



U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, N.W., Suite 3266  
Washington, D.C. 20530

---

JUL 21 2008

Sidney K. Powell, Esq.  
1920 Abrams Parkway, #369  
Dallas, TX 75214

Dear Ms. Powell:

In your letter of June 6, 2008, you requested this Office to conduct an investigation into the prosecution of your client, James Brown, by Matthew Friedrich, currently Acting Assistant Attorney General for the Criminal Division in the Department of Justice and one of the prosecutors on the Enron Task Force in Mr. Brown's case. In addition, your letter noted that you have filed a complaint against Mr. Friedrich with the Virginia State Bar.

Our review of the legal proceedings reveals that there are two matters pending in two different courts arising out of the prosecution of Mr. Brown. The first and most recent filing by Mr. Brown is the Motion to Dismiss Indictment for Egregious Prosecutorial Misconduct filed on March 24, 2008, in the underlying criminal case pending before the United States District Court for the Southern District of Texas, Houston Division. *United States v. Brown*, No. 4:03CR363. The government filed an opposition to this motion and Mr. Brown filed a reply. The second is the interlocutory appeal filed by Mr. Brown on January 16, 2008, with the United States Court of Appeals for the Fifth Circuit seeking dismissal of the same indictment against him. *United States v. Brown*, No. 08-20038. Our review of this matter also reveals, incidentally, that there is an appeal pending in the Fifth Circuit filed by Jeffrey K. Skilling, a co-defendant of Mr. Brown in the underlying prosecution, raising the identical *Brady* issues that you address on Mr. Brown's behalf before the district court and separately to this Office and the Virginia State Bar. *United States v. Skilling*, No. 06-20885. Briefing is completed in that appeal and it appears that the case is awaiting the scheduling of oral argument.

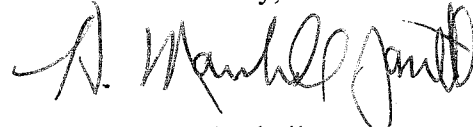
It is the general policy of this office not to initiate an investigation of a new matter where the issues raised in the request to investigate are pending before a court at the time the request for an investigation is made to this Office. In this situation, there are two such matters pending: the *Brady* motion in the district court and the interlocutory appeal in the court of appeals. Consequently, this Office will not initiate an investigation of Mr. Friedrich at this time. However, we will monitor these matters, and will notify you in the event this Office decides to initiate an investigation of Mr. Friedrich's conduct in these matters. Furthermore, we would appreciate your informing us should

any judge enter a finding of professional misconduct by Mr. Friedrich or any other Department prosecutor involved in the matter.

If you have any questions, please contact me or Assistant Counsel William F. Causey at 202-514-3365.

Thank you for bringing this matter to our attention.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Marshall Jarrett". The signature is written in a cursive style with a large, prominent initial "H".

H. Marshall Jarrett  
Counsel

# OFFICE OF BAR COUNSEL

August 14, 2008

**CONFIDENTIAL**

*Serving the District  
of Columbia Court  
of Appeals and its Board  
on Professional  
Responsibility*

Wallace E. Shipp, Jr.  
Bar Counsel

Deputy Bar Counsel  
Elizabeth A. Herman

Senior Assistant Bar Counsel  
Julia L. Porter  
Judith Hetherton

Assistant Bar Counsel  
Joseph N. Bowman  
Ross T. Dicker  
Gayle Marie Brown Driver  
Catherine L. Kello  
Becky Neal  
William Ross  
H. Clay Smith, III  
Traci M. Tait

Staff Attorney  
Lawrence K. Bloom  
Sara Bromberg  
Dolores Darsainvil

Mr. James A. Brown  
704 Camino Ocaso del Sol  
Santa Fe, NM 87505

Re: Ruemmler/Brown  
CJA Number 2008-C124

Dear Mr. Brown:

We received your letter concerning Kathryn H. Ruemmler, Esquire on August 12, 2008. We will write you again after our preliminary inquiry into this matter.

Sincerely,



Elizabeth A. Herman  
Deputy Bar Counsel



EAH/jnb

# OFFICE OF BAR COUNSEL

August 20, 2008

**CONFIDENTIAL**

Mr. James A. Brown  
704 Camino Ocaso del Sol  
Santa Fe, NM 87505

*Serving the District  
of Columbia Court  
of Appeals and its Board  
on Professional  
Responsibility*

Wallace E. Shipp, Jr.  
Bar Counsel

Deputy Bar Counsel  
Elizabeth A. Herman

Senior Assistant Bar Counsel  
Julia L. Porter  
Judith Hetherington

Assistant Bar Counsel  
Joseph N. Bowman  
Ross T. Dicker  
Gayle Marie Brown Driver  
Catherine L. Kelle  
Becky Neal  
William Ross  
H. Clay Smith, III  
Traci M. Tait

Staff Attorney  
Lawrence K. Bloom  
Sara Bromberg  
Dolores Dorsainvil



Re: Ruemmler/Brown  
Bar Docket No. 2008-D356

Dear Ms. Brown:

The Office of Bar Counsel is undertaking a confidential investigation of your complaint. To begin that process, a copy of your recent complaint is being sent to the attorney for a response. Usually a response from the attorney will be shared with you for your review.

This matter is confidential at this stage according to the Rules of the District of Columbia Court of Appeals. However, as part of our investigation, Bar Counsel may request information from any person who may have knowledge of pertinent facts.

If you have a question, please contact the undersigned at (202) 638-1501. Please refer to the above docket number in all telephone calls and correspondence. We thank you for bringing this matter to our attention.

Sincerely,

Elizabeth A. Herman  
Deputy Bar Counsel

EAH/jnb



# Virginia State Bar

Eighth and Main Building  
707 East Main Street, Suite 1500  
Richmond, Virginia 23219-2800  
Telephone: (804) 775-0500

-----  
Facsimile: (804) 775-0597 TDD (804) 775-0502

August 21, 2008

## PERSONAL AND CONFIDENTIAL

James A. Brown  
704 Camino Ocaso del Sol  
Santa Fe, NM 87505

Re: Your information about Kathryn Helen Ruemmler

Dear Mr. Brown:

The Virginia State Bar received your correspondence.

You ask the bar to determine whether Ms. Ruemmler committed prosecutorial misconduct based upon her alleged suppression of evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). I note from the materials you provided and from the information available through the PACER Service Center that an interlocutory appeal was filed prior to the filing of your Motion to Dismiss. The Government then filed a Motion to Stay court action on your motion on grounds that the court lacked jurisdiction to hear your motion while the appeal was pending. It does not appear that the district court has ruled on either motion. I assume that your interlocutory appeal remains pending before the Fifth Circuit.

The bar has no authority to review legal issues that are pending before the court. Should the court in ruling on your Motion to Dismiss determine that Ms. Ruemmler violated *Brady*, the bar can review the matter to determine whether a disciplinary investigation should be conducted. You may re-submit your Inquiry should the court make such finding. Please provide us with a copy of any such order.

Very truly yours,

James C. Bodie  
Intake Counsel

# STATE BAR OF TEXAS



*Office of the Chief Disciplinary Counsel*

August 22, 2008

James A. Brown  
704 Camino Ocaso del Sol  
Santa Fe, New Mexico 87505

Re: A0070811830 James A. Brown - Matthew W. Friedrich

Dear Mr. Brown:

The Office of the Chief Disciplinary Counsel of the State Bar of Texas has received your grievance against the above named lawyer.

Lawyers licensed in Texas are governed by the Texas Disciplinary Rules of Professional Conduct, and may only be disciplined when their conduct is in violation of one or more of the disciplinary rules. After examining your grievance, this office has determined that the information provided does not allege any disciplinary rule violation on the part of the lawyer. Accordingly, this Grievance has been classified as an Inquiry and has been dismissed.

**You may appeal this determination to the Board of Disciplinary Appeals. Your appeal must be submitted directly to the Board in writing, using the enclosed form, within thirty (30) days of receipt of this notice.**

Instead of filing an appeal with the Board of Disciplinary Appeals, you may amend your grievance and re-file it with additional information, **within twenty (20) days** of receipt of this notice.

Under the procedural rules, dismissed grievances such as this one are strictly confidential. You should refrain from discussing this matter, publicly or privately.

**P. O. Box 12487, Capitol Station, Austin, Texas 78711-2487, (512) 453-5535, (512) 453-6667 (FAX)**

The State Bar of Texas maintains the Client-Attorney Assistance Program (CAAP). You may have already visited with the staff of that program prior to filing your Grievance. Pursuant to the State Bar Act, all dismissed grievances (other than where the person complained about is deceased, disbarred, or not a lawyer) are referred to CAAP. This is not a continuation of the attorney disciplinary process and participation by both you and the attorney is voluntary. For additional information you may contact CAAP at 1-800-932-1900.

Sincerely,



J.M. Richards  
Senior Investigator  
Office of the Chief Disciplinary Counsel  
State Bar of Texas

Enclosure: BODA Appeal Form

A0070811830 James A. Brown - Matthew W. Friedrich



**The Board of Disciplinary Appeals  
Appointed by the  
Supreme Court of Texas**

**YOU HAVE THE RIGHT TO APPEAL THE DISMISSAL OF THIS GRIEVANCE**

Sign below and mail or fax this form within 30 days to:

**Board of Disciplinary Appeals  
P.O. Box 12426  
Austin, Texas 78711**

**FAX NO: (512) 427-4130**

Do not send any additional information to the Board of Disciplinary Appeals ("BODA").

BODA will obtain a copy of your grievance from the State Bar of Texas.

You will usually receive a decision from BODA in 3 to 4 weeks.

*Thank you for participating in this process.*

<b>I want BODA to review the dismissal of my grievance.</b>	
_____ Signature	_____ Date
_____ Printed Name	

P.O. Box 12426 Austin, Texas 78711 (512) 427-1578 www.txboda.org





**U.S. Department of Justice**

Office of Professional Responsibility

950 Pennsylvania Avenue, NW, Room 3266

---

Washington, D.C. 20530

**SEP 16 2008**

Sidney Powell, Esq.  
Sidney Powell, P.C.  
1854A Hendersonville Road, No. 228  
Asheville, N.C. 28803

Dear Ms. Powell:

This responds to your letter of August 11, 2008, concerning your renewed request that the Office of Professional Responsibility (OPR) initiate an investigation of the conduct of Matthew Friedrich, Acting Assistant Attorney General for the Criminal Division of the Department of Justice, in the case of *United States v. Brown*, United States District Court for the Southern District of Texas, Houston Division, No. 4:03cr363. You made an initial request for an investigation on June 6, 2008. OPR responded to that initial request on July 21, 2008, informing you that an investigation would not be initiated by OPR while the *Brady* issues raised in Mr. Brown's Motion to Dismiss Indictment for Egregious Prosecutorial Misconduct filed in the district court and the appeal in the Skilling case filed in the Fifth Circuit were resolved. In our response we also noted that you had filed a complaint on behalf of Mr. Brown with the Virginia State Bar raising the same *Brady* issue.

With regard to your August 11 letter, first, please be advised that OPR has not contacted Mr. Friedrich or anyone in the Criminal Division regarding your request or this matter generally.

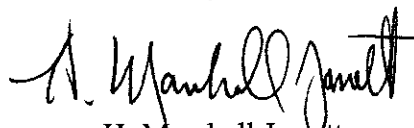
Second, upon receipt of your letter, we checked again the dockets for these two pending matters and noted that both matters are still pending. We are unaware of what action the Virginia State Bar may be taking in response to the complaint that you filed with the Bar on Mr. Brown's behalf. In any event, the complaint filed with the Virginia State Bar would have no impact on any decision by OPR to open an investigation in this matter.

Third, you stated in your August 11 letter that the *Brady* issues raised by Mr. Brown in the District Court proceeding and the *Brady* issues raised by Mr. Skilling in his appeal before the Fifth Circuit are not identical. To the contrary, we again reviewed the Motion to Dismiss Indictment for Egregious Prosecutorial Misconduct and we again note the several references you make in that Motion to the *Brady* issues raised in the Skilling case.

Finally, you pointed out in your August 11 letter that Mr. Friedlich may have a “limited tenure” with the Department of Justice. The possibility of an employee leaving the Department does not trump the other factors OPR routinely considers in deciding whether to initiate an investigation. Here, the critical factors are the absence of any judicial finding of misconduct to date and the fact that the *Brady* issues raised in your Motion to Dismiss Indictment for Egregious Prosecutorial Misconduct await a judicial determination. We believe that any possible misconduct in this matter can be examined more thoroughly and carefully after the district court decides if the law under *Brady* was violated in Mr. Brown’s case.

As we stated in our July 21, 2008, please advise us immediately should any court find that Mr. Friederich or any other Department lawyer committed professional misconduct in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Marshall Jarrett". The signature is written in a cursive style with a prominent initial "H" and a long, sweeping underline.

H. Marshall Jarrett  
Counsel

# OFFICE OF BAR COUNSEL

October 10, 2008

**CONFIDENTIAL**

Mr. James A. Brown  
704 Camino Ocaso del Sol  
Santa Fe, NM 87505

Re: Ruemmler/Brown  
Bar Docket No. 2008-D356

*Serving the District  
of Columbia Court  
of Appeals and its Board  
on Professional  
Responsibility*

Dear Mr. Brown:

Wallace E. Shipp, Jr.  
Bar Counsel

Deputy Bar Counsel  
Elizabeth A. Herman

Senior Assistant Bar Counsel  
Julia L. Porter  
Judith Hetherington

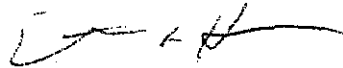
Assistant Bar Counsel  
Joseph N. Bowman  
Ross T. Dicker  
Gayle Marie Brown Driver  
Catherine L. Kello  
Becky Neal  
William Ross  
H. Clay Smith, III  
Traci M. Tait

Staff Attorney  
Lawrence K. Bloom  
Sara Bromberg  
Dolores Dorsainvil

This office has determined that it is appropriate to defer its investigation in the above-referenced matter. Our decision is based upon a pending motion filed by you in the criminal proceeding pending against you in the United States District Court for the District of Southern District of Texas, Houston Division. The issues you raise in your motion to dismiss the indictment are similar to the issues raised in your complaint to this office. Therefore, it would be helpful to this office's investigation to proceed after your motion has been resolved.

Please inform us in writing every 90 days of the status of the criminal matter and, in particular, of the pending motion to dismiss the indictment. If you have questions or comments, please do not hesitate to contact me.

Sincerely,



Elizabeth A. Herman  
Deputy Bar Counsel



cc: Kathryn Ruemmler, Esquire  
c/o Thomas B. Mason, Esquire  
Zuckerman Spaeder LLP  
1800 M Street, N.W., Suite 1000  
Washington, D.C. 20036-5807

EAH/jnb

# OFFICE OF BAR COUNSEL

November 14, 2008

**CONFIDENTIAL**

*Serving the District  
of Columbia Court  
of Appeals and its Board  
on Professional  
Responsibility*

Sidney Powell, Esquire  
1854-A Hendersonville Road  
Suite 228  
Asheville, NC 28803

Wallace E. Shipp, Jr.  
Bar Counsel

Re: Ruemmler/Brown  
Bar Docket No. 2008-D356

Deputy Bar Counsel  
Elizabeth A. Herman

Dear Mr. Powell:

Senior Assistant Bar Counsel  
Julia L. Porter  
Judith Hetherton

I write in response to your letter dated November 3, 2008. I have considered the points you raise, especially the issue of delay. However, I believe that it is in the interest of our disciplinary system to allow the court that heard the criminal matter to proceed first. Even if the sanction does not result in a dismissal of the indictment, we can still benefit from the court's ruling and the refinement of the arguments and evidence as the criminal case proceeds.

Assistant Bar Counsel  
Joseph N. Bowman  
Ross T. Dicker  
Gayle Marie Brown Driver  
Catherine L. Kello  
Becky Neal  
William Ross  
H. Clay Smith, III  
Traci M. Tait

Thank you for your thoughts on this. Please let me know when the court has ruled.

Staff Attorney  
Lawrence K. Bloom  
Sara A. Walshe  
Dolores Dorsainvil

Sincerely,



A handwritten signature in black ink, appearing to read "Elizabeth A. Herman".

Elizabeth A. Herman  
Deputy Bar Counsel

EAH/jnb



U.S. Department of Justice

Civil Division

---

Washington, DC 20530

March 25, 2011

Department Disciplinary Committee  
Supreme Court, Appellate Division  
First Judicial Department  
61 Broadway  
New York, New York 10006

Re: Complaint of James A. Brown  
Docket No. 2008.2128

Dear Mr. Peterson:

This office represents Mr. Andrew Weissmann in the above-referenced complaint filed by Mr. James Brown. Mr. Brown wrongly claims that Mr. Weissmann violated his ethical duties as a licensed attorney by allegedly withholding exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and denying Mr. Brown access to exculpatory witnesses. See Complaint of James A. Brown (w/o exhibits), Tab 1.

All of the allegations in Mr. Brown's complaint arise from actions that occurred within the scope of Mr. Weissmann's official duties in overseeing Mr. Brown's prosecution in *United States v. Bayly, et al.*, No. 03-363 (S.D. Tex.).<sup>1</sup> At all times relevant to the complaint, Mr. Weissmann represented the United States as the Director or Deputy Director of the Department of Justice's Enron Task Force ("ETF"). Mr. Weissmann was not part of the government trial team.

On November 21, 2008, we requested a deferral of investigations under Departmental Disciplinary Committee Rule § 605.9(b)(1) because the issues before this Committee are precisely the same as those raised in Mr. Brown's motion in *Bayly* to dismiss the indictment against him on the grounds of prosecutorial misconduct. See James A. Brown's Motion to

---

<sup>1</sup> In 2006 Mr. Weissmann retired from the Department of Justice after 15 years of public service. Mr. Weissmann is currently engaged in the private practice of law in New York as a partner at Jenner & Block LLP.

Dismiss Indictment (w/o exhibits), Tab 2.<sup>2</sup> This matter was deferred pending the federal district court's resolution of Mr. Brown's motion to dismiss.

The district court has now ruled and that ruling makes plain that there was no merit to the allegations herein. See Mem. and Order, 8/23/10, Tab 3. In ruling on Mr. Brown's motion to dismiss the indictment, the district court conducted what it termed "an exhaustive study" of Mr. Brown's claims that ETF lawyers engaged in prosecutorial misconduct and withheld *Brady* evidence. In his complaint before this Committee, Mr. Brown presses the same claims of prosecutorial misconduct against Mr. Weissmann. The district court, however, found each and every claim both factually and legally unsubstantiated. The court concluded that ETF lawyers did not suppress any material exculpatory evidence. To the contrary, all of the evidence that Mr. Brown claims was "concealed" was actually disclosed to him well in advance of his trial in multiple disclosure letters from the ETF.<sup>3</sup> Moreover, the allegedly concealed evidence was cumulative of other evidence that was presented at trial. The court held that Mr. Brown also had multiple opportunities to elicit favorable testimony at trial through the exercise of reasonable diligence, but that he failed to do so. Finally, the court rejected Mr. Brown's claim that ETF lawyers obstructed his access to exculpatory witnesses, finding that there was absolutely no evidence of any coercion or strong-arm tactics by the prosecution team. The court therefore rejected Mr. Brown's claims of prosecutorial misconduct and denied his motion to dismiss the indictment in its entirety.

Moreover, the district court is not the only court to have rejected these allegations. The district court's reasoning was guided by *United States v. Skilling*, 554 F.3d 529 (5th Cir. 2009), in which the Fifth Circuit considered former Enron president Jeffrey Skilling's claim that ETF lawyers improperly withheld the raw notes of former Enron Chief Financial Officer Andrew Fastow's interviews with the FBI. The same issue forms the basis of Mr. Brown's complaint before this Committee, and it was flatly rejected by the Fifth Circuit for the reasons outlined by the district court.

Now that Mr. Brown's claims of prosecutorial conduct have been fully rejected, we urge this Committee to dismiss the ethics complaint against Mr. Weissmann. As noted, the allegations that Mr. Weissmann violated his professional obligations as a licensed attorney are based solely on claims of prosecutorial misconduct that multiple courts have found factually and legally without merit. We note that identical allegations by Mr. Brown against the ETF trial members Matthew Friedrich<sup>4</sup> and Kathryn Ruemmler<sup>5</sup> have been dismissed by state disciplinary committees, and we respectfully request that you do likewise.

---

<sup>2</sup> Mr. Brown filed his motion to dismiss on March 24, 2008 and filed a renewed motion on May 14, 2010. The renewed motion to dismiss is attached.

<sup>3</sup> See, e.g., June 1, 2004 and July 30, 2004 Disclosure Letters, Tab 4. Prior to Mr. Brown's trial, the government provided extensive discovery that considerably exceeded its *Brady* obligations. The government provided hundreds of thousands of pages of discovery in electronic and paper form to Mr. Brown and his co-defendants. The attached letters are merely an example of the considerable disclosures the government made to Mr. Brown.

<sup>4</sup> *In re Matthew W. Friedrich*, Texas Board of Disciplinary Appeals, Cause No. 42939.

<sup>5</sup> *In re Kathryn Ruemmler*, District of Columbia Bar Docket No. 2008-D356.

Thank you for your consideration of this request.

Sincerely,



Reginald M. Skinner

Trial Attorney

U.S. Department of Justice, Civil Division  
Constitutional & Specialized Tort Litigation

P.O. Box 1746

Washington, D.C. 20044

(202) 616-3111

Reginald.M.Skinner@usdoj.gov

Enclosures

Cc: Mr. James A. Brown  
c/o Sidney Powell, Esq.  
Sidney Powell, P.C.  
3831 Turtle Creek Blvd. #5B  
Dallas, Texas 75214



# OFFICE OF BAR COUNSEL

August 8, 2012

Wallace E. Shipp, Jr.  
Bar Counsel

Elizabeth A. Herman  
Deputy Bar Counsel

Senior Assistant Bar Counsel  
Jennifer Lyman  
Julia L. Porter

Assistant Bar Counsel  
Joseph N. Bowman  
Ross T. Dicker  
Gayle Marie Brown Driver  
Hamilton P. Fox, III  
Catherine L. Kello  
Becky Neal  
William Ross  
H. Clay Smith, III  
Traci M. Tait

Senior Staff Attorney  
Lawrence K. Bloom  
Dolores Dorsainvil  
Joseph C. Perry  
Mary-Helen Perry

## CONFIDENTIAL

W. William Hodes, Esquire  
The William Hodes Law Firm  
811 Chapman Loop  
Village of Hemingway  
Lady Lake, FL 32162

Sidney K. Powell, Esquire  
Sidney Powell P.C.  
3831 Turtle Creek Boulevard, #5B  
Dallas, TX 75219

Re: Ruemmler/Bar Counsel  
Bar Docket No. 2008-D356  
Dear Mr. Hodes and Mr. Powell:

We reviewed the complaint that you filed concerning Kathryn H. Ruemmler, Esquire. As you acknowledge in your complaint, this matter was previously considered in 2008 when Mr. James Brown filed a complaint against Ms. Ruemmler. We consider your submission as a request to reopen this matter. We decline to do so.

You state that the information that you provide is information that was not available in 2008. While that may be so, we did have the opportunity to consider the decision issued on August 23, 2010, by the United States District Court for the Southern District of Texas, Houston Division, denying the defendant's motions for a new trial based upon the same misconduct alleged here.

We will not repeat the findings of the Court here. It is sufficient to state that the Court did not find that the government had an obligation to disclose the documents or information described in your complaint and that the government did not deny you access to witnesses. The decision of the Court of Appeals, *United States v. Brown*, 650 F.3d 581 (5<sup>th</sup> Cir. 2011), also failed to find *Brady* violations.

*Serving the District of Columbia Court of Appeals and its Board on Professional Responsibility*

515 5th Street NW, Building A, Room 117, Washington, DC 20001 ■ 202-638-1501, FAX 202-638-0862



W. William Hodes, Esquire  
Sidney K. Powell, Esquire  
Bar Docket No. 2008-D356  
August 8, 2012  
Page 2

While we agree that ethical rule violations are not necessarily dependent upon a court finding that a conviction must be vacated, or that prosecutorial misconduct occurred, we do not find that there has been any judicial finding or any new evidence that would lead us to believe that we could prove a violation of an ethical rule by clear and convincing evidence.

We trust that this letter adequately advises you of the basis of our decision not to reopen this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth A. Herman', with a long horizontal flourish extending to the right.

Elizabeth A. Herman  
Deputy Bar Counsel

cc: Kathryn H. Ruemmler, Esquire  
c/o Thomas Mason, Esquire

EAH/erz

# STATE BAR OF TEXAS



*Office of the Chief Disciplinary Counsel*

August 17, 2012

W. William Hodes & Sidney K. Powell  
The William Hodes Law Firm  
811 Chapman Loop, Village of Hemingway  
Lady Lake, FL 32162

Re: H0071235495 W. William Hodes & Sidney K. Powell - Matthew W. Friedrich

Dear Mr. Hodes & Mr. Powell:

The Office of the Chief Disciplinary Counsel of the State Bar of Texas has received your grievance against the above named lawyer.

Lawyers licensed in Texas are governed by the Texas Disciplinary Rules of Professional Conduct, and may only be disciplined when their conduct is in violation of one or more of the disciplinary rules. After examining your grievance, this office has determined that the information alleged does not demonstrate professional misconduct or an attorney disability. Accordingly, this grievance has been classified as an Inquiry and has been dismissed.

You may appeal this determination to the Board of Disciplinary Appeals. Your appeal must be submitted directly to the Board in writing, using the enclosed form, within thirty (30) days of receipt of this notice.

Instead of filing an appeal with the Board of Disciplinary Appeals, you may amend your grievance and re-file it with additional information, within twenty (20) days of receipt of this notice.

Please note that, while you have the option of appealing the dismissal of your grievance or amending and re-filing it with additional information, you may not take both actions simultaneously.

The State Bar of Texas maintains the Client-Attorney Assistance Program (CAAP). You may have already visited with the staff of that program prior to filing your grievance. Pursuant to the State Bar Act, all dismissed grievances (other than where the person complained about is deceased, disbarred, or not a lawyer) shall be referred to CAAP. In accordance with that requirement, please be advised that CAAP can attempt to resolve your matter through mediation or other dispute resolution procedures. CAAP is not a continuation of the attorney disciplinary process and participation by both you and the attorney is voluntary. Should you desire to pursue that process, you may contact CAAP at 1-800-932-1900.

The Office of Chief Disciplinary Counsel maintains as confidential the processing of grievances.

Sincerely,

Sue Beckage  
Assistant Disciplinary Counsel

Enclosure: BODA Appeal Form

H0071235495 - W. William Hodes & Sidney K. Powell - Matthew W. Friedrich  
Dismissal Date: August 14, 2012



**The Board of Disciplinary Appeals  
Appointed by the Supreme Court of Texas**

**YOU HAVE THE RIGHT TO APPEAL THE DISMISSAL OF THIS GRIEVANCE WITHIN 30 DAYS OF THE DATE YOU RECEIVE THIS NOTICE. *Usted tiene el derecho de apelar el despido de este agravio dentro de 30 días de la fecha en que usted recibe este aviso.***

By signing below, you are asking the Board of Disciplinary Appeals ("BODA") to review the dismissal of your grievance by the State Bar of Texas. *Firmando abajo, usted está pidiendo que la Mesa Directiva de Apelaciones Disciplinarias (Board of Disciplinary Appeals - "BODA") revise el despido de su agravio por la Barra de Abogados de Texas (State Bar of Texas).*

\_\_\_\_\_  
*Signature (Firma)*

\_\_\_\_\_  
*Date (Fecha)*

*Please print your name and address. (Favor de escribir su nombre y dirección abajo.)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Do not send any additional information to BODA. BODA will obtain a copy of your grievance from the State Bar of Texas. You will usually receive a decision from BODA in three to four weeks. (No envíe información adicional a BODA. BODA obtendrá una copia de su agravio de la Barra De Abogados De Texas. Generalmente, usted recibirá una decisión de BODA dentro de tres o cuatro semanas.)*

Mail, email or fax this form to *(Envíe por correo, correo electrónico, o envíe esta forma por fax a):*

**Mail: Board of Disciplinary Appeals  
P.O. Box 12426  
Austin TX 78711**

**Email: [classificationappeals@txboda.org](mailto:classificationappeals@txboda.org)**

**FAX: 512 427-4130**

P.O. Box 12426 Austin TX 78711

512 427-1578

fax: 512 427-4130

[www.txboda.org](http://www.txboda.org)

**Disciplinary System Questionnaire**

Your completion of this questionnaire is purely voluntary. Any responses you provide will be used to improve the attorney disciplinary system in Texas. Thank you for your participation.

1. Are you a former client of the respondent lawyer?  YES  NO
  
1. Was your grievance dismissed?  YES  NO
  - a. If your grievance was dismissed, did you appeal?  YES  NO
  - b. Did BODA reverse the dismissal?  YES  NO
  
2. Did your grievance result in a sanction against the respondent lawyer?  YES  NO
  
3. Was your grievance heard by:  AN EVIDENTIARY PANEL  A DISTRICT COURT
  
4. If your complaint was heard by an evidentiary panel, how would you describe your treatment by the evidentiary panel? \_\_\_\_\_
  
5. How long did it take to reach a conclusion about your grievance?  
 less than 90 days  90-179 days  180-260 days  more than 360 days
  
6. Did your grievance involve a:  CRIMINAL MATTER  CIVIL MATTER
  
7. If your matter was criminal in nature, was your attorney:  APPOINTED  HIRED
  
8. If your matter was criminal in nature, did you receive a sentence that included jail or penitentiary time?  
 YES  NO
  
9. Which regional office of the chief disciplinary counsel's office processed your grievance?  
 Austin  Dallas  Houston  San Antonio
  
10. Did you ever talk with an employee of that regional office?  YES  NO
  - a. If so, did you talk with:  staff  an attorney  both
  - b. What were the names of the employees that you spoke with?  
\_\_\_\_\_  
\_\_\_\_\_
  
11. How would you describe your treatment by whomever you talked with?  
\_\_\_\_\_  
\_\_\_\_\_
  
12. Do you believe the grievance system is fair?  YES  NO
  - a. If you answered no, why do you think the system is unfair?  
\_\_\_\_\_  
\_\_\_\_\_
  
14. Do you have any suggestions for improving the grievance system?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Return to: Office of the Chief Disciplinary Counsel  
State Bar of Texas  
Post Office Box 12487  
Austin, Texas 78711



U.S. Department of Justice

Civil Division

---

Washington, DC 20530

December 7, 2012

**VIA FACSIMILE (212) 287-1045 AND U.S. MAIL**

Joel Peterson  
Legal Assistant  
Departmental Disciplinary Committee  
Supreme Court, Appellate Division  
First Judicial Department  
61 Broadway  
New York, New York 10006

Re: Complaint of W. William Hodes and Sidney K. Powell  
Docket No. 2012.1807

Dear Mr. Peterson:

This office represents Mr. Andrew Weissmann in the above-referenced complaint filed by Mr. William Hodes and Ms. Sidney K. Powell ("Hodes/Powell Complaint"). The complaint arises from Mr. Weissmann's service as director of the Department of Justice's Enron Task Force ("ETF"), in which he supervised the prosecution of more than 30 individuals in connection with the company's collapse.<sup>1</sup> Specifically, the complaint relates to the prosecution of James A. Brown, a former Merrill Lynch executive who was convicted of perjury and obstruction of justice in connection with an Enron accounting scheme. *United States v. Bayly, et al.*, No. 03-363 (S.D. Tex.).

After the United States Court of Appeals for the Fifth Circuit affirmed these convictions,<sup>2</sup> Mr. Brown filed motions for a new trial and to dismiss the indictment, alleging prosecutorial misconduct in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Mr. Brown claimed that ETF prosecutors failed to disclose exculpatory evidence and denied access to exculpatory witnesses.

---

<sup>1</sup> Mr. Weissmann currently serves as General Counsel of the Federal Bureau of Investigation.

<sup>2</sup> See *United States v. Brown*, 459 F.3d 509 (5th Cir. 2006).

These same claims of prosecutorial misconduct formed the basis of various bar complaints he filed against Mr. Weissmann and other ETF prosecutors. Specifically, in 2008, Mr. Brown filed a complaint against Mr. Weissmann with this Committee. At the same time, Mr. Brown filed identical complaints against Kathryn Ruemmler with the District of Columbia and Virginia Bars, and against Matthew Friedrich with the Texas Office of the Chief Disciplinary Counsel.<sup>3</sup> On December 11, 2008, this Committee closed its investigation into Mr. Brown's complaint pending the district court's resolution of his motions to dismiss the indictment and for a new trial. The case was never reopened. Meanwhile, the D.C., Virginia, and Texas bars dismissed outright the complaints against Ms. Ruemmler and Mr. Friedrich.

On August 23, 2010, the district court denied Mr. Brown's motions in a ruling that makes plain that there was no merit to his allegations of prosecutorial misconduct. *See United States v. Brown*, No. 03-363, 2010 WL 3359471 (S.D. Tex. Aug. 23, 2010).<sup>4</sup> The court conducted what it termed "an exhaustive study" of the claims that ETF lawyers withheld *Brady* evidence and interfered with witnesses. The court ruled that his claims were factually and legally unsubstantiated. ETF lawyers did not suppress any materially favorable evidence. To the contrary, all of the evidence that Mr. Brown claimed was "concealed" was actually disclosed to him well in advance of trial in multiple disclosure letters from the ETF. Moreover, the supposedly concealed evidence was cumulative of other evidence presented at trial. The court held that Mr. Brown also had multiple opportunities to elicit favorable testimony at trial through the exercise of reasonable diligence, but that he failed to do so. Finally, the court rejected Mr. Brown's claim that ETF lawyers blocked access to exculpatory witnesses, finding that there was absolutely no evidence of any coercion or strong-arm tactics by the prosecution team. The court accordingly rejected Mr. Brown's claims of prosecutorial misconduct and denied his motions to dismiss the indictment and for a new trial.<sup>5</sup> The court's judgment was affirmed on appeal. *United States v. Brown*, 650 F.3d 581 (5th Cir. 2011).<sup>6</sup>

In substance, the Hodes/Powell complaint is the same as the complaint that was filed against Mr. Weissmann in 2008. It presents *no* new evidence. Instead, it rehashes and tries to

---

<sup>3</sup> In connection with all of the bar complaints, Mr. Brown was represented by Sidney Powell, one of the complainants in this matter. The other complainant, William Hodes, represented Mr. Brown in his unsuccessful appeal of his perjury and obstruction of justice convictions.

<sup>4</sup> For convenience, a copy of the district court's opinion is attached at Tab 1.

<sup>5</sup> The district court was not alone in rejecting the *Brady* claims that Mr. Brown raised. The court's reasoning was guided by *United States v. Skilling*, 554 F.3d 529 (5th Cir. 2009), in which the Fifth Circuit rejected former Enron president Jeffrey Skilling's claim that ETF prosecutors suppressed favorable evidence—specifically, the notes of former Enron CFO Andrew Fastow's FBI interviews. Mr. Brown's complaint before this Committee relied on the same allegations already rejected by the Fifth Circuit.

<sup>6</sup> For convenience, a copy of the Fifth Circuit's opinion is attached at Tab 2.

Mr. Peterson  
December 7, 2012  
Page 3

---

resurrect the same *Brady* and other misconduct claims that have already been rejected by multiple courts. Notably—just as Mr. Brown did in 2008—Mr. Hodes and Ms. Powell filed similar bar complaints against ETF prosecutors Kathryn Ruemmler and Matthew Friedrich with the D.C. and Texas bars. Those complaints have already been dismissed.

I respectfully urge this Committee to do the same. Over several years, the claims of prosecutorial misconduct raised in this complaint have been fully examined and rejected. The fact that the *Brady* claims are now being raised not by Mr. Brown, but by the same attorney who helped him draft and litigate his old complaint, does not change the analysis or the result. For these reasons, I respectfully request the Committee's prompt dismissal of the complaint against Mr. Weissmann.

Thank you for your consideration of this request. I would be pleased to provide any additional information or answer any questions the Committee may have about the issues addressed in this letter.

Sincerely,



Reginald M. Skinner  
Trial Attorney, Civil Division  
United States Department of Justice  
Constitutional Torts Staff  
P.O. Box 1746  
Washington, D.C. 20044  
Tel: (202) 616-3111  
Fax: (202) 616-4314  
Reginald.M.Skinner@usdoj.gov

Enclosures

cc: W. William Hodes, Esq.  
Sidney K. Powell, Esq.

# STATE BAR OF TEXAS



Ron Bunch  
Chair, Commission for Lawyer Discipline

January 8, 2013

Sidney Powell, Esq.  
3831 Turtle Creek Boulevard, #5-B  
Dallas, Texas 75219

W. William Hodes, Esq.  
811 Chapman Loop  
Village of Hemingway  
Lady Lake, Florida 32162

Dear Ms. Powell and Mr. Hodes:

I am in receipt of your letter concerning the grievance against attorney Matthew Friedrich [Texas Bar #00790720].

The initial classification of a grievance as a “Complaint” or an “Inquiry” is handled by the Chief Disciplinary Counsel’s office (CDC). The Commission for Lawyer Discipline (CFLD) does not directly review those decisions. However, one of the responsibilities of the Commission is to review and evaluate the disciplinary process and make recommendations to refine and improve the system. To that end, I appreciate your letter and I share your concerns about prosecutorial misconduct.

As you know, when a grievance is classified as in “Inquiry” and is dismissed by the CDC, the person who filed the grievance has a right to appeal the decision to the Board of Disciplinary Appeals (BODA). BODA is a statewide independent adjudicatory panel of 12 attorneys appointed by the Supreme Court of Texas. Since 1992, BODA has decided over 49,000 disciplinary matters including appeals of classification decisions by the CDC, appeals from District Grievance Committee evidentiary panels, compulsory discipline cases, reciprocal discipline cases, and disability cases. BODA is an independent panel and is not connected with the Commission or CDC in any manner. BODA provides a true “check” in the system by conducting an independent review of each appealed grievance decision. If BODA determines that the CDC erred by dismissing a grievance, the grievance is sent back to the CDC and processed as a “Complaint”. The sheer volume of grievances reviewed by BODA allows them to



promote consistency in interpretation and application of the Texas Disciplinary Rules of Professional Conduct.

I disagree with your suggestion that political pressure or favoritism may have played a role in the dismissal of your grievance. I am not intimately familiar with the facts of your case and I can only speculate on the reasons supporting the dismissal by CDC and the affirmance of that decision by BODA. However, I suspect that the submission of the information by the prosecution to the trial court and the trial court's ruling thereon insulated the prosecutor from the requisite culpability.

Sincerely,



Ronald E. Bunch  
Chair, Commission for Lawyer Discipline



U.S. Department of Justice

Civil Division

---

Washington, DC 20530

March 15, 2013

VIA FACSIMILE (212) 287-1045 AND U.S. MAIL

Joel Peterson  
Legal Assistant  
Departmental Disciplinary Committee  
Supreme Court, Appellate Division  
First Judicial Department  
61 Broadway  
New York, New York 10006

Re: Complaint of W. William Hodes and Sidney K. Powell  
Docket No. 2012.1807

Dear Mr. Peterson:

I am pleased to submit this response to the complainants' letter dated December 21, 2012. Despite much sound and fury—and attempts to personally disparage opposing counsel—the complainants' reply letter reveals three fatal flaws in the complaint against Mr. Weissmann.

First, the complainants concede that “the whole point” of their complaint against Mr. Weissmann is the notion—for which they cite no legal authority—that Rule 3.8 of the New York Rules of Professional Conduct does not incorporate the materiality standard of *Brady v. Maryland*.<sup>1</sup> On this issue, the complainants are simply wrong. Rule 3.8 codifies the *Brady* rule, including the materiality requirement, and courts have specifically held that there is no violation of the ethical rule without a determination that the suppressed evidence was material. This is critical because the Fifth Circuit's decision in *United States v. Brown*, 650 F.3d 581, 592 (5th Cir. 2011), forecloses any argument that prosecutors suppressed material evidence in the prosecution of James Brown. Second, the complaint loosely charges misconduct by “Task Force lawyers” and “the prosecution team” without detailing any direct or personal violation of the ethical rules by Mr. Weissmann. Indeed, even the identical claims by complainants against the trial attorneys who are alleged to have violated *Brady* have been summarily dismissed *twice* by their respective bars. Third, the same arguments have already been rejected by this Committee, in connection with Mr. Brown's 2008 complaint, of which this is a re-hash. For these reasons, as discussed more fully below, the complaint should be dismissed.

---

<sup>1</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

## Materiality

The central premise of the complaint against Mr. Weissmann is that Rule 3.8 does not incorporate a *Brady* materiality standard, but is broader and more encompassing than what *Brady* requires. Indeed, the complainants argue that “the *whole point* of our complaint against Andrew Weissman [sic] ... is that the materiality of the evidence suppressed is *not* a factor in lawyer disciplinary proceedings; the suppression of favorable evidence alone *is* the disciplinary violation.” Complainants’ Reply Letter, at 4 (emphasis added). The complainants therefore dismiss as irrelevant the Fifth Circuit’s ruling that the supposedly suppressed evidence was not material—even *cumulatively*—to the question of James Brown’s guilt.

The complainants, however, are wrong. Rule 3.8 does incorporate *Brady*’s materiality standard, such that there can be no violation of the ethical rule without a determination that “the result of the proceeding would have been different”<sup>2</sup> if the evidence had been disclosed.

In relevant part, Rule 3.8 provides that

[a] prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant or to a defendant who has no counsel of the existence of evidence or information known to the prosecutor or other government lawyer that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the sentence, except when relieved of this responsibility by a protective order of a tribunal.

Rule 3.8(b) (22 NYCRR §1200.0). Importantly, Rule 3.8(b) codifies the constitutional disclosure requirements of *Brady*. See *People v. Piscitello*, No. 8578, 2011 WL 5169348 (N.Y. Just. Ct. Oct. 13, 2011) (Rule 3.8(b) “concerns the codified responsibility of prosecutors to turn over discovery pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963)”). The Supreme Court has made clear that *Brady* and its progeny include a materiality requirement.<sup>3</sup> The complainants fail to cite any authority for the notion that Rule 3.8 requires more disclosure than what is constitutionally required under *Brady*. To the contrary, courts have squarely rejected the idea that the ethical rule imposes the obligation on prosecutors to disclose more evidence than that required by applicable law. Indeed, if the rule were otherwise, prosecutors would be subjected to an ethics violation in any case in which the most immaterial evidence were not disclosed by the government.

---

<sup>2</sup> *United States v. Bagley*, 473 U.S. 667, 682 (1985).

<sup>3</sup> *United States v. Bagley*, 473 U.S. 667, 682 (1985) (*Brady* requires materiality, which exists “only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.”); *Kyles v. Whitley*, 514 U.S. 419, 433-34 (1995) (evidence material if it “could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.”); *Strickler v. Greene*, 527 U.S. 263 (1999) (there is no *Brady* violation unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict); *United States v. Gambino*, 59 F.3d 353, 365 (2d Cir. 1995) (information must undermine confidence in the outcome of the trial); *Ostrer v. United States*, 577 F.2d 782, 788 n.4 (2d Cir. 1978) (if evidence is not material then it need not have been disclosed under *Brady* and its progeny) (1979).

For example, in *Disciplinary Counsel v. Kellogg-Martin*, 923 N.E.2d 125, 130 (Ohio 2010), the Supreme Court of Ohio confronted the same question that is before this Committee—whether the ethical rule<sup>4</sup> should be read “broadly[] to require disclosure of evidence irrespective of whether its disclosure is legally required or not [under *Brady*].” The court rejected this view, holding that “DR 7-103(B) imposes no requirement on a prosecutor to disclose information that he or she is not required to disclose by applicable law, such as *Brady v. Maryland*....” *Id.* Importantly, the court noted that broadening the disclosure requirement beyond *Brady*’s constitutional standard would have the unattended consequence of expanding the scope of discovery in criminal cases.

We decline to construe DR 7–103(B) as requiring a greater scope of disclosure than *Brady* ... require[s]. Relator’s broad interpretation of DR 7–103(B) would threaten prosecutors with professional discipline for failing to disclose evidence even when the applicable law does *not* require disclosure. *This holding would in effect expand the scope of discovery currently required of prosecutors in criminal cases.*

*Id.* (emphasis added). The court therefore accepted the respondent’s contention that it cannot be the intent of the ethical rules “that a prosecutor’s ethical duties are broader than her legal duties.” *Id.* at 129.

The Supreme Court of Colorado reached the same result in *In re Attorney C*, 47 P.3d 1167, 1170 (Colo. 2002) (en banc). There, the question presented was whether Colorado Rule 3.8(d)<sup>5</sup> incorporates *Brady*’s materiality standard. The court held that it does. *Id.* at 1171 (“[W]e read Rule 3.8(d) as containing a requirement that a prosecutor disclose exculpatory, *outcome-determinative evidence* that tends to negate the guilt or punishment of the accused.”) (emphasis added).

The upshot of these authorities is that the complainants bear the burden of demonstrating that any evidence “suppressed” *was material* to the question of guilt or punishment.<sup>6</sup> They cannot satisfy this burden. As the Fifth Circuit emphatically held, “despite the exculpatory nature

---

<sup>4</sup> The court in *Kellogg-Martin* was interpreting Ohio DR 7-103(B), which is nearly identical to New York Rule 3.8(b): “A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.”

<sup>5</sup> The Colorado rule provides that “The prosecutor in a criminal case shall ... make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense....” Colo. RPC 3.8(d).

<sup>6</sup> Again, the complainants fail to cite a *single authority* for the view that Rule 3.8 imposes greater disclosure obligations than the Constitution.

of the suppressed portions of the McMahon notes,”<sup>7</sup> the evidence of Mr. Brown’s guilt was overwhelming.

In sum, the favorable evidence that Brown points to is not, even cumulatively, sufficient to give us a “definite and firm conviction” that it establishes a substantial probability of a different outcome. *There was considerable evidence of Brown’s guilt.* Trinkle testified that there was a promise during the conference call she listened in on; Glisan and Kopper testified about Fastow’s statements to them that he promised to rebuy; Boyt testified that Boyle told him, immediately after the Fastow call, that Fastow promised a buyback during the call; Long testified that there was a promise as well; Merrill Lynch conducted no due diligence, consistent with a buyback promise; a number of contemporaneous emails and documents referred to a promise; *there was in fact a buyback, at 15% return, exactly six months after Merrill Lynch bought the barges, just as some internal documents said would happen*; Fuhs jokingly emailed Brown that he would re-buy the barges only if Brown gave him a buyback guarantee; and in an email Brown himself said Enron had made a promise to buy back.

*United States v. Brown*, 650 F.3d 581, 593 (5th Cir. Tex. 2011) (emphasis added). The Fifth Circuit’s ruling therefore forecloses any argument that *material* evidence was suppressed. As a result, the complainants cannot establish a violation of Rule 3.8, and the complaint against Mr. Weissmann should be dismissed.

### Vicarious Liability

Despite its length, the complaint is strikingly ineffective in detailing any specific misconduct that Mr. Weissmann *personally* engaged in. The complainants repeatedly attribute bad acts categorically to “ETF lawyers,” “the Task Force,” and “ETF prosecutors,” and “the prosecution team,” but they fail to carry their burden of demonstrating that Mr. Weissmann himself violated any ethical rule. This is critical, because Mr. Weissmann, as Director or Deputy Director of the Enron Task Force, was not a member at all of the trial team during the trial of Mr. Brown’s criminal case. The trial, including *Brady* reviews and decisions regarding *Brady* disclosures, were handled by trial prosecutors Matthew Friedrich, John Hemann, and Kathryn Ruemmler. The complaint is thus a transparent attempt to hold Mr. Weissmann liable vicariously for the alleged misconduct of subordinate lawyers (even assuming, contrary to fact, that there was a violation). As has been previously noted, Mr. Brown and the complainants in this matter *twice* pursued disciplinary charges against Friedrich and Ruemmler, and on both occasions the complaints were summarily dismissed. No complaint was even pursued apparently against Mr. Hemann.


---

<sup>7</sup> *United States v. Brown*, 650 F.3d 581, 592 (5th Cir. 2011). Tellingly, other than the McMahon interview notes, which the Fifth Circuit analyzed and found immaterial, the complainants point to no “new” evidence that has not already been considered by this Committee.

Although the complainants pay lip-service to Rule 5.1, they cannot establish any violation by Mr. Weissmann of the ethical standards for supervisory attorneys. In relevant part, Rule 5.1 provides that “[a] lawyer shall be responsible for a violation of these Rules by another lawyer if ... the lawyer *orders* or *directs* the specific conduct or, *with knowledge* of the specific conduct, *ratifies* it....” Rule 5.1(d)(1) (emphasis added). The complainants make no attempt to demonstrate that Mr. Weissmann “ordered,” “directed,” “ratified” or was even *aware* of any decision to suppress evidence favorable to Mr. Brown (nor in fact could they do so accurately). Furthermore, the fact that bar complaints against the subordinate attorneys alleging prosecutorial misconduct were twice dismissed strongly demonstrates that there is no factual or legal basis to discipline Mr. Weissmann under Rule 5.1.

For these reasons, I respectfully urge the Committee to dismiss the complaint against Mr. Weissmann. The complaint rehashes claims and repeats arguments that have been fully examined by the courts and even this Committee and only serve to harass and disparage a member of the bar held in the highest regard. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Reginald M. Skinner". The signature is written in black ink and is enclosed within a circular flourish at the end.

Reginald M. Skinner  
Trial Attorney, Civil Division  
United States Department of Justice  
Constitutional Torts Staff  
P.O. Box 1746  
Washington, D.C. 20044  
Tel. (202) 616-3111  
Fax. (202) 616-4314  
Reginald.M.Skinner@usdoj.gov

cc: W. William Hodes, Esq.  
Sidney K. Powell, Esq.



U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, N.W., Suite 3266  
Washington, D.C. 20530

---

APR 16 2013

W. William Hodes  
The William Hodes Law Firm  
8125 Raven Rock Drive  
Indianapolis, IN 46256

Dear Mr. Hodes:

This letter is in response to your August 29, 2012 letter to the Office of Professional Responsibility (OPR), alleging professional misconduct by Assistant U.S. Attorney (AUSA) John Hemann in *United States v. Daniel Bayly, et al.*, 4:03-cr-00363 (S.D. Tex.), in which you represented defendant James A. Brown. Specifically, you alleged that AUSA Hemann and other prosecutors with the Enron Task Force improperly suppressed exculpatory evidence, in violation of Rule 3.09(d) of the Texas Disciplinary Rules of Professional Conduct, and made material misrepresentations during trial based on the allegedly suppressed evidence.

OPR initiated an inquiry in this matter and reviewed all relevant briefs and court decisions related to *United States v. Bayly*. OPR also has conferred with bar licensing authorities to which you have made similar allegations. Based on the results of its inquiry, OPR determined that your allegations do not warrant further investigation at this time.

Your allegations that the prosecutors suppressed exculpatory evidence and made material misrepresentations based on that suppressed evidence were raised in the district court and the court of appeals during and following the trial in *United States v. Bayly*. Neither court made a specific finding that any Department of Justice attorney had committed misconduct in the case. To the contrary, in *United States v. Brown (Brown III)*, 650 F.3d 581 (5th Cir. 2011), *cert. denied*, 132 S. Ct. 1969 (2012), the U.S. Court of Appeals for the Fifth Circuit affirmed the district court's holding that the evidence in question was not material to guilt or innocence and, therefore, the government did not violate its obligations under the *Brady* doctrine. Given this procedural posture and information obtained from bar licensing authorities to which you have made similar allegations, OPR has determined that no further investigation of your allegations is warranted at this time. Thank you for bringing this matter to OPR's attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin C. Ashton".

Robin C. Ashton  
Counsel

cc: Sidney Powell