


High-powered lawyering—and a well-timed bit of luck—add up to an eleventh-hour reprieve for an inmate on Louisiana's death row.  By Paul Braverman

ATTORNEYS J. GORDON COONEY, JR., AND Michael Banks cleared the last security check at Louisiana's infamous State Penitentiary at Angola and were admitted to death row. In the visitors room, behind plate glass, sat their client, John Thompson. The lawyers told him that his death warrant had been signed, that his execution would take place in 30 days, and that their last-gasp appeals were probably hopeless. Then they got into their rental car and headed south toward New Orleans to break the news to his mother and son. It was April 1999.

Cooney and Banks recall that they were silent as they drove, weighed down by the ordeal they had just been through and steeling themselves for the meeting to come. For 11 years, they had pursued state and federal remedies, sought writs of habeas corpus, and taken every step they could think of on Thompson's behalf. Eventually the U.S. Court of Appeals for the Fifth Circuit ruled against them, and the U.S. Supreme Court denied certiorari. Their legal maneuvering, it seemed, had come to an end.

As they neared Baton Rouge, Cooney checked his voicemail. There was a message from Elisa Abolafiyeh, a private investigator that Cooney and Banks had hired to dig through Thompson's file one last time, trying to answer a question that had been nagging at them. In addition to murder, Thompson had been found guilty of a carjacking that took place a few weeks after the murder, and for that crime, he been sentenced to 49 years in prison without parole. The conviction had figured heavily in Thompson's murder trial. During the course of the carjacking, the lawyers knew, the driver had kicked the perpetrator in the face. They also knew that a bloody tennis shoe and a swatch of bloody cloth had been taken from the scene. Presumably, it was the perp's blood. But there was no record of further investigation or indication of any forensic tests being run, and the prosecution hadn't presented any blood evidence during the trial. Why not?

The investigator's answer was promising. While digging through old microfiche records at the police crime lab, she discovered a report about blood evidence found at the scene. It was type B. No one on the defense side had ever seen the report.

The lawyers allowed themselves a moment of optimism, but the news raised more questions than hope. What type was Thompson? What if it was the driver's blood? Why hadn't it been turned over?

Before they could answer those questions, Cooney and Banks

had to meet with Thompson's family. They tried to walk a fine line between preparing them for the likelihood that Thompson would die in a few weeks, and offering a hint of hope. Then they got to work.

It had been 11 years since Cooney, now 44, and Banks, 47—driven by a fear that innocent people were being executed—had gone looking for a condemned prisoner to represent. A Louisiana agency that refers pro bono cases to lawyers suggested Thompson, who had been convicted of killing Raymond Liuzza, Jr., the son of a prominent New Orleans businessman. Because of the victim's position in New Orleans society, Louisiana lawyers weren't lining up to take the case, so Cooney and Banks, litigation partners at Philadelphia's Morgan, Lewis & Bockius, became the unlikely champions of a Southern con.

In those early days, the lawyers and their client were a little wary of each other. "Thompson's case didn't scream innocence," says Cooney. "It was clear that the trial had been unfair. But we couldn't say that he hadn't done it." For his part, Thompson didn't have a lot of faith in lawyers. "The system had done him nothing but wrong," says Banks.

But the more time they spent with each other, the more the relationship between Thompson and the Morgan, Lewis lawyers deepened. Life on death row means almost total isolation. Prisoners are kept in their cells, alone, for 23 hours each day. They spend the remaining hour alone in an exercise yard. The cells are constructed so that they can't see another person. Visits and phone calls to family and friends are severely restricted.

But inmates can call their lawyers every day, and Thompson took advantage of the opportunity. "As he got to know us, he'd call more and more," says Cooney. "There was always some talk about the case, but mostly he just wanted to talk to somebody about something else. The Saints, the Eagles, whatever."

The trips Cooney and Banks made to Louisiana were another opportunity for the men to get to know each other. For Cooney and Banks, neatly manicured Yankees who have spent their entire careers at Morgan, Lewis, those visits felt like trips to a foreign country—the swampy, suffocating weather, the teams of inmates at work in the corn and soybean fields, the humiliating, excruciatingly thorough searches at the hands of the oversized prison guards.

The timing—finding out about the missing blood report so soon after breaking the bad news to Thompson—was almost a

Blood Work

cruel joke, but Cooney and Banks knew they had to act fast. Their first job was to establish the blood types of everyone at the carjacking scene. The lawyers tracked down the driver, who supplied a Red Cross donor card indicating that he was type O, meaning that the blood was not his.

Thompson's was a more difficult case. Neither he nor his mother knew his blood type. Cooney and Banks considered asking the court to order a blood test, but that was dangerous. In addition to their appeals, they were seeking clemency from the governor, and if Thompson was type B, it might be the final nail in his coffin.

After a bit of brainstorming, the lawyers came up with an alternative. "We wrote him a bullshit letter on two pieces of paper and stapled them together," says Banks. "We put that in one envelope, and put that in a larger envelope. We called John and told him to take the staple out, cut himself, bleed on the paper, and mail it back to us. He said, 'How much blood do you need?' He was ready to start slicing off as many fingers as it took."

As is the case with much great legal strategizing, however, the plan became moot. Cooney and Banks had been seeking hospital records at the same time and, just after Thompson received their letter, they received the records. Thompson also was type O—no match for the blood at the carjacking.

Next, Cooney and Banks went looking for lawyers in the district attorney's office who knew something about the blood report. One former assistant district attorney gave them an affidavit saying that another ADA had admitted to intentionally suppressing it. With the affidavit and the blood types in hand, the Morgan, Lewis lawyers went to see the trial judge. It was the end of April 1999; there were about two weeks to go before the execution date.

Confronted with the new evidence, the judge stayed the execution. Cooney and Banks now changed their focus to freeing Thompson, not just sparing his life. Over the next three years, they got the carjacking conviction thrown out and fought a series of battles in pursuit of a new trial on the murder charge. The prosecution opposed them at every turn, but eventually the Louisiana Supreme Court agreed that a new trial was needed because the carjacking conviction had prevented Thompson from taking the stand in his own defense during the murder trial and had been improperly considered during the trial's sentencing phase.

Thompson's new trial, which took place last May, was very different from the first one. Cooney and Banks had reinvestigated the crime, found new witnesses, and dug up materials to impeach the old ones. They were also joined by Robert Glass, a prominent New Orleans criminal defense attorney, making the team that handled Thompson's retrial very different from the one that handled his first trial.

But the length of time that had elapsed since the killing complicated things. In particular, a codefendant, Kevin Freeman, had died years before. His testimony had been key in convicting Thompson. The prosecution was going to read that testimony at the new trial. Cooney and Banks now had the evidence to show Freeman had lied, but how to tell the jury?

The team invented a technique: They cross-examined an empty chair. Cooney and Banks drew up a list of about 20 proposed questions. They gave the list, and evidence showing a reasonable basis for asking them, to the judge. He gave them the go-ahead. Cooney recalls the scene: "After Freeman's testimony was read, the judge told the jury that 'the defense has some questions they would've liked to have asked Mr. Freeman.' Glass stood in front of the empty chair and asked questions like 'Isn't it true that you were lying when you testified such and such?' The final question was, 'Isn't it true sir, that you, acting alone, killed Raymond Liuzza?'"

The jury took 35 minutes to return with a not-guilty verdict. Thompson's side of the courtroom erupted, as spectators cried and fell into each other's arms. The victim's family, which remained convinced that Thompson had committed the crime, was in shock. Outside, on the courthouse steps, a phalanx of television lights blazed. It had been 19 years since John Thompson was arrested, and 14 years since Cooney and Banks had taken the case.

"The thing to remember," says Cooney, "is that for all our maneuvering and strategizing, it's luck that saved John. If our investigator hadn't stumbled across that evidence report, we'd be observing the fourth anniversary of John's execution instead of celebrating his release." Luck, of course, and some high-powered lawyering.

A few weeks after the trial, Banks and his wife went out to dinner with a couple they know, and Banks told them Thompson's story: "Our friend is a surgeon. He got kind of teary, and said, 'You know, I've held someone's heart in my hands. You know what that feels like.' I think he's right."

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