

Oversight of prosecutorial decision making and conduct

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Resources for conference:

<https://tinyurl.com/burge2023>

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#burge2023



10:00 am: Welcome

Professor Courtney Anderson, Associate Dean for Academic Affairs

10:05 am: Overview

Professor Clark Cunningham, W. Lee Burge Chair in Law & Ethics, GSU College of Law, Director, National Institute for Teaching Ethics & Professionalism

Ahmaud Arbery February 23, 2020



Travis McMichael and Greg McMichael



Greg McMichael and Travis McMichael



Greg and Travis McMichael

DA Jackie Johnson with Greg McMichael,
former employee of DA's office



May 6, 2020

Cellphone video shows a Georgia jogger allegedly ambushed by 2 gunmen

Ahmaud Arbery was shot and killed on Feb. 23.

By [Christina Carrega](#)

May 6, 2020, 5:21 PM



May 8, 2020

Glynn County commissioners say DA blocked arrests after fatal shooting



CONTINUING COVERAGE: BRUNSWICK AREA SHOOTING

By Christian Boone and Bert Roughton Jr.

May 8, 2020



May 12, 2020



The GBI investigating possible prosecutorial misconduct on behalf of Johnson and another district attorney in Arbery's case.

BRUNSWICK, Ga. – One of the men facing murder charges in the death of Ahmaud Arbery spent more than two decades as the chief investigator for the Brunswick District Attorneys Office.

Last Thursday, **Gregory McMichael and his son, Travis, were arrested and charged with felony murder and aggravated arrest.** We've known since we first reported Arbery's Feb. 23 shooting death that the father of the man who fired the fatal shots was a retired investigator with the DA's office -- a fact that contributed the Georgia Attorney General's request for state and federal investigations of why the two men were not arrested for 2½ months.

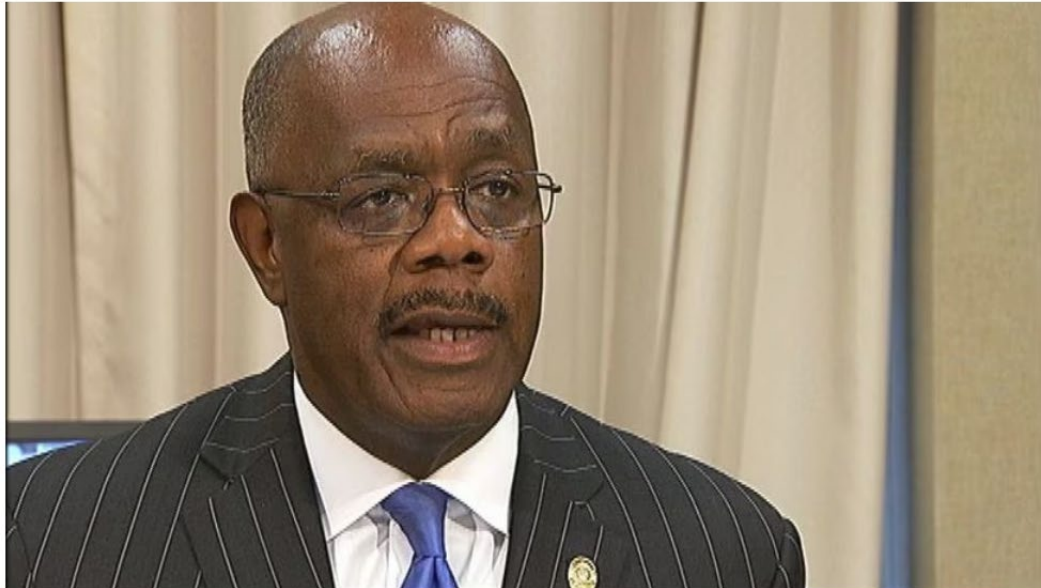
GBI Receives Request from AG Carr to Conduct Investigation into Handling of Ahmaud Arbery Case

MAY 12, 2020

Decatur, GA (May 12, 2020) – On Monday, May 11, 2020, Attorney General Chris Carr requested that the GBI open an investigation into a case involving possible prosecutorial misconduct by the offices of the District Attorneys of the Brunswick and Waycross Judicial Circuits.

Fulton County DA Paul Howard April – May 2020

Nonprofit meant to stem gang violence used to pay Fulton DA



AJC INVESTIGATION

By [Bill Rankin](#)

April 9, 2020



GBI opens probe of Fulton DA Paul Howard over use of nonprofit funds



AJC / CHANNEL 2 ACTION NEWS INVESTIGATION

By [Bill Rankin](#)

May 4, 2020



June 16, 2020

- On June 16, Robert Trammell, the minority leader of the Georgia House of Representatives, introduced as part of “Justice for All” package of 12 criminal reform bills, House Bill 1214, a measure that would amend Georgia law to create a District Attorneys Oversight Commission.
- This proposal would give the commission “the power to discipline, remove and cause involuntary retirement of district attorneys.” The commission would consist of 10 members—seven on an investigative panel and three on a hearing panel.

February 17, 2021 DA Dick Donovan

- Gov. Brian Kemp on Wednesday signed an executive order suspending Paulding County District Attorney Donald Richard "Dick" Donovan.
- Donovan was indicted Feb. 17 for bribery, two counts of false swearing and violating his oath of office.
- Donovan is accused of committing bribery when he dismissed a criminal case in Paulding County Superior Court in which the defendant was being represented by the prosecutor of the municipal court in nearby Cedartown.
- In exchange, the indictment alleged Donovan was trying to influence the prosecutor to dismiss a shoplifting case in the Cedartown court that was pending against a woman who worked in his office.
- The indictment also alleges Donovan lied when he denied "ever having said that he wanted to have sex" with [that woman] and that he lied when he denied "describing his fantasies desiring to be physical" with the woman.

Federal grand jury investigating former DA Paul Howard

March 16, 2021

- A federal grand jury in Atlanta is investigating former Fulton County District Attorney Paul Howard and his use of a nonprofit to pad his salary with almost \$200,000 in city of Atlanta funds

DA Mark Jones

November 15, 2021

- Georgia prosecutor pleads guilty, resigns as jury deliberates his case
- Mark Jones had already been suspended as Chattahoochee Judicial Circuit district attorney after the state attorney general's office obtained the indictment Sept. 7.
- It accused him of trying to influence a police officer's testimony, offering bribes to prosecutors in his office and trying to influence and prevent the testimony of a crime victim.

January 26, 2022


- Former Paulding County District Attorney Dick Donovan pleaded guilty to one misdemeanor count of unprofessional conduct Thursday and was sentenced to 12 months of probation.
- As part of his plea deal, Donovan, 76, has resigned as DA and must surrender his law license. Donovan, who had served as DA since 2010, was indicted in February on charges of bribery, violation of oath by public officer and two counts of false swearing.

September 2, 2021

The New York Times

Arbery's Death Faces Criminal Charges

Jackie Johnson was indicted by a grand jury in Glynn County, Ga., on charges of “violation of oath of public officer” and “obstruction and hindering a law enforcement officer.”

 Share full article



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Carr Announces Indictment of former Brunswick DA for Violation of Oath of Public Officer and Obstruction of a Law Enforcement Officer



- [DA Jackie Johnson] violated her oath by showing favor and affection to Greg McMichael during the investigation into the shooting death of Ahmaud Arbery
- did knowingly and willfully hinder Stephanie Oliver and Stephan Lowrey, law enforcement officers, in the lawful discharge of their official duties by directing that Travis McMichael should not be placed under arrest

Waycross DA George Barnhill

- After the shooting of Ahmaud Arbery, [DA Johnson] sought the assistance of Waycross Judicial Circuit District Attorney George E. Barnhill
- and, after disqualifying her office, recommended DA Barnhill to the Attorney General's Office for appointment as the case prosecutor
- without disclosing that [DA Johnson] had previously sought the assistance of DA Barnhill on the case



Prosecutorial ethics are in the spotlight after the death of Ahmaud Arbery ABA Journal

- DA Barnhill's son was an assistant district attorney working for District Attorney Johnson.
- Barnhill's son had worked with Greg McMichael in a prosecution of Arbery when Arbery was in high school.
- Barnhill did eventually disclose to the attorney general's office that he had a disqualifying conflict of interest, but only on April 7, weeks after he was aware of his son's relationship with both the suspect and the victim
- and after he had provided a controversial written opinion to the Glynn Police Department, and the subsequent prosecutor, insisting there were no grounds to arrest the McMichaels.

[National District Attorneys Association, Statement on District Attorney Recusal and Comments on Ahmaud Arbery Case \(May 9, 2020\)](#)

- District Attorney Barnhill determined he had a conflict in pursuing the investigation into Mr. Arbery's death.
- At that point, his involvement should have ceased.
- Instead, District Attorney Barnhill wrote a letter in which he offered a gratuitous and detailed opinion regarding the hurdles to any prosecution of the individuals involved in the shooting of Mr. Arbery.
- These actions can have an intended or unintended ability to influence potential grand jurors or trial jurors, while also making the new special prosecutor's job to objectively seek the truth significantly more difficult.

February 23, 2023

Georgia Public Broadcasting

- Thursday, Feb. 23 marked the three-year anniversary of Ahmaud Arbery's killing. While his murderers have been convicted in state and federal court, one related case still remains open: the charges facing former Brunswick-area District Attorney Jackie Johnson for interfering on behalf of his killers in the investigation.
- A grand jury **indicted Johnson on Sept. 2, 2021**, and the charges accuse her of showing favor to two of the three murderers: her former employee, Greg McMichael, and his son Travis.
- Johnson's arraignment — where charges are read aloud and the accused pleads guilty or not guilty — was not scheduled until more than a year after her indictment, an unusually long period of time. Yet **still no court hearing has occurred.**

May 5, 2023 Associated Press

- Gov. Brian Kemp signed a bill into law Friday creating a new commission empowered to discipline and remove wayward prosecutors, saying it will curb “far-left prosecutors” who are “making our communities less safe.”
- Kemp made the remarks at the Chatham County Sheriff’s Office in Savannah, where he signed the measure establishing the Prosecuting Attorneys Qualifications Commission, which will launch July 1 and start accepting complaints Oct. 1.
- “I am not going to stand idly by as rogue or incompetent prosecutors refuse to uphold the law,” Kemp said. “Today we are sending a message that we will not forfeit public safety for prosecutors to let criminals off the hook.”

10:20-11:20 am Panel One:

What do we know about prosecutorial misconduct?

- Chair: Professor Clark Cunningham
- Professor Bruce Green, Director, Stein Center Stein Center for Law and Ethics, former federal prosecutor
- Don Samuel, adjunct professor, GSU College of Law, criminal defense attorney, past-President Georgia Association of Criminal Defense Lawyers
- What are the most common problems?
- What are the most serious problems?
- How effective are current approaches for deterrence and remedy?

11:20 – 11:40 am

Coffee break

11:40 am – 12:40 pm: Panel Two

Balancing prosecutor accountability with protection of prosecutorial discretion

- Chair: Professor Caren Morrison, GSU College of Law, former federal prosecutor
- Mawuli Mel Davis, civil rights and criminal defense attorney, Ben Johnson Public Service Award from GSU College of Law
- Professor Maybell Romero, Tulane Law School, former state court prosecutor, former criminal defense attorney
- How much deference should be given to prosecutorial discretion, especially the decision not to prosecute?
- What are the risks of inappropriate political interference?

12:50 -2:20 Luncheon and Keynote.

- Limited to registered participants.
- Will not be recorded or on live streaming.
- Speaker Introduction: Karlise Grier, Executive Director, Georgia Chief Justice's Commission on Professionalism
- Address: "Lessons from Georgia's Judicial Qualifications Commission," David Nahmias, Partner, Jones Day; former Chief Justice, Supreme Court of Georgia; former U.S. Attorney, N.D. Georgia; former Deputy Assistant Attorney General, U.S. Department of Justice

2:30 -3:30 pm: Panel Three:
Prosecutorial Accountability:
the New York experience

- Chair: Professor Bruce Green
- Professor Nicole Smith Futrell, CUNY Law School; Co-Director, Defenders Clinic
- Daniel Alonso, Partner Orrick Herrington & Sutcliffe LLP; former Chief Assistant District Attorney, Manhattan District Attorney's Office; Member, New York State Commission on Prosecutorial Conduct

3:30 -4:30 pm: Panel Four: Prosecutorial Accountability: the Georgia experience

- Chair: Professor Clark Cunningham
- Paula Frederick, General Counsel, State Bar of Georgia
- Todd Hayes, Solicitor General of Cherokee County, Georgia; Co-Chair, SB 92 Rules Committee, Prosecuting Attorneys Council of Georgia
- Dalia Racine, District Attorney of the Douglas Judicial Circuit, Georgia; Co-Chair, SB 92 Rules Committee, Prosecuting Attorneys Council of Georgia



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