

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
TENTH JUDICIAL CIRCUIT, CRIMINAL DIVISION**

TOFOREST O. JOHNSON,)	
)	
Petitioner,)	
)	
v.)	CASE NO: CC-1996-386.61
)	
STATE OF ALABAMA,)	
)	
Respondent.)	

**BRIEF OF ALABAMA LAW STUDENTS AS *AMICI CURIAE* IN SUPPORT OF
PETITIONER TOFOREST JOHNSON’S REQUEST FOR A NEW TRIAL**

Toforest Johnson’s case presents a prime opportunity for the justice system to work the way Alabama law students are taught that it does—as an instrument of truth and justice. But without this Court’s lawful intervention, Mr. Johnson’s case threatens to gravely discredit the principled ideals that this state’s law schools instill in the next generation of Alabama lawyers.

Amici—over 100 current law students in Alabama, spanning a wide ideological spectrum—are moved to add their voices to the call for justice in this case. They have witnessed a rare and diverse coalition of legal and community leaders unite in support of a request for a new trial for Toforest Johnson, a man on Alabama’s death row. Former prosecutors and judges, faith leaders, law professors, legal ethics experts, leaders in the criminal defense bar, and other community leaders have joined with Jefferson County District Attorney Danny Carr and the lead trial prosecutor in Mr. Johnson’s case to ask this Court to grant Mr. Johnson a new trial.

As students, these *amici* do not have the years of experience the other *amici* have. But they have a significant stake in our justice system; indeed, they represent its future. With hope that the lessons taught in Alabama’s legal classrooms hold true in Alabama’s courtrooms, law students from across Alabama submit this brief supporting Mr. Johnson’s request for a new trial.

IDENTITY AND INTEREST OF AMICI CURIAE

Amici, listed below, are 120 current law students from Alabama’s five law schools: The University of Alabama School of Law, Cumberland School of Law, Thomas Goode Jones School of Law, Miles Law School, and Birmingham School of Law. Many, if not most, intend to practice law in Alabama. Many are already registered with the Alabama State Bar. They are the future leaders of Alabama’s legal community and the product of its teachings, mentorship, and guidance.

Amici come from diverse backgrounds and represent a broad spectrum of ideologies, faiths, races, regions, and generations. Some were born and raised in Alabama, while others have newly made it home. They plan to work in varying fields of law. They are members of the following organizations: American Constitution Society, Federalist Society, Black Law Students Association, Student Bar Association, National Moot Court Competition Teams, various law reviews, Dorbin Women’s Association, First Generation Law Students Association, Hispanic National Bar Association, Middle Eastern and South Asian Law Students Association, Bench and Bar Honor Society, Parents Attending Law School, Women in Law Society, Military Justice Society, Environmental Law Society, Business Law Society, Christian Legal Society, Criminal Law Society, and more. *Amici* embrace these differences because they believe the legal system works best with a multitude of perspectives. More importantly, they embrace the shared responsibility of upholding the integrity and fairness of the legal system they are studying. That responsibility is why they collectively feel compelled to add their voices to the many others who believe that justice—the fundamental principle for which the legal profession strives—requires that Mr. Johnson receive a new trial.

LAW STUDENT AMICI:

Katrina M. Smith
University of Alabama School of Law '22

Erica Webb
University of Alabama School of Law '22

Chris Aiken
University of Alabama School of Law '22

Cole Adams
University of Alabama School of Law '23

Marcus Armband
University of Alabama School of Law '22

Crystal Armstrong
University of Alabama School of Law '23

Rebecca Atkin
Cumberland School of Law '23

Frank Johnson Baxley
Cumberland School of Law '24

Christian Bayas
Cumberland School of Law '24

Adrianna Bayles
Cumberland School of Law '24

Adelaide Beckman
University of Alabama School of Law '22

Spencer Bowley
University of Alabama School of Law '22

Lauren Bradley
Cumberland School of Law '23

Treona Brown
Cumberland School of Law '24

William Bruner
Cumberland School of Law '24

Kelsey Cain
Cumberland School of Law '22

Haley Carter
University of Alabama School of Law '22

Jackson Colburn
University of Alabama School of Law '22

Anne Compton
University of Alabama School of Law '24

Brantley Cook
University of Alabama School of Law '24

Raine Cook
University of Alabama School of Law '23

Haley Czarnek
University of Alabama School of Law '22

Natalie Daniel
University of Alabama School of Law '22

Chloe Dasinger
Cumberland School of Law '23

Bryce Dean
University of Alabama School of Law '23

Caroline Dean
University of Alabama School of Law '23

Lucie Dierikx
University of Alabama School of Law '23

Cameron Dobbs
University of Alabama School of Law '23

Lamar Dukes
Cumberland School of Law '24

Cierra Ferrell
Cumberland School of Law '22

Julian Garner
Cumberland School of Law '22

Summer George
Cumberland School of Law '23

Morgan Grissett
Cumberland School of Law '23

Wala Hijaz
Thomas Goode Jones School of Law '22

Brandon Hobbs
University of Alabama School of Law '22

Brian Hottinger
University of Alabama School of Law '22

Hope Hudgins
University of Alabama School of Law '24

Hunter Jackson
University of Alabama School of Law '23

Demarcus Joiner
University of Alabama School of Law '24

Hannah Dillashaw
Cumberland School of Law '24

Matt Duggan
University of Alabama School of Law '22

Kalen Early
Cumberland School of Law '24

Kiara Freeman
Cumberland School of Law '22

William Samuel Gaston
Cumberland School of Law '24

Tiyona Griggs
University of Alabama School of Law '22

Julius Hammond
University of Alabama School of Law '24

Aliah Hill
Cumberland School of Law '24

Chotsani Holifield
Cumberland School of Law '24

Caleb Howard
University of Alabama School of Law '23

Aryne Hudson
University of Alabama School of Law '22

Jalen Johnson
Cumberland School of Law '23

Erin Jolley
University of Alabama School of Law '24

Victoria Jones
University of Alabama School of Law '24

Kiana Kennamore
Cumberland School of Law '22

Courtney Kirbis
University of Alabama School of Law '24

Alan Kouns
Thomas Goode Jones School of Law '22

Katie Larsen
Cumberland School of Law '22

Taylor Lavin
Cumberland School of Law '23

Brianna Lewis
University of Alabama School of Law '24

Angelica Mamani
University of Alabama School of Law '22

Sara Martin
Cumberland School of Law '22

Byron McMath
Birmingham School of Law '22

Makenzie L. Moore
University of Alabama School of Law '22

Amethyst Muncy
University of Alabama School of Law '23

Margaret Olsen
University of Alabama School of Law '22

Cassidy Keith
University of Alabama School of Law '22

Hannah King
University of Alabama School of Law '24

Allison Koszyk
University of Alabama School of Law '22

Makenna Krist
University of Alabama School of Law '24

Rubayet Lasker
University of Alabama School of Law '22

LaDara Lee
Miles Law School '22

Aaliyah Locke
University of Alabama School of Law '22

Mark Martin
Cumberland School of Law '22

Meghan McLeroy
University of Alabama School of Law '23

Amani Moore
University of Alabama School of Law '23

Lejla Mujadzic
University of Alabama School of Law '23

Julie Newton
University of Alabama School of Law '23

Anne Ormond
University of Alabama School of Law '22

Carmen Paige
University of Alabama School of Law '24

Kelsey Perine
University of Alabama School of Law '24

Aditi Prasad
University of Alabama School of Law '22

Ariel Ramirez
Thomas Goode Jones School of Law '22

Samantha Reiersen
University of Alabama School of Law '23

Holly Russo
University of Alabama School of Law '22

Taylor Shetina
University of Alabama School of Law '22

Dakota Slaughter
University of Alabama School of Law '22

Karli Smith
University of Alabama School of Law '23

Lauryn Smith
Cumberland School of Law '24

Caleb Smoke
University of Alabama School of Law '22

Matthew Spencer
University of Alabama School of Law '22

Maya Stevenson
University of Alabama School of Law '24

Chloe Patterson
Cumberland School of Law '23

Nathan Poulosky
University of Alabama School of Law '24

Antoinette Pruitt
Cumberland School of Law '22

Roxana Ramos
University of Alabama School of Law '23

Samantha Renshaw
University of Alabama School of Law '22

Varian Shaw
Thomas Goode Jones School of Law '22

Bachittar Singh
University of Alabama School of Law '24

Erin Smith
University of Alabama School of Law '24

Laura Kate Smith
University of Alabama School of Law '23

Ryne Smith
University of Alabama School of Law '22

Diana Snellgrove
University of Alabama School of Law '23

Shelby Soares
Cumberland School of Law '23

Samantha Szekely
Cumberland School of Law '23

Cooper Taylor
University of Alabama School of Law '22

Shelby Taylor
University of Alabama School of Law '23

Xavier Thomas
Thomas Goode Jones School of Law '22

Monroe Thornton III
Cumberland School of Law '23

Claire Tomberlin
Cumberland School of Law '24

Hunter Tucker
University of Alabama School of Law '24

Madeline Turner
University of Alabama School of Law '23

Maggie Utsey
Cumberland School of Law '24

Vincent Van Deventer
Cumberland School of Law '24

Jordan Van Gundy
University of Alabama School of Law '22

Jaleel Washington
University of Alabama School of Law '23

Mariah Welter
University of Alabama School of Law '24

Carlos Whitaker
Cumberland School of Law '24

Angela Whitlock
Cumberland School of Law '24

Carneil Wilson
University of Alabama School of Law '22

Christopher Wilson
University of Alabama School of Law '22

BACKGROUND

On July 19, 1995, Deputy Sheriff William G. Hardy was tragically murdered. Toforest Johnson and another man, Ardragus Ford, were both separately prosecuted for the crime by the Jefferson County District Attorney's Office. Both men were prosecuted twice because the jury was unable to agree on a guilt-phase verdict during their initial trials.¹ In their second trials, Mr. Ford was acquitted, but Mr. Johnson was convicted and sentenced to death.² For the past twenty-six years, Mr. Johnson has steadfastly maintained his innocence.

After Jefferson County District Attorney Danny Carr was elected to office in 2018, he began a review of potentially wrongful convictions, including Mr. Johnson's case. Following an extensive nine-month investigation, DA Carr took the unusual step of asking this Court to grant Mr. Johnson a new trial in the interest of justice.³ DA Carr identified five specific concerns that undermine confidence in Mr. Johnson's conviction and compel a new trial: (1) the state presented five conflicting theories as to who shot the victim in this case; (2) Mr. Johnson was originally implicated, in large part, by the testimony of a juvenile witness who later admitted to lying under oath; (3) the jury never heard testimony from multiple alibi witnesses who placed Mr. Johnson at another part of town at the time of the shooting; (4) the state paid the star trial witness \$5,000, which was not disclosed to the defense or the jury; and (5) the lead trial prosecutor has serious concerns about the case and supports the request for a new trial.⁴

In December 2020, Mr. Johnson filed a new petition under Alabama Rule of Criminal

¹ See *Johnson v. State*, 823 So. 2d. 1, 27 n.5 (Ala. Crim. App. 2011).

² *Id.* at 9.

³ See Jefferson County District Attorney's *Amicus Curiae* Brief in Support of Petitioner, Doc. 326 at ¶¶ 1-5, No. 01-CC-1996-00386.60 (June 12, 2020).

⁴ *Id.*

Procedure 32 asking this Court to give great weight to DA Carr’s request for a new trial.⁵ In March 2021, seven groups representing a diverse cross-section of lawyers and community leaders filed amicus briefs also urging this Court to grant a new trial: (1) former Alabama judges and state bar leaders, represented by Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.; (2) former Alabama prosecutors, represented by Battle & Winn LLP; (3) the Jefferson County Public Defender’s Office and leaders in the Alabama criminal defense community, represented by themselves; (4) Alabama legal ethics scholars, represented by Balch & Bingham LLP; (5) The Innocence Project, represented by itself and Bradley Arant Boult Cummings LLP; (6) Alabama Appleseed Center for Law and Justice, represented by itself and Lightfoot, Franklin & White LLC; and (7) faith leaders in the greater Birmingham community, represented by Sirote & Permutt, P.C. *Amici* law students now urge the Court to heed this unified chorus and uphold the interests of justice by granting Mr. Johnson a new trial.

ARGUMENT

In their legal classrooms, *amici* are taught fundamental principles of justice, ethics, and integrity that undergird our legal system. DA Carr’s courageous request for a new trial—joined by the united voices of the lead trial prosecutor and an unlikely coalition of Alabama lawyers and leaders—exemplifies those principles. This case presents a real-life opportunity to affirm and uphold the paramount importance of these principles in Alabama’s courts as well as its classrooms, and *amici* urge the Court to do so by granting Mr. Johnson a new trial.

I. ALABAMA’S LAW SCHOOLS TEACH *AMICI* FUNDAMENTAL PRINCIPLES OF JUSTICE, ETHICS AND INTEGRITY.

Alabama’s law schools seek to instill in their students the foundational principles and ideals

⁵ See Petition for Relief from Conviction and Death Sentence Pursuant to Rule 32 of the Alabama Rules of Criminal Procedure, No. 01-CC-1996-00386.61 (Dec. 9, 2020).

that undergird our legal system, such as seeking justice and acting with integrity. The University of Alabama School of Law tells its students that “[i]n no profession are honesty and integrity and a sense of mutual trust more important than in the legal profession.”⁶ Cumberland School of Law’s stated mission is to create “ethical lawyers committed to professionalism and public service.”⁷ Similarly, Miles Law School aims to “produce lawyers committed to public service.”⁸ At the Thomas Goode Jones School of Law, they “seek students who yearn to learn the law so that they may seek justice.”⁹ At Birmingham School of Law, they prioritize “not only the black letter law but how law functions in daily practice and in the courtroom.”¹⁰ In Criminal Law classes, *amici* are taught that trials are about presenting facts, not creating them. In Legal Ethics and Professional Responsibility courses, *amici* are taught that prosecutors who learn of a defendant’s innocence are required to “remedy the conviction.”¹¹ In experiential courses, *amici*’s clinical professors teach them that the ultimate goal of seeking justice is more important than winning a case.

Ultimately, *amici*’s education will culminate in a sworn oath to champion the foundational values of our profession. The Alabama Lawyers’ Creed details these values. The Creed commits attorneys to “offer fairness, integrity and civility” to opposing parties; to offer candor and respect to courts; and to strive to “do honor to the search for justice,” “improve the law and our legal

⁶ *Student Handbook*, THE UNIVERSITY OF ALABAMA SCHOOL OF LAW, <https://www.law.ua.edu/misc/handbook.pdf> (last updated Aug. 9, 2019).

⁷ SAMFORD UNIVERSITY CUMBERLAND SCHOOL OF LAW, *About*, <https://www.samford.edu/cumberlandlaw/about#:~:text=The%20mission%20of%20Cumberland%20School,to%20professionalism%20and%20public%20service> (last visited Aug. 3, 2021).

⁸ MILES LAW SCHOOL, *About Miles Law School*, <https://mlaw.edu/about-miles-law/> (last visited Aug. 3, 2021).

⁹ FAULKNER LAW THOMAS GOODE JONES SCHOOL OF LAW, *About Faulkner Law*, <https://law.faulkner.edu/about-faulkner-law/> (last visited Aug. 3, 2021).

¹⁰ BIRMINGHAM SCHOOL OF LAW, *Why Attend BSL?*, <https://bsol.com/about/why-attend-bsl/> (last visited Aug. 3, 2021).

¹¹ *See* Model Rule of Professional Conduct 3.8(h); *see also* Brief of Amici Curiae Law Professors in Support of Petitioner, Doc. 36, No. 01-CC-1996-00386.61 (Mar. 9, 2020).

system,” make the legal system “available to all,” and “seek the common good.”¹²

II. THIS CASE PRESENTS THE OPPORTUNITY TO AFFIRM THE IMPORTANCE OF THESE FUNDAMENTAL PRINCIPLES.

Toforest Johnson’s case is a paramount opportunity to affirm the real-world significance of the ideals of justice and integrity *amici* are studying in Alabama’s law schools. The actions of DA Carr and the lead trial prosecutor exemplify these principles and merit this Court’s deference.

Consistent with the Alabama Lawyer’s Creed, DA Carr sought to “improve the law and our legal system” by intervening in this case because of his “duty to the Court and the People of Jefferson County.”¹³ DA Carr recognized that his duty to justice and the community must rise above loyalty to his office. The five conflicting theories of this case, the missing testimony from alibi witnesses, and the money paid to the crucial witness all indicate that the whole truth was not presented to the jury at Mr. Johnson’s trial. DA Carr properly recognized that this is deeply troubling and unacceptable, particularly in a death penalty case.

The lead trial prosecutor in Mr. Johnson’s case similarly chose to “do honor to the search for justice” and “seek the common good” by supporting the request for a new trial, even though it means his professional record will reflect one fewer conviction in a prominent case.

DA Carr and the lead trial prosecutor refused to remain silent, even with their own reputations on the line, because they recognized that the interests of justice require granting Mr. Johnson a new trial and that they had an ethical obligation to speak out. By refusing to take the “easier” route of doing nothing and letting a flawed record stand, these attorneys exemplify the lessons taught in *amici*’s law school courses—a level of integrity to which *amici* aspire in their

¹² ALA. STATE BAR, *Ethics Division*, <https://www.alabar.org/office-of-general-counsel/ethics-division/> (last visited Aug. 3, 2021).

¹³ *See supra* note 3, at ¶¶ 1-2.

future legal careers.

The unlikely coalition of *amici* supporting a new trial is also significant. They include former prosecutors,¹⁴ criminal defense attorneys,¹⁵ and many others.¹⁶ Notable *amici* include former Chief Justice Drayton Nabers, Jr.,¹⁷ former U.S. magistrate judge (and professor to some *amici* law students) John Carroll; former U.S. Attorney (and professor to some *amici* law students) Joyce Vance; and former Alabama Attorney General Bill Baxley. Mr. Baxley has also spoken out in the media.¹⁸ The best classroom is the real world, and the values these professors and leaders teach are put to the test in this case. If trials are about finding truth, if defendants have a right to due process, if the legal profession is committed to the search for justice, then Mr. Johnson should be granted a new trial.

As far as *amici* are aware, no court has ever allowed an execution to proceed when both the district attorney and the lead prosecutor agree that the defendant's conviction should not stand,¹⁹ and this Court should not be the first. Rather, the Court should defer to DA Carr's request for a new trial to ensure that justice is "available to all," including Mr. Johnson. The honesty and

¹⁴ See Brief *Amicus Curiae* of Former Alabama Prosecutors, Doc. 20, No. 01-CC-1996-00386.61 (Mar. 9, 2020).

¹⁵ See Jefferson County Public Defender's Office, Alabama Criminal Defense Lawyers Association, Greater Birmingham Criminal Defense Lawyers Association, and Private Defense Counsel *Amicus Curiae* Brief In Support of Petitioner, Doc. 31, No. 01-CC-1996-00386.61 (Mar. 9, 2020).

¹⁶ See Alabama Appleseed's *Amicus Curiae* Brief In Support of Petitioner, Doc. 38, No. 01-CC-1996-00386.61 (Mar. 9, 2020); Brief of *Amicus Curiae* Greater Birmingham Ministries and Other Members of the Jefferson County Faith Community In Support of Petitioner, Doc. 57, No. 01-CC-1996-00386.61 (Mar. 9, 2020); The Innocence Project's *Amicus Curiae* Brief In Support of Petitioner, Doc. 45, No. 01-CC-1996-00386.61 (Mar. 9, 2020).

¹⁷ See Brief of Former Members of the Alabama Supreme Court and Alabama Court of Criminal Appeals and Former Alabama Bar Association Presidents as *Amici Curiae* in Support of Petitioner Johnson's Request for a New Trial, Doc. 42, No. 01-CC-1996-00386.61 (Mar. 9, 2020).

¹⁸ See Bill Baxley, *As A Former Alabama Attorney General, I Do Not Say This Lightly: An Innocent Man Is On Our Death Row*, WASH. POST (Mar. 9, 2021).

¹⁹ See *supra* note 5, at ¶ 29.

integrity of the legal profession is maintained by the reckoning of errors, and it is a far greater public service to allow the justice system to correct itself through a lawful, fair trial than to let a deprivation of due process stand. Righting a wrong is a showing of the strength of our justice system, not a weakness.

CONCLUSION

The law students of Alabama are watching this case. By granting Toforest Johnson's request for a new trial, this Court has a significant opportunity to do justice and affirm that the principles and ideals being taught in Alabama's legal classrooms have real-world application in Alabama's courtrooms. *Amici* law students of the state of Alabama urge this Court to heed the unified voices of DA Carr and the lead trial prosecutor, as well as the diverse group of other *amici curiae*, and grant Mr. Johnson's Request for a New Trial in the interests of justice.

DATED: September 7, 2021.

Respectfully submitted,

/s/ Emily J. Tidmore*

Emily J. Tidmore (VAN 041)
 Spotswood Sansom & Sansbury LLC
 Financial Center
 505 20th Street North, Suite 700
 Birmingham, Alabama 35203
 Telephone: (205) 986-3625
 Fax: (205) 986-3639
 Email: etidmore@spotswoodllc.com

Counsel for Alabama law students as amici curiae

* Katrina M. Smith and Erica Webb, third-year law students at the University of Alabama, contributed significantly to the drafting of this brief.

CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2021, the foregoing document was filed electronically with the Clerk using the Alafile system and served via email on the following counsel:

Steve Marshall
Jon B. Hayden
Office of the Attorney General
Capital Litigation Division
501 Washington Avenue
Montgomery, AL 36130-0152
jon.hayden@alabamaag.gov

Ty Alper
talper@law.berkeley.edu

Kathryn Miller
kathryn.miller@yu.edu

Katherine Moss
kmoss@schr.org

Patrick Mulvaney
pmulvaney@schr.org

Danny Carr
Jefferson County District Attorney
carrd@jccal.org

/s/ Emily J. Tidmore

OF COUNSEL