and never played with Maria Ridulph.

As previously discussed, the witness had told the grand jury that Defendant did know Maria Ridulph, and that all the neighborhood children played together.

Page 79 – 80 Witness testified concerning her attendance at a 4-H event in DeKalb on December 3, 1957, and indicated that her father, Ralph Tessier, took her there at 5:00 and picked her up at 7:00 to return home.

As previously discussed this is inconsistent with the account provided to Judge Heavey. Page 81 and 82, Witness described entering Sycamore with her father shortly after 7:00 and that she "noticed there were lots of police cars, Sheriff's cars with lights flashing". She stated that these police cars were on DeKalb Avenue and Center Cross. She stated that "There were people outside everywhere, walking and looking, you know, in bushes, they were everywhere".

On Cross-Examination, at pages 105 – 106, Witness reiterated returning home at 7:00 and seeing "maybe a dozen" and "a large number of squad cars" and "maybe more than a dozen" and that there "all kinds because they weren't just Sycamore Police".

As previously detailed, this testimony is contradictory to the 1957 reports which repeatedly reflect that the police were not notified until 8:10 p.m. Moreover, these reports indicate that the State Police did not receive notice until after 10:00 p.m., so the idea that "more than a dozen" police cars were present at 7:00 p.m. is simply impossible. This testimony is also contradictory

to the trial testimony of Kathy Sigman who testified that the police interviewed her around 7:30 or 8:00 p.m.

This event, as testified to by Katherine Tessier Caulfield simply could not have taken place on December 3, 1957, at 7:00 p.m. Realistically, it would have had to have been closer to 9:00 or 9:30 p.m., as was previously discussed in Section A-1 of this report

Pages 90 – 94 Witness testified that the FBI came to the Tessier home on December 4, 1957, and questioned Eileen Tessier in the presence of the Witness and her sister Jeanne, and that her mother told the FBI that John Tessier was “home the evening of December 3, 1957”.

FBI reports from 1957 indicate that Ralph, Eileen and Robert Tessier were not interviewed by the FBI until December 8, 1957, that the FBI first became aware of the name “John Tessier” at that time, and the neither Ralph nor Eileen told the FBI that John was home, except for a brief stop before going out again. Moreover, the FBI never noted the presence of either Tessier sister at any interview, and in all other reports they were very detailed about who was present during interviews. In any event, it is entirely possible that John stopped at home while Katherine was still in DeKalb.

B-5. Trial Testimony of Charles Ridulph, September 10, 2012

Page 60, Witness testified that sometime after dinner, while he was listening to records with his friend Randy Strombon, Kathy Sigman came to the door looking for Maria.

The Witness did not provide a time for any of the events he testified to, beyond “after dinner” and the Defense was unable to use his statements, and those of Randy and Merideth Strombon previously detailed, to refresh his recollection.

Page 61 – 62, Witness testified that after Kathy Sigman came back a second time looking for Maria, he and Randy Strombon walked around the block looking for her, which he estimated to have taken 15 minutes. He further stated that, upon returning home, Kathy had already revealed the existence of “Johnny” and that the police were called at that time.

This was inconsistent with the 1957 FBI reports, including statements made by the Witness himself, which indicate that the Ridulphs became aware of Maria’s absence at 7:00 and that the police were not contacted until 8:10. It is also inconsistent with the 1957 statement of Charles Ridulph and Randy Strombon, corroborated by Merideth Strombon, that the boys began their search for Maria at 7:20 p.m. All prior inconsistent statements of Charles Ridulph should have been available as impeachment or to refresh his recollection, but were not.

B-6. Trial Testimony of Pamela Smith Long.

The witness never actually testified that John Tessier, step-grandson of “old man Tessier”, her neighbor, was the individual who gave her a piggyback ride in the early 1950s. She did refer to him as being named Johnny, but never testified to the nickname “Commando”, which is

mentioned in the State Police report of her interview, nor testified to any connection between the piggyback ride giver and “old man Tessier”.

In any event, the Public Defender was unable to question either the witness or the police about the possibility that Ms. Long was mistaken about the identity of the person who gave her the piggyback ride, because all of the reports concerning “Commando” had been barred from evidence.

B-7. Trial Testimony of Cheryl Wiley Crain, September 10, 2012

At page 135, Witness testified that her family usually ate dinner between 5:00 and 6:00, and that after dinner that night she planned to help Janet Edwards decorate the Edwards’ store for Christmas. At page 144, during cross-examination she stated she arrived at the shop between 6:30 and 7:00.

In a 1957 interview with the FBI, the Witness’s father stated that his family finished dinner at 7:30 and that his family then accompanied him to Belvidere, and that by the time he returned to Sycamore, the search for Maria had started and he joined it.

At page 138, the Witness testified that after decorating for a period of time, she and Janet Edwards heard loudspeakers on police cars going through town.

1957 FBI reports indicate that the police became aware of Maria’s disappearance at 8:10, and no ancient documents make any mention of police cars equipped with loudspeakers. Newspaper reports indicate that the sound equipment used that night belonged to Janet Edwards’ father, and that he began driving through town with the truck much later in the evening. This was actually corroborated by Witness Pam Smith Long who recalled returning home from Teen-Town and going to bed, and later being awakened by the Edwards’ sound truck. Teen-Town was in the building that now houses the Midwest Natural History Museum, directly across the street from the theatre building that housed the Edwards’ store.

At page 138, the Witness testified that shortly after they heard the loudspeakers, her father called the store and told them to lock the doors and wait for him, and that he subsequently picked them up, took Janet home, and then returned to the Wiley home and dropped Cheryl off before going out to search.

In his statement to the FBI, while being questioned as a suspect within a week of Maria’s disappearance in 1957, Russell Wiley made no mention of picking up his daughter, and the daughter of the local photographer / hobby shop owner / auxiliary Sheriff’s Deputy who was out that night running the loudspeaker trucks.

B-8. Trial Testimony of Jeanne Tessier, September 11, 2012

On page 157, Witness described men coming to the Tessier home, after supper, to get Ralph to open the hardware store and hand out flashlights to the searchers.

Ancient documents indicate that this could not have happened right after supper, or in the 'evening', as Maria's disappearance was not reported until after 8:00.

Also on page 157, Witness indicated that her mother left home sometime on the night of December 3rd to assist in an effort to provide coffee and sandwiches for the searchers out at the Armory.

All ancient documents including FBI reports and newspaper accounts seem to indicate that the first night's search began later in the night and the organized searches really began on December 4th.

At page 159, Witness testified that a few days after Maria disappeared that some law enforcement agents came to the house and questioned her mother, in her presence. She testified that her mother was asked about John's presence and that her mother said that John came home that night.

This is contradicted by the FBI reports as previously noted. The FBI was not there asking about John, and Ralph, Eileen and Robert were present, but the FBI did not mention Jeanne. The Tessiers brought up John's whereabouts, not the FBI.

B-9. Trial Testimony of "John Doe"

Page 141, Witness testified that Defendant told him that, "he went to the back of his house, crawled on top of a garbage can or something and pulled the little girl inside of a window and had her inside the bedroom.

This is completely inconsistent with the testimony of Katherine Tessier Caulfield and Jeanne Tessier who stated categorically that their brother was never home that evening. Moreover, it is completely at odds with the State's theory of the case, at least up to the time the informants came forward, in that there simply would not have been time to place Maria in the tiny, crowded Tessier home, then leave again, in time to get to a telephone anywhere in Rockford, let alone the downtown Post Office, and make a call at 6:57 p.m.

Page 155, Witness, in response to the question, "you asked for some promises from the State, did you not?" said, "No, sir. State didn't promise me nothing."

On the day the trial began, ASA Trevarthan (page 27 transcripts from 9/10/12) told the court, "There's no deal regarding his Post-Conviction Petition".

"John Doe" has since repeatedly filed pleadings in his own case indicating that promises were made to him, beyond anonymity. In a letter to Paul Glaser, Jack McCullough's Appellate Counsel, he has stated that "the State's Attorney's office 'directed' him not to disclose the deals they made with [him]. Which consisted of lowering my prison classification level (remove me from Level-E Status), allow a transfer to Dixon Correctional Center so I can be confined in the same institution as my father, and to allow my post-conviction petition to be ruled upon based on the merits and waive the defense of untimeliness."

He stated, in open court, although not under oath, that "I was prepared to hear my post-conviction out. I knew the State would probably raise timeliness. That opened the door for much discussion with the former State's Attorneys and with Brion Hanley of the Illinois State Police who clearly made concessions at the institution which I have the deputy director, assistant deputy director, and everybody else who sat down with him and he made the deal with me, so I have evidence to support that there was a deal made." He went on to say that, "if they agree to waive timeliness, which is the State's right, that's their affirmative defense, they have a right to do that, I have no problems with it but at the same time the former State's Attorney they agreed to waive that. There were other concessions made, and they're saying, well Mr. [Doe] didn't come out and say anything about this. Mr. [Doe] has been screaming foul since 2012, December of 2012." If promises were, indeed, made to Doe, prosecutors should certainly have corrected his testimony.

CONCLUSION

The demonstrated pattern of clearly inaccurate testimony, intended or otherwise, and misleading presentations to two Grand Juries and two judges in two states, all shielded by an erroneous ruling which barred any effective impeachment at trial, borders on remarkable.

Taken together, the effect was a denial of due process from beginning to end at the investigative, pre-trial, trial and appellate phases of this proceeding. Even without clear and convincing evidence of actual innocence, which there is, and even if there were some actual untainted evidence of guilt, which there is not, justice would still demand that the conviction be vacated based upon the unfair treatment Defendant received from start to finish, even if completely unintended by all concerned.

Accordingly, Defendant should be appointed counsel to represent him in this matter and in compliance with my responsibilities under RPC 3.8(g), I request that the Court re-appoint the Public Defender of DeKalb County to represent Defendant.

Respectfully Submitted,



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