

## Joshua Levine

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**A** *By Jeff Storey*

**R**eggie Clemons was convicted and sentenced to death in connection with the 1991 deaths of two young girls who were raped and pushed off an abandoned bridge in St. Louis.

On Nov. 24, the Missouri Supreme Court, by a 4-3 vote, vacated Clemons' conviction and sentence and remanded the case to the state for a decision on whether to retry him.

Clemons was within days of being executed in 2009. Now the court, following the lead of a special master, has ruled that the state had violated Clemons' Brady rights.

The Missouri decision was a milestone for Simpson, Thacher & Bartlett, which has represented Clemons for two decades. More than 60 firm attorneys, not counting summer associates, have worked on the case over the years.

After the ruling, an exultant Simpson Thacher partner, Joshua Levine in New York, told a St. Louis newspaper, "The Missouri Supreme Court upheld Mr. Clemons' constitutional right to a fair trial. It's a great day for the Constitution. We are thrilled at the Supreme Court's willingness to protect the right of due process for Mr. Clemons and citizens everywhere."

Levine argued Clemons' case in the Supreme Court and was lead counsel in the proceedings before the special master. He and Washington partner Andrew Lacy led the Simpson Thacher team in the case.

Levine, 46, is a graduate of Cornell University and the University of Michigan Law School. He was a Southern District assistant U.S. attorney from 1999 to 2007.

In his practice, Levine represents companies and corporate executives in white-collar matters and sensitive internal investigations. Each year, he also takes on cases involving indigent people charged with federal crimes.



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**Q.** How did the firm get involved in the Clemons case? How did you and other members of the team sign up?

**A.** In 1995, Simpson Thacher was approached by the NAACP Legal Defense and Education Fund and asked to consider representing Mr. Clemons. That was 20 years ago. Since then, a number of Simpson Thacher partners, counsel, associates and summer associates have worked on the case. I personally joined the team in 2007, when I came to Simpson Thacher. And, of course, all of us have volunteered as part of the firm's pro bono program.

Personally, I was attracted to the case because I felt that the system had failed Mr. Clemons in so many ways. His trial was riddled with injustices, including prosecutorial misconduct and the admission of a coerced confession, and he was convicted of first-degree murder without any physical evidence. And, of course, it was a capital case—where the consequences of receiving an unfair trial are literally a matter of life and death.

The firm's team also included, among others, the following lawyers: Josh Levine, Andy Lacy, David Elbaum, Erika Burk, Ellen Frye, Meredith Duffy, Kristina Green, Katelyn Benton, Diana Wielocha, Blake Hulnick and Jerry Fang, as well as paralegals Stephanie Crosskey and Jennifer Avila.

**Q: What did the Missouri Supreme Court rule?**

**A:** The Missouri Supreme Court ruled that the state violated Mr. Clemons' due process rights by failing to turn over evidence that was favorable to him, and therefore reversed his convictions and sentences for first-degree murder.

**Q: Was there anything about the ruling that surprised you?**

**A:** The ruling took an exceptionally long time to be issued, as the case was argued before the Missouri Supreme Court in February 2014.

**Q: Is the case over?**

**A:** The Missouri Supreme Court threw out not only Mr. Clemons' sentence, but also his murder conviction in its entirety. They sent the case back to the state, which has 60 days to decide whether or not to retry the case. I won't speculate about the prospect of a new trial other than to say that we obviously hope the state will decide not to pursue a retrial.

**Q: Did you and other members of the team develop a personal relationship with Mr. Clemons? How often did you visit him?**

**A:** Over the years, various members of the team have visited Mr. Clemons, and have formed relationships with him and his family. I personally have visited him several times, and spent a week with him during a hearing conducted by the special master appointed by the Missouri Supreme Court. Because Mr. Clemons is in Missouri, however, we primarily keep in touch by phone. Currently, a member of our team speaks with him once a week.

Naturally, when speaking about the case with Mr. Clemons, emotional moments do arise. There have been many ups and downs over the years, and it was particularly difficult when he was close to being executed. As far as the latest decision, Mr. Clemons was ecstatic, profoundly grateful, and relieved. For the first time in many years, he began the new year without a death sentence hanging over him.

**Q: What do you think his future will be like?**

**A:** Mr. Clemons is committed to trying to make productive use of his life. While in prison, he has availed himself of educational opportunities and became involved in a suicide prevention program. He's also a talented writer and visual artist. I hope that, with the continued love and support of his family, he'll lead a productive life.

**Q: Did you and other team members ever become discouraged?**

**A:** There were ups and downs for the many attorneys involved over the years. One particularly difficult and stressful time was in 2009, when Mr. Clemons was 12 days away from being executed. However, we were not going to give up until we secured a fair trial, even if it took 20 years.

**Q: Does Simpson have any experience in Missouri courts? How did local attorneys react to your involvement?**

**A:** We were very fortunate to work with top Missouri counsel Mark Arnold at Husch Blackwell. Our success was dependent upon this partnership and collaboration.

**Q: How many hours did you and other Simpson Thacher attorneys spend on the case? What was the total financial investment in hourly rates and other costs?**

**A:** To date, Simpson Thacher attorneys have spent approximately 50,000 hours on this case. We haven't tried to quantify the financial aspects of it, because we don't think of it in those terms. But it's safe to say that we have devoted very significant resources to this case over the past 20 years.

**Q: Does the firm have other cases like this?**

**A:** Simpson Thacher works on many criminal justice-related matters, including ones with the Northern California Innocence Project. For the last 20 years, Mr. Clemons has been the only individual awaiting the death penalty whom we have represented.

The firm handles a number of criminal cases through the Criminal Justice Act panel in the Southern District of New York. The firm also handles direct criminal appeals through referrals from The Legal Aid Society of New York, and habeas petitions for clients being held in immigration detention without bond through referrals from Brooklyn Defender Services.

**Q: What does the firm gain from an effort like this?**

**A:** Pro bono work is ingrained in the firm's professional ethos. Our attorneys believe in using their skills and passions to serve low-income communities, fight against injustice, preserve access to the courts and enforce the rule of law. An effort like this is a direct reflection of the firm's commitment to its clients, and its values as they relate to access to justice. Lawyers from every practice area across the firm contribute services to a range of vulnerable and low income communities and advocate for clients on a wide variety of issues, including civil and human rights.

**Q: What do the participants gain?**

**A:** Along with the knowledge that we have fought for a fair trial and spared someone from a death sentence, our lawyers have also gained significant professional experience in litigation in which there are no higher stakes than someone's life.

**Q: How do you feel personally about undertaking other cases of this magnitude? Would you do it again?**

**A:** I certainly would do it again. Working on a case where a person's life hangs in the balance is a tremendous responsibility and can be very stressful, but it has also been one of the most rewarding experiences of my career. I'm grateful to have had the opportunity to be part of such a remarkable legal team, and proud to be at a firm that is willing to devote the resources necessary to handle pro bono cases of this magnitude.

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