

6-1-2017

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Richard Schmack

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Suggested Citation

Richard Schmack, Unmaking a Murderer: The Prosecutor's Duty to Remedy Wrongful Convictions, 37 N. Ill. U. L. Rev. 420 (2017).

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Unmaking a Murderer: The Prosecutor’s Duty to Remedy Wrongful Convictions

RICHARD SCHMACK*

This Article will discuss the obligations and duties of a prosecutor in reviewing post-conviction claims of actual innocence in the context of the DeKalb County case of People v. Jack McCullough.¹ In my role as State’s Attorney, the chief prosecutor, I was required to formulate a response to the Defendant’s claim of innocence. Ultimately, I reached the conclusion that he was innocent of the crime for which he had been convicted, and thereafter proactively participated in his exoneration.

This Article will begin with a general discussion of the principles which apply to a prosecutor’s assessment of claims of actual innocence, and of evidence of innocence which may come to the prosecutor’s attention in the absence of a pending petition. The Article will then move on to a summary of the facts of the McCullough case, and conclude with my assessment of how those rules governed my ultimate conclusion of innocence and the disposition of the case.

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I. RULES GOVERNING PROSECUTION IN THE CONTEXT OF INNOCENCE CLAIMS

According to the Preamble of Rule 3.8 of the Illinois Rules of Professional Conduct and the ABA Model Rules of Professional Conduct, entitled

* Richard Schmack has been a practicing attorney in Illinois since 1980. He has been both a prosecutor and defense attorney, and served as State’s Attorney of DeKalb County from 2012 to 2016. He would like to thank his wife, Jackie, for her support and assistance throughout the events described and in the preparation of this Article.

1. People v. McCullough, 2015 IL App (2d) 121364, 38 N.E.3d 1, *appeal denied*, 32 N.E.3d 676 (Ill. 2015), *cert. denied*, McCullough v. Illinois, 136 S. Ct. 219 (2015).

Special Responsibilities of a Prosecutor: “The duty of a public prosecutor is to seek justice, not merely to convict.”²

This rather sparse injunction is greatly expanded upon in the Comments on this section in both the Illinois Rules and the ABA Model Rules:

Illinois Rules of Professional Conduct:

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.³

[1A] The first sentence of Rule 3.8 restates an established principle. In 1924, the Illinois Supreme Court reversed a conviction for murder, noting that: “The state’s attorney in his official capacity is the representative of all the people, including the defendant, and it was as much his duty to safeguard the constitutional rights of the defendant as those of any other citizen.” *People v. Cochran*, 313 Ill. 508, 526 (1924).

In 1935, the United States Supreme Court described the duty of a federal prosecutor in the following passage:

“The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to

2. ILL. SUP. CT. R. 3.8 (2010) (amended 2015); *see also* MODEL RULES OF PROF’L CONDUCT r. 3.8 (AM. BAR ASS’N 2008).

3. ILL. SUP. CT. R. 3.8 cmt. 1.

bring about a just one.” *Berger v. United States*, 295 U.S. 78, 88, 79 L. Ed. 1314, 1321, 55 S. Ct. 629, 633 (1935).

The first sentence of Rule 3.8 does not set an exact standard, but one good prosecutors will readily recognize and have always adhered to in the discharge of their duties. Specific standards, such as those in Rules 3.3, 3.4, 3.5, 3.6, the remaining paragraphs of Rule 3.8, and other applicable rules provide guidance for specific situations. Rule 3.8 is intended to remind prosecutors that the touchstone of ethical conduct is the duty to act fairly, honestly, and honorably.⁴

ABA Model Rules of Professional Conduct:

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons. The extent of mandated remedial action is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Competent representation of the sovereignty may require a prosecutor to undertake some procedural and remedial measures as a matter of obligation. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.⁵

These comments are intended to explain the Rules, of course, and are not Rules themselves. When adopted by the Illinois Supreme Court in 2010, these rules, mirroring the 2002 ABA Model Rules, contained six specific

4. *Id.* at cmt. 1A.

5. MODEL RULES OF PROF'L CONDUCT r. 3.8 cmt. 1 (AM. BAR ASS'N 2008).

mandatory directives, none of which directly addressed post-conviction actions. Prosecutors were mandated to never prosecute without probable cause, protect the accused's right to counsel, not seek waivers of rights from unrepresented defendants, never hide evidence favorable to the defendant, never subpoena an attorney to present evidence against a present or former client (except in very rare and extraordinary circumstances), and to refrain from public comments which jeopardize the defendant's right to a fair trial.⁶ This was a great expansion of the 1990 rules which included only two directives, regarding only probable cause and concealment of evidence.⁷

It is abundantly clear that, while not directly saying, "do not prosecute people you think are innocent," that was obviously the spirit of the Rules, along with the obligation to be fair, even to people you believe are guilty. However, many times the probable cause standard can be met easily in cases where the prosecutor might have doubts about the ability to prove the defendant guilty beyond a reasonable doubt. Prosecuting the case in this situation is ethical, if the prosecutor objectively believes the defendant guilty, but certainly problematic when the prosecutor's doubt is about the defendant's guilt itself.

The ABA Criminal Justice Section Standards on the Prosecution Function,⁸ which are more aspirational than directory, certainly point in the direction that a responsible prosecutor should not bring a charge unless personally convinced, beyond a reasonable doubt, of the defendant's guilt. The following standards are particularly relevant in this regard:

Standard 3-1.2 The Function of the Prosecutor

(b) The prosecutor is an administrator of justice, an advocate, and an officer of the court; the prosecutor must exercise sound discretion in the performance of his or her functions.

(c) The duty of the prosecutor is to seek justice, not merely to convict.

Standard 3-3.6 Quality and Scope of Evidence Before Grand Jury

(a) A prosecutor should only make statements or arguments to the grand jury and only present evidence

6. ILL. SUP. CT. R. 3.8 (a)-(f).

7. ILL. SUP. CT. R. 3.8 (a)-(b) (1990); *see also* ILL. SUP. CT. R. CODE OF PROF'L RESPONSIBILITY Canon 7 DR 7-103 (a)-(b) (1980).

8. CRIMINAL JUSTICE STANDARDS FOR THE PROSECUTION FUNCTION § 3 (AM. BAR ASS'N 2017), http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pfunc_blk.html.

to the grand jury which the prosecutor believes is appropriate or authorized under law for presentation to the grand jury The prosecutor should also inform the grand jurors that they have the right to hear any available witnesses, including eyewitnesses.

(b) No prosecutor should knowingly fail to disclose to the grand jury evidence which tends to negate guilt or mitigate the offense.

(c) A prosecutor should recommend that the grand jury not indict if he or she believes the evidence presented does not warrant an indictment under governing law.

Standard 3-3.9 Discretion in the Charging Decision

(a) A prosecutor should not institute, or cause to be instituted, or permit the continued pendency of criminal charges when the prosecutor knows that the charges are not supported by probable cause. A prosecutor should not institute, cause to be instituted, or permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction.

(b) The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that sufficient evidence may exist which would support a conviction. Illustrative of the factors which the prosecutor may properly consider in exercising his or her discretion are:

(i) the prosecutor's reasonable doubt that the accused is in fact guilty

(c) A prosecutor should not be compelled by his or her supervisor to prosecute a case in which he or she has a reasonable doubt about the guilt of the accused.

(d) In making the decision to prosecute, the prosecutor should give no weight to the personal or polit-

ical advantages or disadvantages which might be involved or to a desire to enhance his or her record of convictions.

Standard 3-3.11 Disclosure of Evidence by the Prosecutor

(a) A prosecutor should not intentionally fail to make timely disclosure to the defense, at the earliest feasible opportunity, of the existence of all evidence or information which tends to negate the guilt of the accused or mitigate the offense charged or which would tend to reduce the punishment of the accused.

(b) A prosecutor should not fail to make a reasonably diligent effort to comply with a legally proper discovery request.

(c) A prosecutor should not intentionally avoid pursuit of evidence because he or she believes it will damage the prosecution's case or aid the accused.⁹

Notwithstanding these rules and recommendations, we are almost weekly confronted by the exoneration of someone wrongfully convicted somewhere in the United States. Certainly, most of these exonerations do not involve defendants consciously charged by prosecutors who believed them to be innocent at the time of charging. Failed eyewitness identifications, lab errors, junk science, overworked and/or underfunded defense counsel, knowing perjury by civilian and/or police witnesses, and dubious jailhouse confessions have all led to wrongful convictions. DNA testing¹⁰ and other scientific advances, witness recantation, and new, previously unknown evidence or witnesses, or the confession by the real perpetrator have all led to exoneration.

However, it is certainly the case that tunnel vision exists on the part of investigators and that there is a general readiness on the part of prosecutors to place sometimes unreasonable reliance on the creditability or skills of police. This has often led to continued defense of these wrongful convictions in the appellate court, and on collateral attack, long after the defendant's innocence became obvious.

As a result, in an effort to provide clarity to a prosecutor's duty in the post-conviction environment, the model rules were amended in 2008 by the addition of Rules 3.8 (g) and (h). These were subsequently adopted by the

9. *Id.* at §§ 3-1.2, 3-3.6, 3-3.9, 3-3.11.

10. *See DNA Exonerations in the United States*, INNOCENCE PROJECT, <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/> (last visited Apr. 2, 2017).

Illinois Supreme Court, together with new Illinois Rule 3.8 (i), effective January 1, 2016, in the following form, along with comments:

(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.

(i) A prosecutor's judgment, made in good faith, that evidence does not rise to the standards stated in paragraphs (g) or (h), though subsequently determined to have been erroneous, does not constitute a violation of this rule.

Comments

[7] When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor's jurisdiction was convicted of a crime that the person did not commit, paragraph (g) requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (g) requires the prosecutor to

examine the evidence and undertake further reasonable investigation to determine whether the defendant is in fact innocent or make reasonable efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

[8] Under paragraph (h), once the prosecutor knows of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.¹¹

The 2008 Report of the ABA Criminal Justice Section, submitted to the ABA House of Delegates along with the Resolution adopting the Amendments, is highly informative and bears reading in full.¹² However, the following extracts are particularly instructive concerning the purpose of the two added paragraphs:

In *Achieving Justice: Freeing the Innocent, Convicting the Guilty*, the ABA's Section of Criminal Justice explored the systemic causes for wrongful convictions in our criminal justice system. Its report made numerous recommendations for systemic remedies to better ensure that individuals will not

11. ILL. SUP. CT. R. 3.8(g)-(i), cmts. 7 & 8 (2015).

12. See CRIMINAL JUSTICE SECTION, *Changes to Rule 3.8*, AM. BAR. ASS'N 3 (Feb. 2008), http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html.

be convicted of crimes that they did not commit and that the innocent will be exonerated. That report did not address the well established ethical obligations of a prosecutor toward innocent persons.

The United States Supreme Court recognized in *Imbler v. Pachtman*, 424 U.S. 409, 427 n.25 (1976), that prosecutors are “bound by the ethics of [their] office to inform the appropriate authority of after-acquired or other information that casts doubt upon the correctness of the conviction.” Further, when a prosecutor concludes upon investigation of such evidence that an innocent person was convicted, it is well recognized that the prosecutor has an obligation to endeavor to rectify the injustice. These obligations have not, however, been codified in Rule 3.8 of the ABA Model Rules of Professional Conduct, which identifies the “Special Responsibilities of a Prosecutor.” Proposed Rules 3.8(g) and (h), and the accompanying Comments would rectify this omission

As the proposed provisions reflect, it is important to codify prosecutorial duties upon learning of possible false convictions. The obligations in the proposed rule are triggered when a prosecutor either “knows” of new, credible and material evidence creating a reasonable likelihood of a convicted defendant’s innocence or “knows” of clear and convincing evidence establishing the convicted defendant’s innocence. The ABA Model Rules define “knows” to “denote[] actual knowledge of the fact in question”; therefore, indirect or imputed knowledge will not suffice.¹³

As can be seen, these 2008 additions to the ABA model rules, effective as disciplinary rules for Illinois prosecutors on January 1, 2016, were many years in the making. They should have served as a guide for prosecutors everywhere, even where they could not yet have formed the basis for discipline. Moreover, they clearly serve as guideposts for prosecutorial conduct prior to conviction, not just in the post-conviction context. They can, and should pro-

13. *Id.* at 3-4 (footnotes omitted).

vide the ethical prosecutors with the clear tools to fight the “institutional disincentives” to accept “persuasive evidence of an unjust conviction.”¹⁴ As noted, wrongful convictions are not “self-correcting by the criminal justice process.”¹⁵ Many of these cases languish for decades in endless appeals and collateral proceeding, with the convictions repeatedly upheld because of technically correct rulings by judges who never receive all the facts. Only the prosecutors can readily correct their own errors, or those of their predecessor. If they were consistently doing that, it probably would not have been necessary to increase the number of special disciplinary rules for prosecutors from two to nine in just eighteen years.

II. *PEOPLE V. MCCULLOUGH*

As previously stated, the aim of this Article is to examine my application of the foregoing disciplinary rules in the case of *People v. McCullough*.¹⁶ Accordingly, my aim is not to provide an in-depth account of the kidnapping and murder of Maria Ridulph, or the investigation or the prosecution of Jack McCullough. Books have already been written, barely scratching the surface, and more are in the works. Television documentaries have also attempted factual analyses, and I understand that we can expect more of these as well.¹⁷ I filed a lengthy report with the court in March 2016, detailing my conclusions and facts supporting them, but even that is by no means exhaustive.¹⁸ However, to establish context, a summary of the background is necessary.

Seven-year-old Maria Ridulph was kidnapped outside her home in Sycamore, Illinois between 6:40 and 6:55 p.m. on December 3, 1957. Her family and a few neighbors realized she was missing around 7:00 p.m., and after about an hour searching on their own, reported her disappearance to the Sycamore Police Department around 8:00 p.m. Beginning around 8:30 p.m., an expanding, but poorly organized search began and continued throughout the night. The Chicago office of the FBI took the investigation over at 7:00 p.m.

14. *Id.* at 5.

15. *Id.* (footnote omitted).

16. *People v. McCullough*, 2015 IL App (2d) 121364, 38 N.E.3d 1, *appeal denied*, 32 N.E.3d 676 (Ill. 2015), *cert. denied*, *McCullough v. Illinois*, 136 S. Ct. 219 (2015).

17. *See generally* JEFFERY DEAN DOTY, *PIGGYBACK* (2014); CHARLES LACHMAN, *FOOTSTEPS IN THE SNOW* (Berkeley ed., 2014); Ann O’Neill, *Taken*, CNN (Aug. 30, 2013), <https://longform.org/posts/taken>; “48-Hours” *Presents: Cold as Ice*, CBSNEWS (May 24, 2014, 9:00 PM), <http://www.cbsnews.com/videos/48-hours-presents-cold-as-ice/>; David Hinckley, *Footsteps in the Snow*: *TV Review*, N.Y. DAILY NEWS (Nov. 12, 2014, 2:00 AM), <http://www.nydailynews.com/entertainment/footsteps-snow-tv-review-article-1.2006945>.

18. DEKALB CTY. CIRCUIT CLERK’S OFFICE, STATE’S ATTORNEY’S REPORT FOR CASE NO. 2011CF000454 (filed Mar., 2016), <https://www.circuitclerk.org/online-records.html> (the report, along with all other pleadings for case No. 2011CF000454 are available electronically through the website of the Office of the Circuit Court Clerk for DeKalb County).

on December 4, 1957, in compliance with an established protocol requiring a twenty-four-hour period to invoke federal jurisdiction.

The FBI established a temporary headquarters at a Sycamore motel and interviewed hundreds of witnesses and suspects using agents from both the Rockford and Chicago offices. Interviews with Maria's family and neighbors convincingly established that Maria had gone out to play with a friend, Kathy Sigman, at around 6:00 p.m. They played at the corner of Center Cross Street and Archie Place, two doors from Maria's home, in the company of a Tom Braddy, who was delivering fuel oil to the house at the corner, until he left between 6:15 and 6:20 p.m. They were seen playing at about that time by Maria's mother, returning from an errand, and at 6:30 p.m. by three teenage neighbors of Kathy's, playing alone at the corner. Maria returned home at 6:40 p.m., according to her mother, in order to get a doll. According to her father, the 6:30 p.m. episode of *Cheyenne* was airing while Maria was in the house.¹⁹

This was the last time that she was seen by her family. She returned to the corner where Kathy was waiting with a man, previously unknown to either of them. According to Kathy, Maria showed her doll to the man, who had identified himself as "Johnny," and Johnny then gave Maria a piggy-back ride, the second one he had given her that evening.²⁰ Kathy then went to her home to get mittens, and returned to find Maria and Johnny gone.²¹ She returned to the Ridulph home looking for Maria, then went out again to see if she could find her playmate.²² The Ridulphs were not immediately alarmed, because Kathy did not mention a stranger. Kathy's brother joined her at the corner, having promised to come out and play when she had been home getting mittens.²³ They searched briefly together, and then returned to the Ridulph home. Although the stranger was not yet mentioned, the Ridulphs began to look for Maria. All the Ridulphs and the Sigmans, as well as the next-door neighbors, the Strombons, concurred with this occurring at 7:00 p.m., when interviewed separately by FBI agents.

Based on all these interviews, and other reports by neighbors, the FBI reached the conclusion that Maria must have been abducted in the 6:45 to 6:55 p.m. window. Although the Ridulphs personally searched for Maria, Kathy did not disclose the presence of a stranger to her family and Maria's family until approximately 7:15 p.m., and the Ridulphs did not notify the Sycamore Police until sometime between 8:00 and 8:10 p.m.²⁴ In all subsequent investigations of potential suspects, the ability of the subject to account

19. O'Neill, *supra* note 17.

20. *McCullough*, 38 N.E.3d at 7.

21. *Id.*

22. *Id.*

23. *Id.* at 8.

24. O'Neill, *supra* note 17.

for his or her whereabouts between 6:30 and 7:00 p.m. on December 3, 1957, was an absolute key factor.

Among those evaluated as a suspect was John Samuel Cherry, an eighteen-year-old neighbor. His mother, Eileen McCullough Cherry, had married his step-father, Ralph Tessier, in England during WWII, and John had lived in Sycamore under the name Tessier throughout his youth after coming to America. His parents had brought his name up when the FBI visited their home during a general canvas of the neighborhood on December 8, out of concern that he might become a suspect because his name was John, and he loosely fit a description of the unknown subject “Johnny.”²⁵

They told the FBI that John had been in Chicago most of the day on the second and the third, going through physicals and other testing in order to enlist in the Air Force.²⁶ He had taken the train to Rockford on the afternoon of the third, and had made a collect call to his parents’ home from Rockford around 7:00 p.m. to solicit a ride home.²⁷ John confirmed this in an interview with the FBI, also on December 8,²⁸ and provided considerable detail about his activities in both Chicago and Rockford. These included contacts that he had with military personnel in Rockford, at the Main Post Office, also home to several other federal departments including his Air Force recruiter and the FBI.²⁹

The FBI confirmed John’s account with Air Force personnel in Rockford, determined that the phone call was placed from Rockford at 6:57 p.m. through the local phone company to Sycamore, and administered a polygraph examination on John, which showed no signs of deception.³⁰ Based on all this information, it was concluded that he could not have been involved in the kidnapping.³¹ Shortly thereafter he was inducted into the Air Force and departed for basic training.³²

The investigation continued under the direction of the FBI until April 1958, when Maria’s body was found in woods just west of Woodbine, Illinois in eastern Jo Daviess County.³³ The location was about one-hundred miles west-northwest of Sycamore. Lacking evidence that Maria had been taken across state lines, and no ransom demand having been made, federal jurisdiction terminated and the FBI turned the investigation over to the Illinois State Police.

25. *McCullough*, 38 N.E.3d at 10.

26. *Id.* at 9-10.

27. *Id.* at 10.

28. O’Neill, *supra* note 17.

29. *McCullough*, 38 N.E.3d at 10.

30. O’Neill, *supra* note 17.

31. O’Neill, *supra* note 17.

32. O’Neill, *supra* note 17.

33. *McCullough*, 38 N.E.3d at 8.

One avenue that the State Police pursued was to inquire into everyone from northern Illinois who enlisted shortly after the abduction. The name of John Tessier was provided by his recruiter along with the fact that the FBI had already investigated him. The State Police confirmed this with Assistant State's Attorney James Boyle in Sycamore who indicated that his office considered Tessier to have been cleared.

By the time the State Police took over the investigation, the FBI had already investigated leads on close to two-hundred subjects, without success.³⁴ A few seemed like good suspects but over time were cleared, either because of ironclad alibis, or their exclusion by the sole witness, Kathy Sigman. The State Police were never able to solve the crime, although both the State Police and the Sycamore Police continued to consider the dwindling tips as the years passed.

In 2008, shortly after the death of Ralph Tessier, the State Police received a call from Janet Tessier, half-sister of John Tessier.³⁵ Janet Tessier claimed that her mother had implicated John in a conversation with Janet and her sister Mary Pat shortly before Eileen Tessier's death in 1994.³⁶ Although she claimed to have contacted the Sycamore Police in 1994 and the FBI in 1996 or 1997, those agencies do not appear to have any records of these contacts. The State Police re-opened the investigation expressly to consider John Tessier as a suspect.

By this time, John Tessier was known as Jack McCullough, having adopted his mother's maiden name during the 1990s.³⁷ He had been living in Seattle since being discharged from the military after the Vietnam War.³⁸ It does not appear that he was ever a suspect in the Ridulph murder between being cleared in 1957 and his sister's tip to the Illinois State Police in 2008.

In 2010, the State Police assembled a photo array of six black and white head-shots of young men around the same age as John Tessier had been in 1957. Five were Sycamore High School yearbook photos of graduating seniors in coat and tie. Tessier was casually attired. The investigators knew which photograph was the suspect, a practice barred by statute two years later. The array was shown to sixty-one-year-old Kathy Sigman, who had last observed the kidnapper when she was eight years old, on a dark street for a few minutes. After four minutes and several side-by-side viewings of three of the photos, she identified Tessier, by saying "that's him."³⁹

The photo array was shown to Sigman after a meeting one week earlier in which she was apparently advised that the State Police had a viable suspect. By this time, the State Police had obtained all surviving FBI records

34. O'Neill, *supra* note 17.

35. *McCullough*, 38 N.E.3d at 9.

36. O'Neill, *supra* note 17.

37. *See generally* LACHMAN, *supra* note 17.

38. *See generally* LACHMAN, *supra* note 17.

39. O'Neill, *supra* note 17.

and were fully aware of the evidence, which had excluded McCullough (Tessier) in 1957.

In the summer of 2011, following the election of a new State's Attorney, the investigators traveled to Seattle to interview McCullough. An arrest warrant was obtained from the King County courts and McCullough was interrogated in the Seattle Police Department. He steadfastly maintained his innocence, and after several hours, invoked his right to counsel.

He waived extradition and was returned to Illinois for trial. While awaiting trial for Maria Ridulph's murder he was indicted for rape based on allegations of a sexual assault in 1961, which one of his sisters had made during a State Police interview in 2009. The charge was filed despite the sister's request that the State not file these charges. He was acquitted of rape following a bench trial in the spring of 2012.⁴⁰

The murder case proceeded to a bench trial in September 2012. Testimony concerning Eileen Tessier's alleged statements was admitted (later deemed in error by the appellate court), while all the FBI reports were excluded as inadmissible hearsay not covered by the public records exception (upheld by the appellate court) or the ancient documents exception (deemed in error by the appellate court).⁴¹ The State's case consisted primarily of the Sigman identification and the testimony of three jailhouse informants. McCullough was convicted of murder and sentenced to life in prison, with the possibility of parole under 1957 law. The sentencing took place on December 10, 2012, one week after I took office and was handled by one of the members of the original prosecution team.

Appeal followed, in which the matter was handled by the Illinois Office of the Appellate Defender and the State's Attorney's Appellate Prosecutor. Owing to the incredible case load in those offices and chronic underfunding, the time between filing of the Notice of Appeal and Oral Argument was just short of two years. The appellate court upheld the verdict, holding all the defects which it found in the trial to have been "harmless error,"⁴² and Defendant's Petition for Leave to Appeal was turned down by the Illinois Supreme Court in the spring of 2015.

McCullough promptly filed a pro se post-conviction petition back in circuit court alleging actual innocence, newly discovered evidence, and prosecutorial misconduct. Under Illinois law such a petition is evaluated by the circuit court judge, without a requirement of participation by the State's Attorney. This is commonly referred to as Stage One. Prosecution typically

40. Jeanne Tessier, Letters to the Editor, *Guest View: Rape Case Against McCullough a 'revictimization'*, DAILY CHRON. (Apr. 14, 2012), <http://www.daily-chronicle.com/2012/04/13/guest-view-rape-case-against-mccullough-a-revictimization/apaauas/?page=2>.

41. *People v. McCullough*, 2015 IL App (2d) 121364, ¶ 106, 38 N.E.3d 1, 27.

42. *Id.* at 34.

does not become involved unless the court rules that the petition is not patently frivolous and advances it to Stage Two, at which time counsel is appointed for the defendant, usually resulting in the filing of an amended, more lawyerly, petition.

Anticipating this as a realistic possibility, I began a complete review of all discovery in the case as well as the transcripts of the two grand juries and the trial. This was necessary because none of the attorneys who prosecuted the case were still employed by me. It is typical for the prosecutors who handled the original trial to be assigned to post-conviction petitions owing to their familiarity with the file. While this may be acceptable in cases involving only claims of procedural errors by the court or newly discovered evidence, my experience in this case convinces me that where allegations of prosecutorial misconduct are raised, the case should always be reviewed by prosecutors who were not involved, in either the trial or the direct appeal.

III. PROOF OF INNOCENCE

I had watched McCullough's trial in 2012 and read the eight pages of FBI reports which were attached to the defense motion *in limine* seeking admission of the 1957 reports as public records and/or ancient documents. I was left with doubts as to his guilt as a result. Police reports are generally deemed reliable by prosecutors in making charging decisions and are admissible hearsay before grand juries. They are prohibited from use at trial because of constitutional due process related to the confrontation clause, not due to any perceived unreliability. It seemed that the reports showing McCullough to have been somewhere in Rockford at 6:57 p.m. on December 3, 1957 were reliable on their face. However, the testimony at trial regarding the time of the abduction was vague, referencing terms like "after dinner" and "around six," certainly leaving the possibility of an earlier abduction. This could have enabled McCullough to kidnap Maria Ridulph in Sycamore and drive her to some location in Rockford in time to make the 6:57 p.m. call.

FBI reports, which conclusively show a far more definitive time of the kidnapping between 6:45 and 6:55 p.m., had not been attached as exhibits, and were not part of the public record available at the time of the trial, nor part of the record available to the appellate court. Limited review of those records while the case was on appeal had already raised further issues about the validity of the conviction in my own mind. However, the appellate court ruled that the trial judge could reasonably have found the testimony of the defendant's sister, that she observed a search involving at least a dozen police vehicles at around 7:00 p.m., to be convincing. A search in full swing at that time, together with testimony from the victim's brother and Kathy Sigman regarding the activities before police involvement, implies an abduction at 6:00 p.m., if not earlier. This would support the appellate court's ruling that

the alibi evidence concerning defendant's activities in Rockford, while arguably admissible under the ancient documents rule, was irrelevant to provide an alibi and thus properly barred.

Very early in my review of the discovery, however, I found the DeKalb County Sheriff's Office report of call, indicating that Maria had not been reported missing until 8:00 p.m. Clearly, there had not been a dozen police cars at the corner of Archie and Center Cross at 7:00, or even 8:00 on December 3, 1957. This was a smoking gun, completely undercutting the testimony of a key prosecution witness on whose testimony the appellate court had placed great reliance.

As my review proceeded, I found a great deal more information. The time of the Sheriff's report of call was substantiated by the FBI interviews with the Sycamore Police Chief, and the victim's parents and older sisters, all of whom gave similar accounts of the time Maria was first reported missing. Two of the defendant's sisters, from 2008 through 2012, told the State Police, a grand jury, and the trial court that their mother had lied to police and provided the false alibi that defendant was home all night. In fact, in their interview with the FBI in 1957, both their parents stated that the defendant was in Rockford on the evening of December third. Jailhouse informants claimed defendant had confessed to them in 2011 and 2012 and that part of the confession involved him hiding Maria's body in the Tessier home. Yet his sisters testified that he was never in the home that night at all, and that they certainly would have seen him if he had been.

In addition, by the time of my review, at least one of the three informants was trying to enforce promises that he claimed were made by the prosecution when he had testified at trial that there were no promises.

Review of the application for warrant presented to the King County court which enabled defendant's 2011 arrest, to begin with, contained numerous demonstrably false statements regarding the 1957 reports.⁴³ An accurate recitation would clearly have shown that all the ancient documents indicated a kidnapping around 6:50 p.m. and a phone call by the defendant at 6:57 p.m. from a location at least 30 miles away.⁴⁴ Instead, the judge was told that Maria Ridulph was already missing at 6:15 p.m., if not earlier.⁴⁵

Similarly, it was clear that the 1957 reports, admissible hearsay before a grand jury, were never provided to either grand jury. Instead, through summary by a State Police witness who had read the reports, they were distorted and taken out of context, so that their exculpatory nature was concealed from both grand juries. This information made it increasingly obvious there had

43. DEKALB CTY. CIRCUIT CLERK'S OFFICE, STATE'S ATTORNEY'S REPORT FOR CASE NO. 2011CF000454, Exhibit 1 (filed Mar. 24, 2016), <https://www.circuitclerk.org/online-records.html>.

44. *Id.*

45. *Id.*

been considerable exculpatory information, either concealed from the trier of fact or unavailable due to an erroneous ruling on its admissibility. As I continued to review all available information, I found nothing which supported the defendant's guilt.

Meanwhile, the addition of Rules 3.8(g) and 3.8(h) to the Illinois Rules of Professional Conduct was proceeding through the review and hearing process, having been recommended by the Illinois Supreme Court. Its adoption being a foregone conclusion, I determined that I should analyze McCullough as though it were already in force. Indeed, I directed my assistants to conduct the affairs of their office under that premise.

Returning to the 2008 Report of the ABA Criminal Justice Section, we see that:

The obligation to avoid and rectify convictions of innocent people, to which the proposed provisions give expression, is *the most fundamental professional obligation of criminal prosecutors*. The inclusion of these provisions in the rules of professional conduct, rather than only in the provisions of the ABA Standards Relating to the Administration of Justice, which are not intended to be enforced, will express the vital importance that the profession places on this obligation. Further, it is important not simply to educate prosecutors but to *hold out the possibility of professional discipline for lawyers who intentionally ignore persuasive evidence of an unjust conviction. Prosecutors' offices have institutional disincentives to comport with these obligations and, as courts have recognized, their failures are not self-correcting by the criminal justice process*. Codification of the obligations, which are meant to express prosecutors' minimum responsibilities, will help counter these institutional disincentives.⁴⁶

The Rule and Comments are designed to provide "clear guidance to prosecutors concerning their minimum disciplinary responsibilities, with the expectation that, as ministers of justice, prosecutors routinely will and should go beyond the disciplinary minimum."⁴⁷ In many instances, a prosecutor will

46. CRIMINAL JUSTICE SECTION, *supra* note 12, at 4-5 (emphasis added).

47. CRIMINAL JUSTICE SECTION, *supra* note 12, at 5.

receive information about a defendant that does not trigger the rule's disclosure obligation and will be called upon to decide whether that information is nevertheless sufficient to require some investigation. The quality and specificity of the information received by a prosecutor often will vary dramatically, and it is expected that a prosecutor will decide whether and how to investigate based upon a good faith assessment of the information received. In some cases, the prosecutor may recognize the need to reinvestigate the underlying case; in others, it may be appropriate to await development of the record in collateral proceedings initiated by the defendant.⁴⁸

By September 2015, I had completed review of all existing discovery, grand jury and trial transcripts, and a considerable body of media reports which included interviews with some witnesses that expanded on their trial testimony. I had reached the conclusion that all this material, taken together, probably raised "a reasonable likelihood that a convicted defendant did not commit an offense of which [he] was convicted . . ." in the words of Rule 3.8(g).⁴⁹ However, it also appeared that there was one piece of evidence never sought by police or prosecutors which could tip this analysis the other way, or which might meet the higher standard of 3.8(h).

The FBI had known the Rockford telephone number from which John Tessier called his parents at 6:57 p.m. that night.⁵⁰ Investigators and prosecutors had conceded the call was made in pre-trial proceedings and in public interviews after the conviction. They speculated, however, that he made the call from some location other than the downtown Post Office. Some location closer to Sycamore, but served by the Rockford telephone company, Illinois Bell. Some location to which he could possibly have gotten with Maria, alive or dead, if the kidnapping occurred at 6:15 p.m., in time to make the call at 6:57 p.m. No reasonable person, familiar with the area, could possibly conclude that someone could commit a murder, transport the body to a car, reach the downtown Post Office, park the car, and enter the building in that brief time period. However, nothing in the discovery tendered to the defense indicated that any attempt had been made to uncover the actual location of this telephone.

48. CRIMINAL JUSTICE SECTION, *supra* note 12, at 5-6.

49. ILL. SUP. CT. R. 3.8(g) (2015).

50. DEKALB CTY. CIRCUIT CLERK'S OFFICE, STATE'S ATTORNEY'S REPORT FOR CASE No. 2011CF000454, at 1 (filed Mar. 24, 2016), <https://www.circuitclerk.org/online-records.html>.

Proof that the phone was in the downtown Post Office would meet the “clear and convincing”⁵¹ evidence standard of Rule 3.8(h) to mandate that I “seek to remedy the conviction.”⁵² Proof that it was not in or near the post office, on the other hand, would completely undercut the defendant’s alibi, and regardless of the irregularities of his prosecution, show there was not a reasonable likelihood of wrongful conviction.

Moreover, at this point, avoiding pursuit of this evidence because of the possibility that it would “damage the prosecution’s case or aid the accused” would have contradicted Standard 3-3.11(c).⁵³ I sought the assistance of the Sycamore Police Department in this regard, as my own office did not have an in-house investigator.⁵⁴ They deferred to the Illinois State Police, the lead investigating agency. I was verbally advised that the State Police had indeed looked into this issue, and concluded that they could not determine the phone number of the pay phone at the downtown Post Office. This investigation had never been documented in writing, but I was advised that it consisted of speaking with representatives of the Rockford Park District, current owners of the building. Supposedly, their financial records did not indicate the number of the pay phone, which had been removed sometime after they took ownership of the building. No explanation was offered for not contacting AT&T to see if they had records. This seemed like an odd omission, since the phone company might actually have known the exact location to which that phone number was assigned in 1957.

I asked the State Police to make contact with AT&T, and was subsequently advised by their legal counsel that they considered the case to be closed and would not investigate the matter for me. This situation is a striking example of the “institutional disincentives” previously mentioned, endemic in police agencies as well as prosecutor’s offices.

Being obligated to investigate, I did so myself, with assistance from the investigator employed by our Public Defender. AT&T confirmed that the phone number in question had indeed been assigned to the downtown Post Office for many years. A subpoena from my office resulted in documentation of this fact. Conversations with Rockford Park District disclosed recollections diametrically opposed to that of the State Police investigators. I was told that the Park District records confirmed that they had that phone number on their billing statement, and that they had told the State Police the same thing.

51. ILL. SUP. CT. R. 3.8(h) (2015).

52. *Id.*

53. CRIMINAL JUSTICE STANDARDS FOR THE PROSECUTION FUNCTION, *supra* note 8, at § 3-3.11(c).

54. CRIMINAL JUSTICE STANDARDS FOR THE PROSECUTION FUNCTION, *supra* note 8, at § 3-2.4. The ABA Standards on the Prosecution Function recommend employment of investigators by prosecutor’s offices, but the DeKalb County Board chose not to provide funding for an investigator when I requested it early in my term.

IV. EXONERATION

The documentary evidence provided by AT&T convinced me that there was no theory of the defendant's guilt, which could be reconciled to the known evidence showing his innocence. Under Rule 3.8(h), I was bound, on pain of professional discipline, to seek to remedy his wrongful conviction. Moreover, it was obviously the right thing to do. Had the defendant not had a petition pending, filed under 735 ILCS 5/2-1401, which I was required to answer, I would have been obligated to file such a petition myself in order to vacate his conviction.

Therefore, on March 24, 2016, I filed an answer to his petition for relief, which admitted his allegation of innocence and joined "in Defendant's pro se motion to set aside the judgment of guilty in this cause, as compelled by my Rule 3.8(h) obligation to seek remedy of wrongful convictions." Along with the answer, I filed a thirty-four-page report for the purpose of making the disclosures to the court and to the defendant as required by Rule 3.8(g).⁵⁵

In the introduction to this report I summarized my assessment of a prosecutor's obligations under Rules 3.8(g) and (h) as follows:

Rules 3.8 (g) and 3.8 (h) have only been in effect in Illinois for three months, so there is little precedent for a report such as this. The purpose and spirit of these new rules is obvious. They address with clarity the tragedy of wrongful convictions and provide a clear guide for prosecutors in evaluating a claim of actual innocence. I have concluded that a prosecutor is bound to consider personal knowledge and experience in life as well as the discovery in a case. The prosecutor is not a court, and is not bound by any prior determination of fact, if he or she knows that determination to be incorrect, wherever that knowledge originates. In short, the prosecutor can never leave his or her common sense out of the equation. The progress of a case from charging, through pre-trial, trial, appellate and post-judgment phases never lessens a prosecutor's primary obligation to seek justice rather than conviction.⁵⁶

55. ILL. SUP. CT. R. 3.8(g).

56. DEKALB CTY. CIRCUIT CLERK'S OFFICE, STATE'S ATTORNEY'S REPORT FOR CASE NO. 2011CF000454, at 1 (filed Mar. 24, 2016), <https://www.circuitclerk.org/online-records.html>.

After the filing of my answer, Charles Ridulph, brother of Maria Ridulph, sought to intervene in the case, to have me removed as prosecutor. Associate Judge William Brady recognized him as an “interested party” under the Illinois State’s Attorney’s Act, giving him standing to file such a petition, but proceedings on McCullough’s petition were not stayed.

Shortly after this filing, volunteer attorneys from the firm of Jenner & Block entered the case on behalf of McCullough. His conviction was vacated on April 15, 2016, and he was released on his own recognizance. I filed a motion to dismiss, which Judge Brady granted on April 22, 2016, and McCullough was able to return home to Seattle a few days later.

Proceedings continued on the Ridulph petition, which I vigorously contested. It was, and remains, my view that if victims or their families could easily obtain replacement of prosecutors who become convinced of the defendant’s innocence it would render Rule 3.8(h) a dead letter. Moreover, it would be a mockery of the Supreme Court’s ruling in *Berger v. United States*⁵⁷, since it would redefine the prosecution function from representing the People (including the defendant) to representing victims only.

The Roderick MacArthur Justice Center,⁵⁸ represented by Quarles and Brady, sought, and was granted, leave to intervene as a Friend of the Court, supporting my position. Ultimately, following a hearing on allegations that I had in some way prejudged the matter, creating a conflict of interest that would justify my removal, the court, on August 5, 2016, dismissed the Ridulph petition. No appeal was filed. This decision closed the books on the prosecution of Jack McCullough, but the fallout has continued and is still ongoing, as litigation has continued on several fronts.

V. AFTERMATH

A petition for issuance of a Certificate of Innocence was filed in the original case, on October 11, 2016, by Russell Ainsworth on behalf of The Exoneration Project. I admitted the allegations of innocence on behalf of the People, consistent with the findings in my March 24, 2016 report. My successor requested several continuances, but a hearing was finally held on April 7, 2017. Judge Brady ordered the issuance of the Certificate of Innocence on April 12, 2017, paving the way for an action for compensation in the Illinois Court of Claims on behalf of McCullough, and clearing his name.⁵⁹

57. See *Berger v. United States*, 295 U.S. 78, 88 (1935).

58. *Roderick and Solange MacArthur Justice Center*, NW. PRITZKER SCH. OF LAW, <http://www.law.northwestern.edu/legalclinic/macarthur/> (last visited Mar. 8, 2017).

59. Christopher Heimerman, *Jack McCullough Granted Certificate of Innocence*, DAILY CHRON. (April 13, 2017), <http://www.daily-chronicle.com/2017/04/12/jack-mccullough-granted-certificate-of-innocence/a8h89h8/>.

An informant who testified as “John Doe,” and denied receiving any consideration beyond anonymity, subsequently claimed to have been promised a waiver of untimeliness, in his post-conviction petition that was pending at the time he testified. In fact, he asserts that he was told to deny these promises under oath by police and prosecutors. This petition was ultimately denied by the circuit court in 2014 due to untimeliness. His appellate defender argued that he should have received a hearing on the issue of the supposed enforceable promise, but the appellate court, on December 22, 2016, ruled that 1) he first clearly raised the argument in a motion to reconsider, and thus had waived it, and 2) his contradictory, sworn testimony in *McCullough* was a judicial admission, barring a “later claim that he had in fact been promised something for his testimony.”⁶⁰

“John Doe” again attempted to intervene in McCullough’s criminal case on August 11, 2016, seeking a hearing on the same alleged promises he raised on his appeal. On October 13, 2016, Judge Brady granted a motion to strike, but transferred the petition to a separate civil case, *John Doe v. DeKalb County State’s Attorney #16 MR 374*. I filed a motion to dismiss on behalf of the State’s Attorney’s Office, and the case remains pending. He also has a pending federal case, filed *pro se*, revolving primarily around the claimed *quid pro quo* for his testimony. The United States District Court dismissed three judges, three prosecutors, and one defense attorney as defendants, but permitted the case to proceed against certain Illinois State Police officers, Illinois Department of Corrections employees, and one former Sycamore police officer. The case remains pending in the United States District Court for the Northern District of Illinois, Western Division.⁶¹

After McCullough was released, Casey Porter, his son-in-law, served Freedom of Information Act (FOIA) requests on the DeKalb County State’s Attorney’s Office, the Illinois State Police, the Sycamore Police, and the Seattle Police. A lawsuit against ISP and the City of Sycamore, relating to the denial of portions of the requests, is presently pending before the Circuit Court in Cook County, as case number 16 CH 09536. Porter is being represented in that action by Loevy & Loevy. Motions for summary judgment have been filed. CNN has since intervened in the case, also seeking release of documents, and multiple motions for summary judgment have been filed by both sides.

Porter’s FOIA with the Seattle Police Department turned up a video of a seventy-minute interview of McCullough by Seattle Detective Irene Lau, which was never disclosed to the defense before Lau testified against McCullough in 2012. At the time, representations were made by the prosecution that no such video existed. The video varies substantially, in McCullough’s favor, from Lau’s sworn testimony. I think this revelation

60. *People v. Reimann*, 2016 IL App (2d) 140996-U, ¶ 34.

61. *Doe v. Hanley*, No. 16 C 50175, 2016 WL 5792679 (N.D. Ill. Oct. 4, 2016).

alone would have required vacation of the conviction, if he had not already been cleared.

Porter requested that my office open an investigation into possible perjury by Lau. Since Lau had been called as a witness by the DeKalb County State's Attorney, albeit my predecessor, I believe that organizing an investigation and deciding whether to prosecute poses an inherent institutional, rather than personal, conflict of interest. Accordingly, I filed a motion for appointment of a Special State's Attorney in DeKalb County case number 16 MR 271 on August 22, 2016. On February 3, 2017, the Office of the State's Attorney's Appellate Prosecutor agreed to accept the appointment, and utilize their Special Prosecution Unit. The matter is now assigned to Charles Colburn, former Morgan County State's Attorney, and Dave Neal, former Grundy County State's Attorney.

Finally, on April 14, 2017, Loevy and Loevy filed an action in U.S. District Court on behalf of Jack McCullough, against four Illinois State Police Officers, two Sycamore Police Officers, three Seattle Police Officers, former DeKalb County State's Attorney Clay Campbell and two of his assistants, the City of Sycamore, the City of Seattle and DeKalb County, Illinois.⁶² This case is now proceeding in the federal court in Rockford, across the street from the post office where Jack McCullough placed the call to his parents on December 3, 1957.

VI. CONCLUSION

Obviously, one other thing that happened in the aftermath of the exoneration of Jack McCullough was that I did not win re-election. Certainly, all elections are popularity contests, and in a general election where national trends are at play, it is impossible to ascribe the outcome to any one decision by the incumbent. In terms of personal face-to-face comments, my actions were almost universally praised. I truly appreciate that, although I was just doing my job. But, I was certainly aware of considerable disagreement voiced in social media and more traditional settings. If I lost the election because I freed an innocent man from prison, I could not be prouder of the loss. However, it certainly illustrates the greatest of the "institutional disincentives," which necessitated the additions to the disciplinary rules.

In my opinion, the new rules provide ethical prosecutors with a solid underpinning to support decisions that might be politically unpopular, but

62. Ann O'Neill, *1957 Cold Case Police and Prosecutors Sued for 'Pervasive Misconduct'*, CNN (Apr. 15, 2017, 5:48 AM), <http://www.cnn.com/2017/04/14/us/ridulph-mccullough-lawsuit/>; Christopher Heimerman, *Jack McCullough Sues Police, Prosecutors, Sycamore, DeKalb County*, DAILY CHRON. (Apr. 17, 2017), <http://www.daily-chronicle.com/2017/04/15/jack-mccullough-sues-police-prosecutors-sycamore-dekalb-county/ah55wm6/>.

ethically required. However, I am less certain that they will have much effect on prosecutors who are already inclined to succumb to institutional disincentives. One of my favorite quotes is from Davy Crockett: “First make sure you’re right, then go ahead.”⁶³ I acted to remedy this wrongful conviction not from fear of discipline, but because I knew I was right and it was the right thing to do. Only time will tell if Rule 3.8(h) forces unethical prosecutors to do the right thing, or if it simply inspires those who would have done the right thing anyway.

However, one thing is certain. A prosecutor always stands “[a]t the Hub of Justice,” to borrow from a campaign slogan used by my distinguished predecessor as DeKalb County State’s Attorney, the late Associate Judge T. Jordan Gallagher.⁶⁴ On April 15, 2016, during the hearing in which he vacated McCullough’s conviction, Judge Brady (formerly Gallagher’s First Assistant) elaborated on this concept, saying,

(Prosecutors) are in the center of everything. They have responsibilities to all the spokes of the wheel. They have a requirement to prosecute those who they believe sufficient evidence exists to convict. They have the responsibility to not prosecute where there is insufficient evidence even though they may feel the person is guilty of that offense. *They have the responsibility to dismiss those cases where they believe the person is innocent.*⁶⁵

I would add only that no prosecutor should ever be tempted to shirk that responsibility in the post-conviction setting. When the body of reliable evidence points to innocence, no matter how many trial or appellate court rulings have upheld a finding of guilt, the final power to correct a wrongful conviction has been placed squarely in the lap of the prosecutor. No personal or political consideration should stand in the way of performing that enormous duty.

63. *David (Davy) Crockett*, <http://www.heartofsanantonio.com/Alamo/crockett.html> (last visited Apr. 2, 2017).

64. DEKALB CTY. CIRCUIT CLERK’S OFFICE, REPORT OF PROCEEDINGS FOR CASE NO. 2011CF000454, at 62 (Apr. 15, 2016), <https://www.circuitclerk.org/online-records.html> (emphasis added).

65. *Id.*