STATE OF ILLINOIS
CIRCUIT COURT OF THE TENTH JUDICIAL DISTRICT
PEORIA COUNTY

People of the State of Illinois,	)	
	)	
Respondent,	)	No. 16 MR 326
	)	
vs.	)	Judge Albert L. Purham, Jr.
	)	
Cleve Heidelberg, Jr.,	)	
	)	
Petitioner.	)	

AMENDED PETITION FOR APPOINTMENT OF A SPECIAL PROSECUTOR

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Petitioner Cleve Heidelberg, Jr. ("Petitioner" or "Heidelberg"), through his undersigned counsel, pursuant to 55 ILCS 5/3-9008, and Rules 3.8(g) and 3.8(h) of the Illinois Rules of Professional Conduct, hereby requests this Court appoint a special prosecutor to investigate and remedy his wrongful conviction. In support of his request, Petitioner alleges and states as follows.

INTRODUCTION

1. In the early morning hours of May 26, 1970, a lynching took place in Peoria, Illinois. There was no rope or tree and the man did not lose his physical life. But make no mistake; Cleve Heidelberg's life was taken from him through the unspeakable abuse of State power as surely as if his body had been left hanging from a tree. Now, after *forty-five years* in prison giving his life for a crime he did not commit, a year-long investigation—culminating in the manual search of FBI files long forgotten indeed buried deep in the belly of the National Archives in Washington D.C.—has finally led to the discovery of new evidence that not only casts a stark and telling light on the nature of the evidence presented to Heidelberg's all white jury but also lays bare the collusion of police and prosecutors in destroying and manufacturing evidence to secure the conviction of an innocent Black man.

2. That evidence, which includes suppressed FBI fingerprint evidence that exonerates Mr. Heidelberg as well as a fully documented instance in which a Peoria County Sheriff's officer flouted the Constitution and *spied on an hour long conversation between Heidelberg and his defense counsel* not to mention witness intimidation and the destruction and manufacture of evidence, was presented to the current Peoria County State's Attorney in a twenty-seven page, single-spaced letter with thirty supporting exhibits along with a request that he re-open the case and conduct a full investigation into the troubling issues raised.

3. After acknowledging that the evidence presented raised several "issues of concern," the Peoria County State's Attorney, with no explanation, declined to conduct any investigation and refused to even consider interviewing critical witnesses (whose sworn statements are corroborated by documentary evidence and the trial testimony of several witnesses) to weigh their credibility before deciding whether he owed a duty to the public he serves to investigate Mr. Heidelberg's conviction and the fully documented pervasive police misconduct that poisoned this case.

4. Time is of the essence and Mr. Heidelberg, who is now 73-years-old and suffers from congenital heart failure, can no longer wait as justice grinds and halts and grinds and halts. One critical witness, the actual confessed killer, who was not a man sentenced to life in prison or dying of some fatal illness when he confessed, has recently died. That man put his very life on the line again and again as he tried for years to undo an unimaginable injustice while Peoria prosecutors turned their backs on truth and justice again and again. That man, the true killer, lived free and died free while Cleve Heidelberg's life continues to waste away in the dark and dank corners of an Illinois prison, long since forgotten by the police and prosecutors who conspired to put him there.

5. Other critical witnesses are also in their seventies and need to be heard now before it's too late. Indeed, several retired Peoria police officers and/or Peoria County Sheriffs' officers have died since Petitioner's counsel began this investigation last summer.

6. There are two standards under Illinois law which, if met, mandate that a prosecutor take action in this case. First, if the prosecutor knows of new, credible and material evidence that creates a reasonable likelihood that a convicted defendant did not commit a crime of which the defendant was convicted, that prosecutor *shall* not only disclose that evidence to an

appropriate court or authority but *shall* also undertake further reasonable investigation to determine whether the defendant was convicted of a crime he did not commit. *See* Rule 3.8(g), Illinois Rules of Professional Conduct.

7. Second, when a prosecutor knows of clear and convincing evidence establishing that a defendant in his/her jurisdiction was convicted of a crime the defendant did not commit, the prosecutor *shall* seek to remedy the conviction. *See* Rule 3.8(h), Illinois Rules of Professional Conduct.

8. Cleve Heidelberg has resoundingly met both standards and presented material exculpatory evidence to the Peoria County State's Attorney that not only warrants an immediate further investigation into the shooting of Peoria County Sheriff's Sergeant Raymond Espinoza but also clearly and convincingly establishes that Mr. Heidelberg did not commit the crime of which he was convicted and is entitled to an immediate remedy of that conviction.

9. Because of his personal relationships with the prosecutors who tried this case, as well as the inherent conflict of interest in investigating his own office, the Peoria County State's Attorney has failed and refused to take the action required of him by law. This Court, therefore, can and should appoint a special prosecutor to discharge the duties he flouts. *See* 55 ILCS 5/3-9008.

SUMMARY OF THE CASE

10. The shooting of Sergeant Raymond Espinoza on May 26, 1970 stunned the Peoria community. The police were intent to find and punish the person responsible for killing their colleague. In the ensuing rush to judgment by law enforcement and prosecutors, Cleve Heidelberg was wrongfully convicted. A detailed recitation of the underlying facts is contained in this petition. This section will simply summarize the key points that support Cleve

Heidelberg's innocence claim and the need for a special prosecutor to fully and fairly review his case.

11. On the night of the shooting, Heidelberg loaned his car to Lester Mason.

12. Around 1:00 a.m., a man attempted to rob the Bellevue Drive-In. The man tied up the projectionist, Maurice Cremeens, and took the office manager, Mayme Manuel, outside to access a cash register at another part of the Drive-In. Cremeens was able to untie himself and call the Peoria County Sheriff's Office. While the offender and Ms. Manuel were walking outside, Peoria County Sergeant Raymond Espinoza and an alleged confidential informant, Jerry Lucas, pulled into the Drive-In in response to the armed robbery call. The offender pulled out a gun and shot Espinoza, killing him. The offender then took Ms. Manuel hostage and fled in a blue Chevy (which turned out to be Heidelberg's car).

13. The initial police radio calls described the offender as wearing a yellow shirt and brown jacket. When Heidelberg was arrested that morning he was wearing a blue shirt and gray jacket.

14. The police and prosecutors would later claim that alleged confidential informant Jerry Lucas used Espinoza's police radio to describe his own clothing (yellow shirt/brown jacket) but the transcript of the police radio calls disproves that claim.

15. The offender fled the Bellvue Drive-In and a high-speed chase ensued. The offender crashed the car he was driving at the intersection of Blaine & Butler and fled on foot before the first officers arrived.

16. Seconds after the crash, Peoria police officer Jerry Patty, who was driving westbound on Martin Street, spotted the offender crossing Martin Street as he ran northbound away from the crash scene. (Martin Street is two blocks north of Butler Street). Officer Patty

exited his police car and chased the offender, who continued to run northbound, for a few more blocks until he lost sight of him, never to see him again.

17. About twenty-five minutes after Officer Patty lost sight of the offender, the police received a call from a neighbor reporting a Black man 'walk[ing]" in the direction of the crash site and only about a block away. That man was Cleve Heidelberg.

18. Mason had called Heidelberg in the early morning and told Heidelberg that his car had been left near the intersection of Blaine & Butler. Mason said nothing about the car being used in a botched robbery. When Heidelberg went to retrieve his car, he was spotted by the police and arrested.

19. Upon his arrest, several police officers viciously beat and kicked Heidelberg, who had to be taken to the hospital for treatment of his injuries. The beating only stopped when James Polk and his wife came out of their house to confront the police.

20. The police recovered a gun, a pair of black eyeglasses, and a radio from the crashed car. The police also recovered a flashlight from the Bellevue Drive-In. All of this evidence was sent to the FBI for fingerprint testing. The FBI was specifically asked to compare Heidelberg's fingerprints to any fingerprints found on these items of evidence.

21. At the time of his arrest, Heidelberg was in possession of his black eyeglasses. Thus, the black eyeglasses found in Heidelberg's car belonged to someone else (i.e., James Clark, the real perpetrator).

22. At least four reports and one telegram were sent by the FBI documenting the examination and analysis of the evidence. Neither the telegram nor any of the reports were ever produced to Heidelberg before or during his trial.

23. After he was arrested, Cleve Heidelberg was placed in a lineup with three other men. Neither of the two eyewitnesses to the botched robbery, Mayme Manuel, the office manager of the Bellvue Drive-In, nor Maurice Cremeens, the projectionist, was able to identify Heidelberg.

24. Peoria County police offider Emanuel Manias destroyed his original lineup report. Officer Manias later prepared a lineup report that falsely claimed that both Manuel and Cremeens had identified Heidelberg in the lineup.

25. The police also claimed that alleged confidential informant Jerry Lucas identified Heidelberg at the lineup. But, the evidence contradicts that account and shows that the police paid Lucas money on the night of the shooting and asked Lucas if he would testify that Heidelberg was the person who shot and killed Espinoza. The police continued to make payments to Lucas until he testified at the criminal trial.

26. A few days after Heidelberg was arrested, Officer Manias spied on privileged attorney/client communications between Heidelberg and his pubic defender for over an hour. Manias, incredibly, prepared a police report documenting what he learned, which was that Heidelberg was proclaiming his innocence and had loaned his car to Lester Mason on the night of the shooting.

27. At a preliminary hearing about a week after the shooting, Mayme Manuel was again unable to identify Heidelberg, even after being allowed to leave the witness stand and walk over to the table where Heidelberg was sitting. At a motion to suppress hearing, Cremeens testified that he identified the man in position #3 (Heidelberg) in the first run of the lineup and the man in position #1 (George Johnson) in the reverse lineup.

28. Prior to the criminal trial, the police and prosecutors pressured Lester Mason not to testify on behalf of Heidelberg. Mason wound up being called as a witness by the defense but refused to answer any questions and asserted his fifth amendment rights.

29. At the criminal trial, five city and county officers claimed, and testified, that during the high-speed chase they were able to see the perpetrator and his blue shirt and gray coat. Four of those officers identified Heidelberg as the man they were chasing. However, the transcript of police radio calls establishes that the officers testified falsely.

30. At trial, Junius Whitt testified that he was with Lester Mason and a man he knew as Curtis Smith (aka James Clark) and that Smith wanted to rob a drive-in. Whitt declined to participate but loaned a gun to Smith that was identified at trial as the murder weapon. Early that morning, Smith pounded on Whitt's door and asked to spend the night. Smith used Whitt's phone to call Lester Mason to tell him "things didn't turn out right."

31. Sharon Ford, Emmett Bryson, Charles Bloomfield, Thomas McClain, Leon Harps, Jay Van Russell and Charles Young all testified as alibi witnesses for Heidelberg.

32. On December 15, 1970, the jury found Heidelberg guilty.

33. At the January 1971 sentencing hearing, Heidelberg's attorney advised the court that another man, James Clark, had confessed to killing Sergeant Espinoza. Shortly thereafter, James Clark submitted an affidavit setting forth the details of borrowing a car, the botched robbery attempt and his escape. The State opposed any evidentiary hearing and James Clark was never allowed to testify in support of his confession. Ultimately, the court denied Heidelberg's request that his conviction be vacated based on Clark's confession.

34. Newly discovered evidence found in a manual search of FBI files in the National Archives proves that a subsequent fingerprint report was prepared and transmitted to the Peoria

County Sheriff's Office. Specifically, an FBI index card stated "LAT PRT EXAM THIS CASE NEGATIVE." The only reasonable inference is that the FBI found prints on some of the evidence and that those prints did not match Heidelberg's prints. Further, based on the FBI's interview of James Clark in Rock Island in July, 1970, and the statements of Matthew Clark that his brother James told him that his fingerprints had been connected to the crime, the FBI must have found James Clark's fingerprints on some of the evidence recovered.

35. Lester Mason has submitted an affidavit attesting to the fact that he borrowed Heidelberg's car and then gave that car to James Clark on the night Sergeant Espinoza was killed.

36. Matthew Clark has submitted an affidavit attesting to the fact that his brother James admitted to him, back in the day, that he (James) was the person responsible for killing Sergeant Espinoza.

37. Heidelberg has presented all of this compelling evidence to Peoria County State's Attorney Jerry Brady. State's Attorney Brady interviewed his friend and mentor, Ron Hamm, the former prosecutor in the criminal trial. But, State's Attorney Brady inexplicably refused to interview Cleve Heidelberg, Lester Mason or Matthew Clark. State's Attorney Brady, with no explanation or written findings, has refused to re-open Heidelberg's case, despite this overwhelming evidence of innocence.

38. Thus, Heidelberg now respectfully requests that this Court appoint a special prosecutor to investigate and remedy his wrongful conviction or, in the alternative, this Court, based on its own review of the evidence, order the Peoria County State's Attorney's Office to remedy Heidelberg's wrongful conviction.

BACKGROUND

The Crime

39. Shortly after midnight on that May Peoria morning, a Black man shot and killed a white police officer—and took a white woman hostage—as he fled the scene of a botched armed robbery at the Bellevue Drive-In. Police responding to calls of officer shot, armed Black man wearing a yellow shirt and brown jacket with a female hostage in a blue Chevy quickly closed in on the perpetrator who, within minutes, had crashed the car he was driving and fled on foot leaving the hostage behind. (See transcript of police radio calls, App. at CH 84-90).[1] Peoria police officer Jerry Patty chased the perpetrator as he ran northbound away from the crash scene until he lost sight of him several blocks north of the crash site, never to see him again. (See criminal trial testimony of Jerry Patty, App. at TR 708-713; See also map of the area where the car crashed, App. at CH 637). At least ten officers on foot along with two canines remained at and around the vicinity of the crash while squad cars continued to canvass the area several blocks north where the perpetrator was last seen. Nearly thirty minutes after the foot chase began and twenty-five minutes after Officer Patty lost sight of the perpetrator, police received a call reporting a Black man "walk[ing]" in the direction of the crash site and only about a block away. (App. at CH 88 at 2:02.55). That man was Cleve Heidelberg.

40. Within less than a minute, as many as ten Peoria police and Sheriff's officers and two police canines had descended on Mr. Heidelberg who, having no idea what he had walked into, began to run but didn't get very far. The officers grabbed Heidelberg, handcuffed him and threw him to ground. After Heidelberg was cuffed and down, they unleashed two canines on him and began viciously kicking him in the head, neck and face while the canines attacked his body.

[1] All supporting documents cited herein are contained in a separately filed three-volume Appendix ("App.").

41. So certain were the officers that they had their cop killer in hand and without having asked a single question, more than one of them yelled "we ought to kill him and say he was resisting arrest." (See criminal trial testimony of Patricia Ann Polk, App. at 762).

42. And that was the start and finish of the police investigation into the murder of Sergeant Espinoza.[2] Thereafter, every action taken by Peoria police and Sheriff's officers was calculated to confirm Heidelberg's guilt and ensure his conviction no matter the actual evidence.

Evidence Collected At The First And Secondary Crime Scenes

43. At the Drive-In, the first crime scene, the police found bullets and spent cartridges and a flashlight that the perpetrator had taken from the office at the Drive-In and had used to make his way to the ticket booth outside of the office where the evening's ticket receipts were kept. At the crash site, the secondary crime scene, the police found the murder weapon on the driver's seat of the get-away car. (See criminal trial testimony of Kenneth DeCremer, App. at TR 256). They also found, on the driver's side floor of the car, a pair of prescription eyeglasses with clear lenses, one of which appeared to have been stepped on and cracked when the perpetrator exited the car and made his escape after the crash. (See crime scene photograph of eyeglasses, App. at CH 122). The police also found ignition keys and a portable transistor radio in the car. (See police report of Peoria County Sheriff Officer Robert Cone, App. at CH 130). Notably, and as will be discussed more fully below, when police later documented the evidence found in the get-away car, they falsely described the eyeglasses as "sunglasses." (App. at CH 124).

44. When Mr. Heidelberg was attacked by police, he was wearing his eyeglasses and they remained intact after the assault. When he was processed at the police station before he was

[2] James Polk and his wife Patricia Ann, who had been watching the brutal attack from their home, attempted to come to Mr. Heidelberg's rescue asking the police to please stop the beating to no avail. In fact, the attack continued until Mrs. Polk began screaming when she heard officers suggest that Mr. Heidelberg be murdered at police hands. (See criminal trial testimony of James Polk (App. at TR 752-760) and Patricia Ann Polk, App. at TR 760-764).

taken to the hospital, those eyeglasses, along with all other items found on Mr. Heidelberg's person, were confiscated and put under lock in a vault at the Peoria County Jail. Mr. Heidelberg had no idea what happened to his glasses for months after he was arrested.

45. In addition, Mr. Heidelberg was wearing *a blue shirt and a gray jacket* not the yellow shirt and brown jacket described repeatedly by police radio transmissions when he was attacked and then taken into custody by Peoria County and Peoria police officers. (See police report describing Mr. Heidelberg's clothing, App. at CH 92).

The Failed Lineup

46. Mr. Heidelberg required medical treatment for the canine bites and other injuries he had received during the attack. He was taken to the hospital where doctors initially believed the dog bites were bullet wounds (that's how deep the puncture wounds were) and, in fact, x-rayed the wounds looking for bullets before officers begrudgingly informed them that Mr. Heidelberg had been attacked by two police canines.

47. After treatment, Mr. Heidelberg was taken to the county jail, denied a lawyer and forced, that is, physically pushed, into a lineup. (See Cleve Heidelberg motion to suppress testimony, App. at CH 507-508). Peoria County Officer Emanuel Manias, who was a close friend of Sergeant Espinoza, conducted the lineup under Sheriff Koeppel's supervision. Captain Macklin and Officer Cone were also present. The lineup, consisting of four men, was run twice, the second time in reverse order. Mr. Heidelberg was assigned position #3 in the first run of the lineup and therefore position #2 in the reverse run. (See Officer Manias motion to suppress testimony, App. at CH 488, 491).

48. Neither of the two eyewitnesses to the robbery, Mayme Manuel, the hostage and office manager at the Drive-In, nor Maurice Cremeens, the projectionist, was able to identify Heidelberg.

49. Specifically, Ms. Manuel was unable to identify any of the men in the lineup as the man who attempted to rob the Drive-In, shot Sergeant Espinoza and took her hostage in either the original lineup or the reverse lineup.[3] (See Mayme Manuel criminal trial testimony, App. at TR 540-545, 549-582; See Maurice Cremeens motion to suppress testimony, App. at CH 404, 429).[4]

50. And while Mr. Cremeens did identify Heidelberg in the first run of the lineup, he identified a different man, George Johnson (the man in position #1), in the reverse lineup. (See Maurice Creemens motion to suppress testimony, App. at CH 428, 433, 435, 444; See Maurice Cremeens criminal trial testimony, App. at TR 101).

51. Officer Manias documented the results of the failed lineup in a police report which he soon destroyed. (See criminal trial testimony of Emanuel Manias, App. at TR 667).

52. It is enormously significant that Mr. Cremeens testified *insistently and repeatedly* that he had identified the man in position #1 (George Johnson) in the reverse lineup as the man who committed the armed robbery. (See Maurice Cremeens motion to suppress testimony, App. at CH 428, 433, 435, 444; See Maurice Cremeens criminal trial testimony, App. at TR 101). During the lineup, each participant was brought individually into a room with a window. That is, each participant was alone in the room at all times and the witnesses viewed the participants through the window one at a time. The participant was instructed to face the window and then

[3] The mere fact that Manias ran the lineup twice is further evidence that Ms. Manuel was unable to identify anyone in the first run.
[4] Ms. Manuel and Mr. Cremeens viewed the lineup at the same time. (See App. at CH 394).

turn to give a right and left profile view to the witnesses who were behind the window and about two feet away from the participant. (See Officer Manias motion to suppress testimony, App. at CH 491). Mr. Cremeens testified at the motion to suppress hearing that during the first run of the lineup, he looked closely at participants #1, #2 and #3 but did not pay close attention to participant #4 (George Johnson) because he had already identified #3 (Heidelberg) as the armed robber. (App. at CH 425).

53. During the reverse lineup (and there was a break before it was run), Cremeens was again paying close attention. Johnson was participant #1 and Johnson was the man Cremeens identified as the armed robber. Because Johnson was #1 and because the participants were viewed individually, there was little, if any, chance that Cremeens would have gotten confused as to Mr. Johnson's position in the reverse lineup. He wasn't standing in a line with several other men. He wasn't in the second or third position. He was the *first* man brought through and therefore in the easiest position to remember.

54. Furthermore, Mr. Cremeens testified at the motion to suppress hearing that he "tried to fix in [his] mind that one fact, that [the armed robber] was brought through – he was the third man in the first lineup and the first man the second time." (App. at CH 433).

55. Cremeens also testified at the motion to suppress hearing that he did not know whether the second lineup was run in reverse order. (App. at CH 428). All he knew was that the armed robber was the third man in the first run and the first man in the second run. (App. at CH 428, 433, 435, 444). What he didn't know was that the man in position #1 in the second lineup was not, in fact, the same man who was in position #3 in the first run.

The Police Ignored This Early And Compelling Evidence

56. Thus, in the first two hours of their "investigation," police ignored four critical pieces of evidence that should have led them to reconsider whether they had the right man in custody.

57. First, the police failed to question why a perpetrator who had successfully eluded police would return to the secondary crime scene nearly thirty minutes after he had escaped when he knew that a manhunt was underway for a cop killer and when the crash site was already swarming with police even as he made his escape.

58. In fact, the unidentified neighbor who called the police to report that there was a Black man "walk[ing] up" his block did so only because of the intense police activity in the area ("the policemen are all around here"). (App. at CH 88 at 2:02.55). If the neighbor could see the police swarming the area from inside his house, surely Mr. Heidelberg would have seen and heard them as well. Why then would he continue to calmly walk into the hive of police activity if he were in fact the perpetrator of the crime? Again, that neighbor did not report that the man was running or hiding behind houses as he made his way down the block or otherwise behaving in a suspicious manner. He simply reported that he saw a Black man "walk up" the street. In this racially mixed neighborhood, Mr. Heidelberg could have been a resident on his way home or out for a walk. Yet the police charged Heidelberg with guns drawn causing him to flee.

59. Second, in addition to the extreme unlikelihood that the Black killer of a white police officer in 1970 Peoria would return to the secondary crime scene was the fact that Mr. Heidelberg was wearing his eyeglasses when he was attacked and taken into custody. The police knew that the perpetrator's eyeglasses were found in the get-away car. (App. at CH 130). In 1970, eyeglasses were almost prohibitively expensive due in part to various state laws and

regulations in all fifty states and cost the equivalent of well over $300 today. Many people were not lucky enough to own one pair of glasses in 1970 and there was little, if any, likelihood that someone of Mr. Heidelberg's socio-economic status would own two.

60. Third, the police ignored the fact that Mr. Heidelberg was wearing a blue shirt and gray sports coat (App. at CH 92) not a yellow shirt and brown jacket. As it turns out, the police did not really ignore this fact; instead, they falsified their testimony to account for this troubling discrepancy.

61. While the above evidence in and of itself was certainly more than sufficient to give the police pause, that evidence coupled with the fourth piece of evidence, the failed lineup, should have put the police on high alert that they had the wrong Black man in custody.

62. However, unwilling to re-examine their presumption of guilt and release Mr. Heidelberg as they should have after the failed lineup, the police played their final card and their last hope later that morning when Peoria County Officer Robert Cone boarded a plane to Washington D.C. and hand-delivered the flashlight, the keys, the radio and the broken eyeglasses along with the gun, bullets and spent cartridges to the FBI laboratory and requested a ballistics and fingerprint examination.

63. Other than determining the ownership of the get-away car and pressuring the FBI to hurry its fingerprint examination of the murder weapon, the police took no further action to actually investigate the murder of Sergeant Espinoza while they awaited the results of the fingerprint examination.

The Blue Chevy And The FBI Telegram

64. Within a couple of days of the failed lineup, the police were informed that the car used in the commission of the crime was registered to Mr. Heidelberg. However, they were also

informed through a May 28, 1970 telegram from the FBI that Heidelberg's prints were not on the murder weapon and that ballistics testing on the gun found in the get-away car was inconclusive.[5]

65. Without his prints on the murder weapon and with no eyewitness identifications, the police knew that they did not have probable cause to arrest Mr. Heidelberg for, much less charge him with, the murder of Sergeant Espinoza. Ownership of the car alone was insufficient because, to state the obvious and as any competent prosecutor would have told them, the car could have been stolen or, as was the case here, Heidelberg could have loaned his car to someone else.[6]

66. Undeterred by this utter lack of evidence and still as convinced of Heidelberg's guilt as they were when they contemplated murdering him before they even knew his name, the police, rather than releasing Mr. Heidelberg as the law required, then embarked on a course of stunning misconduct to ensure he was prosecuted for and convicted of Sergeant Espinoza's murder.

67. That course of misconduct included: (i) spying on privileged communications between Heidelberg and his counsel (and later using the information obtained through that spying to intimidate alibi witnesses and thwart Mr. Heidelberg's defense); (ii) destroying the original lineup report; (iii) hiring a witness to testify against Heidelberg; (iv) suppressing exculpatory FBI fingerprint reports; (v) suppressing their interview on at least two occasions of

[5] The May 28, 1970 telegram was never produced to Mr. Heidelberg at the time of his trial or any time thereafter. Nor was the telegram produced in response to FOIA requests by his current counsel. However, a subsequent FBI report discovered years after Mr. Heidelberg was convicted, refers to the telegram. (See FBI report, App. at TR 137-138).

[6] As the police would shortly discover, Mr. Heidelberg loaned his car to an acquaintance, Lester Mason, who in turn loaned Heidelberg's car to James Clark, the individual who would ultimately confess to the shooting of Sergeant Espinoza. See Affidavits of Cleve Heidelberg (App. at CH 1-3) and Lester Mason (App. at CH 4-15).

the actual killer within weeks of the murder as well as suppressing the facts and circumstances which led to these interviews; and (vi) intimidating defense witnesses.

68. And before long, prosecutors in the case joined in police efforts to ensure Heidelberg's conviction and themselves not only suppressed exculpatory evidence and engaged in witness intimidation and witness tampering, they flat out lied to the trial court. Equally disturbing, prosecutors exploited the racial strife plaguing Peoria and the rest of the nation and manipulated the all white jury through subtle race-baiting.

Officer Manias Spies On Heidelberg And His Counsel

69. Five days into the aborted investigation with no eyewitness identifications and no fingerprints, Officer Manias, determined to pin the murder of his close friend on Mr. Heidelberg, concluded that the easiest and quickest path to finding evidence to convict Heidelberg would be to spy on privileged communications between Heidelberg and his then lawyer, public defender Jack Brunnmeyer.

70. Officer Manias, however, had a problem; his shift did not start until 10:00 p.m., hardly an ideal time for a lawyer to visit his imprisoned client.[7] Manias knew, therefore, that he had to manufacture a compelling reason to summon Brunnmeyer to the jail during the late-night hours of his shift. To that end, Manias placed a call to Brunnmeyer's home sometime after 10:00 p.m. on May 30, 1970 and left an urgent message for him. Within thirty minutes, Brunnmeyer returned the call and Manias told him that Heidelberg had confessed and was insisting on making

[7] It is interesting to note that in an April 1, 1970 grievance letter, Officer Manias complains that he has been "taken out of the Detective Department" and "placed in the jail as a turnkey and on third shift." (See App. at CH 198). Perhaps Officer Manias was trying to play hero and wanted to be the one who "cracked" the Espinoza case.

an immediate statement to police. Brunnmeyer took the bait and, in accordance with Manias' scheme, rushed to the jail.[8] (See police report of Emanuel Manias, App. at CH 200).

71. Once Brunnmeyer arrived (at approximately 11:15 p.m.), Manias proceeded with his scheme and spied on privileged attorney/client communications for over an hour. (App. at CH 49). During that hour, Manias learned several critical facts that should have been investigated but instead triggered the manufacture of a series of false police reports as well as false police testimony designed to thwart Heidelberg's defense and ensure his conviction.

72. Specifically, Manias learned that (i) Heidelberg had loaned his car to "a Lester Mason;" (ii) Heidelberg had been at the "T&T Club" during the commission of the crime (iii) other people had seen Mr. Heidelberg at the club; (iv) when Heidelberg was on his way to retrieve his car, he saw "alot [sic] of Police cars in the Area" but nonetheless continued to the location where Mason had told him he had left Heidelberg's car; and (v) Heidelberg's counsel warned him not to tell anyone about his alibi defense for fear of police tampering with alibi witnesses. (See police report of Emanuel Manias, App. at CH 49).

73. Perhaps as comic relief to the tragedy that ended any semblance of a life for the young Black man at the center of this unimaginable injustice, Officer Manias, so confident and secure in his supreme authority, actually documented not only his absurdly transparent efforts to contrive a late-night meeting between Heidelberg and Brunnmeyer by claiming some late night

[8] The absurdity of Officer Manias' claim that Heidelberg spontaneously confessed cannot be overstated. As Manias himself testified, throughout the five days he had been in custody and notwithstanding the vicious beating and canine attack, Heidelberg had refused to make any statement to or otherwise cooperate with the police and began demanding an attorney from the minute he was taken into custody. Indeed, Heidelberg refused to cooperate during the fingerprinting process and had to be physically pushed into the lineup because he had refused to participate without an attorney present. Not even the prosecutors believed Manias' concocted claim and, in fact, they did not seek any testimony from him regarding the purported confession at trial.

confession, he unabashedly and without fear of any consequence documented his illegal spying on their privileged communications in a police report. (App. at CH 49).

74. Manias was justified in his fearlessness. There is no indication in the record that he suffered any discipline as a result of his outrageous misconduct. To the contrary, on October 22, 1970, Peoria County Sheriff Bernard J. Kennedy promoted Manias to the rank of Sergeant, filling the vacancy created by the death of his close friend Sergeant Espinoza. (See Bernard J. Kennedy letter, App. at CH 208).

75. Nor is there any indication in the record that the prosecutors, upon seeing Officer Manias' police report documenting his spying on Mr. Heidelberg, did anything to bring the misconduct to the attention of the trial judge or Heidelberg's counsel, both of whom should have been informed immediately.[9] Indeed, had this misconduct been disclosed, Mr. Heidelberg's counsel would certainly have moved the trial court to dismiss the charges against Heidelberg as the entire case had been irrevocably tainted. One must ask what would happen today if a criminal court learned that the police had spied on confidential communications between a criminal defendant and his attorney? Perhaps the only person facing criminal prosecution would be the offending police officer and rightly so. Such was not the case in 1970 Peoria.[10]

Officer Manias Manufactures A False Lineup Report

76. The police now knew that Mr. Heidelberg intended to raise an alibi defense. They knew that "a Lester Mason" (and perhaps others) could testify that Mason borrowed

[9] Officer Manias' report was never produced to Mr. Heidelberg at any time prior to his current counsel's 2015 FOIA request to the Peoria County State's Attorney's Office.

[10] Officer Manias was no stranger to controversy. In early June 1970, less than a week after Sergeant Espinoza had been shot, Officer Manias stole three handguns from a Peoria store. When confronted, Officer Manias claimed he only did so to prove that the store lacked proper security. (See Peoria County Sheriff's Office report dated June 2, 1970, App. at CH 204). Several officers threatened to quit the force if Manias was not discharged. (See Peoria County Sheriff's Commission letter dated June 5, 1970, App. at CH 206).

Heidelberg's car. (App. at CH 49). They also knew that several other people had seen Heidelberg at the "T&T Club" and elsewhere during the time the shooting had occurred. Did they find Mason and question him? Did they send Mason's prints to the FBI lab? Did they go to the "T&T Club" with Heidelberg or Mason's mug shot and ask around? Did they send their "confidential informant" (more on him shortly) out to listen to the word on the street? Of course not. They were simply not interested in finding exculpatory evidence. But it was more than just that: the shameful reality was that they were just not interested in anything a Black witness might have to say in defense of a Black man who they had already decided was a cop killer—a white cop killer. No matter the evidence these Black witnesses could provide, and as would be exposed at the trial, white Peoria had no inclination to believe them anyway.

77. And that was the hook: inter-racial distrust. All the police and prosecutors had to do was make sure they baited that hook with enough white witnesses telling the all white jury that Black Cleve Heidelberg was a white cop killer who took a white woman hostage and no amount of "Black as the ace of spades" (to quote Mayme) alibi witnesses would make a difference. (See statement of Mayme Manuel, App. at CH 641). American jurisprudence's recorded history of this shameful truth stands as witness to the success of such a strategy and Mr. Heidelberg's case became part of that history *when his white prosecutor told his white jury that his Black alibi witnesses were liars and perjurers who were not to be believed*. (See State's closing argument, App. at TR 1140-1155, 1200).

78. Indeed, so paramount was the issue of race and its impact on the trial in this case, the trial judge felt the need to point out that the State investigator assigned to assist Mr. Heidelberg's defense was Black. (See Court's comments at trial, App. at TR 698).

79. So Officer Manias began baiting that hook. He first destroyed the original report documenting the failed lineup. He then prepared a falsified lineup report in which he claimed that Ms. Manuel and Mr. Cremeens had identified Mr. Heidelberg in both the original and reverse run of the lineup and further falsely claimed that Heidelberg had waived his right to an attorney and voluntarily participated in the lineup with no attorney present. (See Officer Manias' lineup report, App. at CH 142).

80. The falsified report served two very important purposes. First, the falsified identifications gave the police the probable cause necessary to arrest Heidelberg, charge him with the crime and keep him incarcerated. Second, it enabled Manias to testify at trial that Ms. Manuel and Mr. Cremeens identified Heidelberg in the lineup conducted almost immediately after the crime occurred thereby mitigating any impeachment of their identifications of Mr. Heidelberg at trial (and there was plenty).

81. Although Officer Manias would later claim that he destroyed the original lineup report to protect the identity of Jerry Lucas, an alleged confidential informant who was with Sergeant Espinoza when he was shot and who Manias (and Manias alone) claims was present during the lineup and identified Heidelberg, such claim is demonstrably false.[11]

82. In fact, *both* Ms. Manuel and Mr. Cremeens testified not once but *twice* (at a preliminary hearing and at trial) that at no point during the lineup was Ms. Manuel able to identify Heidelberg. Indeed, at the preliminary hearing which was conducted a week after the failed lineup, Ms. Manuel was given another chance to identify Heidelberg and she still could not, even though the court allowed her to leave the witness stand and approach Mr. Heidelberg to

[11] Sergeant Espinoza was the first officer to respond to a call of an armed robbery in progress at the Drive-In. Lucas was in the car with Espinoza when he got the call and, strangely enough, Espinoza allowed Lucas to accompany him to the Drive-In. While Espinoza was speeding up the driveway to the Drive-In, the perpetrator began shooting at Espinoza's car killing him while the car was still in motion.

get an up close look at him. (See App. at TR 581). Mr. Cremeens further testified at *both* the motion to suppress hearing and at trial that he identified the man in position #3 (Heidelberg) in the first run of the lineup and the man in position #1 (George Johnson) in the reverse lineup. (See App. at CH 428, 433, 435, 444; App. at TR 101).

83. Furthermore, Sheriff Koeppel, who supervised the conduct of the lineup, testified that Jerry Lucas, the purported confidential informant, was not in fact present when the lineup was conducted.[12] (See Willard M. Koepple motion to suppress testimony, App. at CH 464).

84. Sheriff Koeppel's testimony was unwittingly corroborated by a "police report" prepared by Captain Macklin documenting a conversation he had with Lucas about thirty minutes after the failed lineup was conducted. In that report, Macklin first claimed he was aware that Lucas was working with Espinoza as a confidential informant and asked him whether he was willing to continue that work and whether "he was acquainted with the suspect, Heidelberg." (See police report of Captain Macklin, App. at CH 226). Of course Lucas, a shameless opportunist,[13] replied that he was willing to continue his "work" and that he did know Heidelberg. Macklin then asked Lucas "if he would testify that Heidelberg was the guilty party that shot and killed Espinoza" and promptly paid Lucas $40 (an amount equivalent to over $250 today) and continued making payments to Lucas up to and through the trial in an amount equal

[12] Koeppel also testified that Mr. Heidelberg did not waive his right to have an attorney present at the lineup. (App. at CH 470).

[13] When officers arrived at the scene within minutes of the shooting, they found Lucas cradling Sergeant Espinoza's bleeding head in his arms. They also found Espinoza's gun stuffed down Lucas' pants. (See criminal testimony of Officer Larry Bernard, App. at TR 39).

to about $2000 today. (Id.)(See also criminal trial testimony of Nolan Macklin, App. at TR 619, 635, 764-770).[14]

85. Notably, there were absolutely no records to support Macklin's claim that Lucas worked as a confidential informant for the police at any time prior to the shooting. And, as Macklin himself testified, the May 26 payment to Lucas was the first payment *ever* made by the police to Lucas. (App. at TR 770). Evidence would later emerge that not only was Lucas receiving a steady stream of cash, the police were also paying his room and board expenses.

86. If, as Officer Manias claimed, Lucas had been at the lineup and identified Heidelberg, there would have been no reason for Macklin to ask Lucas if he knew or could identify Heidelberg as the shooter. Moreover, Captain Macklin, Manias' boss and the only officer who even claimed to know Lucas was a "confidential informant," certainly felt free to include Lucas' first and last name in his report and he did so even as he claimed in that very same report that Lucas had requested his identity remain undisclosed until trial.

87. If Manias had really wanted to protect Lucas' identity, he would have simply redacted the original lineup report rather than destroy it. The only reason Manias destroyed the original report was because it truthfully documented Ms. Manuel and Mr. Cremeens' failure to identify Heidelberg as the perpetrator of this crime. The prosecutors should have known this as well. In fact, the prosecutors actively participated in the initial investigation and themselves interviewed Mr. Cremeens the day of the shooting and Ms. Manuel two days after the shooting and thus knew that they both had failed to identify Mr. Heidelberg at the lineup. Undeterred, and

[14] In his closing argument, prosecutor Riddle seemed to have forgotten all the money that Lucas was paid to testify, telling the jury "[t]hat man didn't have one single thing to gain from getting on that witness stand and doing what he did." (App. at TR 1125).

ignoring their duty to seek justice, not just a conviction, the prosecutors forged ahead with their manufactured case against Heidelberg.

88. Macklin, of course, did not intend through his false report to expose Manias' fraudulent second lineup report. He intended to lay the foundation for the police to be able to later claim that Lucas was at the lineup and could reliably identify Heidelberg because he knew him personally, even if Ms. Manuel and Mr. Cremeens could not. Macklin also intended to provide the justification for Manias' destruction of the original lineup report by falsely documenting that Lucas asked that his identity not be disclosed until the trial. Macklin, however, made critical errors.

89. First, while he claims in his report that he "questioned" Lucas at 4:00 a.m. on May 26, he did not prepare his report until June 1, the day after the police learned of Heidelberg's alibi through Manias' spying when they knew they would need an eyewitness to rebut Heidelberg's alibi defense, especially in light of the failed lineup. (App. at CH 226).

90. Second, the failed lineup was conducted at 3:30 a.m. on May 26. If Lucas had actually been at the lineup and had identified Heidelberg, there would have been no need for Macklin to ask Lucas about identifying and testifying against him thirty minutes later. (App. at CH 226). Equally telling, there is not a single police report documenting *any* police interviews of Ms. Manuel or Mr. Cremeens, much less an interview asking them about their ability to identify Mr. Heidelberg.

91. Third, remarkably absent from Macklin's report is a single question or response regarding what Lucas saw happen at the Drive-In. Not one. (See App. at CH 226). Instead, before the body of one of his own officers was even cold, Captain Macklin claims he decided to ask Lucas whether he was interested in continuing the confidential informant work he was doing

(work, by the way, that no else in the department knew of and that according to Macklin had conveniently started only two days before the shooting) as he promptly shoved more than a few bucks into Lucas' welcoming hands. No reasonable human being would ever believe that continuing a working relationship with Lucas was what was uppermost on Macklin's mind just little more than two hours after Sergeant Espinoza was murdered and just thirty minutes after Ms. Manuel and Mr. Cremeens had failed to make an identification of the man the police were certain killed Espinoza.

92. The truth is Macklin did not care what Lucas saw because he was going to tell Lucas what, or more specifically who, he saw. What he did care about was manufacturing a justification for the $2000 (today's value) that would end up in Lucas' pocket in exchange for his testimony against Cleve Heidelberg. In short, Lucas was not a paid informant; he was a paid witness.

93. Although Mr. Cremeens testified at the motion to suppress hearing that there was another man in the lineup room who he did not know (App. at CH 398), it is unlikely that this man was Lucas. First, Cremeens had seen Lucas at the Drive-In when they were both questioned by responding officers. Thus, he spent more than a few minutes with Lucas before they arrived at the county jail. Second, Lucas had a very severe and noticeable birth defect—one of his arms had not developed and was less than half the length of the other and he walked with a pronounced limp. When asked at the hearing whether the unknown man he saw in the lineup room had a limp or any physical deformities, Cremeens testified that he did not. (App. at CH 424).

94. Cremeens also testified that he was later told that the name of the unknown man at the lineup was Jerry Lucas. (App. at CH 424). Obviously, there can be absolutely no context in which authorities telling Cremeens Lucas' name would be even remotely appropriate. In fact,

there could be no proper reason for authorities to discuss Lucas with Cremeens at all. The only reason authorities would have had to tell Cremeens that the unknown man was named Jerry Lucas would have been to plant that name in his memory in hopes that, when he later testified at trial, he would have a false memory of a "Jerry Lucas" being at the lineup.

95. In any event, Mr. Cremeens also testified that the unknown man did not identify any of the men in the lineup as the man who shot Sergeant Espinoza. Instead, Cremeens testified, when he himself identified Heidelberg as the armed robber in the first run of the lineup, the unknown man said, "That's Cleve." (App. at CH 423). The unknown man said nothing further during the lineup which continued with Cremeens identifying George Johnson in the reverse run. Thus, even if Lucas were at the lineup he did not make any identification. He merely announced to the room that he knew the name of the man identified by Cremeens in the first run of the lineup in which case his meeting with Macklin shortly thereafter makes all the more sense.

Police Attempt To Manufacture Additional Civilian Eyewitness Testimony

96. A young man named John Mathis, who lived at 1803 West Butler, witnessed the perpetrator crash in front of his house and saw him run north through his backyard but was unable to see the perpetrator's face or clothing. (See criminal trial testimony of John Mathis, App. at TR 379).

97. Shortly before trial, however, Officer Manias (yes, him again) went to Mr. Mathis' house and pretended he was doing a follow-up interview. After he questioned Mr. Mathis, Manias himself wrote a statement by hand for Mathis to sign. (Id. at TR 385). The statement reads in part: *"The man the police officers were bringing from the alley was the same height and weight as the man that I saw run from the accident in front of 1717 W. Butler and he also was wearing the same clothing."* (See handwritten statement of John Mathis, App. at CH

157-160). The State then promptly updated its witness list to include Mr. Mathis and his wife Sharon. (App. at CH 638).

98. But as evidenced by Mathis' testimony, Manias engaged in a bit of sleight of hand and slipped this sentence into the statement he wrote. And while Mr. Mathis did not notice the sentence when he signed the statement, he denied at trial ever telling Manias that the man he saw crash the car was wearing the same clothes as the man the police brought out from the alley.

99. Apparently, the police and prosecutors were very, very nervous that, notwithstanding their machinations, Ms. Manuel and Mr. Cremeens would not deliver the in-court identifications they desperately needed to rebut Mr. Heidelberg's alibi defense.

An Embarrassment of Witnesses

100. And by the time of Mr. Heidelberg' trial, not only were Ms. Manuel and Mr. Cremeens somehow able to make an in-court identification of Mr. Heidelberg as the armed robber of the Drive-In,[15] five city and county officers claimed, and testified, that during the course of their high-speed chase (50-100 mph) they were able to see the perpetrator, his glasses and the specific items of clothing he was wearing. (See Peoria Journal Star article "3 Officers Testify They Saw Heidelberg In Car," App. at CH 670-671). They testified that the perpetrator was wearing a blue shirt and gray sports coat. And four of those officers identified Mr. Heidelberg as the man they were chasing. However, the transcript of the tapes of police and

[15] There really is no mystery here. Mr. Heidelberg was clearly the defendant and the lone Black man sitting at the defense table. Moreover, it was the practice of the police and prosecutors throughout this case to conduct group lineups and group witness meetings. Nearly every prosecution witness was privy to the perspective and testimony of their fellow witnesses throughout the preparation of the case against Mr. Heidelberg. Furthermore, police even discussed the details of the evidence, e.g. the color of the perpetrator's clothing and get-away car, with the witnesses. In short, the testimony of every single prosecution witness was influenced and tainted by what he or she heard from the other witnesses and from police and prosecutors.

county radio transmissions from those officers during the manhunt indisputably establishes that they perjured themselves.[16]

101. Furthermore, while four police reports were written by those officers, only two of those reports purport to provide any description of the driver of the get-away car. Like their testimony, however, the transcript of their radio transmissions indisputably establishes that their reports were also falsified.

102. With the prospect of five additional eyewitnesses—white officers no less—is it any wonder that the tapes and transcript of those radio transmissions were kept hidden from Heidelberg.

Their Testimony v. Their Radio Transmissions

The Chase

103. County Officers Sack and DeCremer passed the get-away car (the blue Chevy) en route to the Drive-In. When they made a U-turn to pursue the car, they lost it. (App. at TR 205; 250). The Chevy was then spotted by Officer Watson traveling at 50-60 mph east-bound on Harmon Highway. Watson radioed Officer Paul Hilst, who was also on Harmon Highway but down the road further east at the point where Harmon Highway merges into Lincoln Avenue, to give chase. (App. at CH 85 at 1:34.40). Hilst responded and entered the chase immediately behind the Chevy as it merged onto Lincoln with Watson following behind him. As Hilst and Watson pursued the Chevy east on Lincoln, Officer Hibser was traveling south on Western, a

[16] The police falsely claimed those tapes had been destroyed and the police never produced those tapes to Mr. Heidelberg until the court exposed their lies shortly before trial. (See November 5, 1970 criminal court hearing, App. at CH 523-608). The court, after learning on its own that the tapes did, indeed, exist, chastised the prosecutors stating: "I will put it on the record, those tapes do exist, Mr. Hamm, and this is one of the difficulties we get into. . . Now the tapes exist, and this is an experience I had with the Sheriff in another case, namely the *Gorsuch* case where I was just never absolutely sure that the reports had been made and put in a file and turned over to you." (App. at CH 568). *The People of the State of Illinois v. Todd B. Gorsuch* was another case investigated by the Peoria County Sheriff's Office. That crime took place on October 3, 1970. Fourteen-year-old Todd Gorsuch was tried as an adult and convicted of shooting his sister and his sister's friend. See 19 Ill.App.3d 60 (1974).

street several blocks east of the chase, towards Lincoln in an attempt to cut-off the Chevy at the intersection of Western and Lincoln. (App. at CH 85 at 1:35.30).

104. Shortly after Hilst and Watson gave chase, Sack and DeCremer caught up with and passed Watson then Hilst and took the position behind the Chevy. The Chevy turned left (north) onto Blaine Street, traveled three blocks and then turned right (east) onto Butler Street. DeCremer and Sack lost sight of the Chevy when it turned onto to Butler and by the time they reached Butler, the Chevy had already crashed and the driver had escaped. (App. at TR 210). DeCremer and Sack were the first to arrive at the crash site. Officer Hibser was the second to arrive. Hibser had turned left (east) onto Butler from Western and pulled up behind DeCremer and Sack who were about 50 feet behind the crashed Chevy. (App. at TR 212, 255).

Sack and DeCremer's Testimony

105. Sack and DeCremer first spotted the Chevy traveling east on Plank Road while they were traveling west on Plank Road en route to the Drive-In. (App. at TR 204-205; 249). Eastbound Plank Road (the direction the blue Chevy was traveling) merges into Harmon Highway. When the officers stopped to make a U-turn, they lost sight of the blue Chevy. (App. at TR 205; 250). As they searched for the Chevy, they stopped on the Harmon Highway overpass where they "took a visual look to the north and south" but did not see anything. (App. at TR 205). They then left the overpass and got on Harmon Highway traveling eastbound. (Id.) DeCremer, who was driving their squad car, omitted the stop at the overpass from his testimony.

106. Sack and DeCremer next saw the blue Chevy on Lincoln Avenue at the point where Harmon Highway merges into Lincoln Avenue. (App. at TR 206; 250). According to the officers, they pulled up parallel to and 50 feet away from the Chevy. (App. at TR 207; 252) They then each shined a spotlight into the Chevy and observed that the driver was a Negro male

wearing glasses, a blue shirt and gray coat. (App. at TR 207-208; 253). *Remarkably, neither Sack nor DeCremer were asked how it was they could see the driver's blue shirt under his gray sports coat.* After they shined their respective spotlights, the driver accelerated and they started to give chase but a city police car (Officer Watson) pulled in behind the car and in front of Sack and DeCremer. (App. at TR 208-209). DeCremer never mentioned Watson or his car, or any car, taking the lead in the chase down Lincoln in his testimony. (See App. at TR 254).

107. Sack and DeCremer eventually passed Watson (and Hilst), got first in line behind the Chevy and were about 2 blocks behind it throughout the chase down Lincoln Avenue. (App. at TR 209). Sack and DeCremer again lost sight of the Chevy when it turned left onto Blaine from Lincoln, traveled north three blocks and then turned right onto Butler. By the time Sack and DeCremer reached Butler, they found the Chevy crashed into a parked car with the driver's side door open. (App. at TR 210). Sack covered DeCremer while he approached the Chevy. (Id.). As DeCremer was approaching the Chevy, Officer Hibser pulled up on Butler. (App. at TR 212; 255). The only person DeCremer found in the Chevy was Ms. Manuel. (App. at TR 256).

108. Both Sack and DeCremer made an in-court identification of Mr. Heidelberg as the man who was driving the Chevy during the chase. (App. at TR 214; 254).

109. During cross-examination, Sack testified that when he shined his spotlight on the Chevy the "most distinguishing thing . . . was the blue shirt . . . To me the blue shirt stood out." (App. at TR 221). Similarly, DeCremer testified that his spotlight (which he managed to operate while driving) revealed that the blue shirt was "bright," "loud," "deep blue," "pastel," and like "a policeman's blue." (App. at TR 259, 262-263). They both really noticed that blue shirt (and they did so despite their claim that the driver was wearing a gray sports coat over that shirt and despite their testimony that they never got a front view of the driver). Sack denied ever having

heard the radio transmissions reporting that the suspect was wearing a yellow shirt and brown jacket (although Sack would later testify that DeCremer admitted to him that he did in fact hear those transmissions and that he had an explanation for that). (App. at TR 215-216).

110. Also on cross, DeCremer testified that during the chase, he was driving between 80 and 100 mph. Both officers further testified that they did not see the Chevy crash on Butler nor did they see the driver escape from the car. (App. at TR 210, 222; 255, 258). In addition, DeCremer testified that when he approached the Chevy and looked inside, he saw a gun on the driver's seat and a pair of glasses and a radio on the floor. (App. at TR 256).

111. Again on cross-examination, Sack and DeCremer both testified that about 2 to 3 minutes had elapsed between the time they first lost sight of the Chevy on Plank Road and the time they next saw it on Lincoln Avenue where they each shined a spotlight into the car. (App. at TR 98).

Sack and DeCremer's Radio Transmissions

112. Sack and DeCremer, identified by their unit #714 in the radio transcript and in their police report, made only two radio transmissions during the high speed chase. In their first transmission, which they made en route to the Drive-In (at 1:34.05 a.m.), they reported that a blue Chevy II with two subjects in the car had passed them. (App. at CH 84). Twenty seconds later (at 1:34.25), the radio operator responded with "10-4: Colored male; yellow shirt." (Id.). Five seconds later (at 1:34.30), Sack and DeCremer responded to that dispatch with a question: "714: you believe he's in a Chevy II then?" (Id.). There were no further radio transmissions from Sack and DeCremer. However, five seconds after their last transmission (at 1:34.35), Officer Robert Lee Watson radioed in: "Wait a minute, operator, we're behind that Chevrolet now." (Id.).

113. Thus, *30 seconds after Sack and DeCremer first spotted the Chevy traveling on Plank Road in the opposite direction of their vehicle*, Watson was already chasing behind the Chevy. And as Watson would testify, the Chevy was still on Harmon Highway when he spotted it, it was traveling at a very high rate of speed and there were no other cars anywhere near the Chevy on Harmon Highway. (See criminal trial testimony of Robert Lee Watson, App. at TR 267)

114. Likewise, Officer Hilst would testify that he was parked at the precise point where Harmon Highway and Lincoln Avenue merge, he saw the Chevy merge onto Lincoln traveling at 50 to 60 mph, he was instructed by radio transmission from Watson to "go after" the Chevy and he immediately gave chase. (See criminal trial testimony of Paul Hilst, App. at TR 296, 300). In addition, Hilst did not testify that he had seen Sack and DeCremer's car behind the blue Chevy when he saw the blue Chevy merge onto Lincoln from Harmon.

115. Thus, Sack and DeCremer got on the witness stand, took an oath to tell the truth and then promptly lied. To reach any other conclusion, this Court would have to believe that, in 30 seconds, DeCremer managed to stop and make a U-turn, lose sight of the Chevy, stop on the Harmon Highway overpass, conduct a visual inspection to the north and south, get on the highway and beat the Chevy to the merger point of Harmon and Lincoln, come to an "almost complete stop;" see the Chevy approach the merger point, pull up parallel to the Chevy and shine a spotlight into the Chevy for a long enough time to be able to identify the driver's clothing and face (and somehow do all of this without Watson and Hilst ever seeing their squad car). All of that in 30 seconds.

116. The Court would also have to disregard the testimony of Watson and Hilst who would respectively testify that the Chevy was traveling at "a very high rate of speed" (Watson)

and at "50 to 60 mph" (Hilst) when it merged from Harmon onto Lincoln and that there were no other cars on Harmon Highway near the Chevy or in the area when they spotted it. Indeed, both Sack and DeCremer themselves testified that 2 to 3 minutes had passed between the time they first spotted and lost the Chevy and the time they next saw it on *Lincoln* (neither DeCremer nor Sack claimed that they saw the Chevy on Harmon Highway; they claimed that they were on Harmon at the Lincoln merger point when they saw the Chevy after losing sight of it).

117. Thus, by their own testimony, Sack and DeCremer never saw the Chevy on Harmon Highway. And, as indisputably established by the radio transmissions and Watson and Hilst's testimony, by the time Sack and DeCremer reached Lincoln (and in fact they only knew to go to Lincoln because of Watson's transmissions), Hilst and Watson were already in pursuit of the Chevy. In fact, Sack and DeCremer were exactly 1.7 miles away from Watson's location when they stopped to make a U-turn.[17] Thus, just to be able to get to where Watson was parked in thirty seconds, DeCremer would have had to have been driving at a rate of *205.2 mph* without making *any* stops.

118. In short, they were never parallel to the Chevy, they never shined any spotlight into the Chevy and they never saw the driver's face or clothing. Their testimony was false and their in-court identification of Mr. Heidelberg was false. Indeed, even without Watson's and Hilst's testimony, Sack and DeCremer would have had to both bend and suspend time to enable them to accomplish all they claim they accomplished in the 30 second timeline indisputably established by the transcript of the radio transmissions during the high speed chase.

[17] Sack testified that DeCremer made a U-turn the Timberline Motel which was located at the corner of Plank Road (Illinois Route 116) and Anna Avenue. (App. at TR 205) Watson testified that he was parked at the corner of Harmon Highway and Laramie. (App. at TR 266). The distance between these two points is 1.7 miles.

119. This alone should be enough for any prosecutor to conclude that Sack and DeCremer were liars. But there is more. Neither Sack nor DeCremer ever radioed in a description of the driver's clothing, and in particular that remarkably noticeable blue shirt (why gild the lily when you're telling the truth?), at any time during or after the chase notwithstanding two radio requests for a further description of the driver both during the chase and the subsequent foot search of the area. Nor did they report that the driver was wearing glasses. If they had seen the perpetrator, his glasses and his clothing at the very outset of the chase and if that blue shirt was so "distinguishing," why didn't Sack radio the description in while DeCremer drove?

120. Sack and DeCremer also falsified their police report. In paragraph 2 of the report, the officers claim that after they lost sight of the blue Chevy, they noticed it again on Lincoln and "turned the spotlight on the car and noticed a negro (sic) male driving." (App. at CH 224). That's it; there is no further description where it logically would have been in the report. Paragraph 2 continues for 5 more lines describing the car chase and crash.

121. The third paragraph of the report describes approaching the Chevy and finding Ms. Manuel in the backseat. In the last sentence of the third paragraph which was also the last paragraph of the report, almost as an after-thought, is a sentence which states: "Officer DeCremer gave the description of the subject over the car radio as N/M wearing blue shirt, grey (sic) coat and having short hair." (App. at CH 224). Of course, as the Court knows from the transcript, DeCremer made no such radio transmission and thus there is no question that this sentence, the very last in the report, was added after the failed lineup (and even then they failed to mention the glasses they later claimed they saw the driver wearing).[18]

[18] Because it was 1970 and they were using a manual typewriter, Sack and DeCremer were unable to insert the description of the driver's clothing and glasses where it should have gone in their report.

122. Finally, the officers did not state in their report that they would be able to identify the perpetrator if they saw him again.

Watson's Testimony

123. Officer Robert Lee Watson testified that while he was parked in a bank parking lot at the corner of Harmon Highway and Laramie (a spot well-before Harmon becomes Lincoln) on the lookout for the car involved in the armed robbery, he saw a car that resembled the description in the radio dispatch. (See criminal trial testimony of Robert Lee Watson, App. at TR 266-267). Watson also testified that the car was traveling east on Harmon Highway toward Peoria at a high rate of speed and that there were no other "vehicles near this vehicle or around this vehicle." (App. at TR 267) Watson further testified that his car was facing Harmon Highway (i.e., perpendicular to the highway) and was at least 75 feet[19] away from the car matching the radioed description. (App. at TR 273, 275). As soon as he spotted the car, Watson turned on his headlights and spotlight so he would have a better "field of vision to observe any occupants in the car" when it passed him. (App. at TR 267).

124. According to Watson, he had about two seconds to look into the car when it passed and that, during those two seconds, he was able to see a colored man with a dark complexion and glasses. (App. at TR 276). In addition, Watson claimed he was able to recognize this colored man as someone he knew. Watson made an in-court identification of Mr. Heidelberg as the driver in the car he saw that morning. (App. at TR 268). Of course, even if it had taken two seconds for the car to *pass* him (the officers involved in the chase reported speeds from 50 to 100 mph; even at 50 mph, the Chevy would have been moving forward at a rate of 73 feet per

[19] Watson distorted his distance from the blue Chevy and did not testify to the speed of the car during his direct examination. On cross examination, however, Watson, after much hemming and hawing and after being confronted with his own police report, was forced to admit that he was 75 feet from the car and that the car was traveling at a "very high rate of speed." (App. at TR 273-275).

second and thus would have covered the width of Watson's car in the tiniest fraction of a second), Watson never actually had two seconds or even a fraction of a second to look into the car because, while Watson was stationary, the car was not.

125. Thus, to have had those two seconds, Watson would have had to stop time for two seconds at the exact time the car passed him and then taken a look. In short, Watson (who even if he could suspend time would have only gotten a side view of the driver's face from 75 feet away) did not see the driver or his face or any glasses or any blue shirt. All he saw was a car matching the description of the get-away car traveling at an abnormally high rate of speed. And if the laws of physics aren't enough to convince a prosecutor that Watson perjured himself on the stand, his radio transmissions can lead to no other conclusion.[20]

Watson's Radio Transmissions

126. Officer Watson made the most radio transmissions during the chase that lasted two minutes and five seconds from start to finish.[21] (See App. at CH 84-90). As he testified, Watson purposely hung back in the chase so he could continue radioing in location points throughout the chase. (App. at TR 269). And, in fact, Watson made 6 radio transmissions from the time he spotted the Chevy to the time the car chase ended. However, not one of those transmissions included a description of the driver—not one.

127. Watson also made several transmissions after the car chase ended and while the driver was on foot. In only one of those transmissions did he give a description of the driver and that description was a simple: "Operator, there is a colored man in the area on foot." (App. at CH 86 at 1:37.50). Of course, the operator had already radioed three times before the chase even

[20] In fact, Mr. Heidelberg's current counsel conducted a test to determine whether it was possible for a stationary individual to see and identify an individual in a passing car traveling at 50 mph. And of course it is not.

[21] The transcript of the radio transmissions establishes that Sack and DeCremer first spotted the blue Chevy at 1:34.05 (App. at CH 84) and Watson reported that the Chevy was stopped on Butler at 1:36.10. (App. at CH 86).

started that the suspect was a "colored male." (App. at CH 84 at 1:29.45; 1:33.10, and 1:33.45). The operator had also already radioed three times before the chase started that the suspect was wearing a yellow shirt (Id. at 1:33.10; 1:33.45; and 1:34.25) and two times before the chase started that he was wearing a brown jacket. (Id. at 1:33.10 and 1:33.45). The operator, however, had not mentioned anything about any eyeglasses.

128. Did it not occur to Watson, as he hung back to radio in critical information, that he should update the operator's description by adding that the colored male was wearing glasses or correct the operator's description of the suspect's shirt and announce that he saw the driver's shirt and it was blue not yellow? Apparently not and, remarkably, it also did not occur to any of the other officers (who claimed they had seen the driver's blue shirt, gray suit coat and glasses from the very start of the chase) to correct the radio operator's earlier description of the color of driver's clothing or to add that he was wearing glasses.

129. Indeed, throughout the car chase only one transmission contained any mention of a pair of eyeglasses. That transmission, from an unknown officer, reported that "a light blue Chevy II with a colored male with glasses; appears to have a goatee on" was "in an alley" headed "towards the Pow Wow Club." (App. at CH 85 at 1:35.10). That location was much further east than where the car chase was happening. In fact, after that transmission came in, the operator asked another unit to move towards Jefferson Avenue, a street which is much further east of Blaine and Butler (the location where the Chevy ultimately crashed).

130. Furthermore, the transmission from the unknown officer came in thirty-five seconds after Watson reported being behind the Chevy (App. at CH 84 at 1:35.35) and twenty seconds after Hilst had joined the chase. (App. at CH 85 at 1:35.10). Thus, the Chevy, Hilst and Watson were already speeding down Lincoln Avenue behind the Chevy which they never lost

sight of until it turned onto Blaine, a street far west of Jefferson. In other words, the Chevy could not have been both on Lincoln Avenue and somewhere east in an alley at the same time.

131. The "colored male with glasses" and "a goatee" in a Chevy in an alley somewhere east of the chase, therefore, must have been a different man driving a different Chevy and, whoever he was, he certainly could not have been seen by Watson and Hilst who, according to their testimony, were at all times during the chase behind the Chevy, first on Harmon Highway and then on Lincoln Avenue until it turned on Blaine. Likewise, DeCremer and Sack, as they testified, passed Watson and Hilst on Lincoln and remained on Lincoln until the Chevy turned on Blaine; hence, they could not have been in alley observing a colored man with glasses and a goatee in a Chevy.

132. In any event, Watson prepared a police report in which he claimed that the perpetrator was wearing a blue shirt and that he had seen the perpetrator's face during the high speed chase and could identify him. (See Officer Watson's police report, App. at CH 228). He also claimed in his report that he knew the perpetrator from a prior arrest, recognized him during the chase and remembered his name after he was arrested. (Id.). Again, Watson never shared this information in his radio transmissions.[22]

Hilst's Testimony

133. When Officer Paul Hilst entered the car chase, he was first in line behind the Chevy and Watson was second in line behind Hilst. At some point, Watson and Hilst were overtaken by Sack and DeCremer who were then first in line behind the Chevy. (App. at TR 297).

[22] Officer Watson was one of the Officers who beat Mr. Heidelberg upon his arrest and Watson was eventually suspended for his role in the violent attack which resulted in a crushed disc in Heidelberg's spinal cord, nerve damage in his right arm and permanent damage to his hip. (See police memos, App. at CH 230-231, and sentencing report, App. at CH 56).

134. Specifically, Hilst testified that while he was parked in his squad car facing Harmon Highway from the south, a blue Chevy sped past him at 50-60 mph as it was merging from the four lanes of Harmon Highway into the two lanes of Lincoln Avenue. (App. at TR 296). Thus, Hilst, like Watson, had a side view of the passenger side of the Chevy, not the driver's side. According to Hilst, the Chevy straddled two lanes as it merged and was about 45 feet away from Hilst's squad car.

135. Notwithstanding this rate of speed, the driver's position in the car and the laws of physics, Hilst testified he was able to see into the Chevy across the front seat to the driver's side and observe the side profile of his face (again, Watson and Hilst had the same view of the Chevy—a side view)(App. at TR 296). Hilst further testified that he had about 3 to 4 seconds to look at the driver (App. at TR 297) and that he saw that the driver was "a colored male wearing a blue shirt and glasses." (App. at TR 296). While Hilst then testified that he could not "positively" identify Heidelberg as the driver, he was able to further describe the blue shirt as "the same color as a police shirt." (App. at TR 298). That sounds familiar. But again, at 50 mph, the Chevy was covering 73 feet per second and would have covered the width of Hilst's car in the tiniest fraction of a second. That means that Hilst never saw a colored male or a pair of glasses or a blue shirt. All he saw was a car whip past him and he then gave chase because Watson told him to give chase.

Hilst's Radio Transmissions

136. Officer Hilst's radio transmissions confirm he never saw the driver, his glasses or his shirt and conclusively establish that his testimony was false. Specifically, as the Chevy was speeding down Harmon Highway (again, thirty seconds after Sack and DeCremer had lost sight of it), Watson radioed in that he was behind the Chevy. (App. at CH 84 at 1:34.35). Five seconds

later, Watson instructed Hilst, who was ¾ of a block east of Watson, by radio to go after the Chevy. (App. at CH 85 at 1:34.40). Five seconds after Watson radioed in his instruction, Hilst responded with "10-4" and entered the chase in the first position behind the Chevy and in front of Watson. (Id. at 1:34.45). Five seconds after that, Hilst[23] radioed in that "we're coming down [traveling east on] Lincoln now approaching Griswold" (it is at this point that Hibser radioed in that he would try to cut-off the Chevy at Lincoln and Western)(Id. at 1:34.50). Sometime thereafter, Sack and DeCremer caught up with and passed Watson and Hilst.

137. Hilst next made a radio transmission in response to a radioed question from Watson in which Hilst confirmed that the Chevy was stopped on Butler. (App. at CH 86 at 1:36.30). Again, Hilst provided no description of the driver's clothing nor did he report that the driver was wearing glasses which he testified he had already seen by this time even though the driver was now on foot and had eluded police.

138. That Hilst's testimony describing the driver as wearing a blue shirt and glasses was false is finally and conclusively established by his final radio transmission made during the foot search for the driver. In that transmission which came seven minutes after he joined the chase and at least five minutes after the Chevy had crashed, Hilst states, in response to a radioed request for a further description of the driver, that "County Officer Cramer said that the guy had on a light blue sweater over a light blue shirt when he bailed out of the car." (App. at CH 87 at 1:41.00). If Hilst himself had already seen the driver's clothing seven minutes earlier as he later testified, he would have given his own description of the driver and his clothing in response to the request and not a description he attributed to an "Officer Cramer." Certainly, he would have at least reported the fact that he had seen that the driver was wearing glasses.

[23] Hilst is not identified as the officer who made this transmission but he documents this transmission as coming from him in his police report. In any event, either Hilst or Watson made this transmission.

139. Logically it would seem that "Officer Cramer" was the unknown officer who made the transmission reporting the sighting of a colored male with glasses and a goatee in a Chevy in an alley somewhere east of the chase and the crash and that the clothing description he gave (a light blue sweater over a light blue shirt) was of the man he saw in an alley while the chase was occurring on Lincoln Avenue.[24] Most of the officers dispatched that morning, like Hilst, ended up at the crash site. As Officer Hibser would testify, there was confusion and many conversations taking place all at once. Thus, it is likely that the crash site is where Hilst heard this description (of another man in another Chevy) from Officer Cramer as well as other snippets of conversation taking place amongst the officers at the crash site.

140. While it is possible that Hilst was referring to Officer DeCremer in his transmission, that is unlikely given that DeCremer testified that he did not see the driver exit the Chevy and the description of a light blue shirt and light blue sweater is completely at odds with DeCremer's claim at trial that the driver was wearing a "bright" and "loud" color blue shirt and gray suit coat. Notably, Hilst testified that he did not know the names of the county officers so it is unclear how he could accurately attribute the description to any county officer. (App. at TR 305).

141. In any event, consistent with his radio transmissions, nowhere in his police report did Hilst state that he saw a side profile of a colored male wearing glasses and a blue shirt driving the blue Chevy. Indeed, the description Hilst provided in his report was nothing more than "this officer observed a light blue Chev. that was driven by a C/M directly in front of my

[24] This clothing description makes no mention of a gray sports coat nor does it match the officers' testimony regarding the remarkably blue shirt that just really stuck out to the testifying officers.

possission (sic)." (See Officer Hilst's police report and transcription, App. at CH 647-648).[25] There was no further description of the driver in Hilst's report.

Hibser's Testimony

142. In direct contradiction to the testimony of the preceding four officers, Peoria Police Officer Paul Hibser claimed that he too was involved in the "high speed" chase on Lincoln. Specifically, Hibser testified that he was parallel to the Chevy while it sped down Lincoln, that he followed it as it turned left on Blaine and right on Butler where he saw it crash into a parked car. (See criminal trial testimony of Paul Hibser, App. at TR 307-308).

143. Hibser also testified that when he pulled up on Butler, he saw the driver exit the blue Chevy. He testified that he could see a side profile of the driver's face as well as his clothing which Hibser described as a blue shirt and gray sports coat because his headlights were shining on the Chevy. (App. at TR 308-310, 312).

144. On cross, Heidelberg's counsel asked him how he could see the driver's face or shirt if he was behind the Chevy. Hibser claimed that the driver crouched down and paused when he exited the Chevy and it was then that he could see his face and clothing. (App. at TR 316-317). However, according to both DeCremer and Sack, *and as Hibser documented in his police report*, Hibser arrived *after* DeCremer and Sack had arrived and that when he arrived, they told him the driver had escaped. (App. at TR 319-320). In short, Hibser's testimony that he saw the driver exit the Chevy and that the driver was wearing a blue shirt and gray sports coat was indisputably false as established not only by DeCremer and Sack but by his *own* words in his

[25] Both a copy of the report and a transcription are attached.

own police report.[26] (See Officer Hibser's police report (and transcription), App. at CH 276; 645-646).

145. Hibser then testified that he left the area of the crash to go in search of the driver but later returned. According to his radio transmissions, he did in fact return to Blaine and Butler a full 25 minutes later. Hibser testified that when he returned to Blaine and Butler, he saw a man crossing Butler and took aim with his gun but could not fire because officers and police canines were too close to the man. (App. at TR 313, 339-340). That man was Cleve Heidelberg who had been intercepted by police as he walked toward the location where Lester Mason had told him he could retrieve his car.

146. Hibser then identified Heidelberg in court as the man he saw crossing Butler. (App. at TR 313, 345). Notably, in his police report, Hibser describes the man crossing Butler as wearing "dark clothes" and not a blue shirt and gray sports coat. (App. at CH 276).

147. At trial, Hibser's false testimony claiming that he had seen the driver exit the Chevy and that the driver was wearing a blue shirt and gray coat created a false link between the driver of the Chevy (a man he never saw) and the man he later saw on Butler a full thirty minutes after the crash and a full twenty-five minutes after the driver was last seen running north by Officer Patty.

148. And in his closing argument, prosecutor Riddle emphasized the importance of the false link Hibser created: "So that even though he doesn't know him by name or face he knows it was the same person he saw get out of the car. I think that is important because he got involved in this case and he rules out the possibility that someone other than the man that got out of that

[26] To add suspenders here, John Mathis, the owner of the home in front of which the blue Chevy crashed and the only other witness (besides his wife) who testified he saw the driver flee the Chevy, testified that the driver did not crouch down but instead exited the car and immediately bolted north. (App. at TR 381-383, 391).

car that was arrested. Officer Hibser tells you that is not so. The police arrested the same man that got out of that car." (App. at TR 1129).

149. Neither this Court nor any reasonable human being can believe that Riddle was not aware of the content of Hibser report or the testimony of Sack and DeCremer which the State itself presented. Nonetheless, he used Hibser (or perhaps Hibser volunteered) to present perjured testimony to the jury to plug this gaping hole in the State's case and he did so just in case the members of the jury used even a modicum of common sense in weighing the testimony of Sack, DeCremer, Watson and Hilst which would have forced them to conclude that not one of those officers, at the speeds they reported, would have been able to see the driver's face or any glasses or any blue shirt or gray coat.

Hibser's Radio Transmissions

150. Hibser's radio transmissions establish that he was never following the blue Chevy on Lincoln much less driving parallel to it. Specifically, according to his radio transmissions, while DeCremer and Sack, Hilst and Watson were giving chase going east on Lincoln, he was traveling "down" (going south on) Western (a street which is perpendicular to Lincoln) in an attempt to cut-off the blue Chevy at the intersection of Lincoln and Western. (App. at CH 85 at 1:35.30).

151. In fact, Hibser made five transmissions describing his path down Western. Fifteen seconds after his fourth transmission reporting that he was still "moving down" Western, Watson radioed in that the Chevy has turned left (north) on Blaine Street. (App. at CH 85 at 1:35.45).

Five seconds after Hibser's fifth transmission that he was still "coming down" Western,[27] Watson radioed in that the Chevy had turned right on Butler Street. (Id. at 1:35.55).

152. The intersection of Blaine and Butler is a T-shaped intersection. Blaine runs perpendicular to Butler and dead-ends at Butler. As DeCremer testified and as Hibser documented in his police report, Hibser pulled up on Butler not Blaine. This means that Hibser turned onto Butler from Western when he heard Watson's radio transmission reporting that the blue Chevy had turned east onto Butler. Thus, contrary to his testimony, Hibser never saw the blue Chevy in motion nor was he ever parallel to it nor did he see it crash.

153. In fact, given that Hibser was still on Western a mere five seconds before the Chevy turned on Butler, there was simply no way Hibser would have had the time to get to Butler and Blaine in time to see either the crash or the driver exit the Chevy.

154. When Hibser was confronted with his police report on cross-examination, Hibser "clarified" his direct testimony and admitted that he was not in the actual car chase, he did not see the crash, and he arrived at the crash scene after Sack and DeCremer. He insisted, however, that he saw the driver exit the Chevy but could not account for why Sack and DeCremer did not see the driver exit the Chevy. He speculated that it could have been because the driver's side of the Chevy was dark. (App. at TR 321). However, he had testified on direct that his headlights were illuminating the driver's side of the Chevy which was how he was able to see the driver's clothing as he exited the Chevy. (App. at TR 310). Hibser was also unable to explain how he saw the driver exit the Chevy but did not see him run away from the Chevy. (App. at TR 323).

155. In any event, the radio transmissions establish that Hibser was still driving down Western five seconds before the Chevy crashed. Hibser never saw the driver get out of the car

[27] Although Hibser's name is only recorded next to one of these five transmissions, it is obvious from context that it is Hibser who is making the transmissions.

and he never saw a blue shirt that night until Heidelberg was attacked and arrested. In fact, nowhere in his police report does he claim he saw the driver and nowhere in his police report does he describe the driver's clothing. (App. at TR 276). In short, Hibser got on the stand and just plain lied.

156. And like all of the officers discussed here, Hibser never radioed in a description of the driver even after the driver had eluded police and a foot search was underway.

157. Again, although four officers testified that they saw that the driver was wearing glasses, there was only one radio transmission during any time that morning that described a colored male wearing glasses and that transmission came from the unknown officer (possibly an "Officer Cramer") who was in a location much further east than where the chase began and ended. (App. at CH 85 at 1:35.10).

158. As it turns out, the actual driver of the blue Chevy, and the real killer, was not even wearing glasses that morning. His glasses were in the pocket of his jacket. While he was pushing Ms. Manuel into the back seat of the Chevy, the glasses fell out of his pocket onto the floor of the car. (See Affidavit of James Clark, App. at CH 61). These facts, contained in the killer's confession, are corroborated by Junius Whitt who testified that when he saw the shooter, he was not wearing glasses but the frames of a pair of glasses were sticking out of the shooter's jacket. (See criminal trial testimony of Junius Whitt, App. at TR 1004). These facts are also corroborated by the type of damage to the glasses that were found in the Chevy.

159. Specifically, one lens of the glasses was cracked and clearly appeared to have been stepped on. (See photograph of glasses, App. at 122). If the driver had been wearing the glasses, it is unlikely that the glasses would have flown off his face during the crash given that the driver had slowed considerably to take the turn at Butler. Even if they had, they would have

hit the windshield not landed on the floor of the car. Moreover, it is exceedingly difficult to break the lenses on a pair of glasses unless direct downward force is applied to the lens itself as would be the case if the lens were stepped on.

160. Indeed, Mr. Heidelberg was wearing his glasses when he thrown to the ground, cuffed and attacked by police and canines for a period lasting 10 to 12 minutes. Yet, as would be testified to by a Peoria County Jail administrator, Heidelberg's glasses suffered no damage at all. (See testimony of Robert Zook, App. at TR 940).

161. In any event, the tapes of police radio transmissions were transcribed on June 18, 1970, just weeks after the murder and likely at the request of the prosecutors. (See App. at CH 90). The prosecutors, unlike Heidelberg's counsel, had months to study the transcript and knew that the police testimony they were presenting was thoroughly inconsistent with the radio transmissions and could not be reconciled with the timeline irrefutably established by those transmissions.[28] In short, the prosecutors knew that the police officers' testimony purporting to identify Mr. Heidelberg during the high-speed chase was pure fabrication.

The Group Witness Meeting

162. During his cross-examination, Officer Sack denied that he had heard a radio transmission reporting that the perpetrator was wearing a yellow shirt and brown jacket. (App. at TR 215-216). He also stated, however, that he had heard from the "state's attorney's office" during a group meeting of county and city officers the night before he testified that there was "testimony" regarding the yellow shirt and brown jacket. (App. at TR 216). He further stated that he and DeCremer had discussed the yellow shirt and brown jacket before his testimony. (Id.).

[28] As stated earlier, Mr. Heidelberg did not receive the transcript until November, shortly before trial, after the Court learned that the State had misrepresented the fact that the tapes of the radio calls had been destroyed. (App. at CH 568).

163. At the close of Sack's testimony, Mr. Heidelberg's counsel moved to strike Sack's testimony because he had discussed prior testimony that had been given in the trial before he himself testified. (App. at TR 228). Prosecutor Hamm denied that the witnesses had discussed their testimony with each other. He also denied discussing the testimony of a witness with any other witness. He admitted, however, that he and prosecutor Riddle had been unable to meet with witnesses individually during their preparation of the case and had therefore been meeting with witnesses in groups to conduct "briefings." (App. at TR 230).

164. Prosecutor Hamm also admitted that the yellow shirt and brown jacket came up at the meeting because there was a police report documenting that Jerry Lucas had radioed in a description of his own clothing. (App. at TR 230-231). No such report exists. Even if it did, why would that report be the subject of witness preparation for any witness other than the witness who prepared the report? Finally, Hamm suggested that witnesses may be reading reports of testimony in the newspapers. (App. at TR 231). Strangely, neither the trial court nor the lawyers seemed disturbed by that prospect.

165. In any event, the trial court then called DeCremer and Sack to the stand and questioned them regarding the meeting and the discussions that took place at the meeting. Both were evasive (in fact, "evasive" was the word the trial court used- App. at TR 245) and gave conflicting testimony about the discussion of the yellow shirt. (App. at TR 236-247). When prosecutor Riddle questioned DeCremer, he had no qualms asking DeCremer to confirm that he (Riddle) discussed different things with different officers. In other words, the five city and county officers who testified that the driver was wearing glasses and a blue shirt (with four making in-court identifications) were each privy to and tainted by their respective discussions with prosecutors Hamm and Riddle.

166. In the end, the trial court allowed all of the officers who attended the meeting in which the yellow shirt/brown jacket was discussed to testify and each of those officers just coincidently testified that the driver of the Chevy was wearing a blue shirt/gray coat. The judge did so because he ultimately attributed Sack's use of the word "testimony" in describing the context of the discussions about the yellow shirt as either "a slip of the tongue" or a lack of understanding as to what the word "testimony" actually means. (App. at TR 247). Incredible.

The Polks' Testimony

167. The Polks witnessed the attack and arrest of Mr. Heidelberg. (App. at 752-760; 760-764). They saw the officers unleash the canines on Heidelberg after he was already down on the ground and handcuffed. They also saw the officers viciously kicking Heidelberg in the head and neck area after he was already down on the ground and handcuffed. (App. at TR 756, 762). They also heard more than one officer suggest that they murder Heidelberg and claim he was assisting arrest. (App. at TR 755, 762). Throughout the attack, which lasted 10 to 12 minutes, Heidelberg lay motionless on the ground. (See App. at TR 755-756, 762).

168. But the Polks also heard something else that has significant evidentiary weight here: the arresting officers were repeatedly asking Heidelberg to tell them who he was with and were repeatedly telling him that he shouldn't take the rap himself throughout the attack. (App. at TR 755). As indisputably established by the radio transmissions transcript, there were never any reports that more than one man was involved in the armed robbery nor were there any reports that more than one man was seen driving the blue Chevy.

169. Why then were the officers repeatedly asking Heidelberg to name another man? They did so because Mr. Heidelberg was not wearing a yellow shirt and brown jacket. They did so because none of them ever saw the clothing of the driver they were chasing down Lincoln.

And when they saw that the man they attacked and cuffed was wearing a blue shirt and gray suit coat, they knew that something was not adding up.

The Yellow Shirt and Brown Jacket

170. In addition to shoring up their list of eyewitnesses, the police were busy attending to another looming problem in their case against Mr. Heidelberg: how to explain that the first radio transmission (and two more thereafter) describing the perpetrator clearly reported that the armed robber was wearing a yellow shirt and brown jacket. Part of the solution was the five officers discussed above who would later claim that they were able to see that the man in the get-away car was wearing a blue shirt and gray suit coat. The other part of the solution was to again use the highly-paid Lucas.

171. According to Lucas, the confusion over the perpetrator's clothing arose because, when he used Sergeant Espinoza's radio to report that Espinoza had been shot, he also reported that he was wearing a yellow shirt and brown jacket to ensure that he was not shot when officers responded to the call. (App. at TR 122-123).

172. The suppressed transcript of the radio transmissions, however, tells a different story. In fact, there was only one radio transmission from Officer Espinoza's squad car, unit #707. That transmission was a simple "Ray is shot." (App. at CH 84 at 1:29.20).

173. No further radio transmissions were made from Sergeant Espinoza's police car. Thus, if any radio transmissions were made from the Drive-In describing clothing, they were made by the officers who arrived on the scene after the perpetrator made his escape from their

radios.[29] Having arrived at the scene and taken Lucas into custody, there would have been no need to radio in his clothing description to protect him from responding officers.[30]

174. Moreover, the transcript indicates that the information regarding the yellow shirt/brown jacket was received through a telephone call to the county Sheriff's department and that the county then shared that information with the city police radio operator by telephone. (App. at CH 84 at 1:33.10). The only person who called the county Sheriff's department by telephone during the commission of the crime was Mr. Cremeens and he did so within 30 to 60 seconds after the perpetrator tied him up. (App. at TR 83). In other words, as the radio transcript (and a county police report) confirms, Mr. Cremeens' call was the first report of the robbery and it came in *before* Lucas radioed in that "Ray is shot."

175. There can be no question that when Cremeens made that call he was asked to describe the robber and the clothes he was wearing. If Cremeens had described anything other than a yellow shirt and a brown jacket (for example, glasses, a blue shirt and gray sports coat), that description would also have been broadcast to the officers searching for the perpetrator. Remarkably, while police transcribed the tape of the phone call from the unknown neighbor who saw a Black man "walk up" his block, they did not transcribe Cremeens' phone call reporting the actual armed robbery. They did, however, destroy that tape.

176. The first officers to respond to the Drive-In were county officers Bernard and Schalk. These officers testified that when they arrived at the Drive-In they noticed that Lucas was wearing a yellow shirt and brown jacket. (See criminal trial testimony of Officer Bernard,

[29] The transcript shows both the county and city officers' radio transmissions. Thus, it appears unlikely that any clothing descriptions were ever radioed in by anyone.

[30] Lucas' testimony is also at odds with his handwritten statement in which he states: "I then got to the radio for help stating Sgt Espinoza had been shot, in addition to identifying myself." (See App. at CH 275). Lucas does not state that he made any mention of his clothing. (Id.).

App. at TR 38, and Officer Schalk, App. at TR 49). However, their own report of their arrest and interview of Lucas at the Drive-In makes absolutely no mention of the clothing Lucas was wearing. (See App. at CH 222).

177. In addition, these officers interviewed Lucas and Cremeens at the same time and while they were outdoors. At trial, when Cremeens was asked to describe Lucas' clothing, he testified that it was too dark too see Lucas' clothing. (App. at TR 90). Finally, if Lucas had in fact radioed in a description of his clothing, wouldn't Bernard and Schalk have immediately gotten on their radio and clarified this information so that the officers in pursuit of the perpetrator would not have the wrong description?

178. Lucas' own testimony further reveals that his claim (as well as Bernard and Schalk's) that he was the one wearing a yellow shirt and brown jacket that early morning was manufactured. Specifically, Lucas, perhaps working too hard to earn $2000 (in today's value) in cash and his room and board, actually testified that the clothes he was wearing at trial (what he describes as a gold shirt and brown jacket) were the same clothes he was wearing the night of the armed robbery. (App. at TR 122-123). Lucas, Bernard and Schalk, however, also testified that he (Lucas) was holding Sergeant Espinoza's bleeding head in his arms when officers arrived at the scene. (App. at TR 38, 49). Without doubt, all of that blood would have ruined whatever clothing Lucas was wearing that morning.

179. And prosecutor Riddle himself gave credence to this ridiculous claim by arguing to the jury that he had proven that it was Lucas who was wearing the yellow shirt and brown jacket because they themselves saw him wearing those same clothes when he testified. (App. at

TR 1115-1116). Just minutes before, Riddle had asked the jury to look at photos of Espinoza's car and note that there was blood everywhere.[31] (App. at TR 1113).

180. Riddle, by the way, was the same prosecutor who told the jury it was their job to assess the credibility of the witnesses but that in his opinion Heidelberg's witnesses did not *look* believable to him. (App. at TR 1110, 1141, 1152). Riddle made those statements to the jury about each of the defense witnesses *all of whom were Black and not a single one of whom had been impeached or rebutted in any way.*[32] Mr. Lucas, on the other hand, was not only impeached by defense witnesses to whom he had admitted falsifying his identification of and his plan to falsely testify against Mr. Heidelberg, he lied from the stand while under oath and Riddle was forced to inform the trial court that Lucas was lying. (App. at TR 145).[33]

181. Riddle did so because the lie Lucas told would have been easily exposed. Specifically, Lucas falsely testified that he did not discuss his testimony with the prosecutor before trial. (App. at TR 145). However, the prosecution held group witness meetings and so other witnesses could expose Lucas' perjury. And when Riddle told the trial court Lucas was lying, he admitted he had met with Lucas at least three or four times to discuss his testimony. (App. at TR 145-146, 167).

182. One must ask why a busy prosecutor who presented over thirty witnesses was compelled to meet with Mr. Lucas three or four times. Riddle was also forced to inform the trial court that he had met with Ms. Manuel several times when she too was either mistaken or less

[31] There was so much blood at the crime scene and pouring from Officer Espinoza's head that even his own gun was covered in blood and the County had to clean the gun before they turned it over to Mrs. Espinoza. (See App. at 527).

[32] In contrast, prosecutor Riddle described the State's (white) witnesses as follows: "Now I think that in considering our witnesses, I think that you can learn from looking at them and listening to them that they are obviously a reliable group. They are obviously honest . . . they are reliable persons with integrity. . . " (App. at TR 1138).

[33] In closing argument, Riddle simply ignored the fact that the transcript of the radio calls did not support the State's claim that Lucas identified his own clothing, telling the jury "the yellow shirt and brown jacket is another attempt to make you take your mind off the blue shirt and gray jacket." (App. at TR 1143).

than honest about discussing her testimony with him. And prosecutor Hamm had been forced to admit that he and Riddle had conducted group meetings with witnesses to discuss their testimony.

183. But here's the real kicker: in the end, Riddle told the white jury that they could believe Lucas, the only Black witness for the prosecution, because his testimony regarding his clothing was corroborated by two white officers, Bernard and Schalk. (App. at TR 1115-1116). That's right; that's exactly what he implied. So never mind that they witnessed Lucas perjure himself right there on the witness stand; a couple of white men backed him up so it was okay to believe his testimony. And this was just the start of the prosecutor's race-baiting.

184. Indeed, the prosecutor also told the jury that while they might doubt Lucas' identification of Heidelberg because Lucas was "not such a lily white character," (App. at TR 1122), they need not have such doubts because Ms. Manuel (who was lily white) had also identified Heidelberg as the shooter. (Id.). The implication was clear: Black testimony can only be believed if it is corroborated by white testimony. Is there any wonder that Mr. Heidelberg's overwhelming and unrefuted alibi evidence held *zero* weight with that jury?

185. The irony here is that Ms. Manuel in fact never identified Mr. Heidelberg until the trial when he was the lone defendant sitting at defense table. She could not identify him in the first lineup or in the reverse lineup or at the preliminary hearing when she got up, walked over to him and looked him straight in the face. Notwithstanding Ms. Manuel's devastating admission at trial that she had never been able to identify Heidelberg before the trial, according to the prosecutor, the jury should believe her in-court identification of Mr. Heidelberg (and by association Lucas') because…well she's white.

186. The race issue in Peoria was so endemic, so embedded in Peoria society that Mr. Heidelberg's trial counsel even tried to use it to Heidelberg's advantage. That is, he argued to the members of the all white jury that as they all know, white people have a hard time distinguishing one Negro from another so they really should not give any weight to the identifications of the officers, Ms. Manuel and Mr. Cremeens. (App. at TR 1179). And believe it or not, prosecutor Hamm actually felt this point had merit and was compelled to respond to it but not by decrying its inherent racism. Instead, he argued to the jury that while this truism may be the case, they shouldn't worry too much because Jerry Lucas was himself a Negro and therefore qualified to distinguish one from another. (App. at TR 1196).

What About The Eyeglasses?

187. Although Mr. Heidelberg was attacked and arrested about a block away, the officers dragged him back to the crash site. Thus, the officer who was processing the evidence from the get-away car, Robert Cone, saw that Heidelberg was wearing glasses and the arresting officers saw that a pair of broken eyeglasses was found in the get-away car. It was no coincidence then that in describing the broken eyeglasses in the evidence log, Cone described them as "sunglasses." (App. at CH 124). What Cone didn't count on (and perhaps didn't know) was that the FBI would later photograph the broken eyeglasses when they were examined for fingerprints. That photo indisputably establishes that Cone lied about the type of glasses found in the get-away car. (App. at CH 122).

188. The arresting officers dealt with the eyeglasses problem in a different way. Mr. Heidelberg was taken to the Peoria police department before he was taken to the hospital. At the police station, his clothing and eyeglasses were confiscated by police. Notwithstanding no less than *seven* police reports logging or otherwise addressing Mr. Heidelberg's property (and five of

those reports logged the blue shirt and gray sports coat), no log or other report makes any mention of the eyeglasses he was wearing when he was arrested. Not one. In fact, those eyeglasses were secreted away in the vault of the county jail and Mr. Heidelberg had no idea what had become them for months after his arrest.

189. Mr. Heidelberg's eyeglasses were evidence. They should have been logged in as evidence and the prescription of Heidelberg's lenses should have been compared with the prescription of the lenses in the broken eyeglasses found in the get-away car. An attempt should also have been made to determine where the glasses were purchased and whether Mr. Heidelberg purchased more than one pair. At a minimum, they should have been preserved as evidence for trial and Mr Heidelberg, who needed his glasses to be able to see, should have been given a replacement pair.

190. Instead, months after he was arrested, Robert Zook, a Peoria County Jail administrator whose duties were to assist in the welfare of prisoners, removed the eyeglasses from the jail vault and returned them to Mr. Heidelberg so he could finally see again.[34] (App. at TR 937-942). In doing so, however, what little chain of custody there was attached to Heidelberg's glasses while they remained in the county vault (as discussed above, the police did not create a log of his glasses when they confiscated and inventoried his property after his arrest) was destroyed.[35]

[34] Zook testified that when he turned over the eyeglasses to Heidelberg, they were not broken or damaged in any way. (App. at TR 940).

[35] While Heidelberg's defense counsel tried to link Lucas to the broken glasses found in the blue Chevy, he did not pursue any analysis comparing the broken glasses to Mr. Heidelberg's glasses nor did he call Mr. Heidelberg's eye doctor to testify regarding the strength of his prescription or the number of pairs of glasses he purchased from the doctor.

The Suppressed FBI Fingerprint Reports

191. At least four reports and one telegram were sent by the FBI documenting the examination and analysis of the evidence hand-delivered by Officer Cone. Neither the telegram nor any of the reports were ever produced to Mr. Heidelberg before or during his trial. Furthermore, the telegram and at least one report were destroyed.

192. Pursuant to a FOIA request from Mr. Heidelberg's current counsel, the State produced an FBI report dated June 5, 1970. (App. at CH 135). The report states that no latent prints of value appeared or were developed on the "Q" and "K" specimens which were the murder weapon, the bullets and cartridges. (Id.). The report further states that "the results of the laboratory examinations" of the remaining "submitted items" (which the report does not individually list or identify) "are the subjects of a separate report." (Id.).

193. An FBI ballistics report dated June 19, 1970, which was produced years after Mr. Heidelberg's trial, identifies the remaining submitted items referred to in the June 5 report as "flash light, four keys, radio and glasses." (App. at CH 137). The June 19 report then sets forth the results of the ballistics examination and concludes with the sentence "You are being advised by separate report concerning the results of the latent fingerprint examinations." (App. at CH 138). Because the June 5 report had already reported the results of the fingerprint examination of the murder weapon, bullets and cartridges, it would seem that this sentence refers only to the fingerprint examination of the individual items identified and listed on the first page of the report as the "flash light, four keys, radio and glasses." It must be asked, however, whether additional testing was also conducted on the murder weapon (which appears likely given the haste with which the May 28 telegram and June 5 report were produced). In any event, no subsequent

fingerprint report was produced by the State in response to the FOIA request. That subsequent report, therefore, must have been destroyed.[36]

194. And, in fact, newly discovered evidence found in a manual search of FBI files in the National Archives proves that a subsequent fingerprint report was prepared and transmitted to the Peoria County Sheriff's Office. Specifically, an FBI index card (generated to document receipt of a trial subpoena from Mr. Heidelberg's trial counsel) dated December 9, 1970, literally days before the trial concluded, states "LAT PRT EXAM THIS CASE NEGATIVE." (emphasis original)(App. at CH 140). The card does not state "no prints of value" or "no prints were developed." Instead, it plainly states that the results of FBI attempts to match Heidelberg's prints to prints on the evidence in the case were "negative." The only reasonable inference here is that the FBI found prints on at least one of the "flash light, four keys, radio and glasses" (which, as discussed above, were to be the subject of a report subsequent to the June 5 report) and perhaps even on the murder weapon which was likely further tested and that those prints did not match Mr. Heidelberg's.

195. If the subsequent report did anything other than exonerate Mr. Heidelberg by a finding that the prints on those items did not match his prints, there would have been no reason for that report to have been destroyed. It is also telling that the May 28 telegram was destroyed. It appears from the information contained in the June 5 and June 19 reports, that the telegram informed the police that there were no prints of value or developed from the murder weapon to match against Heidelberg's and that the murder weapon could not be determined to be the gun that shot the bullet retrieved from Sergeant Espinoza's head. The police destroyed that telegram

[36] The Peoria County State's Attorney's Office also produced a subsequent ballistics report dated July 2, 1970 pursuant to the FOIA request which had never been produced to Mr. Heidelberg at any time before or after his trial. (App. at CH 212).

so they could hide the date on which they became aware that they had no physical evidence against Mr. Heidelberg. They could then continue to unlawfully detain Mr. Heidelberg, spy on privileged communications and manufacture false eyewitness identifications while they "waited" for the FBI examination results—results we now know they already had with respect to the murder weapon within two days of Mr. Heidelberg's arrest.[37]

196. There is more evidence beyond the FBI index card that corroborates that the FBI did indeed find another individual's prints on either the flashlight left by the perpetrator at the scene of the shooting, the car keys or the broken eyeglasses left by the perpetrator in the get-away car.

197. In July 1970, something seemingly inexplicable and out of the blue happened. Two FBI agents paid a visit to an individual named James Clark who had been arrested on July 5, 1970 for committing an armed robbery in Rock Island, Illinois and interrogated him about the murder of Officer Espinoza.[38] (See Affidavit of James Clark, App. at CH 62). Clark denied involvement but at some point in the interrogation it became clear to him that police knew he was in Heidelberg's car. To "counter this," Clark told the agents that he had been in Heidelberg's car for a few minutes on May 26. (Id.).

198. But what exactly did lead the FBI to James Clark? Mr. Heidelberg did not have any reason to believe Clark was in his car or involved in the shooting of Espinoza. All he knew was that Lester Mason had his car during the time the shooting occurred. In any event, Heidelberg had refused to answer police questions and the only name Officer Manias heard Heidelberg say when he was playing secret agent man was "Lester Mason." The police and

[37] Incredibly, the Peoria County Sheriff's Office—the main agency that investigated the Espinoza shooting—claims it cannot locate it's file. (See App. at CH 18 at ¶¶18-19 and CH 238-239).
[38] As will be discussed shortly, James Clark was in fact the actual killer of Sergeant Espinoza and confessed as much within weeks of Heidelberg's conviction.

prosecutors admit (and Mason confirms) that they did not speak to Mason until the fall of 1970; thus he had not yet told them about Clark.

199. In fact, there are no police reports or any other documents recording statements from any individual who may have had knowledge of the shooting at all much less a report that identifies James Clark by name (unless of course, they too were destroyed and if they were, why?). In short, at the time Clark was interrogated, no one had told police that Mason had given Heidelberg's car to Clark which means that his *fingerprints* were all that could have led them to Clark. There simply is no other explanation or inference to be made.

200. Another curious discovery regarding James Clark merits mention. Buried among County police reports dated in July 1970 and produced pursuant to a FOIA request, are two documents that contain information about Clark's July 5, 1970 arrest. (App. at CH 284-285). Clearly, Peoria authorities had their eye on Clark in July 1970.

201. But there is more than just inference here. The fact that it was his fingerprints that led authorities to James Clark is finally and conclusively established by Matthew Clark, James' brother. Matthew attests that, at some point after James was interrogated, he told Matthew that his fingerprints had been connected to the crime and that, as a result, he had been questioned by the FBI. (See Affidavit of Matthew Clark, App. at CH 16 at ¶11).

202. James also confessed to Matthew that he, in fact, was the man who shot Sergeant Espinoza. (Id. at ¶8). Matthew Clark is now in his seventies. He has no reason to besmirch the name of his dead brother who he loved dearly. His only mission here is to complete his brother's call for truth and justice in this case. It is imperative that Matthew be interviewed and allowed to testify, if necessary, before it is too late.

203. Again unfortunately, and perhaps by design, there are no reports in the FBI files on this case. All that is left of those files is a handful of index cards. (See CH 262-266). It is possible that authorities believed James Clark's denial and explanation of how his prints ended up on the items retrieved from the get-away car. They had their cop killer, they caught him with their bare hands and nothing was going to change their mind. Perhaps they destroyed the subsequent fingerprint report despite this belief (just like they destroyed the original lineup report and the May 28 telegram, suppressed the June 5 and 19 reports) because they wanted to ensure that there was no evidence to corroborate the alibi witness testimony they knew from Manias' spying would be forthcoming at trial.

204. There were, however, other very compelling reasons why police may have simply chosen to go along with Clark's denials whether they believed him or not.

The Black Panther Party and Racial Strife in 1970 Peoria

205. In the years leading up to 1970 and beyond, America was besieged with political assassinations and racial violence. From the Deep South to Kent State, peaceful protestors who opposed segregation and the Vietnam War were beaten and imprisoned—and even murdered—by state and local authorities who often responded to the protests with deadly force. Violent protestors who opposed the Civil Rights movement and efforts at desegregation detonated bombs in churches and fired bullets and threw Molotov cocktails into homes often facing little if any consequences for their violent and deadly acts.

206. And Peoria was not immune. Throughout the sixties, Black Peoria conducted sit-ins, boycotts, and marches to protest for job opportunities, better housing and desegregation of schools. Yet, in 1970, Blacks were still shut out from jobs with the trade unions and with the fire

and police departments.[39] They were still forced to live in housing projects and a few select neighborhoods which were often worse than the projects. The schools were still segregated and would remain so throughout the seventies. Black frustration was high and starting with the assassination of Martin Luther King, Jr., at times that frustration erupted in rioting and violent confrontations between the all but white police force and young Black citizens of Peoria.

207. In addition to the night of fires and rioting that marked the assassination of Dr. King, one notable example occurred a few months later when two hundred police officers surrounded the Taft Homes housing projects and exchanged gunfire with residents who had been rioting in protest of the unjustified arrest of a 16-year-old pregnant girl. Ten police officers were wounded in the confrontation which lasted two days and the Peoria Journal Star lauded the officers as heroes while posting pictures of three of them in hospital beds the next day. (App. at CH 324). The event heightened Black frustration and solidified the belief that racial injustice would continue to be a part of life in Peoria.

208. The violent protests and armed resistance at the Taft Homes shocked and terrified white Peoria and stood in stark contrast to the peaceful sit-ins and boycotts it expected from its Negro citizens. Indeed, throughout Mr. Heidelberg's pre-trial proceedings and trial, the Peoria County Sheriff's Department regularly surveilled the homes of the judge and prosecutors to protect them from any Black threat. (App. at CH 286-288). Throughout all of those months, officers had only one encounter that caused them concern: a "Negro female" was driving "slowly" down the trial judge's block. The woman was stopped and, as it turns out, she was looking for her lost dog. (App. at CH 289).

[39] Blacks continue to be excluded from Peoria police department hiring. A May 27, 2015 Peoria Journal Star article noted that of the 26 police officers hired in recent years, only three were Black. (App. at CH 328).

209. That white fear would soon reach near hysteria as a new movement, born in Oakland, California in 1967 and expressly advocating armed self-defense against police abuse and brutality, made its way across the country and entered Peoria through a young man named Mark Clark.

210. Mark was born and raised in Peoria and, by all accounts, he was a kind and quiet young man who spent his time going to school and helping poor Black children in his community. When Mark was in college, he heard about the social services the Panthers were putting in place for Blacks in need (e.g., providing breakfast before school for poor Black children and securing healthcare and legal counsel for other members of the Black community) and decided to start a Black Panther Chapter in Peoria and successfully established a breakfast program which further endeared him to the community. (App. at CH 684).

211. At the young age of 22, however, Mark's life was cut short by a Chicago police raid, authorized and led by the Cook County State's Attorney with the assistance of FBI counter-intelligence. In that raid, which was carried out in the wee hours of the morning on December 4, 1969, the police fired at least 76 bullets into the apartment of Fred Hampton, the leader of the Chicago Chapter of the Black Panther Party. (App. at CH 318, 320). Every occupant of the apartment was asleep, and with the exception of one bullet, a grand jury determined that all of the shots fired came from police and that none of the occupants fired back or resisted the police. Of course, before the grand jury's findings, the survivors of the raid were all charged with various crimes, including attempted murder and the police told a much different story. In fact, so contrary to the physical evidence were the police accounts that the grand jury expressly asked the officers who carried out the raid to review the physical evidence before giving their testimony.

212. Notwithstanding that evidence, their testimony remained unchanged. The grand jury then summoned the survivors to testify but advised them that although the charges against them had been dismissed as mandated by the physical evidence they might still be indicted at a later time. The survivors, of course, refused to testify not only because of the grand jury's warning but also because they felt that the all white grand jury was not a jury of their peers and therefore could not investigate the raid fairly.

213. As it turns out, they were right. The grand jury ultimately attributed the profound discrepancies between police testimony and the physical evidence to confusion over friendly fire. (App. at TR 320). Specifically, the grand jury speculated that because police had entered shooting from both the front and back of the apartment, the police in the front thought that the occupants were exchanging fire when in fact it was the police shooting form the back of the apartment and vice-a-versa. And, even though it found that the State's Attorney had misled the public and falsified evidence, the grand jury failed to return a single indictment when it published its findings in May 1970, the same month Mr. Heidelberg was arrested.

214. Black leaders in Chicago were outraged and State's Attorney Edward Hanrahan was actually shocked at this outrage. Mr. Hanrahan had expected Black leaders to join with white sentiment which overwhelming believed that the raid was justified and thanked God those violent and dangerous Panthers were brought to heel. Indeed, in the Peoria Journal Star's first article reporting the raid, the Black Panther Party was described as a "Black Ku Klux Klan" and Mark Clark was just another stupid Black boy who had been seduced by the Party's rhetoric. (App. at CH 673). A week later, the Peoria Journal Star reported that Attorney General John Mitchell's order that the FBI investigate the deaths of Fred Hampton and Mark Clark "was a long time in coming." (App. at CH 674).

215. Black outrage in Chicago resulted in the appointment of a special prosecutor whose investigation, which was ongoing throughout Mr. Heidelberg's trial and post-trial proceedings, did result in indictments sometime in 1971 against Hanrahan and the officers who participated in the raid. Those indictments were ultimately dismissed and, although Hanrahan's career was ruined, neither he nor any of the officers or FBI agents had to spend a single day in jail for what is now widely considered the cold-blooded murder of Mark Clark and Fred Hampton. In 1982, the Clark and Hampton estates as well as the survivors of the raid were awarded $1.8 million by a Cook County jury in a civil suit arising from the raid. (App. at CH 320). The verdict was the largest of its kind at the time.

216. Throughout this period of time (December 1969 through 1972), there were no less than forty-three articles published in the Peoria Journal Star and five hundred and forty-five articles published in Chicago newspapers and Mr. Heidelberg's case became inextricably bound to the Panther raid and became just as sensational in Peoria.

217. Such was the political and racial backdrop in July 1970 when FBI agents paid a visit to James Clark to question him about Espinoza's shooting and made the decision to believe the story he told them. As it turns out, James Clark was Mark Clark's older brother and himself a Black Panther. (App. at CH 16 at ¶¶ 5,6). In fact, it was Mark's death that radicalized James and motivated him to join the Panther movement. James perceived all police officers as enemies who would shoot to kill if you didn't get them first. Could it be that Peoria police and the Peoria State's Attorney, not to mention the FBI an organization that all of Black America deemed complicit in the attempted massacre in Chicago, when just the month before a special prosecutor was appointed in Chicago to investigate the raid and seek indictments of Hanrahan and the police officers involved in the Panther's raid, simply chose to believe James Clark because they knew

Peoria was a racial powder keg and were afraid to accuse a Black Panther (and Mark Clark's brother no less) of murdering a white police offer in the midst of the national Black outcry over the raid and killing of Mark Clark and Fred Hampton?

218. Indeed, within mere days of James Clark's interrogation, shooting, firebombing and rock throwing again erupted in the Taft Homes and spread throughout several housing projects across Peoria. The rioting received national attention and white Peoria was terrified with reports of Black youth gangs shooting bullets into white establishments and injuring white patrons as they went on a violent robbery spree under cover of the rioting.

219. Would State authorities even consider adding to the profound anger and bitter disappointment over the assassinations of Dr. King, Malcolm X, Fred Hampton and Mark Clark by charging Mark Clark's brother with murder only months after Mark himself had been shot and killed at the hands of white Chicago police officers? Black Peoria was already outraged over Mr. Heidelberg's arrest. White Peoria, on the other hand, thanked God that a Negro cop killer was caught and behind bars and deeply resented the outside agitators who descended upon their city to protest Heidelberg's arrest and rile up the Negros. Police reports document that there were even calls to the police threatening to kill "a 100 niggers every day until that nigger [Heidelberg] was killed" as well as calls threatening to kill that "nigger" when he was taken to court. (See App. at CH 277).

220. And Heidelberg wasn't just a Black man, he was a highly intelligent Black man who refused to cooperate with the police or the judicial system and who had the audacity to publicly proclaim his innocence and deride what he rightly perceived as a mockery of an investigation and a tainted trial rife with witness tampering, perjured testimony and unfair suppression of actual evidence. He challenged white justice with every ounce of himself

throughout his trial. And the newspapers ate it up. How would white Peoria react if they were now told that the police and prosecutors had got it wrong, the outside agitators had got it right and Heidelberg was not the killer after all?

221. And they didn't just get it wrong. They had already manufactured a case against Mr. Heidelberg by falsely claiming that Ms. Manuel and Mr. Cremeens had identified Heidelberg at the lineup and paying Lucas to identify Heidelberg as well. If they now charged Clark, their misconduct would be exposed.

222. With the ongoing investigation into the Panther raid in Chicago and simmering racial violence both Black and white bubbling just below the surface, not to mention political careers and jobs at stake, it was probably just best to believe James Clark and stay the course. And the Illinois State Police noted in a February 19, 1971 memo that there had been no action taken on the confession by James Clark and that the case was being closed. (App. at CH 636).

Lester Mason (1970)

223. After ignoring him for five and a half months, the police and prosecutors decided to pay Lester Mason a visit. During that visit, Mason told prosecutor Hamm and Officer Lolli that he had borrowed Mr. Heidelberg's car shortly before midnight on May 25, 1970, that he had then loaned the car to James Clark shortly before 1:00 a.m. on May 26 and that James Clark had Heidelberg's car during the time of the armed robbery and shooting at the Drive-In. (See Affidavit of Lester Mason, App. at CH 6 at ¶1). The men told Mason that they had information to the contrary and that, if he tried to testify on Heidelberg's behalf at trial and Heidelberg was found not guilty, he himself could be charged because, they falsely claimed, it was Heidelberg's plan to pin the robbery and murder on him. (Id.).

224. Mason did not give authorities all of the details during that meeting. However, if he decided to testify, he intended to tell the truth. That truth, and as he attested by affidavit later in Heidelberg's criminal proceedings, was that he had run into Heidelberg at the T.T. Club that night and borrowed his car at around 11:40 p.m. or 11:45 p.m. (App. at CH 7 at ¶4). He and four other men, Junius Whitt, Matthew Clark, Mike Biehl and James Clark sat in Heidelberg's car for about 15 to 20 minutes and then he drove the men to a house at which he, James Clark and Junius Whitt discussed committing an armed robbery. Matthew Clark and Mike Biehl were not involved in the conversation. (Id.). The men left the house and Mason dropped Whitt off at his home on McBean Street and then dropped Matthew Clark and Mike Biehl off at the 615 Club which was also on McBean just down the street. (Id.).

225. Mason and James Clark then returned to Whitt's house where they continued their discussion about committing an armed robbery and, in particular, a robbery of a drive-in. (App. at CH 8). Whitt and Clark traded guns but the men could not agree on a place to rob so Mason and Clark left. (Id.). James Clark asked Mason if he could use Heidelberg's car to go back to Whitt's house for further discussions. (Id.). Mason agreed and Clark dropped him off at the 615 Club where he joined back up with Matthew Clark. A friend of Matthew's was going to Dimp's Place and they caught a ride with him but, although they looked in door and saw Heidelberg, they did not go inside. Instead, the two men walked to the Blue Shadow club. (Id.).

226. Shortly after they arrived, Mason was called to the phone. James Clark was on the line and told him that things went wrong and he had abandoned Heidelberg's car about 3 or 4 blocks on the other side of Whitt's house. (Id.). Mason then ran to Dimp's Place where he found Heidelberg outside and told him where his car was. He did not, however, tell him that he had given his car to James Clark. (Id.).

227. After the meeting with Hamm and Lolli, Mason was added to the prosecution's witness list but never called by the prosecution at trial. (See App. at CH 297). Mr. Heidelberg did, however, call Mason as a defense witness on December 10, 1970. At that time, Mason had not yet made up his mind about whether he was going to testify truthfully at Heidelberg's trial. As he waited in the witness room that day still unsure of what he should do, prosecutor Riddle came in and moved him into a room that had a loud speaker through which testimony from Mr. Heidelberg's trial could be heard.[40] Riddle directed Mason to listen carefully to Junius Whitt's testimony as he contemplated his own. (App. at CH 6 at ¶2).

228. After listening to Whitt's testimony, Mason was called to the stand and he pleaded the Fifth in response to each question put to him by Mr. Heidelberg's counsel. (App. at TR 1046-1062).

Junius Whitt

229. Lester Mason took the Fifth after listening to Whitt's powerful and unshakable testimony (testimony Mason should never have heard) because it plainly implicated Mason as well as Whitt himself as accessories before the fact and seemingly confirmed prosecutor Hamm's claim that Heidelberg planned to pin the crime on him.

230. Specifically, Mr. Whitt testified that he arrived at the T.T. Club on May 25, 1970 sometime around 11:15 p.m. where he saw Lester Mason and a man he knew as Curtis Smith sitting at a front table. (App. at TR 981). Whitt joined the men and they discussed committing a robbery but could not reach agreement. (App. at TR 982). Whitt then left the T.T. Club and went

[40] Because Mr. Heidelberg continued to challenge the integrity of his trial and repeatedly and loudly argued that he could not under any circumstances receive a fair trial in Peoria County, the trial court ordered that a witness room be fitted with speakers wired to the courtroom and that Heidelberg be removed from the courtroom to that witness room during times he vociferously challenged the court and objected to the continuation of the trial. (App. at CH 652-653).

to another club, the Blue Shadow, where he had a Coke and played some records before deciding to return to the T.T. Club. (App. at TR 983). He got to the T.T. Club at about 12:10 or 12:15 a.m. and saw Thomas McLain. (Id.). The club was too crowded so Whitt went outside a minute or two after he arrived. (Id.). While speaking to Charles Bloomfield outside the club, he thought he saw one of his friends sitting in a light blue Rambler parked in the club's lot. (App. at TR 984).

231. Whitt walked over to the car and saw Mason in the driver's seat with Smith next to him and Matthew Clark and Mike Biehl in the backseat of the car. Whitt got in the back seat of the car and Mason drove them to someone's home. (App. at TR 985). At that home, Smith, Mason and Whitt went into the dining room and continued discussing whether they would commit a robbery. Smith said he thought of a place they could rob. (App. at TR 986). All of the men then left the home and Mason dropped Whitt off at his own house so he could change his clothes and get his guns while Mason and Smith gave Matthew Clark and Mike Biehl a ride downtown. (Id.).

232. When Mason and Smith returned to Whitt's house a few minutes later, Smith said that he knew of a drive-in the men could rob that was several miles away. (App. at TR 988). Whitt told Smith that the drive-in was too far away, that they could never reach a Black neighborhood if things went wrong and to count him out. (App. at TR 988-989). Smith then asked if he could borrow one of Whitt's guns and Whitt agreed. Mason and Smith left at about 12:45 a.m. and Whitt then went to bed. (App. at TR 989). Whitt identified the murder weapon as the gun he gave Smith that morning. (App. at TR 988).

233. Whitt further testified that he was later awoken between 2:15 and 2:30 a.m. by somebody pounding on his front door. (App. at TR 989-990). He got up, opened the door and found Smith who asked if he could come in and make a couple of calls. Smith came in and made

two calls. (App. at TR 990). During the first call which lasted only about 15 seconds, Smith asked for Lester Mason and then hung up the phone. (App. at TR 1018). During the second call, Smith again asked for Mason and Whitt heard Smith say "things didn't turn out right." (App. at TR 990). The conversation continued but Whitt was unable to catch more than a word or two. (Id.). Smith then asked Whitt if he could spend the night, Whitt agreed and they both went to bed. (App. at TR 991).

234. At about 5:30 a.m., Smith woke Whitt up and told him he had lost his gun but would replace it. (App. at TR 992). Smith left and Whitt fell back asleep until about 6:30 a.m.

235. Whitt also testified that Smith was wearing a yellow and green shirt, a "brownish" jacket and dark bell bottoms. (App. at TR 992).

236. What Whitt did not and could not testify to was the fact that Mason had also backed out of Smith's plan after he and Smith left Whitt's home and had also refused to participate in the armed robbery of the Drive-In. Thus, from Mason's perspective, Whitt's testimony seemingly established that the blame for the robbery and shooting was being laid at his feet as well as Smith's.

237. Whitt's testimony was clear and cohesive. He did not stumble. He did not ask Heidelberg's counsel to repeat any questions. He did not pretend that he didn't understand any questions. And he fully admitted his past criminal record and made no excuses for it. The truth of Whitt's testimony resonates from the pages of the trial transcripts. Indeed, notwithstanding a *forty-two page* rapid fire cross examination that delved into the most minute details of Whitt's late night/early morning activities and observations, prosecutor Hamm was unable to trip Whitt up or impeach him in any way.

238. So compelling was Mr. Whitt's testimony that Hamm, in his closing argument, stated "[t]he witness that really threw me, I have to admit this, was Junius Whitt. I couldn't break him on cross-examination, and I worked hard at it, I tried everything, but Junius Whitt had an answer to every one of my questions." (App. at TR 1204). As Mark Twain famously said, "If you tell the truth, you don't have to remember anything." Junius Whitt told the truth, plain and simple.

239. Criminal record or otherwise, Mr. Whitt showed he was a man of integrity when he put his own freedom and his very life on the line to testify truthfully on behalf of a man he knew was innocent. Whitt, with nothing to gain and everything to lose, could have, like Lester Mason and Matthew Clark, asserted his Fifth Amendment rights. But he just couldn't find it in his heart or his soul to participate in the wrongful conviction and possible execution of an innocent man even if it meant putting himself in danger.

240. Whitt continued to tell the truth even after Mr. Heidelberg was convicted when he could have easily told himself that he had done his best and could now simply walk away in good conscience. Specifically, when Whitt learned, after Clark's confession, that Curtis Smith's real name was James Clark, Whitt testified by affidavit that Curtis Smith and James Clark were one and same man. (See Affidavit of Junius Whitt, App. at CH 313-315).

241. It should also be emphasized that, unlike Lester Mason, Whitt was not incarcerated at the time of Mr. Heidelberg's trial. As such, he could have easily dodged the trial subpoena or left town. In short, unlike Mason, Whitt was not forced to appear at Heidelberg's trial.

The Alibi Witnesses

242. Before Junius Whitt testified, several alibi witnesses testified on Mr. Heidelberg's behalf. With the exception of Thomas McLain, none of the witnesses were friends of Heidelberg and all of them, including McLain, were Black. Four of those witnesses testified that Heidelberg was at the T.T. Club until 1:00 a.m. Each of the four witnesses was certain as to the time because the club closed every night at 1:00 a.m. and because the bartender would announce that the club was closing and that it was time for the patrons to leave.

243. Thus, while most of the alibi witnesses gave estimates as to the time of their own arrival at the club or when they had first seen Heidelberg in the club (which became the focus of ridiculously lengthy, and often abusive, yet pointless cross examinations because the critical time period was not when they first saw Heidelberg but rather when they last saw him), each of them gave the precise time that they saw him leave the club: specifically 1:00 a.m.. As discussed earlier, the armed robbery of the Bellevue Drive-In began around 1:00 a.m.

244. The following is a summary of the alibi testimony in the order it was given.

Sharon Ford

245. Sharon Ford first saw Mr. Heidelberg at the T.T. Club at midnight of May 25/26. (App. at TR 783). She bumped into him while making her way to the bathroom and noticed he had very tight pants on. (Id.). Miss Ford knew the specific time because she was meeting a friend at the club at midnight and was watching the time while she waited. (Id.). She also saw him talking to another woman named "Clara" sometime later. (App. at TR 785). Finally, she saw him leaving the club at 1:00 a.m. She knew it was 1:00 a.m. because that was the club's closing time and the bartender was yelling out to the patrons that it was closing time. (App. at TR 787). Miss Ford testified that while she and Heidelberg were acquaintances, they were not friends and knew

nothing about each others' personal lives. (App. at TR 780). Finally, Miss Ford testified that she had never met with Heidelberg's counsel, that she came to the court that day pursuant to a subpoena and that she had to approach Heidelberg's counsel and identify herself when she arrived at the courtroom. (App. at TR 788-789).

Emmett Bryson

246. Emmett Bryson, the bartender at the T.T. Club, testified that he saw Heidelberg arrive at the club between 11:00 p.m. and 11:30 p.m. (App. at TR 794). He also testified that Heidelberg was at the bar talking to "Clara" and another woman. (App. at TR 797). Mr. Bryson further testified that he saw Matthew Clark that night talking to a group of men. (App. at TR 800). Bryson did not notice when Heidelberg left the club as Bryson was bartending alone that night and the club was busy with about 60 patrons present. (App. at TR 798, 800-801). Bryson testified that he and Heidelberg were acquaintances not friends. (App. at TR 793).

Charles Bloomfield

247. Charles Bloomfield testified that he arrived at the T.T. Club around 12:15 a.m. on May 26, 1970 and spoke to Heidelberg about 10 to 15 minutes after he arrived. (App. at TR 805). Mr. Bloomfield also testified that he stayed at the club until a few minutes before closing time which was 1:00 a.m. and that he saw Heidelberg in the club as he himself was leaving. (App. at TR 806). Bloomfield further testified that he knew Heidelberg "but not too personally" and that his brief conversation with Heidelberg at the T.T. Club was the first time the men had spoken to each other. (Id.).

248. In addition to seeing Mr. Heidelberg at the T.T. Club on May 26, Bloomfield also testified that he knew Jerry Lucas (the purported confidential informant) well. (App. at TR 807). He testified that about a month before the trial, Lucas told him he was going to "appear" at

Heidelberg's trial because "he had to, you know, like he was being pushed or something." (App. at TR 814). Bloomfield further testified that on another occasion, Lucas was trying to borrow money from him. (App. at TR 817). When Bloomfield declined to loan Lucas any money, Lucas told Bloomfield he was a policeman and "he [was] going to frame [Bloomfield] like he did Mr. Heidelberg." (App. at TR 816-817).

Thomas McLain

249. On direct examination, Thomas McLain testified that he arrived at the T.T. Club between 11:30 p.m. and 12:05 a.m. on May 25/26 and that he saw Heidelberg's car in the parking lot when he was parking his own car. (App. at TR 840, 851-852, 862). In the club, he saw Mr. Heidelberg, a long-time friend, talking to some girls. Sometime thereafter, McLain and Heidelberg got together and, at about 12:30 a.m., they left the T.T. Club for about 10 minutes to go look for Heidelberg's car and then returned to the club where they stayed until about 1:00 a.m. (App. at TR 841-843).

250. When they left the club, Heidelberg's car was still not back in the lot so Heidelberg asked McLain to drop him off at another club called Dimp's Place. (App. at TR 843). Leon Harps, who had ridden to the T.T. Club with McLain earlier that night, was with the men when they left the club. (Id.). The men chatted outside briefly and then McLain and Harps dropped Heidelberg off at Dimp's Place at about 5 or 10 minutes after 1:00 a.m. (Id.). At about 2:00 a.m., McLain and Harps returned to Dimp's Place and while McLain was parking his car, Heidelberg walked over and asked for a ride to his car. (App. at TR 843-844). McLain agreed and he and Harp dropped him off at the Butternut Bakery and went home. (App. at TR 844).

251. On cross-examination, McLain testified that after he woke up later that same day, he was watching the news and heard Mr. Heidelberg's name. (App. at TR 845). He then went out

to buy a newspaper and after reading about the crime went over to Heidelberg's mother's house. (App. at TR 846). He told Mrs. Heidelberg that he had been with Cleve during the time the crime was reported to have occurred and couldn't see how Cleve could have been involved. (Id.). He also testified that he did not see or talk to Cleve or his lawyer until few months later. (App. at TR 845).

252. Prosecutor Riddle then spent eighteen pages drilling McLain on the time he arrived at the T.T. Club, whether he was standing or sitting, where did he stand or sit, was Heidelberg standing or sitting, were they in the front or the back of the club etc. etc. etc. Riddle also drilled McLain on where exactly in the parking lot did he park his car, where exactly Heidelberg's car was parked, what color was it, what make and on and on. (App. at TR 864).

253. But then Mr. Riddle asked one question too many: he asked McLain if he saw anyone in Mr. Heidelberg's car when he saw the car in the parking lot. Mr. McLain responded that yes, he saw a guy named Lester, a guy named Matt, a guy named Junius and another guy whose name he did not know in Heidelberg's car. (App. at TR 864). Riddle asked whether Heidelberg was also present and McLain responded that no, he never saw Heidelberg in his own car that night/early morning. (Id.).

254. That this testimony was only elicited on cross examination is virtually proof positive that McLain was telling the truth and had not rehearsed or otherwise prepared his testimony with Heidelberg's counsel. Obviously, McLain knew nothing about the importance of having seen those men in Heidelberg's car without Heidelberg himself present or he would have told those facts to Heidelberg's counsel. All McLain did know and all that he thought was important was the simple and true fact that his friend had been with him during the time all reports indicated the crime was committed.

255. This stunning turn of events should have triggered a request by Riddle, whose duty it was to seek the truth, for a recess of the trial and a demand that police re-open the investigation. Riddle knew that Manias had heard Heidelberg tell his lawyer that he had loaned his car to Lester Mason; *in fact he had a police report documenting the conversation*. He also knew what Junius Whitt was going to testify to later that day and that McLain, without even knowing it, had just thoroughly corroborated Whitt's testimony.

256. Instead, however, prosecutor Riddle spent an additional sixteen pages attempting to discredit McLain by again asking him for the most minute and irrelevant details of that night/morning hoping to discredit him to the jury. But Riddle's machinations shouldn't have worked and they certainly would not have if the jury had been even close to fair and impartial because even a cursory reading of the transcript of McLain's testimony reveals that none of Riddle's insulting implications, outright badgering and other gamesmanship had absolutely any impact on the truth that sings from the pages of that transcript.

Leon Harps

257. Leon Harps' testimony fully corroborated McLain's testimony although he testified that he did not know what kind of car Mr. Heidelberg had or even if he had one and thus obviously could not testify that he saw the car in the parking lot when he and McLain arrived at the T.T. Club. (App. at TR 903). This difference in testimony speaks to the truth of the testimony of these two men. Had they conspired with Heidelberg or his counsel to give false testimony, surely they would have both testified that they had seen the four men in Heidelberg's car and surely Heidelberg's counsel would have asked them on direct examination about seeing those men. It was nothing but fortuity that McLain's critical testimony was ever elicited.

258. In any event, Harps did add one important detail to McLain's testimony: when he and McLain dropped Heidelberg off by the bakery at about 2:00 a.m., *police were in the area*. (App. at TR 898). If Heidelberg had somehow gotten from Dimp's Place to the Drive-In by 1:00 a.m. or even a few minutes after 1:00 a.m. when no less than four witnesses saw him at the T.T. Club until closing time (again 1:00 a.m.), attempted the robbery, shot Espinoza, crashed his car and then somehow got back to Dimp's Place to catch a ride from McLain and Harps, why on God's green earth (and even if he were dumb enough to go back for his car), would he get out of McLain's car in an area where there was significant police presence? No reasonable jury would have bought this ridiculous narrative because time doesn't bend and not even the dumbest of men would go back to the secondary crime scene and thrust himself into the midst of plainly visible intense police activity.

Jay Van Russell

259. Jay Van Russell volunteered as the assistant manager of a quasi-community center called Dimp's Place. (App. at TR 951, 955). The center was housed in a two-story building with a basement. The second story (which Van Russell called the "third floor") was reserved exclusively for children in the community while the first, or ground, floor (which Van Russell called the "upstairs") and basement (which Van Russell called the "downstairs") were exclusively reserved for adults. (App. at TR 968-969, 971). The center, which was open 24 hours a day, provided the community with a safe place to pass time as well as food and other services for those in need. (App. at TR 955).

260. The Black clubs in Peoria were licensed to close at either 1:00 a.m. (e.g., the T.T. Club) or 4:00 a.m. (e.g., the Blue Shadow). A few adults would come in shortly after 1:00 a.m. but more would come in after 4:00 a.m. (App. at TR 968).

261. On direct examination, Van Russell testified that Mr. Heidelberg came to Dimp's Place shortly after 1:00 a.m. on May 26, 1970 and estimated that he left sometime around 1:40 a.m. (App. at TR 949-950). As with all of the alibi witnesses, the direct examination was short and to the point.

262. Prosecutor Hamm opened his cross examination with: "Mr. Van Russell, could you please state what the weather conditions were last May 25th?" (App. at TR 951). Hamm then spent six pages asking about the physical layout of Dimp's, why Van Russell volunteered there, why it was open around the clock, what kind of people went there, what were his "chores" at the center etc. etc. etc. before he got to a question about Mr. Heidelberg. (App. at TR 951-956).

263. The point here is that the prosecution never had any interest in truly testing the testimony of any of the alibi witnesses. The prosecution knew in fact that it couldn't. And rather than questioning the State's case, the prosecution spent *days* examining the alibi witnesses on the weather and other minutia hoping that their inability to recall the minutia with specificity would convince the jury that they were lying about the material aspects of their testimony.

264. This effort was transparent and would have utterly failed with a jury who was not blinded by race and fear. More to the point, had these alibi witnesses been white, the jury would have experienced frustration and even anger that the prosecution's inane cross-examinations were a waste of everyone's time.

265. The abusive cross-examination continued with questions such as "Where was Heidelberg standing? Did he play pool? How many times did he go upstairs? How many times did he go downstairs?" (App. at TR 959). Understandably, Van Russell, like Leon Harps, became frustrated and at times uncooperative. For example, he refused to testify as to the content

of his conversations with Heidelberg that morning (a question that, by the way, was not asked on direct examination). (App. at TR 960).

266. In addition, when he was asked if anyone came to the door while Mr. Heidelberg was there, Van Russell responded affirmatively but refused to give any names although he further testified that the individual did not want to come inside.[41] Van Russell's cross and re-cross examination lasted for twenty-eight pages. (App. at TR 951-978).

267. On re-direct, Heidelberg's counsel followed up on the questions the prosecution asked about Van Russell's conversations with Heidelberg. Van Russell testified that they talked about Heidelberg's car and that Heidelberg asked to borrow Van Russell's car. (App. at TR 972-973). Heidelberg's counsel also followed up on the identity of the individual who came to the door but did not want to come in. Van Russell testified that in fact two individuals came to the door but did not come in and their names were Lester Mason and Matthew Clark. (App. at TR 973).

268. Again, and just like with McLain, these critical questions were not asked on direct examination which means that Heidelberg's counsel never questioned the alibi witnesses in depth (much less prepared, rehearsed or manufactured their testimony) and, if he met with them at all, he at most merely confirmed that they had seen Heidelberg at various times from 11:30 p.m. through 2:00 a.m. the night/morning of the shooting.

269. As for the prosecution, remarkably absent from its abusive and exhausting cross-examination of Van Russell was the most important question of all if Hamm's intent was to test his testimony: "How is it that you remember that it was the morning of May 26 when you saw Mr. Heidelberg at Dimp's Place and not some other morning?"

[41] The doors to Dimp's Place were always locked. Community members had to knock to gain entry. (App. at TR 963-964).

270. Indeed, the prosecutors did not ask any of the alibi witnesses (and unfortunately Heidelberg's counsel didn't either) that question. If they had, they would have received the same answer prosecutor Riddle received when he asked McLain how he knew what time the crime had occurred: *because, only hours after the shooting, Peoria woke up to reports of the crime, and Heidelberg's arrest for the crime, all over the television news and on the front pages of all of the newspapers*.[42] And each of those witnesses was in disbelief because he/she had seen Heidelberg in the flesh during the time the various news outlets were reporting the crime had occurred. So while they probably couldn't remember the weather or the name of every other person they saw that night, they certainly had a very good reason for why they were able to remember that they had seen Heidelberg on May 26, 1970 during the time the crime occurred.

271. The prosecution's failure to ask this question was not a negligent omission; it was by design. And that design, like everything else in this case, was to convict Mr. Heidelberg no matter the evidence.

Charles Young

272. Mr. Heidelberg's trial became the embodiment of the deep racial divide that existed in 1970 Peoria and spectators packed into the courtroom every day—some to stand in witness and others to watch a Black man hang. Inter-racial distrust and anger crackled in the air as Black and white Peoria took their respective sides. At times there were outbursts, both Black and white. One of the spectators was a man named Charles Young who, after hearing Jerry Lucas' testimony, was compelled to contact Heidelberg's counsel. Young told Heidelberg's counsel that Lucas had lied repeatedly on the stand and that he wanted to testify to expose Lucas' perjury. (App. at TR 607).

[42] Of course, when Riddle asked McLain this question, he intended to imply that McLain had manufactured his testimony. It backfired, or would have, had the jury been fair and impartial.

273. It cannot be emphasized enough that every single Black man who entered that courtroom as a witness for the defense was literally putting his life at risk. There were, after all, those regular calls to police from citizens threatening to kill that "nigger" on his way to the courtroom. (App. at CH 277).

274. There were other threats too. Some of the men had criminal records and they had no doubt that their testimony would make them a future target of the Peoria law enforcement community. And those who had jobs knew that one tactic of harassment and coercion frequently employed by Peoria authorities was to call employers (who were already reluctant to employ Black men) and make trouble. In fact, the one area in their testimony that deviated from the pristine clarity of the testimony of Mr. Heidelberg's defense witnesses was the hesitation to admit their place of employment or the names of their associates and friends.

275. But Charles Young took that risk and testified that Lucas had told him that County officers had made it clear that if he did not testify against Heidelberg, he had better leave town or he would end up dead. (App. at TR 611).

276. Unlike Lucas, Young was not paid or fed or housed in exchange for his testimony. He, like all of the defense witnesses, had nothing to gain and everything to lose.

Guilty As Charged

277. On December 14, 1970, the jury heard closing arguments. (App. at TR 1105-1210). Prosecutor Riddle argued for the death penalty telling the jury: "[l]adies and gentlemen, Sergeant Espinoza deserved to live and we are standing in front of this jury and saying to you that Cleve Heidelberg, Jr. does not deserve to live." (App. at TR 1155).

278. Prosecutor Riddle, ignoring all the police and prosecutorial misconduct in the case, had the temerity to tell the jury: "[w]e do submit to you that the very right of a fair trial has been rejected and stomped on and trampled by the defendant." (App. at TR 1156).

279. Prosecutor Riddle concluded his argument by stating: "[w]e are asking you ladies and gentlemen to deal harshly with Cleve Heidelberg, Jr. and to invoke society's ultimate penalty. There are just some cases where it is deserved, where the punishment should be the ultimate punishment allowed and we feel that this is one of them and we are asking you to invoke the death penalty." (App. at TR 1157).

280. Imagine that. The State, knowing that the witnesses did not identify Heidelberg at the lineup, knowing that Officer Manias created a false lineup report, knowing that Officer Manias spied on Heidelberg and his attorney, knowing that Lucas was paid to testify against Heidelberg, knowing that the perpetrator who crashed the car eluded the police, knowing that Heidelberg did not appear until thirty minutes later when he came to retrieve his car, knowing that no physical evidence tied Heidelberg to the crime (and that someone else's fingerprints were found on the evidence), and knowing that Heidelberg had an airtight alibi and had loaned his car to Lester Mason, nonetheless, argued to the jury that Cleve Heidelberg should be put to death. Wow.

281. On December 15, 1970, the jury returned a guilty verdict on all counts.

The Confession of James Clark

282. On the heels of Mr. Heidelberg's conviction, James Clark was sent to the same prison that housed Heidelberg to serve two concurrent sentences of 6 to 8 years for the armed robberies he committed in July 1970 in Rock Island, Illinois. Shortly after he arrived, Clark began sending notes to Heidelberg through a man named Robert Butler. In those notes, Clark

told Heidelberg that he was considering writing to Heidelberg's trial judge or other authorities to let them know what really happened on May 26, 1970. Heidelberg left that prison, however, without the men ever having met. A short time later, Heidelberg's trial counsel interviewed Clark who stopped short of fully confessing.

283. At this point in his life, James Clark was caught in an escalating existential crisis. He had been deeply traumatized and then radicalized by the murder of his brother. He believed that police officers posed a mortal threat to all Black men and that he was acting in self-defense when he shot and killed Officer Espinoza. As he put it: "it was kill or be killed." (App. at CH 61). At the same time, however, if he allowed the State to execute Heidelberg,[43] an innocent man, he was no better than police and, in fact, would be complicit in the racial injustice against which his soul raged.

284. When Heidelberg was returned to the same prison and the two men met, Clark's crisis reached its peak and he knew he just could not leave Heidelberg's life in the hands of the State. Clark first told his brother Matthew that he intended to confess. Matthew, who had just lost a brother and did not want to lose another, begged James to reconsider. (App. at CH 16 at ¶13). But James Clark, perhaps in his finest and clearest moment, stepped forward nonetheless and publicly confessed to the shooting of Officer Espinoza. (See Peoria Journal Star articles, App. at CH 65, 67).

285. The courage it took for James Clark to come forward cannot be overstated. This man was young, he was healthy, he was serving a relatively short sentence, rightly or wrongly he believed that he had shot Espinoza in self-defense and yet his deep and highly personal sense of

[43] Heidelberg had not yet been sentenced and the State was seeking the death penalty.

justice compelled him to admit his crime. James Clark and Mr. Heidelberg were not relatives or even friends. They barely knew each other. James Clark owed Cleve Heidelberg nothing.

286. Nor was there any fact or circumstance that could cast doubt on the truth of his confession. Indeed, the testimony of Junius Whitt and *six* alibi witnesses stood in unimpeached corroboration of Clark's confession. And the confession addressed so many of the unanswered issues in the State's case: the yellow shirt/brown jacket, the extra pair of eyeglasses, the absence of Heidelberg's fingerprints on the murder weapon and the flashlight and the eyeglasses and even the car keys not to mention the utter inability of Ms. Manuel and Mr. Cremeens to make any identification of Heidelberg other than when he was in court sitting at the defense table.

287. Perhaps most compelling, the facts of Clark's confession were materially consistent with (but not identical to) the testimony of Officer Patty, Ms. Manuel, Mr. Cremeens and Mr. Whitt.[44] (App. at TR 707-713)(App. at TR 540-545, 549-582)(App. at TR 62-111)(App. at TR 979-1033). The confession was also consistent with Lester Mason's account of what transpired on May 26, 1970. (App. at CH 6-8).

288. Surely the State, or at least the trial judge, who himself stated that Ms. Manuel's and Mr. Cremeens' testimony at the preliminary hearing regarding their purported identifications was disturbingly inconsistent and did not establish any actual identification, would take a very close look at this new evidence.

289. But that was not to happen. After Clark came forward, Mr. Heidelberg requested that the trial court conduct a hearing to allow Clark to testify regarding his commission of the attempted armed robbery and the shooting. The State strongly objected and publicly proclaimed

[44] See Hale letters to Brady for a detailed comparison of Clark's confession to the testimony at trial. (App. at CH 22-24).

that despite Clark's confession the State's focus was to "protect the trial record"—whatever that means. (App. at CH 71).

290. And thus began a three and a half year saga in which affidavit after affidavit after affidavit, from James Clark to Junius Whitt to Lester Mason himself, attesting to Heidelberg's innocence and Clark's guilt were submitted to no avail. See, e.g., Affidavit of James Clark dated February 10, 1971 (App. at CH 613-614); Affidavits of James Clark, Cleve Heidelberg, Junius Whitt, Thomas McClain, and Jack C. Vieley, filed on January 26, 1972, (App. at CH 615-631); Supporting Affidavit by James Clark dated February 29, 1972, (App. at CH 635); and Supporting Affidavit By James Clark dated January 9 1973, (App. at CH 317).

291. Indeed, the trial court even refused to allow Clark and Mason to give live testimony before sending Heidelberg away for the rest of his life. (App. at CH 609-612).

292. As for the State, it did everything in its power to block that live testimony including just a little more witness tampering and just a little more manufacturing of evidence.

Lester Mason (1971)

293. Fear of implicating himself was not the only reason Mason pleaded the Fifth at Mr. Heidelberg's trial. (App. at TR 1046-1062). He also feared James Clark who had let him know that if he testified that Clark was the man who had Heidelberg's car that May morning his life would be in danger. (App. at CH 6 at ¶2). Once Clark confessed that fear was gone and, equally important, the confession made clear that Mason himself was not shooter and had refused to participate in the crime.

294. Now free of retaliation and criminal implication, Mason agreed to testify that he had given Heidelberg's car to Clark, that Clark had the car during the time of the shooting, that

Clark later called him and told him where the car had crashed and that he had then told Heidelberg where he could go pick up his car.

295. The trial court, however, denied Heidelberg's request to bring Mason to court stating that because Mason had refused to testify at Heidelberg's trial, unless Mason offered an affidavit stating that he was willing to testify now, there was no point in bringing him to a hearing. (App. at CH 664). As for Heidelberg, the court held that anything he had to say could be submitted by affidavit. (App. at CH 661). Finally, the court deferred ruling on whether Clark would be allowed to give live testimony and took that matter under advisement. (App. at CH 667).[45]

296. With the imminent threat of such an affidavit from Mason, the State pulled out one of its biggest guns: *the* duly elected State's Attorney for Peoria County, Robert S. Calkins. Calkins himself personally contacted Mason and "requested" that he meet with a representative from Calkins' office. Mason did not respond to Calkins' request for nearly two months. During that time, prosecutor Riddle had a "personal conversation" with Mason in which Riddle advised him that if he cooperated with the State, his common-law-wife's legal problems would go away and he would ensure that she would not serve anytime for her crime. (App. at CH 7 at ¶3).

297. This promise was heaven sent for Mason: if his wife went to jail, their daughter would be left without anyone to care for her and would become a ward of the State. As the State expected, Mason agreed to give a false statement in which he would claim that Heidelberg had confessed to the shooting after his conviction and while they were in prison together. At all times, Riddle knew this statement was pure fabrication.

[45] Prosecutor Riddle objected to James Clark testifying live in court, stating "Would you want him here, your Honor? We don't want him here." (App. at CH 665).

298. Having heard nothing since his conversation with Riddle, Mason wrote to Calkins implicitly referring to his wife's circumstances and inquiring as to why no one from his office had come to take his statement. (App. at CH 304). He also included a subtle threat to Calkins letting him know that he had met with Heidelberg's counsel no less than five times and that, just a few days prior, Heidelberg's counsel had tried to meet with Mason again. (Id.). Four days later, Mason gave a court-reported statement claiming that Heidelberg had confessed. Now assured that Heidelberg would not ever get that affidavit from Mason, the State put Mason's statement in its back pocket for the next year and half.

299. What the prosecution didn't know, however, was that the same day he gave prosecutor Riddle a court-reported statement in prison, Mason wrote another statement by hand detailing how Riddle had threatened him and coerced him into implicating Cleve Heidelberg and not testifying that James Clark was the real shooter. (App. at CH 305-307). The prosecution shouldn't have been so sure of Mr. Mason.

300. Over the year and a half that Mason's falsified statement remained in the State's pocket, Heidelberg submitted three affidavits from James Clark, two affidavits from Junius Whitt and an affidavit from Thomas McLean as well as a few of his own. Clearly, Cleve Heidelberg was not going away. Nor were his witnesses. With one man willing to confess to murder—the murder of a police officer no less—and another willing to again admit that he supplied the murder weapon, the State determined it was time to bring Mason's fabricated statement forward.

301. But the State had made one big mistake: Mason had never signed the statement. And, as the State soon found out, while Mason was willing to lie to protect himself, his wife and his daughter, he was not willing to lie just to help the State maintain the conviction of an innocent Black man. By the time the State came seeking that signature, Mason's wife's criminal

charges had been resolved and the State had nothing left with which to coerce false testimony from Mason. In short, he refused to sign.

302. Not only did he refuse to sign, he eventually gave that affidavit the State so feared. (App. at CH 6-8). Unfortunately, it came too late and not until months after the trial court had denied Heidelberg's request for a hearing to consider the James Clark evidence and present live testimony. Notwithstanding all of the affidavits Heidelberg submitted, the judge just could not convince himself that any of those Black men were worth listening to.

303. Maybe those men did make one difference, however. Maybe, just maybe, they created enough doubt in the judge's mind that he chose to sentence Heidelberg to 175 years in prison rather than put him to death. But really, what was the difference.

Lester Mason and Matthew Clark (2016)

304. James Clark fought for years to undo the unimaginable injustice done to Cleve Heidelberg. Clark is now dead and will never be able to stand in a courtroom and speak truth to power. But other men, strong Black men, continue the fight and they deserve to be heard. Nearly half a century later, Lester Mason and Matthew Clark stand ready to be questioned, indeed interrogated; they stand ready to testify; and they stand ready to tell the truth. (See App. at CH 5 at ¶15; CH 17 at ¶17).

305. The law requires the Peoria County State's Attorney to investigate this case immediately. This Court can and should remedy his breach of duty by appointing a special prosecutor to do what the Peoria County State's Attorney lacks the courage to do: investigate the "evidence" used to convict Mr. Heidelberg, examine the new evidence presented and determine whether the driving force behind Mr. Heidelberg's conviction was corruption and racism rather than actual evidence.

ARGUMENT

ILLINOIS RULES OF PROFESSIONAL CONDUCT

306. On October 15, 2015, Rule 3.8 of the Illinois Rules of Professional Conduct was amended to include the following provisions, which became effective on January 1, 2016:

> (g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:
>
> (1) promptly disclose that evidence to an appropriate court or authority, and
> (2) if the conviction was obtained in the prosecutor's jurisdiction,
> (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and
> (ii) undertake further reasonable investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.
>
> (h) 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.

Rule 3.8, Illinois Rules of Professional Conduct.

New, Credible and Material Evidence Requires A Further Investigation

307. Petitioner Cleve Heidelberg has presented new, credible and material evidence creating a reasonable likelihood that he did not commit the attempted armed robbery or murder of Sergeant Espinoza.

308. Specifically, Mr. Heidelberg has uncovered proof of the existence of a subsequent fingerprint report which contained the results of fingerprint examinations and which was destroyed. The destruction of that report (not to mention the May 28 telegram and the tape of Cremeens' call to the Sheriff's department reporting the armed robbery) entitles Mr. Heidelberg

to the presumption that the subsequent fingerprint report and the telegram and the tape of Cremeens' call were exculpatory.

309. In addition, Mr. Heidelberg has uncovered an FBI index card which documents that his fingerprints were "negative" for a match with the prints recovered on items retrieved from the first and secondary crime scenes thus confirming that the destroyed subsequent fingerprint report contained evidence exonerating Mr. Heidelberg in the crime.

310. Mr. Heidelberg has also presented the affidavit of Matthew Clark in which he attests that he was in Mr. Heidelberg's car with Lester Mason, Junius Whitt, Mike Biehl and his brother, James Clark, on the morning of May 26, 1970 and that Heidelberg was not with them. (App. at CH 16 at ¶9).

311. Matthew also attests that James told him that his fingerprints were connected to the attempted armed robbery and shooting at the Bellevue Drive-In and that as a result he was interrogated by the FBI regarding the crime. (Id. at ¶11).

312. He further attests that James told him that he was the man who committed the crime shortly after the crime occurred. (Id. at ¶8).

313. He also attests that, after Mr. Heidelberg was convicted, James told him he intended to confess to crime and that Matthew strongly discouraged him from doing so but "James insisted on taking his own weight and said it was the right thing to do." (Id. at ¶13).

314. Finally, Matthew Clark attests that after his brother's confession, the State's Attorneys tried to coerce him into implicating Heidelberg in the crime but that he refused. (Id. at ¶14).

315. Without question, the new fingerprint evidence and the new evidence set forth in Matthew Clark's affidavit in and of itself establishes a reasonable likelihood that Mr. Heidelberg

did not commit the crime of which he was convicted thereby triggering an immediate duty to conduct a further investigation under Rule 3.8(g).

316. But James Clark's confession is also new evidence. As set forth above, the trial court refused to hold a hearing to examine Clark's confession and Clark was never allowed to testify to the facts in his confession. That means that no court or prosecutor ever analyzed or compared the confession to the testimony of the other witnesses at trial.

317. Likewise, the 1974 affidavit of Lester Mason should be considered new evidence in that it was not considered by the trial court or any prosecutor nor was Mason allowed to testify with respect to the facts set forth in his affidavit. Irrefutably, Clark's confession and Mason's affidavit alone also trigger an immediate duty to further investigate this case.

318. Mason has also submitted a new affidavit confirming and reiterating that he borrowed Cleve Heidelberg's car on May 25/26, 1970 and that he then gave that car to James Clark. (App. at CH 4-5). Mason is ready and willing to testify to all of these facts under oath. (App. at CH 5 at ¶15).

319. Mr. Heidelberg has also presented new, credible and material evidence of police misconduct and fabrication of evidence that further supports the likelihood that Heidelberg did not commit the crime of which he was convicted. Specifically, Mr. Heidelberg has uncovered a police report generated by Officer Manias in which he documented his illegal activity of spying on privileged communications between Heidelberg and his counsel. (App. at CH 49).

320. This indisputable piece of evidence of police misconduct mandates a very close and serious examination of all of the police conduct in this case. But even a simple comparison of police testimony to their own police reports and to the transcript of their radio transmissions during the high-speed car chase that occurred that morning resoundingly establishes that police

gave false testimony at Mr. Heidelberg's trial and falsely identified him as the driver of the get-away car.

321. Likewise, even a simple review of both Ms. Manuel's and Mr. Cremeens' testimony conclusively establishes that Officer Manias falsified the lineup report in which he claimed that Ms. Manuel identified Mr. Heidelberg in the first and second run of the lineup on May 26, 1970. (App. at CH 142).

322. And a review of Mr. Cremeens' testimony also conclusively establishes that Manias falsified the lineup report in which he claimed that Cremeens identified the man in position #3 in the first run of the lineup and the man in position #2 in the second run of lineup.

323. Mr. Heidelberg has also presented evidence that Jerry Lucas' testimony was fabricated by police in that the transcript of radio transmissions establishes that Lucas did not radio in a description of his own clothing after the shooting of Officer Espinoza. (See App. at CH 84-90). In addition, a review of the testimony of Sheriff Koeppel and Cremeens establishes that Lucas was not in the room from which witnesses viewed the men in the lineup and, in any event, did not make an identification of Heidelberg as the shooter even if he were in the room.

324. Mr. Heidelberg has also presented evidence that prosecutors held group meetings with witnesses before they testified and that the testimony of each of the witnesses was discussed in front of all of the witnesses present at those meetings thereby tainting and compromising the testimony of virtually *all* of the prosecution's witnesses.

325. In short, not only has Mr. Heidelberg established a reasonable likelihood that he did not commit the crime of which he was convicted, he has also clearly and convincingly established that his trial was a sham, as he claimed at the time, and that no genuine evidence against him existed or was presented at his trial.

Clear and Convincing Evidence Proves Heidelberg Is Innocent

326. In addition to triggering a mandatory obligation to conduct a further investigation of this case, the new evidence casts a new light on the evidence used to convict Mr. Heidelberg which light reveals that the evidence *which was nothing more than eyewitness testimony* was either false (the city and county officers) or the product of improper and suggestive discussions and other techniques (e.g., interviewing Cremeens and Lucas together at the Drive-In, telling Cremeens that a man named Jerry Lucas was present at the lineup, telling Ms. Manuel that the get-away car was blue, conducting a group lineup, discussing the color of the perpetrator's clothing at group witness meetings etc.) intended to manipulate the memories and testimony of civilian witnesses.

327. Indeed, none of the police conduct in this case would ever be acceptable today and no prosecutor would ever bring a case based on eyewitness testimony that was either thoroughly impeached (Manuel, Cremeens and Lucas) *before trial* at a preliminary hearing or was so transparently manufactured (the officers) as conclusively established by the transcript of the radio transmissions, their own police reports and the laws of physics.

328. Moreover, prosecutors today are keenly aware of the inherent unreliability of stranger eyewitness identification which has been thoroughly established by study after study after study. Indeed, a full 70% of the cases in which an innocent man was ultimately exonerated by DNA evidence involved mistaken eyewitness identifications. (App. at CH 331-338). They are also keenly aware of our justice system's history of systemic racism and its impact on juries.

329. Given that there was no evidence other than eyewitness identifications in this case and given that a man who bears a striking resemblance to Mr. Heidelberg actually confessed and continued to assert his guilt for years after Heidelberg was convicted and given that his

confession is corroborated by his brother Matthew Clark, his friend Lester Mason and by Junius Whitt not to mention six alibi witnesses, Mr. Heidelberg has more than established clearly and convincingly that he is innocent—he has established his innocence beyond any reasonable doubt.

A Prosecutor's Duty

330. "The duty of a public prosecutor is to seek justice, not merely to convict." Rule 3.8, Illinois Rules of Professional Conduct.

331. Indeed, *"[t]he State's interest in a criminal prosecution is not that it must win at all costs, but to assure that justice is done, and it is a prosecutor's duty as much to refrain from improper methods calculated to produce a conviction as it is to employ legitimate techniques to secure a just conviction," People v. Ray*, 126 Ill.App.3d 656, 664 (1st Dist. 1984)(citing *Viereck v. United States*, 318 U.S. 236 (1943).

332. Thus, *"[w]hile there is no doubt that we have the best legal system on earth, it is not perfect. Sometimes it fails, as it did here. Quite frankly, I believe that such a failure is more likely to happen when one is charged with such a heinous crime as the one involved here. The nature of the crime itself is bound to put blood in the eyes of good men and women." People of the State of Illinois v. Steven Cole*, 2015 IL App (3d) 120992-U, *10 (May 7, 2015)(Justice Schmidt concurring opinion). (App. at CH 339-349).

333. And when faced with a crime the nature of which can blind and prejudice good men and women, prosecutors have a heightened duty to the public they serve: *"During the trial, the prosecutors made a point, more than once, to remind the jurors that they represented the law-abiding citizens of Illinois. I suggest that the law-abiding citizens of Illinois, or anywhere else, have no interest in wrongful convictions. . . However, prosecutors have a special place in the system and must be sure that they 'should' charge someone with a crime, not just 'can' they*

do it. I agree that prosecutors represent the law-abiding members of society. However, a wrongful conviction is not a 'verdict for their client.'" Id. at *17. (App. at CH 349).

334. In *Cole*, the defendant had been convicted of raping a 20-month old baby girl who his wife had been babysitting. There was no suppression of evidence or manufacture of evidence but the Illinois Appellate Court vacated the conviction nonetheless because the prosecutor inflamed and misled the jury during closing argument. The prosecutor also told the jury that the defense's expert was unreliable and shouldn't be believed. Other than the prosecutor's gamesmanship, the court found there was simply no evidence to convict this man.

335. Justice Schmidt was so outraged that he was compelled to write his concurring opinion so he could detail the wrongs of the prosecutor. Justice Schmidt focused on two specific failings of the prosecutor.

336. First, he examined the baby's mother's testimony in detail and took the prosecutor to task for presenting testimony that was transparently false stating that to believe her testimony one would have to believe that the Coles were the most *"stupid people . . . on the face of the earth."* (App. at CH 346). He did the same with testimony of the mother's roommate.

337. Second, Justice Schmidt examined the prosecutor's cross examination of the defendant's wife and chastised the prosecutor for "*grill[ing]*" her on insignificant details and "*beat[ing] on*" her over minor inconsistencies. (App. at CH 346). As Justice Schmidt put it: "*it is improper, especially in a criminal case, for the State to simply try to confuse the jury*." (App. at CH 348).

338. Justice Schmidt also pointed his finger at the trial judge and defense counsel for allowing the prosecutor to get away with his machinations as a result of which: "*the jury was led down the primrose path as a result of a confluence of errors by the trial judge, prosecutors, and*

defense counsel. As a result of this perfect storm of errors, an innocent man stands convicted of an unspeakably heinous offense." Id. at *10. (App. at CH 345).

339. Justice Schmidt concluded his concurring opinion by stating *"In my 12 years on the appellate court, I have never seen anything like this case. I hope I never do again." Id.* (App. at CH 349).

340. Sadly, Mr. Heidelberg's case and Mr. Cole's case are virtually identical.

341. Like the prosecutor in Cole, prosecutors Riddle and Hamm inflamed the passions of the jury by playing to racial distrust. They also exploited the sensational nature of Mr. Heidelberg's trial. Indeed, Riddle's closing is *riddled* with exhortations to the jury to just "look" at the defense witnesses, to listen to how they speak (in fact, he mocked and laughed at their speech patterns) and to notice what "type of people" they were. (App. at TR 1110, 1140-1141, 1149, 1151-1152). But, like the prosecutor in *Cole*, he was utterly unable to argue any *facts* that refuted or even remotely impeached their testimony. And like the *Cole* jury, Heidelberg's jury was led down the primrose path.

342. Also like the prosecutor in *Cole*, Riddle and Hamm presented testimony from witnesses that they knew or should have known was not credible. Specifically, they elicited in-court identifications from the four officers whose testimony simply could not stand up when measured against their own police reports and the indisputable timeline established by the transcript of their radio transmissions not to mention the laws of physics. In short, the officer identifications were untethered from reality and science.

343. Riddle and Hamm also elicited in-court identifications from Ms. Manuel and Mr. Cremeens despite the failed lineup, despite their testimony at the preliminary hearing which even caused the judge to comment (but who allowed Manias' lineup testimony to come in anyway)

and despite the major inconsistencies between their testimony at the preliminary hearing and their testimony at trial.

344. And like *Cole* where the only "evidence" was the incredible and easily impeachable testimony of the baby's mother, the only "evidence" in this case was the incredible and easily impeachable in-court identifications by the officers, Manuel and Cremeens.

345. Riddle and Hamm also hammered Junius Whitt and the defense alibi witnesses during cross examination with inane questions and "harped on" (another term used by Justice Schmidt in describing the prosecutor's cross) minor inconsistencies. Indeed, Riddle was so proud of this performance that he crowed about it to the jury during closing: "*you remember Mr. Hamm spent an hour or more just asking him little tiny insignificant questions just to demonstrate . . . some things he couldn't remember.*" (App. at TR 1147). This comment was in reference to just one witness but the prosecutors used this tactic over and over and over again throughout their cross examinations. And, just like in *Cole*, the trial court let the prosecution get away with it.

346. The enactment of Rule 3.8 and recent decisions like *Cole* herald the dawning of a new day in which we, as a society, must face the overwhelming evidence that wrongful convictions are not rare and that too many prosecutors are focused on the "win" and have lost sight of the actual duty they owe to the public they serve. While Mr. Heidelberg's case may have been tried in a time of ignorance and prejudice where police and prosecutorial authority went virtually unquestioned and unchecked, today is different. And the Peoria County State's Attorney's Office must answer the call of Rule 3.8 and address the unimaginable injustice done to Cleve Heidelberg.

347. Indeed, even before Rule 3.8, State's Attorneys across the country have taken action to seek truth in justice. In 2012, for example, Cook County State's Attorney Anita Alvarez

formed a dedicated Conviction Integrity Unit tasked with reviewing cases of potential wrongful convictions. At the time, Alvarez was quoted as saying *"In my view, my job is not just about racking up convictions, it's about always seeking justice, even if that measure of justice means that we must acknowledge mistakes of the past."* (See "Anita Alvarez Wrongful Convictions: Chief Prosecutor Forms New Team To Investigate Claims," App. at CH 692).

348. In another recent example, the DeKalb County State's Attorney conducted a six-month investigation pursuant to Rule 3.8, and issued a written report concluding that a criminal defendant had been wrongfully convicted. *People of the State of Illinois v. Jack D. McCullough*, 11 CF 454. (See "Rule 3.8(g) and 3.8(h) Report Of The State's Attorney Of DeKalb County And Disclosure To The Court And Defendant," App. at CH 350-383).

349. In his report, the DeKalb County State's Attorney states: "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." (App. at CH 383).

350. These words could just as easily have been written by the Peoria County State's Attorney to describe what happened to Cleve Heidelberg.

351. Peoria County currently does not have any type of Conviction Integrity Unit with a dedicated staff to review potential wrongful convictions. And, notwithstanding the actions of his peers, the Peoria County State's Attorney has turned his back to the evidence presented in this petition and has denied Mr. Heidelberg's request for a further investigation of his case.

352. Heidelberg's counsel has been investigating this case for the past year. On October 30, 2015, Heidelberg's counsel, Andrew Hale, met face-to-face with Peoria County State's Attorney Jerry Brady and advised Mr. Brady of the overwhelming evidence demonstrating Mr. Heidelberg's innocence. (App. at CH 18 at ¶8).

353. On December 4, 2015, Petitioner's counsel sent State's Attorney Brady a 27-page letter with thirty (30) exhibits setting forth the facts that demonstrated Heidelberg's innocence and James Clark's guilt, as well as identifying the serious flaws and misconduct that took place during the investigation and subsequent trial. (Id.)(See Andrew M. Hale letter to Jerry Brady dated December 4, 2015, App. at CH 21-47).

354. By letters dated December 6, 2015 (App. at CH 176-179) and January 13, 2016 (App. at CH 180-182), Heidelberg's counsel provided State's Attorney Brady with additional facts and evidence supporting Mr Heidelberg's innocence and identifying additional misconduct that occurred during the case.

355. On February 9, 2016, State's Attorney Brady telephoned Heidelberg's counsel and admitted that there were "issues of concern." (See App. at CH 18 at ¶12). However, State's Attorney Brady stated he would not be re-opening the case. (Id. at ¶13).

356. State's Attorney Brady refused to offer any explanation for his decision and stated he would not be issuing any type of report or written findings. (Id. at ¶¶13, 15).

357. Heidelberg's counsel asked State's Attorney Brady who he had interviewed, if anyone, and State's Attorney Brady refused to answer. (Id. at ¶14). However, Mr. Heidelberg's counsel has confirmed that State's Attorney Brady did not interview Cleve Heidelberg, Lester Mason, or Matthew Clark. (Id.).

358. Heidelberg's counsel has now learned that State's Attorney Brady, while ignoring Cleve Heidelberg, Lester Mason, and Matthew Clark, met with the prosecutor from Heidelberg's criminal case. *See* Andy Kravetz, *Lawyers seek special prosecutor in case of Cleve Heidelberg, imprisoned since 1971 for Peoria County slaying*, Peoria Journal Star, April 21, 2016. In that article, Peoria County State's Attorney Jerry Brady is quoted as follows: "I have met with attorney Hale, reviewed the information that he presented to us, reviewed the information in our own files *and also talked to the former prosecutor.*" (emphasis added). The "former prosecutor" that State's Attorney Brady is referring to must be Ron Hamm, since the other prosecutor in the case, John Riddle, is deceased.

The Peoria County State's Attorney Should Recuse Himself

359. Under section 3-9008 of the Counties Code, "the State's Attorney may file a petition to recuse himself or herself from a cause or proceeding for any other reason he or she deems appropriate and the court shall appoint a special prosecutor as provided in this Section." 55 ILCS 5/3-9008, (a-15).

360. There are numerous recent examples of State's Attorney's proactively seeking the appointment of a special prosecutor in cases that presented a conflict of interest or the appearance of impropriety.

361. Recently, Cook County State's Attorney Anita Alvarez, although denying that her office had a conflict of interest, asked the court to appoint a special prosecutor in the Laquan

McDonald case in Chicago. Alvarez stated "[w]hile it has not been an easy decision, I believe that it is the right one because it will help to avoid unnecessary legal delays and provide continuity in the handling of this very important and complicated case." *See* Marc Berman, *Chicago prosecutor withdraws from Laquan McDonald case, asks for special prosecutor*, The Washington Post, May 5, 2016.

362. A special prosecutor was also recently appointed in a case in Decatur, Illinois to investigate allegations of misconduct by the Decatur City Manager who allegedly used a police car and driver to go to the St. Louis airport for a personal trip. In that case, the Macon County State's Attorney's Office filed the request for the special prosecutor arguing that prosecuting the City Manager could be a conflict of interest for the office or create the appearance of impropriety. *See* Allison Petty, *Special Prosecutor appointed to investigate allegations against Gleason*, Hearld & Review, May 31, 2016.

363. In April, 2016, the Will County Chief Judge granted the State's Attorney's Office's request seeking a special prosecutor to handle the case of a man charged with misdemeanor battery after he hit a Joliet City Council member in the face. A county employee was also present at the time of the incident and the State's Attorney's Office sought to avoid a conflict of interest. *See Special prosecutor granted in case of man charged with hitting Joliet council member*, Herald-News, April 20, 2016.

364. In March, 2016, a special prosecutor was appointed in Columbia, Illinois where the Columbia police chief was involved in a domestic matter. The Monroe County State's Attorney moved for the appointment of a special prosecutor stating "[t]he prosecution of the defendant by the state's attorney's office could be a conflict of interest for the office, or

alternatively, could create the appearance of an impropriety." *See* Corey Saathoff, *Special prosecutor appointed in Edwards case*, Republic-Times, March 23, 2016.

365. In January, 2016, the Jersey County, Illinois State's Attorney requested a special prosecutor to handle an investigation of an alderwoman allegedly pushing a Grafton police officer. The Jersey County State's Attorney sought the appointment of a special prosecutor to avoid the appearance of impropriety and the court found that the interests of justice required the appointment of a special prosecutor. *See* Jill Moon, *Court approves state's attorney special prosecutor request to investigate Grafton alderwoman*, The Telegraph, January 26, 2016.

366. In 2014, a Williamson County judge appointed the Illinois Attorney General's Office as a special prosecutor in a case involving missing funds from the Williamson County Clerk's Office. *See* Scott Fitzgerald, *AG probe of Williamson County office continues*, The Southern Illinoisan, May 27, 2014.

367. Also, in 2013, a LaSalle County judge overruled the State's Attorney and ordered a special prosecutor to investigate allegations of a woman who said she was illegally striped of her clothes and videotaped at the county jail. Attorneys for the women had argued that the State's Attorney's office had a conflict of interest. *See* Greg Stanmar, *Judge orders special prosecutor in strip-search case*, Pantagraph, October 29, 2013.

368. This Court can take judicial notice of these articles.

369. Peoria County State's Attorney Jerry Brady, likewise, should step aside and allow the appointment of a special prosecutor in this case. Heidelberg has made serious accusations of misconduct against the police officers that investigated his case and the prosecutors that handled his case. Rather than opposing this petition, Peoria County State's Attorney Jerry Brady should

be in agreement that the appointment of a special prosecutor will serve the interests of justice and remove any conflict of interest or appearance of impropriety.

370. Recusal is warranted due to State's Attorney Brady's close and personal relationship with the former prosecutor Ron Hamm, the fact that State's Attorney Brady discussed the case with Ron Hamm, and only Ron Hamm, and refused to interview Cleve Heidelberg, Lester Mason or Matthew Clark. Absent such recusal, State's Attorney Brady has, at the very least, created an appearance of impropriety and unfairness.

371. In this detailed petition, Cleve Heidelberg has demonstrated that he was wrongfully convicted of the murder of Sergeant Raymond Espinoza in 1970. At the very least, Mr. Heidelberg has raised several very serious and troubling issues concerning the investigation of the shooting and his resulting trial and conviction. Indeed, State's Attorney Brady has found there to be "issues of concern." (App. at CH 18 at ¶12).

372. As set forth herein, Heidelberg's counsel provided State's Attorney Brady with the evidence set forth in this petition. State's Attorney Brady, unfortunately, did not fully and fairly investigate Heidelberg's serious claims. For example, as mentioned above, State's Attorney Brady has now admitted that he discussed this case with his friend and mentor Ron Hamm, who was one of the prosecutors at the criminal trial in 1970. State's Attorney Brady disclosed that information to the Peoria Journal Star but refused to make that same disclosure to Heidelberg's counsel.

373. But, importantly, State's Attorney Brady failed and refused to interview Cleve Heidelberg. Nor did State's Attorney Brady seek to interview Lester Mason, the most significant witness in the case, as Mason is the person who borrowed Heidelberg's car and then gave the car to James Clark, who used Heidelberg's car in his botched robbery attempt at the Bellvue Drive-

In. Nor did State's Attorney Brady seek to interview Matthew Clark, the brother of James Clark, the true perpetrator of this horrible crime. That is despite the fact that Heidelberg's counsel provided State's Attorney Brady with a videotaped interview of Matthew Clark wherein he discusses how his brother James admitted to killing Sergeant Espinoza.

374. There is no legitimate justification for why State's Attorney Brady would only seek input from his friend and mentor and ignore Heidelberg and his witnesses. This blatant one-sided approach demonstrates that there has been no full and fair review as required by Rule 3.8 of the Illinois Rules of Professional Conduct.

375. Consequently, State's Attorney Brady should recuse himself from any further role in this case and allow the court to appoint a special prosecutor, someone with no prior ties to anyone in this case, or the Peoria community, to review and investigate Heidelberg's claims.

If The Peoria County State's Attorney Refuses To Recuse Himself, This Court Should Appoint A Special Prosecutor

376. Under section 3-9008, "[t]he court on its own motion, or an interested person in a cause or proceeding, civil or criminal, may file a petition alleging that the State's Attorney has an actual conflict of interest in the cause or proceeding." 55 ILCS 5/3-9008, (a-10).

377. The decision to appoint a special prosecutor rests within the sound discretion of the trial court. *People v. Lang*, 346 Ill.App.3d 677, 681 (2nd Dist. 2004), citing *People v. Polonowski*, 258 Ill.App.3d 497, 503 (1994).

378. A special prosecutor can be appointed at any stage of the case. *People v. Lang*, 346 Ill.App.3d 677, 681 (2nd Dist. 2004), citing *Baxter v. Peterlin*, 156 Ill.App.3d 564, 566 (1987).

379. The appointment of a special prosecutor is appropriate when necessary in order to "maintain the public's confidence in the impartiality and integrity of our criminal judicial system." *People v. Lang*, 346 Ill.App.3d 677, 682 (2nd Dist. 2004).

380. If Cleve Heidelberg's claims are proven to be true, there can be no doubt that an unimaginable injustice has occurred with Mr. Heidelberg spending almost half a century in prison for a crime he did not commit. There is overwhelming evidence supporting Heidelberg's contentions, as set forth in detail herein.

381. The Peoria County State's Attorney has acknowledged there are "issues of concern." (App. at CH 18 at ¶12). That acknowledgement, alone, is sufficient to re-open this case and conduct a thorough investigation but Mr. Brady has refused to do so with no explanation, no report, and no findings. (Contrast State's Attorney Brady's simple oral refusal to re-open Heidelberg's case with the detailed 34-page report issued by DeKalb County State's Attorney Richard Schmack in the Jack D. McCullough case, App. CH 350-383).

382. Despite acknowledging there are "issues of concern," Peoria County State's Attorney Brady felt no need to interview Cleve Heidelberg to hear his version of events.

383. Likewise, State's Attorney Brady felt no need to interview key witness Lester Mason, who borrowed Heidelberg's car on the night of the shooting, and has submitted an affidavit supporting Heidelberg's innocence. Mason had previously invoked his fifth amendment rights when called by the defense at the criminal trial.

384. Similarly, State's Attorney Brady felt no need to interview Matthew Clark, who has provided an affidavit stating that his brother James Clark confessed to shooting and killing Sergeant Espinoza. Matthew Clark, like Mason, invoked his fifth amendment rights when called by the defense at the criminal trial.

385. State's Attorney Brady undoubtedly has no interest in hearing what Messrs. Heidelberg, Mason and Clark have to say.

386. Yet, at the same time, State's Attorney Brady recently revealed for the first time, after being interviewed by a Peoria Journal Star reporter, that he did interview the former prosecutor in the case, Ron Hamm. *See* Andy Kravetz, *Lawyers seek special prosecutor in case of Cleve Heidelberg, imprisoned since 1971 for Peoria County slaying*, Peoria Journal Star, April 21, 2016.

387. This is a stunning admission. It is difficult to fathom how State's Attorney Brady, while acknowledging "issues of concern," could think it would be appropriate to only interview Ron Hamm, who clearly has a personal interest in protecting his conviction, and ignore Cleve Heidelberg, Lester Mason and Matthew Clark.

388. This issue becomes more troubling when placed in the context of State's Attorney Brady's relationship with former prosecutor Ron Hamm. When Jerry Brady was elected Peoria County State's Attorney, former prosecutor Ron Hamm was one of the persons that Brady specifically thanked and mentioned by name. *See* Andy Kravetz, *Brady sworn in as new Peoria County state's attorney*, Peoria Journal Star, August 1, 2011. ("Brady took time to remember many who helped him along the way including veteran attorneys such as Ron Hamm")(*See* App. at CH 695).

389. Similarly, State's Attorney Brady is quoted as praising Ron Hamm in an article discussing Hamm's retirement after five decades of practicing law. *See* Phil Luciano, *Luciano: Recalling a storied legal career*, Peoria Journal Star, June 7, 2012. That article states "His departure leaves central Illinois' legal community without perhaps the most revered defense attorney of his era. Fans include Peoria County State's Attorney Jerry Brady. 'He taught me the

value of hard work, honesty and strategy in handling criminal cases,' Brady says. 'And regardless of the financial resources of a client, Ron Hamm was always willing to help.'"

390. Clearly, Peoria County State's Attorney Jerry Brady has a longstanding close and personal relationship with Ron Hamm, a former employee of the Peoria County State's Attorney's Office and one of the prosecutors from Cleve Heidelberg's criminal trial.

391. Peoria County State's Attorney Brady has an actual conflict of interest based on his personal relationship with former prosecutor Hamm and the inherent conflict attendant to investigating his own office.

392. Mr. Heidelberg has set forth compelling evidence of his innocence. He has been in prison for nearly *a half century* paying for a crime he did not commit.

393. State's Attorney Brady's failure to even take the simple action of interviewing Cleve Heidelberg, and key witnesses Lester Mason and Matthew Clark, demonstrates that the Peoria County State's Attorney's Office did not take a serious look into the significant and overwhelming evidence of innocence that has been presented or into the State's misconduct including the suppression and destruction of evidence, the manufacture of evidence, group witness meetings, witness coercion and manipulation and the breach of Mr. Heidelberg's attorney/client privilege and use of the information obtained through that breach to thwart Heidelberg's defense and tamper with his witnesses.

394. Further, in this Petition, Heidelberg has made serious allegations of misconduct against former prosecutor Ron Hamm and his trial partner prosecutor John Riddle.

395. The only inference that can be drawn by State's Attorney Brady's refusal to even consider speaking to any witness other than Heidelberg's prosecutor, who is accused of wrongdoing and who happens to be his friend and mentor, is that State's Attorney Brady has an

actual conflict of interest based on a personal relationship that has compromised his ability to objectively investigate Heidelberg's claims. By his own actions and inaction, State's Attorney Brady has disqualified himself and this Court should therefore appoint a special prosecutor to discharge the duties imposed on his office and on him personally under Rule 3.8.

396. As aptly stated by the court in *People v. Lang*, 346 Ill.App. 3d 677, 682 (2d Dist. 2004), "the appointment of a special prosecutor may also be required if it is necessary to remove the appearance of impropriety in the prosecution of a defendant. We believe that the appointment of a special prosecutor in such a situation may be necessary in order to maintain the public's confidence in the impartiality and integrity of our judicial system."

397. Here, as discussed above, Peoria County State's Attorney Jerry Brady's conduct proves that an actual conflict of interest exists. Moreover, due to State's Attorney Brady's conduct, the appointment of a special prosecutor is necessary in this case in order to maintain the public's confidence in the impartiality and integrity of the judicial system.

398. Also, courts have found there to be a conflict of interest based on facts that would subject an attorney to charges that his representation was not completely faithful. For example, in *People v. Stoval*, 40 Ill.2d 109 (1968), the defendant was charged with burglary. The law firm that was appointed to represent the defendant had previously represented the store that had been burglarized. The court stated that "[t]here is no showing that the attorney did not conduct the defense of the accused with diligence and resoluteness, but we believe that sound policy disfavors the representation of an accused, especially when counsel is appointed by an attorney with possible conflict of interests. It is unfair to the accused, for who can determine whether his representation was affected, at least, subliminally, by the conflict. Too, it places an additional burden on counsel, however conscientious, and exposes him unnecessarily to later charges that

his representation was not completely faithful. In a case involving such a conflict there is no necessity for the defendant to show actual prejudice." *Id*. at 113. Thus, the court reversed the defendant's conviction and ordered a new trial.

399. Here, too, State's Attorney Brady's close relationship with the former prosecutor, Ron Hamm, who has been accused of misconduct, and the fact that the only person that State's Attorney Brady interviewed was Ron Hamm, has exposed State's Attorney Brady to charges that his review of Heidelberg's case was not "completely faithful." As such, an unavoidable conflict of interest exists. Indeed, State's Attorney Brady should be welcoming the appointment of a special prosecutor rather than fighting it. Such opposition only proves the conflict.

400. Similarly, in *People v. Washington*, 111 Ill.App.3d 711 (1st Dist. 1982), the court, in finding a conflict of interest, stated "public confidence in the integrity and impartiality of the criminal justice system demands that public officials avoid even the appearance of impropriety." *Id*. at 716. Peoria County State's Attorney Jerry Brady, by his conduct in only interviewing his friend and former prosecutor Hamm, and ignoring Cleve Heidelberg and key witnesses Lester Mason and Matthew Clark, has created, at the very least, an appearance of impropriety.

401. The court's discussion in *People v. Arrington*, 297 Ill.App.3d 1 (2nd Dist. 1998) is also instructive. In that case, the defendant was convicted of armed robbery and aggravated battery. On appeal, the defendant argued that a special prosecutor should have been appointed because the State's Attorney's cousin owned the store that the defendant attempted to rob. The court noted that "defendant has presented no evidence that would support a conclusion that [the State's Attorney's] relationship with the store involves such emotional ties that his personal interests *influenced* the discharge of his duties." *Id*. at 4. (emphasis added).

402. Here, on the other hand, such evidence does exist. State's Attorney Brady has admitted that he discussed the case with his friend Ron Hamm, the former prosecutor. Thereafter, State's Attorney Brady failed to interview Cleve Heidelberg, Lester Mason or Matthew Clark. How can that be? Did State's Attorney Brady have his mind made up after talking to his friend and mentor Ron Hamm? Again, it is inconceivable that if State's Attorney Brady were to fully and fairly investigate Heidelberg's claims he would not seek to interview Heidelberg, Mason and Clark. This evidence demonstrates that State's Attorney Brady's relationship with Ron Hamm, the former prosecutor, did, indeed, *influence* the discharge of his duties to fully and fairly investigate Heidelberg's claims, especially in a case where State's Attorney Brady has admitted that there are "issues of concern." (*See* App. at CH 18 at ¶12).

403. Rule 3.8 of the Illinois Rules of Professional Conduct demands that this case be investigated. The Peoria County State's Attorney has demonstrated that he cannot be trusted to discharge his duties in accordance with Rule 3.8 or examine the evidence with a clear and objective eye. This Court, therefore, should appoint an independent special prosecutor to investigate Mr. Heidelberg's case and to take the necessary action to remedy his wrongful conviction.

404. Section 3-9008 also states as follows: "Prior to appointing a private attorney under this Section, the court shall contact public agencies, including, but not limited to, the Office of the Attorney General, Office of the State's Attorney's Appellate Prosecutor, or local State's Attorney's Offices throughout the State, to determine a public prosecutor's availability to serve as a special prosecutor at no cost to the county and shall appoint a public agency if they are able and willing to accept the appointment. An attorney so appointed shall have the same power

and authority in relation to the cause or proceeding as the State's Attorney would have if present and attending to the cause or proceedings." 55 ILCS 5/3-9008, (a-20).

RELIEF REQUESTED

405. Accordingly, petitioner requests that this Court appoint the Office of the Attorney General to act as the special prosecutor in this case.

406. In the alternative, petitioner asks this Court, based on the court's review of the evidence cited herein, to issue an order vacating Heidelberg's conviction, or requesting the Peoria County State's Attorney to do so.

407. Time is of the essence. Mr. Heidelberg is 73-years-old and in poor health. (See Affidavit of Cleve Heidelberg, Jr., App. at CH 2 at ¶¶17, 18). Matthew Clark and Lester Mason are also in their seventies now. Accordingly, Mr. Heidelberg respectfully requests that this matter be set for an expedited hearing.

408. The unimaginable injustice done to Cleve Heidelberg has stood, and he has lived in despair, for nearly half a century. Cleve Heidelberg is innocent and it is long past time for his wrongful conviction to be remedied.

WHEREFORE, Petitioner, Cleve Heidelberg, Jr., respectfully requests that this Court appoint a special prosecutor to investigate and remedy his wrongful conviction and for such other and further relief as this Court deems appropriate including vacating Petitioner's conviction based on the evidence presented herein.

Respectfully submitted,

CLEVE HEIDELBERG, JR.

BY:

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