

Morgan Lewis Helps Free Man Convicted By DA Misconduct

By Tracey Read

Law360 (December 2, 2022, 8:02 PM EST) -- A team of Morgan Lewis & Bockius LLP attorneys recently helped a pro bono client who was wrongfully convicted of a New Orleans murder during an era of prosecutorial misconduct walk out of prison a free man after 35 years at Angola State Penitentiary.



After serving 35 years of a life sentence for a New Orleans murder, Ricky Warner, now 64, became a free man Nov. 17 thanks to the pro bono efforts of Morgan Lewis & Bockius LLP attorneys. Pictured from left are associate Brent Hackett, partner Michael Banks, Warner and associate Lynne Powers. (Morgan Lewis)

Ricky Warner, then 27, was sentenced to life in prison without parole after being convicted by a jury of first-degree murder in Orleans Parish Criminal District Court for the fatal shooting of Ben Pitts on March 9, 1985.

Warner, now 64, requested a new trial based on recently disclosed key evidence that he says prosecutors deliberately concealed from him for decades.

On Nov. 17, Warner's conviction was vacated.

Warner — who will spend the coming weeks with the Parole Project getting training and assistance for his reentry into society before moving in with family in the Baton Rouge area — spoke to Law360 last week via video with his attorneys, Morgan Lewis partner Michael Banks and associates Lynne Powers and Brent Hackett.

"I feel real blessed to be here right now," Warner said. "It's been a long time coming. With the law firm, from the first day I talked to them, there was just something about those guys. I really felt comfy. I just felt good from day one."

The three attorneys began working on the case with current Orleans Parish District Attorney Jason Williams on a full investigation in June after being contacted by the Orleans Parish Conviction Accuracy and Integrity Project, a new initiative between the district attorney's office and Innocence Project New Orleans to root out and undo wrongful convictions in Orleans Parish.

The trio filed a post-conviction petition last month on the grounds that the evidence presented by the state at trial consisted primarily of two alleged eyewitness identifications made months or years after the crime.

In addition, the state did not present any physical evidence connecting Warner to the crime.

"As you know, eyewitness identification is among your least reliable sources of evidence in any criminal matter," Banks said, "but especially in a case like this, where months elapsed before anyone came forward and suggested that Ricky was a perpetrator, and then a second witness, claiming after the fact to have seen this."

He added that impeachment evidence is also crucial, specifically that which shows a defect in a witness's perception, memory or truthfulness, such as evidence of bias, mistake, character for untruthfulness, or past inconsistent statements.

"When you have someone coming forward months after the fact, as a defense lawyer, you really need to know what that person said to the police. What is the story?" Banks said. "And it's just absolutely shocking to see the prosecutors here, preventing the defense from having any access to the information that shows the eyewitness identification to be completely bogus."

The New Evidence

The shooting followed an argument over a street game of dice. The key witness against Warner, Randolph Gray, told police the night of the crime that he did not actually see the shooting and could not identify the perpetrator.


Seven months later, Warner was arrested and charged. At trial, Gray changed his story to say that he saw a man hand Warner a gun and saw Warner shoot Pitts.

Gray was never shown a lineup or photographs of Warner; the first identification he actually made was at trial, as Warner sat at the defense table two years after the shooting.

The inconsistency between Gray's initial account and his trial testimony was discovered earlier this year in files that the district attorney's office had not turned over to the defense at the time of trial and in

response to a 2000 court order.

The files included notes and internal memos from the prosecutors confirming that Gray had been unable to identify the shooter when initially interviewed by the police.

In their post-conviction petition, the Morgan Lewis attorneys said the state violated Brady  evidence requirements by not turning over evidence that could exonerate Warner.

In March 1997, the court ordered the district attorney's office to turn its files over to the defense. The office provided transcripts of both purported witnesses, but nothing more. In February 2000, it sent a letter claiming it had no other documents relating to this case.

"Apparently, that was untrue," the petition said. "Twenty years later, however, it seems that the district attorney has 'found' files dating back to 1987. Under the new leadership of District Attorney Jason Williams, the office has located and sent to petitioner's counsel thousands of pages of records concerning Ricky Warner's case."

The newly obtained case files included the prosecutorial case notes relating to Warner's trial. These case notes revealed an undated prosecutorial memorandum which includes a written note asking, "Can Gray make an ID?" in black ink with a response written in red ink stating "No" — which was inconsistent with Gray's testimony at trial, and information that would have been subject to mandatory production under Brady, Banks said.

A Sordid History

The petition also alleged that the Orleans Parish District Attorney's Office under Harry Connick, and the two prosecutors who oversaw the case, James A. Williams and Gerry Deegan, had a history of suppressing evidence.

At the time, there was a high level of political pressure to solve major crimes quickly, Hackett said.

"I think it is important to also point out that this was New Orleans in the 1980s," he said.

Connick was district attorney from 1973 to 2003. Under his leadership, the district attorney's office had an extensive practice of suppressing evidence that was favorable to the defense, especially in capital cases, Banks said.

For example, in 2005, defendant John Thompson - who was arrested in 1985 in New Orleans for a carjacking and unrelated murder of a hotel executive - sued the office for suppressing Brady evidence during his armed robbery trial in 1985. That suit eventually reached the U.S. Supreme Court, with the petition quoting Justice Ruth Bader Ginsburg in another case that under Connick, "misperception and disregard of Brady's disclosure requirements were pervasive in Orleans Parish."

Banks, along with Morgan Lewis partner Gordon Cooney, also secured Thompson's exoneration from death row.

Banks said that 35 years ago there was an indifference to the rights of the indigent, especially Black defendants in New Orleans.

"The DA's office did not seem to care much about protecting their civil rights as was their sworn duty," Banks said. "And on top of that, there was a campaign to 'get tough on crime, put people in jail, show that we're in charge, get convictions,' so that often young and inexperienced prosecutors were urged from above to get convictions at all costs."

Connick is now in his 90s and retired. He did not return a phone message left at his home. Deegan has since died of cancer, and James A. Williams is now a practicing criminal defense lawyer in Louisiana.

Banks said the number of cases Williams prosecuted with Brady violations and concealment of evidence is "frightening," but the full extent will never be known.

"There was a grand jury convened in one of our cases in 1999, in which the attorney running the grand jury process actually recommended indicting Jim Williams, but the then-elected District Attorney Harry Connick instead dismissed the grand jury before it completed its proceedings and never pursued any charges against the former prosecutor Jim Williams," Banks said.

Williams told Law360 that he does not remember much from that time period but wishes Warner well.

"I have no recollection of who Ricky Warner is," he said. "When I was in New Orleans, I tried over 100 cases, and that was nearly 40 years ago. I don't remember what I had for breakfast this morning, let alone all those cases.

"But if he's been in jail for 36 years, you know, that's enough time. I'm sure he was a young kid when it happened. He did enough time; whether he did it or didn't do it, you know, that's above my pay grade now. We presented the case that we had, and I don't even remember who did the arguments or who did what, but, you know, good for him."

A New Beginning

Powers said things are looking up under the new district attorney, who did not return a phone call seeking comment.

"The Conviction Integrity Unit under Jason Williams is doing some amazing things," she said. "Ricky wasn't the only man that was released from Angola that day. There was another case that the Conviction Integrity Unit had also been working on. So not only are they really looking into these cases, but they're getting results and are working with the defense lawyers to make things right."

Powers added that Warner's family stayed in his corner the entire time and were the ones that had contacted the Conviction Integrity Unit to look into his case.

"I talk to Ricky on the phone every day still. He's just got such a great heart," she said. "From the get-go, I think we did have a very, very great connection with Ricky and he has stayed with us every step of the way. He was patient with us. He believed in us, and he's now become a good friend to us."

Warner said he is now living in an apartment with two other men to help him adjust to the feeling of being free.

"I had a lot of anger in my heart for what happened and everything," he said. "But over a period of time, I've come to learn that carrying anger in your heart doesn't help the problem."

Warner said he took advantage of programs in prison to educate himself, and also found solace in religion and, when he was younger, sports.

"My plan for the future going forward is to find steady employment," he said. "Work and do what I can do to be a better person to find me a nice church to get involved in and just live my life."

Banks said one thing still bothers him a great deal about Warner's case and all the others involving wrongful prosecution when Brady evidence was withheld.

"Every time an innocent man was arrested and convicted, it meant that a perpetrator was going free," he said. "It meant that the police suspended their search for the murderer because some prosecutor decided that he could play with the evidence, hide evidence and get a conviction as a notch on the belt. And what that meant was the real murderer was out there terrorizing the community."

"Ricky was arrested in 1986, and convicted in 1987. Once the criminal justice system decides that it has a perpetrator in the eyes of a jury, the search for the perpetrator stops. So who knows what mayhem and violence were done by whoever killed Ben Pitts."

--Editing by Marygrace Anderson and Brian Baresch.