

THE AM LAW LITIGATION DAILY

Litigators of the Week: A \$28M Verdict for Exonerated Member of ‘Buffalo Five’

By Ross Todd

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Our Litigators of the Week are **Ryanne Perio** of **Wilmer Cutler Pickering Hale and Dorr**, **Joel Rudin** of **The Law Offices of Joel B. Rudin P.C.** and **Spencer Durland** of **Hoover & Durland**.

They and their firms represented John Walker Jr., a member of the “Buffalo Five,” five Black men who were teenagers in 1976 when they were linked with the murder of 62-year-old William Crawford on Buffalo’s East Side.

Walker was wrongly convicted in 1977 at age 17 and spent 22 years in prison and another 17 years on parole before having his conviction vacated in 2021.

This week, after a three-week trial, federal jurors in Rochester, New York, awarded Walker \$28 million after finding prosecutors violated his constitutional right to a fair trial.

Lit Daily: Who was your client and what was at stake?

Joel Rudin: Our client is John Walker Jr., a courageous 65-year-old man living in Buffalo, New York, who was wrongly convicted of a robbery-murder in 1977 when he was 17 years old. John spent 22 years in prison and 17 years on parole before his conviction was finally vacated in 2021. Our team represented him in his civil lawsuit under 42 U.S. Code § 1983 against the County of Erie for *Brady* violations and summation misconduct committed by the Erie County District Attorney’s office in connection with



Courtesy photos

(l-r) Ryanne Perio of WilmerHale, Joel Rudin of The Law Offices of Joel B. Rudin P.C., and Spencer Durland of Hoover & Durland.

John’s 1977 criminal trial. What was ultimately at stake was accountability. We set out to establish that John’s murder conviction was not simply an isolated error, but the result of unlawful policies and practices maintained by the Erie County District Attorney’s office.

How did you and your firms get involved in this case?

Rudin: I have a boutique criminal defense and plaintiff’s civil rights firm that, over the past 25 years, has brought numerous lawsuits against New York City seeking money damages for clients wrongfully convicted due to police and prosecutorial misconduct.

John and one of his co-defendants, Darryl Boyd, reached out to me shortly after their convictions were overturned in 2021. The task was daunting, as municipal liability cases are notoriously difficult to establish, and this one no less so because of its age. But with the help of my co-counsel at WilmerHale and Hoover & Durland, we were up to the challenge.

Ryanne Perio: WilmerHale has a long and storied history of providing pro bono representation for society's most vulnerable across a broad range of issues. Starting with **Ross Firszenbaum's** exonerations of Dewey Bozella in 2009 and Jaythan Kendrick in 2020, our firm has helped the wrongfully convicted secure their freedom and recover damages for their immeasurable losses. When Joel called Ross to come on board as co-counsel, we were excited to commit our time, talent and resources to John's case.

Spencer Durland: My firm, Hoover & Durland LLP, came into the case during discovery. My partner **Tim Hoover** and I were defending another wrongful conviction verdict in the Second Circuit, and we were initially asked to serve as local counsel in John's case. Over time, our colleagues asked us to expand our role to true co-counsel, and I ultimately tried the case with the Rudin firm and WilmerHale.

What was the division of labor, both in the run-up to trial and at the trial itself?

Rudin: This case was notable for the cohesiveness among our firms. We collaborated on every aspect of the case from the day it was filed through the day of the verdict, and we think the outcome depended on it.

We divided up investigative responsibilities and collectively accumulated a great deal of information about the practices of the Erie County District Attorney's office back in the 1970s. We visited the crime scene, sought out surviving witnesses for interviews (so many had died over the years), interviewed numerous ex-prosecutors and defense lawyers in Buffalo and researched other reported cases of misconduct to develop evidence of policy, custom and practice. Because of my experience in cases against police departments and prosecutors offices, I took most of the depositions and succeeded in obtaining many key admissions that the conduct by police and

prosecutors in John's case was consistent with the policies and practices of the respective agencies. This went a long way in enabling us to prove municipal liability. At trial, I cross-examined the assistant district attorneys and police detective who investigated and prosecuted John's case.

Perio: We worked side-by-side with the Rudin firm to investigate the case long before the complaint was filed and dedicated thousands of hours to building the factual record through discovery and preparing for trial. Our WilmerHale counsel and associates, including **Gideon Hanft, Phoebe Silos, Erin Hughes, Trena Riley** and **Melissa Zubizarreta**, made their first arguments in federal court in connection with motions in limine, and had their first speaking roles in a trial through the presentation of documentary evidence and deposition testimony. At trial, I gave our opening statement, and Ross Firszenbaum gave our closing. We also put on many of the key witnesses, including fact witnesses from the 1977 criminal proceedings and experts in false confessions, prosecutorial and criminal defense practices, crossed the county's expert and took the lead briefing and arguing many of the legal and evidentiary arguments that arose before and during trial. Gideon deposed former Erie County District Attorney Edward Cosgrove, which yielded key admissions that we played to the jury by video at trial.

Durland: In the run-up to and during trial, my principal responsibilities were presenting the testimony of John Walker, presenting the testimony of an expert forensic psychologist, Dr. Sanford Drob, and handling many of the complex evidentiary and legal issues that this case presented.

What were your key trial themes and how did you drive them home with the jury?

Perio: The main theme for our case was that John was entitled to a fair trial, but what he got was a trial rigged in favor of the prosecution. The prosecutors in 1977 coerced witnesses to implicate John and his friends, suppressed the evidence of this coercion—along with evidence showing that John was in a taxi at the time of the crime, and evidence implicating two other much more likely suspects—and then delivered

a closing argument in John's trial that exploited the prior suppression of favorable evidence.

We drove home these themes through the testimony of John Walker and his friend, Tyrone Woodruff, whom police and prosecutors had coerced to falsely accuse and testify against John in 1976 and 1977 but has long since recanted and provided compelling testimony at trial; James McLeod, the criminal defense attorney for one of John's co-defendants, who was acquitted in 1977 because Mr. McLeod received favorable evidence the other defense attorneys did not receive; Alan Hirsch, a retired Williams College professor and expert in police interrogation practices and false confessions; Professor Steven Zeidman of CUNY Law School in New York, who explained how a reasonably competent criminal defense attorney could have used the suppressed materials; and Dr. Sanford Drob, a veteran forensic psychologist, who testified about our client's psychological injuries and damages.

Mr. Walker's conviction was handed down in 1977. What sorts of complications did that provide in building this case?

Durland: The 50-year history of the case was an ever-present challenge. We had to prove that critical evidence was not provided to John's defense counsel. We analyzed pretrial discovery records, as well as pretrial hearing and trial transcripts in John's case and those of two of his co-defendants, and established that prosecutors back then made a careful record of what they disclosed, but there was no record of the key *Brady* material having been turned over. In addition, our analysis of the trial records made clear that the defense lawyers likely didn't have the materials because if they did, they would have used them.

But proving non-disclosure of the *Brady* material was only part of the challenge. We also had to prove that John's constitutional violations were caused by a policy, custom or practice of the Erie County District Attorney's office in 1976 and 1977. We were largely able to do that in depositions, when the two main assistant district attorneys, while insisting they did nothing wrong, acknowledged that all of their

decisions were consistent with office policy and practice. We were also able to establish in depositions that the Erie County District Attorney's office was not recognizing or correctly applying Supreme Court decisions that had developed the *Brady* doctrine in the years between 1963 and 1977.

The challenge of the passage of time also manifested in another, sadder way. Many witnesses, including two of John's co-defendants and several of the lawyers involved in the underlying criminal proceedings, had long since passed by the time the suit was filed. Darryl Boyd's criminal defense attorney passed after the case was filed but before we were able to depose him. And three witnesses passed between their depositions and trial including, tragically, Darryl Boyd, who passed from pancreatic cancer just days before his trial was scheduled to start.

How much of this record was developed in the run-up to Mr. Walker's exoneration in 2021? What was new to this particular case?

Rudin: Most of the *Brady* material was uncovered by John Walker himself during a Freedom of Information Law request. A single piece of that evidence—a photograph James McLeod received in his defense of one of John's co-defendants suggesting another perpetrator—was the basis of the vacatur of John's conviction in 2021. All of the other evidence in the case—including the evidence and analysis of non-disclosure of all the *Brady* evidence, and the historical evidence showing the unlawful policy, custom or practice of the Erie County District Attorney's office back in 1976 and 1977—was newly developed by our team.

Your team representing Mr. Walker was much larger than the team representing the defendants during this trial. How did you address that dynamic at trial?

Perio: Ross Firszenbaum explicitly addressed this issue in his summation and did so in a way that reminded the jury why the *Brady* rule exists. Although our team was larger than the County's in 2025, the dynamic was reversed in 1977. In a criminal case,



Courtesy photo

John Walker Jr. with his legal team.

the police and prosecutors had all the resources and all the power. The *Brady* rule seeks to correct the informational imbalance by requiring the prosecution to disclose to the defense any material favorable to the accused—anything someone like John might want to use to defend himself.

We also addressed this issue indirectly, through the number of lawyers who played meaningful roles in the courtroom. The four lead attorneys all had substantial parts to play in presenting the direct case and attacking the defense case, and WilmerHale's deep bench of outstanding young attorneys was not kept on the sideline; they were all on their feet at some point during the trial, presenting evidence to the jury.

What moments from the trial stand out to you?

Rudin: For me, it was our client's own brave, extraordinarily articulate testimony, together with the testimony of his friend, Tyrone Woodruff, explaining how his role in testifying against his teenage friends had haunted him over his lifetime and how he has had the criminal indictment number tattooed on his arm to remind him every day of what he was forced to do and its consequences for his friends.

Perio: Trials have always been an opportunity to tell a story, and no story is more compelling than John's. From the day Joel and I drafted the complaint together, we've been preparing for how we would tell John's story at trial, and those narrative themes were reflected in my opening, in Ross's closing, and with every witness we examined in between. I'm also personally proud of our entire WilmerHale team, the majority of whom got their first courtroom and trial experience in this case. Watching them each step to the podium to argue a motion or present evidence to the jury for the first time was an extremely proud moment for me.

Durland: On a personal level, I'll remember standing at the podium, directing John Walker's testimony, for the rest of my life. He was dignified, riveting, articulate, measured and utterly genuine as he walked the jury through his life, one searing experience after another.

Thinking over our case as a whole, I'm struck by the range of notes we hit. There was deeply moving and heartbreaking testimony from John and his friend, Tyrone Woodruff. There was engaging and informative testimony from expert witnesses giving the jury crash courses in police interrogation, criminal defense and the psychological suffering endured by long-term prisoners. There were slashing, confrontational examinations of Mr. Walker's prosecutors and of the defense expert seeking to excuse their conduct. And there was Ross Firsenbaum's masterful summation that tied all these strands together.