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Courageous Conversations about Racial Bias and Ethical Issues in the Criminal Justice System

October 6, 2020

Presentation for *Association of Corporate Counsel* – Charlotte Chapter

Jonathan Heyl, Partner – Charlotte, NC

Kimberly Bullock Gatling, Partner – Greensboro, NC

Brian W. Stolarz, Partner – Washington, DC

Robert H. Edmunds, Jr., Counsel – Greensboro, NC

Jonathan Heyl, Partner



jhey@foxrothschild.com
Tel: 704.384.2625

Jon is a partner and member of the firm's litigation team in the Charlotte office. His practice includes a range of matters involving antitrust litigation and counseling; contract, vendor, manufacturer-dealer, shareholder and other commercial disputes; financial services litigation; fiduciary litigation relating to trust administration; professional liability matters; and matters relating to the sports industry. He has served as first-chair counsel in jury cases tried to verdict, bench trials, administrative trials and arbitrations. Jon is also certified by the North Carolina Dispute Resolution Commission as a mediator in North Carolina.

A testament to his extensive service record with the North Carolina Bar Association, Jon was named president-elect of the NCBA for the 2020-2021 term. He previously served as chair of the Antitrust and Trade Regulation Section (now the Antitrust and Complex Business Disputes Section), two years as chair of the Judicial Independence Committee as well as a three-year term on the NCBA Board of Governors. In 2019, Jon was appointed to the State Judicial Council by the North Carolina State Bar Council.



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Kimberly Bullock Gatling, Partner and Chief Diversity & Inclusion Officer



kgatling@foxrothschild.com
Tel: 336.378.5356

Kim concentrates her practice in intellectual property prosecution, licensing and litigation. Clients see her as a trusted advisor and valued team member, providing comprehensive, global advice from a legal and business perspectives.

Kim prosecutes federal, state and international trademark and patent applications within a range of industries and manages global trademark portfolios. She also structures complex license agreements for patents, trademarks and copyrights, as well as drafts critical transactional agreements for various IT business efforts.

As Chief Diversity & Inclusion Officer, Kim works to develop and implement programs and policies that support the firm's goals of increasing and promoting a diverse workforce and inclusive environment at all levels throughout the firm.

A community growth advocate, Kim serves or has served in leadership roles with numerous organizations that improve quality of life in her home regions and beyond. She is among the most recent recipients of the North Carolina Bar Association's 2020 Citizen Lawyer Award, which recognizes "lawyers who provide exemplary public service to their communities."



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Innocent Going In, Innocent Coming Out: The Exoneration of Alfred Dewayne Brown



Presented by: Brian W. Stolarz

Brian W. Stolarz, Partner



Brian's national white-collar criminal defense practice assists individuals and companies in all stages of governmental investigations that deal with sensitive ethical conduct issues. He frequently handles internal investigations, federal contracts and False Claims Act defense, securities enforcement and commercial litigation. His trial experience extends to jury cases, regulatory hearings, criminal and civil cases before federal and state court as well as enforcement matters involving criminal and civil divisions of the DOJ, the SEC, FINRA and CFTC.

Brian has served in leading roles on a number of high-profile matters with national media coverage:

- The investigation of former Senator John Ensign
- The investigation of Jack Abramoff
- Major DOJ False Claims Act investigation
- Represented individuals before congressional committees and prepared clients for staff testimony and testimony before public hearings.

In addition to serving as habeas corpus counsel to Alfred Dewayne Brown, Brian has received several high-profile awards for his dedication to pro bono service.



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Alfred Dewayne Brown was arrested in April 2003 and convicted and **sentenced to death** in October 2005 for a crime he did not commit.



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Murder Victims

OFC. CHARLES CLARK ALFREDIA JONES

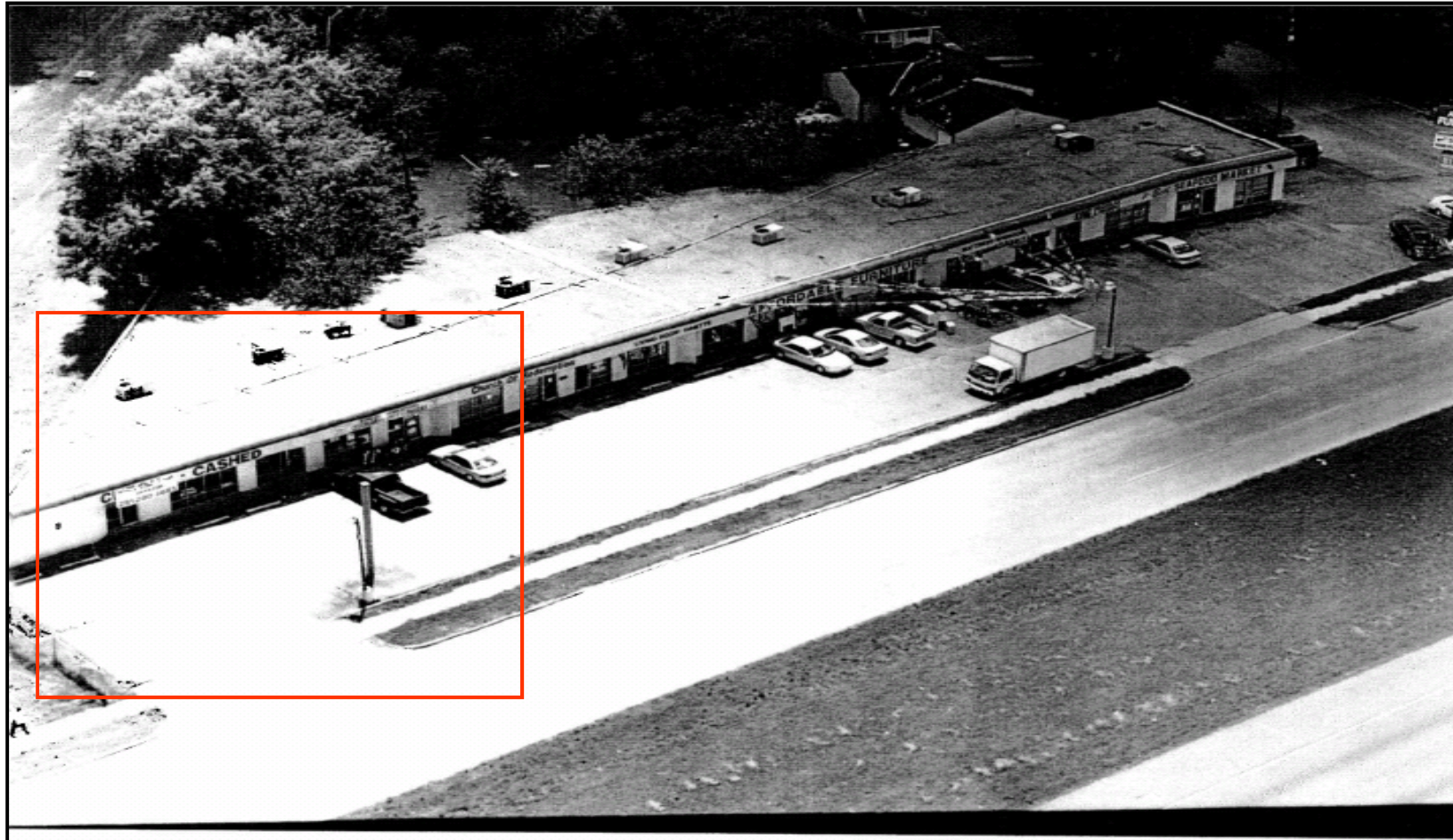


April 3, 2003 - Officer Charles Clark was killed the day before his 20th anniversary with the Houston Police Department. Ms. Alfredia Jones was killed the day she returned from maternity leave.



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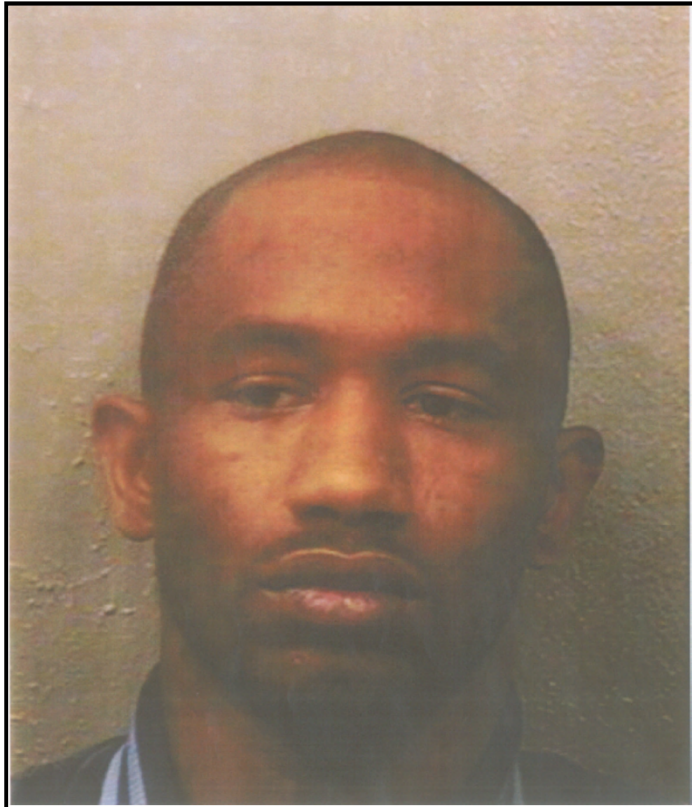
The Scene of the Crime



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The Co-Defendants

Co-defendant ***Elijah Joubert*** was convicted of capital murder and sentenced to death.



Co-defendant ***Dashan Glaspie*** cooperated with prosecutors in exchange for a 30-year sentence for aggravated robbery and testified against Dewayne and Elijah Joubert.



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15 THE DEFENDANT: Excuse me. I
16 didn't rob nobody. I didn't shoot nobody. I'm
17 tired of sitting up in here --

18 THE COURT: Please retire to the
19 jury room. Please retire to the jury room.

20 THE BAILIFF: All rise.
21 (Jury retired.)

22 THE DEFENDANT: These people
23 trying to take my life away for something I didn't
24 do. I didn't do this crime, man.

25 THE COURT: Mr. Brown.

**At one point during the punishment phase,
Dewayne stood up and cried out in exasperation.**



78

1 THE DEFENDANT: It's hard sitting
2 up here. He's trying to let these people take my
3 life away for something I didn't do.

4 THE COURT: Mr. Brown, be quiet.

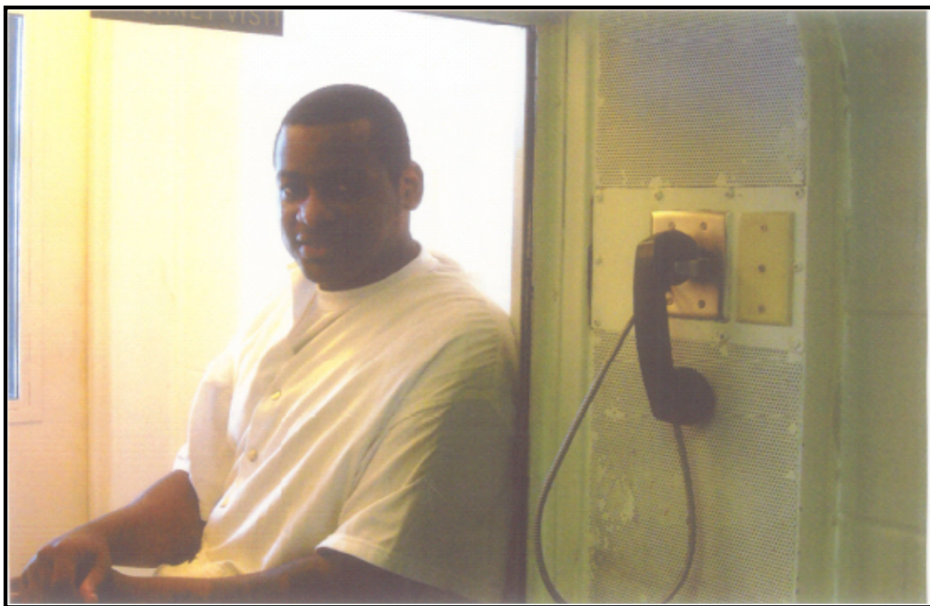
5 MR. RIZZO: Judge, for purposes of
6 the record --

7 THE COURT: Be seated.

8 In case it's not clear, during the
9 argument of Mr. Lafon, the Defendant chose to
10 speak out, which, of course, he cannot do, will
11 not do if he wants to stay in the courtroom for
12 the balance of this process.



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Photos of Dewayne when he was on Death Row at the Polunsky Unit of the Texas Department of Criminal Justice in Livingston, Texas.



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Where Dewayne Lived for 10 Years



He was in this cell for 23 hours a day and was in an enclosed rec yard for the other hour. He said it was like going from “the dog kennel to the bird cage.”



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The VA and an “Identification”



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Ericka Dockery's Initial Statement That Confirmed Dewayne's Alibi

Wednesday night, Alfred and I had a fight. I wanted him to leave. He wanted to go out with his friends at eleven o'clock at night to go out with his friends. I had just got home from work. I told him that I could go out on him at that time of night, so he couldn't do it to me, either.

That morning, I woke up at around 6:00 AM. I went downstairs and I noticed that Alfred was sleeping on the small couch. I get my three girls up and ready, because they have to be up in the front of the apartments at 6:50 AM so that they can catch the bus for school. They are out of the house at 6:45 AM. I get ready to go to my job and leave around 8:30 AM. I arrived at my job which is in the area of Homestead at Harwick, around 8:55 AM.

I called home to make sure that Reginald, Rueben, and Alfred were cleaning up. I was talking to Reginald. They were playing games and were not cleaning up. I asked them about Alfred and they told me that he was sick and that he was sleeping upstairs.

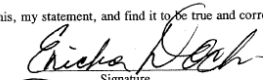
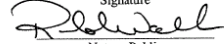
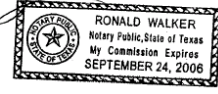
Later on that morning, around 10:00 AM, Alfred called me at my job. Alfred and I talked about our business. One of the things that Alfred mentioned to me was that the store where I got checked had been robbed. He told me that he thought that the girl that cashed my checks had cashed by checks had been killed. I turned on Channel 26 and I saw this on the news. It was right before the "Ricky Lake" show on television. We talked about fifteen minutes.

I got home from work around 1:30 PM this past Thursday. When I got home, Alfred was upstairs, and he was vomiting. He told me that he had a stomach virus. He could sleep, so I went to bed with him and slept there until about 3:00 PM. I had to get ready for my job at the Subway, which is at Cullen at Reed. I work there from 4:00 PM until closing, which Wednesday night, was at 11:00 PM. I got home at 12:00 Midnight. We have to clean up before. I never looked to see what time it was.

I went to be about 1:00 AM. I had watched Ricky Lake on television. My youngest child woke me up around 3:00 AM. She had an ear ache. She crawled up into bed with me and went to sleep. I got up at 6:00 AM and again got the kids ready for school and went to work at 8:30AM.

As far as I know, no one called the house this morning. My two cousins sleep with those phones, so they may go off and I don't hear them. I do not know if Ghetto and Deshawn called today or yesterday.

I have read the above portion of this, my statement, and find it to be true and correct to the best of my knowledge as typed by Sgt M. K. Peters.


Signature

Notary Public


End of Page 2

I get ready to go to my job and leave around 8:30 AM.

they told me that he was sick and that he was sleeping upstairs.



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Ericka is Badgered and Threatened by Grand Jury

FOREPERSON: Hey Dan. What are the punishments for Perjury and Aggravated Perjury?

MR. DAN RIZZO: It's up to 10 years in prison.

FOREPERSON: In prison. Okay.

GRAND JUROR: Oh, no.

FOREPERSON: . . . Like we said, and if you are—the evidence shows that you are perjuring yourself then you know the kids are going to be taken by Child Protective Services, **and you're going to the penitentiary and you won't see your kids for a long time.**



Badgering and Threats Continued

GRAND JUROR: One minute, Ericka. He wasn't in the house when you put your kids on the bus, either, was he?

THE WITNESS: I'm trying to remember.

GRAND JUROR: Think about your kids, darling.

THE WITNESS: I'm trying to remember.

FOREPERSON: That's what we're concerned about here, is your kids.

GRAND JUROR: He was not at the house—

FOREPERSON: We're as much concerned about your kids as you are. So, tell the truth.

GRAND JUROR: He was not in the house when you put your kids on the bus, was he? Tell the truth, girl.

THE WITNESS: Yes, he was there.



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Grand Jury Is Tainted

CITY | STATE

Friday, July 25, 2014

COMMENTARY

Cop was foreman of grand jury in cop killing

By Lisa Falkenberg

We can't hear his voice as he browbeats the mother of three within the secret confines of the grand jury room. We can't see his face as he dogs her to stop supporting her boyfriend's alibi in a cop-killing case.

But we know when the grand jury foreman is talking. We know because the 146-page transcript notes it in all capital letters. And we know by his words.

Lisa Falkenberg's Pulitzer Prize-winning work on the case uncovered that an active-duty police officer was foreman of the grand jury for a police officer shooting.



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“Pick-a-Pal” Abolished

Austin, TX – June 19, 2015 – Gov. Greg Abbott on Friday signed a bill ending Texas' "pick-a-pal" system for selecting grand juries, a move heralded as a way to end lingering questions of bias in the criminal justice system.

"Having a police officer as foreman of a grand jury investigating police shootings is not the way for people to have confidence in the system, and this bill will correct that."



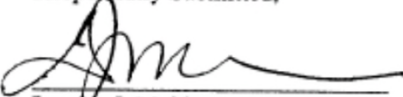
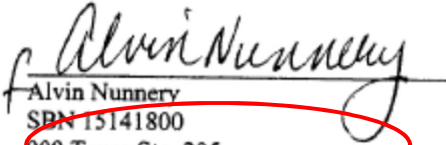
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Conflict of Interest With Trial Counsel

Cause No. 1073163 14700555

STATE OF TEXAS	§	IN THE 230 TH DISTRICT COURT
VS.	§	OF
HOWARD PAUL GUIDRY	§	HARRIS COUNTY, TEXAS

Respectfully Submitted,

 Loretta J. Muldrow State Bar Number 10768300 909 Texas Ste. 205 Houston, Texas 77002 713/222-1919 Fax 713/226-8097	 Alvin Nunnery SBN 15141800 909 Texas Ste. 205 Houston, Texas 77002 713/222-1919 713/226-8097
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Attorneys for Defendant
Howard Paul Guidry

Conflict of interest – Muldrow represented Dewayne and Nunnery represented Gaspie and they shared an office and represented other death row inmates.



Punishment Phase Testimony Expert Testimony

The State proffered **junk science** to artificially raise Mr. Brown's IQ. The State's expert elevated Mr. Brown's IQ score from

68 to 72-77

because of "mild anxiety" and "depression."

One expert stated that "Dr. Denkowski takes clinical interpretation beyond the realm of reason."

The elevation of his full scale IQ from 68 to 72-77 is unsupported. The methods he uses violate standardized procedures and thus make his revised data unusable. Fortunately, we are provided with Mr. Brown's unadjusted full scale score of 68, one that should be used as the best estimate of his intellectual ability.



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The "Smooth Letter" Sent to Dewayne While He Was in Jail

5-20-03
Dobbie what's going down, I know you hobbing your head up and if you need anything just let me know. Man I heard they jamed "J.D." up a few days ago. N.E. way I went to "J.D." house a couple of days ago to buy some weed and we were sitting down talking, cause he can't leave the house. "J.D." ask me did anybody hear anything from anyone of them boys in the county Jail. RB. be going up there to see his brother but I don't know who be going to see Shunc and "T." That day that shit was crazy "I thought them boys was going to give me up." That Morning shunc picked to call "T" he you Dobbie called the that's were to pick "T" south west two stores of the day
"T" said Make this right I, need to check on some thing. SO they got on 610 and exit the first exit and made that loop. "T" stated to shunc and J.D. that we need to hit that ace check cashing place, cause it don't be no laws around. we can hit this place and have bread (money) and go back to the hood. so we pulled up at the furniture store discussing how we

Dobbie that wasn't nothing but one big setup for you.
one Love smooth.

5-20-03
(Shunc, "T" J.D.) going to do it. the man that was standing in front of the furniture store smoking a cigarette. the man went back in and shunc said lets go in the furniture store so J.D. and shunc went in side, but "T" stayed behind in the back seat. when shunc and J.D. came out the store, "T" was already in the ace store, then shunc and J.D. joined "T" in side the ace store. J.D. said shunc was holding the girl while "T" was going through stuff. J.D. said he was at the front Door watching art and before he
so when he and said what we J.D. said he he girl J.D. "T" came behind J.D." said he hands.
shunc and I went across the street to the big girl house. "J.D." said he went to the big girl house after washing his hands. shunc was on the phone and called Dobbie to come and get him. Shunc got mad cause Dobbie wouldn't come and get him so Shunc hung up and called his girlfriend (Henna). they finished smoking a sweet and all left. Dobbie keep my name out of this, but this is what J.D. Told me.



Ericka Dockery Recants Trial Testimony and Exposes Threats

OFFICER OF PUBLIC DEFENSE DOCKERY LOCKETT

6. I am coming forward now because I believe it is time to tell the truth about what happened.

7. When I testified in the grand jury, ADA Dan Pizzo spoke to me in the room alone by the grand jury room. I was locked in the room. ADA Pizzo told me that he did not believe me, that I was not a good person, that he was going to take my children away by calling Child Protective Services, and that I was going to go to jail for a long time. I felt very threatened by ADA Pizzo throughout this whole case.



Elijah Joubert Agrees to Talk With Dewayne's Counsel

ms rothman

Hello How are you doing? well my name is Elijah Joubert I'm quite sure you already know who I am, So I Really don't have to explain who I am. But I just want you to know that I'm giving you my personal consent, that you can come and speak to me out and talk to me about any legal matters you want, I don't care what my lawyer's say, I'm only looking out for my friend that's my only concern.

Yours Truly
Elijah



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Joubert previously stated his desire to right the wrong by helping to clear Dewayne's name.

Affidavit of Elijah Dewayne Joubert

1. My name is Elijah Dewayne Joubert. I reside at the Polunsky Unit in Livingston, Texas. I was convicted of capital murder on October 21, 2004 for the events at ACE check cashing on April 3, 2003.
2. I have personal knowledge of the facts and circumstances before, during, and after the incident at ACE check cashing on April 3, 2003.
3. Alfred Dewayne Brown was not involved in any way with the incident on April 3, 2003 nor present at the ACE check cashing store on April 3, 2003.
4. In fact, I did not see Alfred Dewayne Brown on April 3, 2003.
5. I swear under the penalty of perjury that the foregoing is true.

Dated: 4-22-08 Elijah Joubert
Elijah Dewayne Joubert

Notary: Ruby Singleton
4-22-08

Ruby Singleton
Notary Public, State of Texas



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“Spring Cleaning”

Kaplan, Casey

From: Hardaway, Lynn [HARDAWAY_LYNN@dao.hctx.net]
Sent: Tuesday, April 09, 2013 6:26 PM
To: Ellis, Judge Mark (DCA)
Cc: Kaplan, Casey; Garcia, Linda
Subject: Alfred Brown

Judge Ellis—

As you can see, I am copying habeas counsel Casey Kaplan and ADA Linda Garcia on this e-mail.

The purpose of this e-mail to let you know that Breck McDaniel, the HPD officer who testified regarding the telephone records at the Brown trial, delivered to me today a box of materials related to the phone records in the Brown case. Officer McDaniel found these records over the weekend in cleaning out his garage. I have not had a chance to really review the records but wanted to make sure that habeas counsel had copies of these same records. Therefore, I copied the records and sent them via overnight delivery to habeas counsel.

Please let me know if you have any questions regarding this matter.

Lynn



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The Phone Record

U.S. MARSHAL'S SERVICE

REPORT NAME : CALLS DATABASE LISTING PAGE #1
 RUN DATE : 04/23/2003 RUN TIME : 14:50:26
 DESCRIPTION : MONEACD

*Doby G.F. Landline
South Loop*

<u>Target</u>	<u>Date</u>	<u>Time</u>	<u>Duration</u>	<u>Number Dialed</u>	<u>Dialed Name</u>	<u>Dialed City</u>
(713) 649-6385	04/03/2003	06:42:00	00:00:00	IN- (409) 256-1234	NO SUBSCRIBER.	GALVESTON
(713) 649-6385	04/03/2003	06:44:00	00:00:00	IN- (409) 256-1234	NO SUBSCRIBER.	GALVESTON
(713) 649-6385	04/03/2003	06:45:00	00:00:00	IN- (409) 256-1234	NO SUBSCRIBER.	GALVESTON
(713) 649-6385	04/03/2003	08:26:00	00:00:00	(832) 274-4130	DESHON GALASPIE-T-MOBILE CELL	HOUSTON
(713) 649-6385	04/03/2003	08:30:00	00:00:00	(281) 590-6316	BERRY, ALMA	HOUSTON
(713) 649-6385	04/03/2003	08:39:00	00:00:00	IN- (409) 256-1234	NO SUBSCRIBER.	GALVESTON
(713) 649-6385	04/03/2003	09:13:00	00:00:00	IN- (713) 842-3804	NO SUBSCRIBER.	HOUSTON
(713) 649-6385	04/03/2003	09:23:00	00:00:00	IN- (281) 590-3225	NO SUBSCRIBER.	ALDINE
(713) 649-6385	04/03/2003	10:07:00	00:00:00	IN- (713) 264-0244	NO SUBSCRIBER.	HOUSTON
(713) 649-6385	04/03/2003	10:08:00	00:00:00	(281) 590-6316	BERRY, ALMA	HOUSTON

(713) 649-6385 04/03/2003 10:08:00 00:00:00 (281) 590-6316 BERRY, ALMA HOUSTON



Phone Record Subpoena

This was sent *the day after* Ericka Dockery testified about the phone call, so this was critical to confirming the alibi.

APPLICATION

COMES NOW, the State of Texas, by and through her Assistant District Attorney, Dan Rizzo, and hereby request that an Order be signed requiring the herein named utility to furnish all Verbatim Call Records, including all incoming and outgoing call activity for the listed telephone number. And, to furnish to the Homicide Division of the Houston Police Department, through the below named officer, as soon as practical and at reasonable intervals during regular business hours, for the duration of this Order.

I.

The utility is Southwestern Bell Telephone Company (SBC)

II.

The subscriber is Monea Pickett. The telephone number is 713-649-6385

III.

The location of the instrument is 6969 South Loop East, Houston, TX 77087

IV.

The release of said telephone records are material to the investigation of a criminal offense; supporting information follows:



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Trial Court Ordered a New Trial – Granted by CCA 17 Months Later

1 THE COURT: Mr. Brown, I'm meaning what I
2 say. As soon as we can, with the cooperation of the
3 Court of Criminal Appeals, we will give you the trial
4 that you deserve. So, we'll see you then.

5 MR. KAPLAN: Thank you very much, Your
6 Honor. May I be dismissed?

7 THE COURT: Yes.

8 (Proceedings recessed)



May 2013

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October 2013

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April 2014

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May 2014

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June 2014

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July 2014

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August 2014

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September 2014

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October 2014

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**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. WR-68,876-01

EX PARTE ALFRED DEWAYNE BROWN

ON APPLICATION FOR POST-CONVICTION WRIT OF HABEAS CORPUS
FROM CAUSE NO. 1035159A IN THE 351ST DISTRICT COURT
HARRIS COUNTY

Per curiam.

OPINION

This is an application for a writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071.

In October 2005, a jury found applicant guilty of the offense of capital murder committed on April 3, 2003. The jury answered the special issues submitted pursuant to Texas Code of Criminal Procedure Article 37.071, and the trial court, accordingly, set applicant's punishment at death. This Court affirmed applicant's conviction and sentence on direct appeal. *Brown v. State*, 270 S.W.3d 564 (Tex. Crim. App. 2008).



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Applicant presents numerous allegations in his application in which he challenges the validity of his conviction and resulting sentence. In allegation V.D.3., applicant claims that the State withheld exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). The State conceded that material exculpatory evidence was withheld from applicant. The habeas court adopted the parties' agreed findings of fact and conclusions of law and recommended that this Court grant relief.

This Court has reviewed the record with respect to the *Brady* allegation made by applicant. Based on the habeas court's findings and conclusions and our own review, we hold that the State withheld evidence that was both favorable and material to applicant's case in violation of *Brady*. See also *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). Therefore, relief is granted. We dismiss as moot applicant's remaining challenges to his conviction and sentence.

We vacate applicant's conviction and sentence, and remand the case to the trial court for a new trial or other proceeding consistent with this opinion.

Delivered: November 5, 2014

DO NOT PUBLISH



DA Dismisses Charges

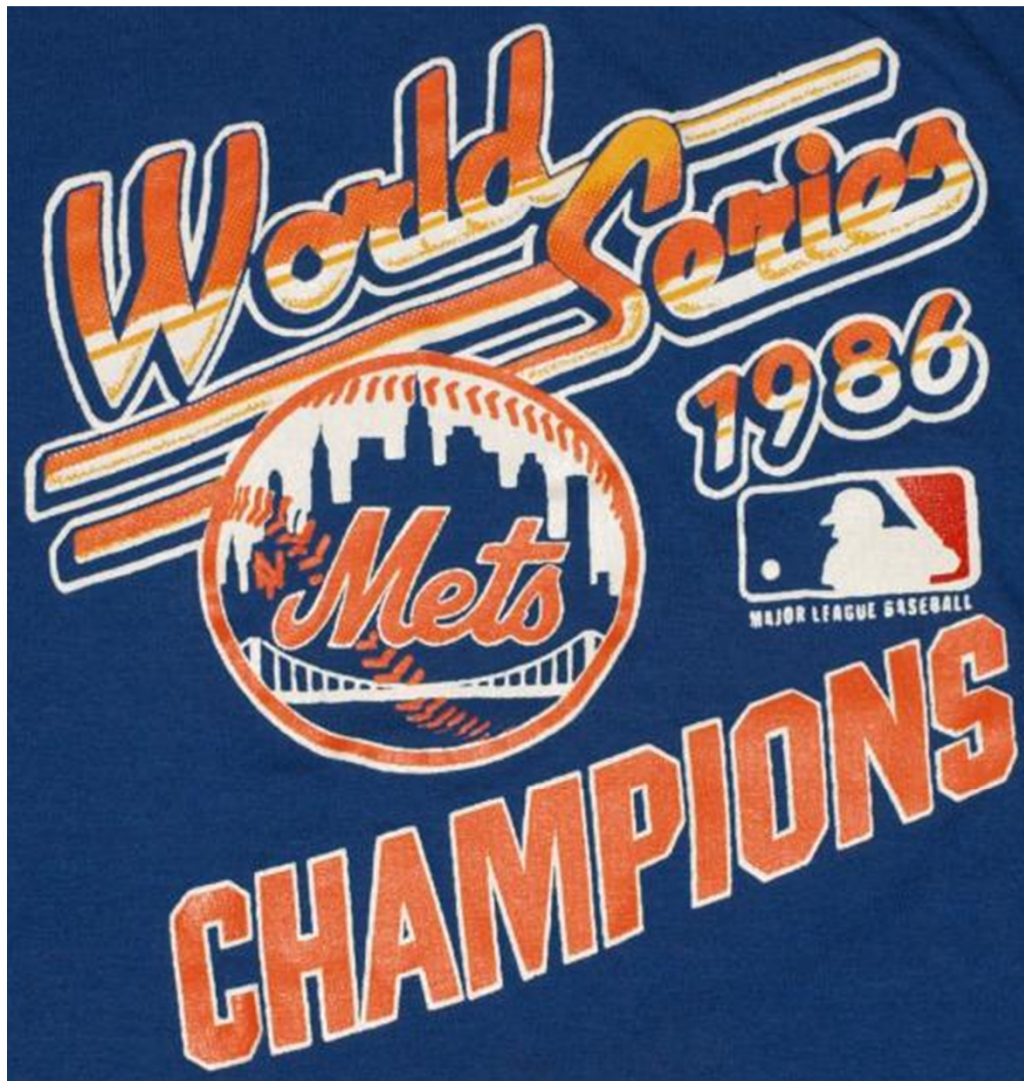
*“After very careful consideration, I have decided that at this time, there is insufficient evidence to corroborate the testimony of Brown’s co-defendant,” said Harris County DA Devon Anderson. “Accordingly, we dismissed Alfred Brown’s capital murder case earlier today. **It is the right thing to do.**” – June 8, 2015*



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DA Rizzo's Statements to Media About Phone Records

"This particular record, **I don't think we ever received it,**" Rizzo said of the landline phone record.

"I wanted to find out if this guy was potentially innocent, which could be the worst thing that ever happened to me, or anybody.

"I was shocked that it was there, first of all," he said. "I told her I'd be surprised I would have missed something."

"It should have been turned over to us and **it should have been turned over to the defense.**"



From: breckmcdaniel@[REDACTED]
To: rizzo_dan@da.co.harris.tx.us
Subject: Court order on Dobie's Girlfriend's Apartment's Home Phone
Date: Tuesday, April 22, 2003 4:21:40 PM
Attachments: APP.DOC
ORDER.DOC

Dan,

Here is a copy of the application and order on Dobie's girlfriend's apartment's home phone. Please let us know if the order looks correct and/or if further information is needed and please get it signed, or, let us know who can if you are tied up. I specifically want to ensure that the C.C.P. article quoted is the correct one for this order as I have never done one of these orders before. But, I think that the same article with SWB has already provided the records. Also, I do not know if you knew this until last Friday and never even knew that they could provide us call details are not billed individually. **However, I think it is a new development.**

However, I think it is a new development.

Regardless, I was hoping that it would clearly refute Erica's claim that she received a call at work(residence on Hartwick street) from Dobie at about 10 a.m. or so from her apartment, thereby, putting him at the apartment as an alibi as the nephews claim. **But, it looks like the call detail records from the apartment shows that the home phone dialed Erica's place of employment on Hartwick Street at about 8:30 A.M. and again at 10:08 A.M.** Erica claimed that the caller identification at the Hartwick house showed the apartment. Though this is possible, Erica dialed ghetto's cellular phone at 10:26 A.M. and the call connected with the phone at the apartments on Selinsky. Presumably, Erica knew that Dobie was with Ghetto and she called Ghetto's cell phone to reach Dobie.

Breck McDaniel

[breckmcdaniel@\[REDACTED\]](mailto:breckmcdaniel@[REDACTED])

Direct/Home: [REDACTED]
Cellular: [REDACTED]
Work: [REDACTED]
Pager/Voice Mail: [REDACTED]
Work Toll Free: [REDACTED]



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Statement from KIM OGG

News Release
March 2, 2018



Houston, Texas
Contact
mediarequest@dao.hctx.net

Harris County District Attorney

KIM OGG

Statement from Harris County District Attorney Kim Ogg Regarding Newly Discovered Evidence in
Alfred Brown Case

At the time Brown's conviction was challenged, the prosecution and defense agreed the failure to disclose the phone records was "inadvertent." The new evidence suggests, however, that well before Brown's trial, Rizzo was informed about the existence of the records, yet failed to disclose or provide them to the defense counsel or the jury. Without access to actual records, the defense was unable to use them in Brown's defense.



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KIM OGG Statement Continued...

Accordingly, the Harris County District Attorney's Office will notify the State Bar of Texas of the newly discovered evidence so that it may investigate the prosecutor's professional conduct while handling the Brown case.



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MAGNOLIAS' BLOOM
DISPELS GLOOM

PAGE D1



HOUSTON



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CHRONICLE

Saturday, March 2, 2019 | HoustonChronicle.com and Chron.com | Vol. 118, No. 140 | \$2.00 **

Mostly cloudy: High 71, Low 65

Brown found 'actually innocent' in killing

Ex-prosecutor, police union slam special counsel's scathing report

By Keri Blakinger
STAFF WRITER

More than 15 years after the murder of a south Houston police officer landed him on death row, the final report is in: Alfred Dewayne Brown is actually innocent.

The news came Friday as part of a sweeping review authored by special prosecutor John Raley, who started investigating the Brown case last year at the behest of Harris County District Attorney Kim Ogg.

"My obligation as an advocate is not to tell people what they want to hear but to tell them the truth," Ogg told a scrum of reporters gathered on the ground floor of the district attorney's office. "Alfred Brown was wrongfully convicted through prosecutorial misconduct."

The explosive findings offer far more than a simple take on Brown's guilt or innocence. The painstaking 179-page report — compiled over 10 months — also delves into alternate theories of the case, outlines possible other

suspects, details more extensive problems with the grand jury than previously reported and raises questions about what embattled former prosecutor Dan Rizzo knew and when he knew it.

"It is impossible to examine the conviction of Alfred Dewayne Brown without confronting prosecutorial misconduct," Raley wrote. "ADA Daniel Rizzo presided over a Grand Jury that abusively manipulated witnesses to supply evidence for a chosen narrative. He was provided notice of

Brown continues on A11



Alfred Brown, with daughter Klearra Simon, spent 12 years in prison in the 2003 killing of Houston police officer Charles Clark before being released in 2015.

Staff file photo

Plane's voice recorder retrieved

Search continues

Hats off to these tutu cuties



Divided church sect in turmoil



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B. State's Attorney's Certification of Alfred Brown's Innocence

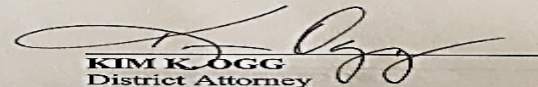
The undersigned state's attorney, Harris County District Attorney Kim Ogg, has accepted Special Prosecutor Raley's report and comes now before this Honorable Court to present this Amended Motion to Dismiss, specifically detailing the reasons as follows:

- (1) The undersigned states that no credible evidence exists that inculpates Alfred Brown in the April 3, 2003 murder of Charles Clark as alleged in Cause No. 1035159.
- (2) The undersigned believes that Alfred Brown is actually innocent of the capital murder for which he was convicted and sentenced to death on October 25, 2005 in Cause No. 1035159.

**III.
Conclusion**

For the foregoing reasons, the State of Texas moves to dismiss the criminal matter docketed as Cause No. 1035159.

Respectfully submitted,



KIM K. OGG
District Attorney
Harris County, Texas
State Bar of Texas No. 15230200



HOUSTON CHRONICLE

FOUNDED 1901 • A HEARST NEWSPAPER

PAUL BARBETTA, *Executive VP and*

JACK SWEENEY, *Chairman*

An innocent man

Justice is upheld by the DA dropping charges against Alfred Dewayne Brown.

The Texas Code of Criminal Procedure states that it is the primary duty of all prosecuting attorneys “not to convict, but to see that justice is done.” With her announcement Monday that charges would be dropped against Alfred Dewayne Brown, Harris County District Attorney Devon Anderson has done her duty.

disagrees.

Houston Police Chief Charles McClelland has reiterated in public statements that he still believes Brown is guilty, as has Officer Joseph Gamaldi, the police union’s 2nd vice president. The police union Twitter feed also continues to refer to Brown as a “murderer.”

Officers like McClelland and Gamaldi



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Opinion > Editorials

Editorials

Editorial: Another big reason to rethink capital punishment

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Capital Flows
CONTRIBUTOR

Guest commentary
curated by Forbes
Opinion.

FULL BIO >

Opinions expressed by Forbes
Contributors are their own.

GUEST POST WRITTEN BY

Rick Perry

Rick Perry, a two-time presidential candidate, was the 47th Governor of Texas, serving from 2000 to 2015.



Former Texas Gov. Rick Perry delivers remarks about improving African-American lives at the annual meeting of the American Legislative Exchange Council in Indianapolis on July 27, 2016. (ALEC)

Gov. Perry delivered these remarks on July 27, 2016, at the 43rd annual meeting of the American Legislative Exchange Council in Indianapolis, Indiana.

YOU COULD SAY THIS STORY has a happy ending, because Alfred was released. But his life was almost ruined because of an overzealous prosecutor who concealed exonerating evidence. And Ericka's children were put in harm's way because of a grand jury that acted as the arm of the prosecution, rather than as an independent check on government power. Sometimes we forget that the IRS isn't the only government agency capable of abusing its authority. Anyone wielding the power of the state faces the temptation to abuse it. And when it comes to prosecutors, there are clearly bad apples in the system who care more about indicting someone—anyone—than they care about convicting the right person. You may know that I was indicted in 2014 on two frivolous felony charges. Eventually, those charges were dismissed, because I was lucky enough to have high-powered lawyers working for me. Ericka Jean Dockery had no such luxury. **When ambitious prosecutors go overboard, the true victims aren't people like you or me; they're people like Ericka and Alfred who don't have the means to fight back.**



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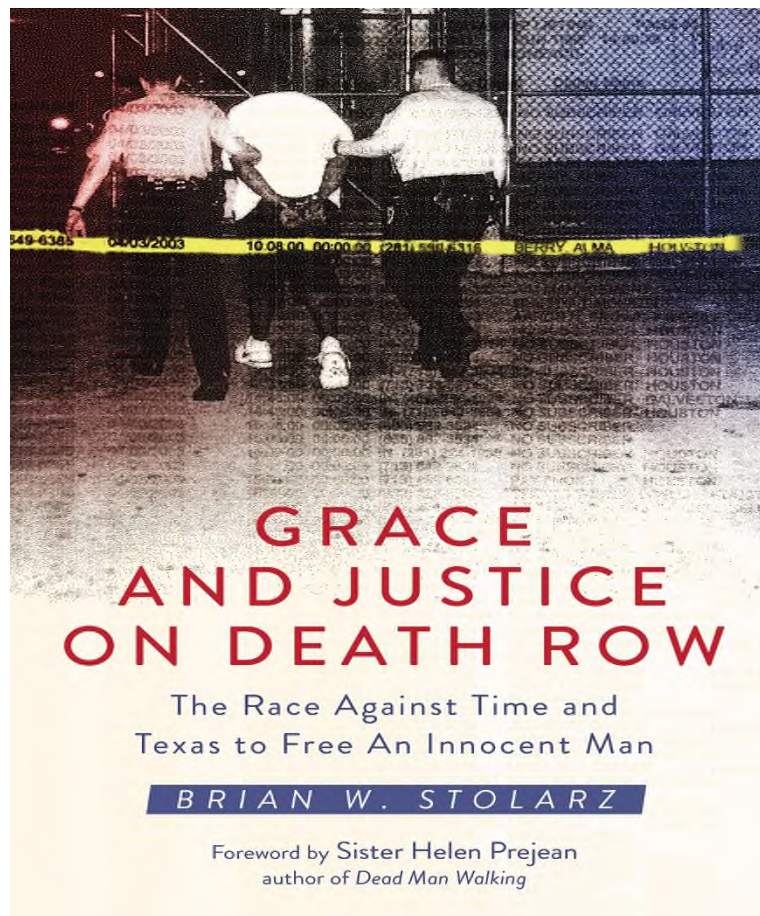
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Washington Post bestsellers: Oct. 23, 2016

Brian Stolarz, bstolarz@foxrothschild.com,
[@brianstolarz](https://twitter.com/brianstolarz) on Twitter

Grace and Justice on Death Row: The Race against Time and Texas to Free an Innocent Man Hardcover – October 25, 2016

by Brian W. Stolarz (Author)

#1 New Release in Family & Health Malpractice Law



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Fundraiser by Brian Stolarz : The x Fundraiser by Brian Stolarz : The x +

gofundme.com/f/hjwh7f-the-innocence-files-support-dewayne-brown?utm_source=customer&utm_medium=email&utm_campaign=...

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The Innocence Files -- Support Dewayne Brown!



\$365 raised of \$2000

6 donors 33 shares 6 followers

Scott Inman
\$50 • 3 hr

Anonymous
\$100 • 6 hr

Gloria Ruben
\$25 • 10 hr



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Robert H. Edmunds, Jr., Counsel and Former Justice of the North Carolina Supreme Court



bedmunds@foxrothschild.com
Tel: 336.378.5446

Justice Edmunds served as an appellate judge for 18 years, most recently as Senior Associate Justice of the Supreme Court of North Carolina. Justice Edmunds now serves clients with that same dedication, assisting them with a range of appellate issues.

Justice Edmunds helps clients navigate complex criminal and civil appeals in state and federal court. He also protects clients' interests in constitutional and other high-stakes litigation. Justice Edmunds draws from his breadth of experience in government and the private sector. He is board certified as a specialist in appellate practice, state criminal law and federal criminal law.

Justice Edmunds is a former Chair of the North Carolina Bar Association Appellate Rules Committee, President of the Appellate Judges Education Institute and is a member of the board of directors of BarCares. He is the recipient the "Chief Justice's Professionalism Award" by the North Carolina Chief Justice's Commission on Professionalism.



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