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## HUMPHRIES' PERJURY TRIAL SET TO BEGIN

*RICK BRUNDRETT Staff Writer*

Prosecutor Fran Humphries will experience what it's like to be prosecuted when he is tried this week in Columbia on a federal perjury charge.

The former deputy solicitor in Lexington County faces a jury trial on a charge he lied to a federal grand jury about the 1995 videotaping of a capital murder suspect's conversation with his lawyer at the Lexington Sheriff's Department. Testimony before U.S. District Court Judge Dennis Shedd probably will start Tuesday. The trial is expected to last two or three days.

A lawyer for about 15 years, Humphries, now the No. 2 prosecutor in Horry County, faces a maximum sentence of five years in prison and a \$250,000 fine if convicted. He currently is suspended without pay from his deputy solicitor's job.

"He has pleaded not guilty and continues to maintain he's not guilty," said **Jack Swerling**, Humphries' lawyer. "He's anxious to go forward to get it resolved."

**Swerling** declined to discuss details of the case. Prosecutors could not be reached for comment.

Humphries is the federal government's main target in the May 29, 1995, videotaping of a private conversation between murder suspect B.J. Quattlebaum and his then-lawyer, **Jack Duncan**. Quattlebaum voluntarily went to the Lexington Sheriff's Department to be questioned about the shooting death of William Swartz.

Quattlebaum, who made incriminating remarks to Duncan on the tape, was arrested immediately after the conversation. In March 1998, he was convicted and sentenced to death.

Though the five-minute tape wasn't allowed in Quattlebaum's trial, the state Supreme Court in January reversed his conviction, unanimously ruling that Humphries engaged in prosecutorial misconduct by participating in the taping. Humphries' actions violated Quattlebaum's right to counsel, the justices said.

In unusually strong language, the court banned the 11th Circuit Solicitor's Office in Lexington from handling Quattlebaum's retrial, which hasn't been scheduled yet.

State law protects private conversations between lawyers and their clients as vigilantly as those between husbands and wives or priests and penitents, legal observers say. In South

Carolina, people accused of capital crimes have a right to legal counsel that pre-dates the federal and state constitutions.

"It's sacred," said John Freeman, a legal ethics professor at the University of South Carolina law school. "When people pierce that shield of confidentiality, our entire system of justice is compromised."

In testimony before Quattlebaum's trial, Freeman criticized the conduct of Lexington County prosecutors. But he said Friday that he has "no interest at all in prejudging" Humphries' criminal case.

Perjury is a tough charge to prove, Freeman said, explaining that "words can take on nuances."

"In hindsight, things you think were clear . . . sometimes aren't that clear at all," he said.

Humphries testified before a federal grand jury on April 22, 1998, that he didn't know the 1995 conversation between Quattlebaum and Duncan had been taped. He testified that he didn't find out about the tape until 10 months later. Federal prosecutors allege both of those answers were lies.

Quattlebaum's lawyers were not told about the tape until August 1997, three months before his death penalty trial was to have started

Critics have accused the U.S. Attorney's Office in Columbia of dragging its feet on the case, noting that Humphries wasn't initially charged until May.

When he was indicted, prosecutors alleged Humphries lied when he testified that he told deputies to quit recording the conversation between Quattlebaum and Duncan.

That indictment was dismissed when prosecutors said they first needed to try a co-defendant's case. Humphries was indicted again in September for perjury.

The recorded conversation took place in the polygraph room at the Lexington Sheriff's Department after Quattlebaum was given a lie-detector test that wasn't recorded. The conversation was recorded from a detective's office nearby; Humphries and four deputies listened to it on a TV monitor while it was being taped, according to earlier testimony.

Ex-Sgt. David Grice, who admitted to pushing the record button, was fined \$250 in September after pleading guilty to violating Quattlebaum's constitutional protection against unreasonable searches. Prosecutors said then his fine probably would be reduced if he testifies against Humphries.

Grice and Edward Hite, another former detective who wasn't charged, testified that Humphries witnessed the taping but didn't try to stop it and didn't tell Quattlebaum or Duncan about the tape.

Besides Grice and Humphries, the only other person charged in the case was Duncan. In September 1999, the Lexington lawyer was sentenced to four months in federal prison after pleading guilty to lying to a federal grand jury about giving a copy of the secret videotape to a

television reporter.

The state Supreme Court in May placed Duncan on indefinite suspension, barring him from practicing law again until at least next year. The court also has temporarily suspended Humphries' law license.

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## VIDEOTAPING PERJURY TRIAL BEGINS

*BLAIR STOKES BLANKS, Staff Writer*

A former Lexington County prosecutor lied in court about a videotaped conversation between a murder suspect and his lawyer, a federal prosecutor told a jury Tuesday. Testimony in the perjury trial of former Deputy 11th Circuit Solicitor Fran Humphries began in U.S. District Court with the testimony of a former polygraph operator with the Lexington County Sheriff's Department.

The polygraph operator, ex-Sgt. David Grice, gave a differing account of the events surrounding the taping than Humphries did when he testified on April 22, 1998, before a federal grand jury investigating the taping.

Humphries is charged with lying to a grand jury about his knowledge of the tape.

"He lied to that grand jury because he was afraid the truth would get him in trouble," said prosecutor Bob Jendron.

A defense attorney said the Lexington County Sheriff's Department is trying to blame Humphries for their wrongdoing that came to light when the tape was leaked to the media.

"I suggest to you that when this thing blew up . . . the wagons started circling at the Sheriff's Department of Lexington County," said **Jack Swerling**, one of Humphries' attorneys.

The conversation taped in May, 1995, was between murder suspect B. J. Quattlebaum and his attorney at the time, **Jack Duncan**. Quattlebaum was being questioned about the shooting death of William Swartz, a crime for which he later was convicted and sentenced to death.

The four-minute tape was not used in Quattlebaum's trial. However, the state Supreme Court in January reversed the conviction, saying Humphries engaged in prosecutorial misconduct. No new trial has been scheduled.

Private lawyer-client conversations are protected under the law. Quattlebaum made incriminating comments to Duncan on the tape.

Grice told the jury Tuesday that he'd meant to tape himself administering Quattlebaum's lie-detector test. Instead, he said, the VCR in his office, which records remotely from a camera in the polygraph room, malfunctioned. Grice said he'd left Quattlebaum alone in the polygraph room and was back in his office when he realized the tape had ejected. About the same time

he pushed it back in and pressed the record button, he saw on the monitor that Duncan had joined Quattlebaum in room and the two were talking.

Grice said he summoned others who asked Humphries' advice about the admissibility of the tape while it still was recording.

When Humphries was asked if the deputies could use the tape to prosecute Quattlebaum, Humphries said, "I don't know, but it would be an interesting Supreme Court case," Grice testified.

Grice said Humphries never told him it was wrong to tape the conversation and never told him to stop taping.

Humphries' lawyers maintain that their client testified truthfully to a federal grand jury that he did not know for 10 months that a tape had been made. Defense attorney **Swerling** said in his opening statement that Humphries told Grice to stop monitoring the conversation and did not know of the tape until much later.

Grice pleaded no contest to a civil right's violation earlier this year. He received a reduced punishment in exchange for his testimony against Humphries. He was fined \$250.

## Humphries



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## DEFENSE TEAM ATTACKS WITNESSES IN PERJURY CASE

*BLAIR STOKES BLANKS Staff Writer*

The defense in the perjury trial of a former Lexington County prosecutor attempted to poke holes in the testimony of the government's witnesses Wednesday.

Ex-Sgt. David Grice remained on the stand for much of the day, answering questions about the night he said he accidentally taped a conversation between a murder suspect and his attorney at the Lexington County Sheriff's Department. Also on Wednesday, a second witness backed up much of Grice's earlier testimony. Former investigator Eddie Hite said he, too, heard Fran Humphries talk about the tape the night it was recorded. Humphries, a former 11th Circuit deputy solicitor, told a grand jury he didn't know about the tape until 10 months later.

The taping led the state Supreme Court to reverse the murder conviction of B.J. Quattlebaum, calling Humphries' actions prosecutorial misconduct.

Humphries faces a maximum sentence of five years in prison and a \$250,000 fine if convicted.

The conversation in question between Quattlebaum and his attorney at the time, **Jack Duncan**, happened May 29, 1995, in the polygraph room of the Lexington County Sheriff's Department. News of the tape became public in August 1997, three months before Quattlebaum's death penalty trial.

Grice on Tuesday said that on the night of the taping he offered to toss the tape in the trash if Humphries thought it was improper.

"He (Humphries) said, 'No, I've got to tell Duncan we've got it and we may have to give him a copy,'" Grice testified.

Defense attorney **Jack Swerling** pointed out that Grice was willing to destroy evidence in a criminal case.

He also asked Grice about the taping of another lawyer-client conversation in a separate case. Grice said he knew nothing of that taping until the FBI started reviewing all the tapes.

Hite, who now works with the county coroner's office, testified Wednesday he heard Grice offer to toss the tape and Humphries tell him not to.

Hite also testified that Humphries told the officers to stop monitoring the conversation, saying

something to the effect of, "Y'all need to cut that thing off."

Hite said he asked Grice about the tape several times in the months after the taping.

"I was concerned about whether it was legal or not," Hite said.

**Swerling** pointed out that Hite, the lead investigator in the case, didn't mention the taping in his report and said later in magistrate's court that there were no tape-recorded statements from Quattlebaum.

Hite said he meant there were no recordings of his own interviews with Quattlebaum.

On the night the tape was made, Quattlebaum was left alone in a room after taking a lie-detector test. He opened a locked door and let in Duncan, according to trial witnesses. Quattlebaum then made incriminating statements to Duncan.

A surveillance camera used to record polygraph exams captured the conversation.

Grice said the camera is obvious in the small room, and he maintains Quattlebaum knew he was being monitored.

At one point on the four-minute tape, Duncan looks into the camera and rolls his eyes. Hite and Grice said Duncan appeared to have been drinking that night.

Grice said he never intended to tape anything but the lie-detector test.

**Swerling** has made several unsuccessful attempts to have the tape introduced into evidence.

Grice pleaded no contest earlier this year to a civil rights violation and is testifying as part of an agreement made with the prosecution.



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## JUDGE DISMISSES FEDERAL CASE AGAINST PROSECUTOR

*RICK BRUNDRETT, Staff Writer*

A federal judge Friday dismissed a perjury charge against former Lexington County prosecutor Fran Humphries, ruling that federal prosecutors didn't prove a key part of the charge.

After U.S. District Judge Dennis Shedd granted the motion for acquittal, Humphries hugged supporters in the Columbia courtroom. "I'm extremely pleased with the judge's decision," Humphries said. "I have always maintained that I never lied in connection with this matter."

Humphries' law license was temporarily suspended after he was indicted. It was not known Friday whether the state Supreme Court will reinstate his license so he can return to work in his current job as the No. 2 prosecutor in Horry County.

U.S. Attorney Rene Josey said he was disappointed with Shedd's ruling, adding he didn't believe the order can be appealed.

Shedd ruled that it wasn't enough for prosecutors to show that Humphries lied to a federal grand jury in 1998 about the 1995 videotaping of a conversation between capital murder suspect B.J. Quattlebaum and his lawyer at the time, Jack Duncan, at the Lexington County Sheriff's Department.

Prosecutors also had to prove that Humphries' statements were "material," or important enough to affect the grand jury's investigation, Shedd said.

"The government has completely failed to meet its obligation as to materiality," he said. "The government is not allowed to wrap its theory in such an unreasonable inference in an attempt to produce a conviction."

Shedd said prosecutors didn't clearly show trial jurors the purpose of the grand jury investigation. He said trial jurors could infer that the investigation focused on the "actual monitoring" of the conversation, not the taping of the conversation, which Humphries was accused of lying about to the grand jury.

But Josey said the ruling is "inconsistent with the broad, investigative role of the grand jury."

"My concept of materiality is that it's anything that would lead to the discovery of further evidence, or help the jury assess the roles of individuals, or help them assess evidence that they might have received from other sources," he said.



Prosecutors alleged Humphries lied when he told the grand jury he didn't know the conversation had been taped, and that he didn't find out about the tape until 10 months later.

Humphries told the grand jury he knew officers overheard the conversation via a video monitor but didn't know it was being taped, according to a portion of his testimony that was read in court Thursday.

"The government has the burden of proof," Humphries' lawyer, **Jack Swerling**, said after Shedd's ruling. "They didn't prove the case, and that's what it's all about."

Bob Jendron, the federal prosecutor who tried the case, declined to say whether Shedd's ruling would close the investigation into the taping.

If convicted, Humphries could have been sentenced to a maximum of five years in prison and a \$250,000 fine.

Besides Humphries, the only defendants charged in the case were Duncan and David Grice, a former sheriff's deputy who admitted to pushing the VCR's record button.

In September, Shedd fined Grice \$250 but gave him no prison sentence after Grice pleaded no contest to violating Quattlebaum's constitutional rights.

Duncan was sentenced in September 1999 to four months in federal prison after pleading guilty to lying to a federal grand jury about giving the videotape to a television reporter. The state Supreme Court in May ordered that Duncan can't practice law again until at least next year.

John Freeman, a legal ethics professor at the University of South Carolina law school, said Friday that Humphries could still face disciplinary action by the Supreme Court. In a stinging opinion in January, the court reversed Quattlebaum's death penalty conviction, ruling that Humphries engaged in prosecutorial misconduct by eavesdropping on the conversation.

"The last chapter in this saga hasn't been written yet," Freeman said.

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