

The Murder Trial of Shareef Cousin

Overview

The murder was shocking, even in a city recently proclaimed the murder capital of the United States. For their first date, Michael Gerardi gave Connie Babin a single red rose and took her out to dinner at the Port of Call restaurant on the edge of New Orleans' historic French Quarter. As they were returning to his truck, parked a block away, they were confronted by three African American youths. Before Gerardi had a chance to hand over his wallet, he was shot in the face. A part-time bartender, who was also a medical student, provided emergency first aid but to no avail. Michael Gerardi was killed during what became known as New Orleans' bloodiest week.

Acting on an anonymous tip, New Orleans Police Department detectives arrested Shareef Cousin at his home just a few blocks from where Michael Gerardi had been slain. Nine months later the case went to trial. The state's star witness was Connie Babin, the victim's date, who identified Cousin as the attacker. The defense countered with an alibi contending that Cousin was playing basketball about the time of the shooting. Amid intense local media coverage, the majority African American jury convicted Shareef Cousin of first-degree murder and sentenced him to death. National attention soon focused on the case as well. Shareef Cousin became a poster child for the anti-death penalty movement; he was only 16 at the time of the murder and thus garnered the dubious distinction of being one of the youngest people on America's death row.

Amid allegations that the prosecutor had improperly withheld evidence during the trial, the state's case unraveled on appeal, however. The Louisiana Supreme Court reversed on the basis of improper use of hearsay testimony. But there would be no retrial; District Attorney Harry Connick reluctantly dismissed the case. Yet Cousin would not walk away from death row a free man. Earlier he had pled guilty to four armed robberies and began serving 20 years in Angola, the state's major penitentiary.

Was justice done? To some, the refusal of DA Harry Connick to try Shareef Cousin a second time represented a miscarriage of justice—a brutal murderer was released on a legal technicality. In the words of Connie Babin, the victim’s date for that evening: “You try and do the right thing, and you get kicked in the end” (Coyle 1999). To others, the reversal of the murder conviction meant that justice eventually prevailed—an innocent man had been freed from death row. Throughout the proceedings, the defendant’s family alleged racism, prosecutorial misconduct, and underhanded police work.

Throughout this book we will follow the murder trial of Shareef Cousin. Each chapter will examine one aspect of the prosecution, trial, and appeal of this case. The goal is to illustrate important aspects of the American justice system.

In the wake of Hurricane Katrina I have added material on the devastation of the criminal justice system. It is hard to imagine living in the United States in the modern era and having a criminal justice system teetering on the edge of total collapse, but that was the situation after the levees broke and the city was inundated. A year later, the city struggles to restore policing, open the courts, and reestablish its jails, all within a context of returning crime. The specifics of this disaster aside, the purpose is to suggest that justice officials across the nation need to plan for the possibility of a traumatic shock to the system.

Compensating the Wrongfully Convicted

After the criminal charges were dropped against Shareef Cousin, legal attention shifted to the civil law. At first glance the issue seems straightforward. After all, Shareef Cousin’s rights were apparently violated—he spent almost two years on Louisiana’s death row and almost as long in jail awaiting a new trial that never occurred. But the legal issues are much more complicated and evolving. Legislatures and courts across the nation are debating the question: If an inmate turns out to be wrongfully convicted, does the state owe compensation for the years lost in prison? Or is the restoration of freedom compensation enough? (Coyle 2000a) These have

become pressing questions in the wake of a wave of persons who have been freed from death row or long prison terms. About half the states have enacted laws that create a rational system for paying compensation. In the other jurisdictions, these issues are being decided by courts. Indeed, a federal jury in Virginia awarded \$2 million to Earl Washington, Jr., who had been falsely convicted of rape and murder based on a confession fabricated by a former state police investigator (“Jury: Investigator Must Pay” 2006).

In Louisiana, the question of compensating the wrongfully incarcerated arose in a lawsuit that was winding its way through the courts at about the same time that Shareef Cousin was being convicted and sentenced to death. Roland Gibson was convicted for the 1967 murder of a New Orleans cab driver and sentenced to life imprisonment. After he had spent 17 years in prison, Gibson’s boyhood friend and codefendant, Lloyd West, recanted his claim that Gibson had been the triggerman. A new trial was ordered, but the DA decided not to conduct a retrial. Gibson spent another 8 years in prison after the problem of perjured testimony surfaced.

Following a bench trial, civil court judge Carolyn Gill-Jefferson ruled that the New Orleans police had lacked probable cause to arrest Gibson and ordered the city to pay the plaintiff and his family \$10.7 million in damages (Finch 1998). But the Louisiana Supreme Court unanimously held that civil trials should not “second-guess” a criminal court finding of probable cause to arrest, even when that evidence later turns out to be false. The court also chastised the trial judge for putting too much weight on the testimony of West, a convicted felon (Gibson v. New Orleans 2000).

Given these legal standards, it would be hard for Shareef Cousin to successfully sue the New Orleans Police Department. And even if he were to win, it would be difficult to collect because the city of New Orleans is cashstarved. In a lawsuit against a private party, the plaintiff is entitled to seize the defendant’s assets to pay the judgment, but the federal courts have exempted cities from such possibilities. Thus, in the past when plaintiffs have successfully sued the city of New Orleans over matters such as police brutality, the city has delayed paying for years. Indeed, some may never collect.

In 2005, the Louisiana legislature passed a mechanism for compensating the wrongfully convicted after their innocence is proven by DNA or other “clear and convincing” evidence. According to State Senator Lydia Jackson (D-Shreveport), “You can’t put a price on a person’s freedom,” but the bill does provide a limit on compensation: \$15,000 for each year spent in prison, up to a cap of \$150,000 plus medical, counseling, and education services. But State Senator Robert Kostelka (R-Monroe), a former judge, objected on the grounds that the principle was wrong, because the person was “still found guilty by a court of law” (Hill 2005).

Debates like this are occurring in legislatures across the nation. Amid evidence that several persons were falsely convicted, Illinois increased the compensation limit to \$140,000. The same holds true in Florida; prompted by the discovery that Wilton Dodge served 22 years for a brutal rape he did not commit, the Florida legislature is considering a compensation formula (Pudlow 2005). Nonetheless, legislatures are more prone to provide financial support for those who are victims of crime (called victim compensation bills, discussed in Chapter 9) than appropriate money for those who have been victimized by the criminal justice system.

Because Louisiana law allows little likelihood that Shareef Cousin could successfully win a civil lawsuit for wrongful conviction, his lawyers turned to federal court, filing a federal civil rights lawsuit.

A Federal Civil Rights Lawsuit Is Filed

Late on the afternoon of January 7, 2000, attorney Clive Stafford-Smith walked the five blocks from his office to the federal courthouse at 500 Camp Street. The date was important. Federal law mandates a one-year statute of limitations in cases like this one. Thus the lawsuit was filed exactly one year after District Attorney Harry Connick decided not to retry Shareef Cousin for the Port of Call murder.

Smith, the state's leading anti-death penalty lawyer, had represented Shareef Cousin in the state criminal trial and appeal. But now he was filing a federal civil rights lawsuit. Proceeding to the intake desk of the clerk's office, he paid the \$150 filing fee, and the office time-stamped the lawsuit, titled "Shareef Cousin versus Anthony Small." The complaint was given the number 00-0069, indicating that it was the 69th civil lawsuit filed during the year 2000. The case was then randomly allotted to U.S. District Court Judge Sarah Vance, who had been appointed to the federal bench in 1994 by President Clinton. As a practicing lawyer, she had worked in the civil litigation section of one of the city's largest law firms. As a presiding judge, she was noted for running a tight ship, particularly in cases involving felony prosecutions of some of the state's top elected officials (Gyan 1997).

Some of the defendants were the prosecutors in the state criminal prosecution. The others were New Orleans police officers. The 83-page lawsuit began: "This civil action arises from the malicious prosecution, wrongful arrest, incarceration and prosecution of plaintiff Shareef Cousin." The lawsuit alleged that the plaintiff's rights were violated under the Civil Rights Act (Chapter 42 of the U.S. Code), particularly Section 1983. The document offered a broad-based indictment of both police and prosecution. Detective Anthony Small, the lead homicide detective in the murder of Michael Gerardi, was accused of being corrupt and fabricating evidence. Assistant District Attorney Roger Jordan was accused of repeatedly not turning over evidence favorable to the defense. The complaint concluded with a broad-based indictment of racial bias in the police department and Connick's office. The complaint requested an unspecified amount of damages. In a later letter from one of Cousin's attorneys, however, the lawyer suggested that, based on past cases, \$2.5 million would constitute a justifiable settlement.

The city attorney for New Orleans defended the police officers. His reply simply denied the allegations, thus providing little guidance as to the defense the city might use in the case. More interesting was the reply from Harry Connick's lawyer, who asserted that the district attorney enjoys absolute immunity from lawsuits. The reply also termed the complaint redundant and immaterial. The judge would later call the document convoluted but refused to dismiss it on procedural grounds.

A month before filing the civil rights lawsuit, attorney Clive Stafford-Smith and other defense lawyers held a news conference to bestow their first Chef Menteur award (which in French means “big liar”). The recipient was an NOPD homicide detective who allegedly falsified evidence in a trial that resulted in the defendant’s being acquitted. A longtime homicide detective, who requested that he not be identified by name, scoffed. He said the lawsuits had little to do with the case they claimed to address but instead were part of an effort to undermine the credibility of detectives who testified in future cases (Coyle 2000b).

The cases never went to trial. The judge dismissed the case on substantive grounds, ruling that both the police and prosecutor were immune from prosecution.

The federal courthouse in New Orleans suffered only minor damage from Hurricane Katrina. Located in an older area of town, the building did not flood because it was on high ground. Nonetheless, the extensive destruction in other parts of the city and surrounding areas forced the court to temporarily hold sessions in surrounding cities that did not suffer extensive damage. Eventually, the federal courthouse reopened. But a year later, it was still not business as usual. It was, for example, difficult to find jurors, and the FBI building was still not functional. The federal courthouse also served as a temporary state courthouse, because the criminal courthouse in New Orleans had experienced extensive hurricane damage (see Chapter 4). In an effort to preserve some semblance of a court process, two courtrooms were made available to state judges to conduct hearings and other proceedings, but not trials.

Doing Time at Tulane and Broad (Part I)

Christopher Rose, “Doing Time at Tulane and Broad,” *The Times-Picayune*, 27 September 1998.

Emergency vehicles with lights and sirens a-go-go are so frequent here that no one seems to notice. Also missed in the daily bustle is the grand building on the corner . . . The Orleans Parish Criminal Courthouse is so familiar and dirty and, at night, so poorly lit that it fades into background despite the jolting tales of the city inside. . . .

Morning light filters in the north windows in the grand foyer, gray light turning yellow, illuminating dust particles above the expansive marble floor. . . . “It’s like a church,” one bystander affirms. “It makes you feel guilty before you even get to the courtroom.” . . .

There are 12 criminal court sections . . . and each day’s docket reflects anywhere from 20 to 40 cases in progress. Hundreds of people flock through the courthouse doors for bond hearings, status hearings, arraignments, motions, and pretrial arguments on cases from crack possession to murder, on and numbingly on, all of this dispensed with before actual trials begin later in the day.

Many of the accused in these cases shuffle along wearing international safety orange prison fatigues stamped with “OPP”—Orleans Parish Prison—on the back, their wrists and ankles shackled, deputies flanking them. Down the center of the hall they walk, past the innumerable “bench people” who gather on the seats outside each courtroom. The bench people are witnesses to crimes, victims of crimes, and, mostly, friends and relatives of the accused. . . .

The improbably named Lark Fall administers to the hurt and the fallen here. Fall, 33, is the answer desk clerk just inside the front door. Her job is to provide courthouse visitors with directions to various courtrooms and agencies, but sometimes she takes on extra duty. Dressed in a sequined “Amazing Grace” T-shirt and poring over sheet music while making notes in the margins, Fall sings. . . .

Numa Bertel loves this story. . . . Bertel is a veritable lifer here, the chief of the public defender's office and the man to see if you want to know what it's like to love this place. "The colloquial expression would be: I like to be where the action is," Bertel explains. "The actual expression is: I like life. This is much closer to real life than sitting in a high-rise law office watching corporations function. . . . I've been coming into this building every day since '63 and there's hardly a day goes by that there isn't some high drama going here if you know where to look for it—and usually you don't have to look for it. In and out come all the misfortunes and tragedies of the city."

In a first floor corner is Magistrate Court, the first stop in the criminal justice system after arrest and booking. . . . Magistrate Court is a microcosm of the criminal justice system, a quick picture. The defendants have generally all been arrested within the past 12 to 24 hours. Dressed in various combinations of OPP fatigues and street clothes, they are, on this day, 20 men in serious need of a good night's sleep, bleary-eyed and unshaven. Statistics tell us at least three quarters of them are coming down off a buzz from drugs or alcohol.

Bail bondsmen sit in the audience hungrily eyeing these prospective clients like carrion-eaters over road kill. Magistrate Judge Gerard Hansen whips through the docket. The first guy is fittingly named Lawless. He threw a boat propeller at a guy. Hansen puts bond at \$2,000 and moves on. . . . In about 24 minutes, Hansen has dispensed with the entire docket. In a few hours there will be another Magistrate Court session . . . 20 more morose citizens will enter the revolving door that is the Orleans Parish criminal justice system.

Note: The devastation left by Hurricane Katrina had the positive effect of breaking the political logjam that for decades had protected the numerous fiefdoms loosely composing the court system of New Orleans. At the governor's urging, the legislature passed a bill merging the civil and criminal district courts, as well as their two clerk's offices and their two sheriff's departments, along with several other agencies. The mergers will be phased in beginning in 2009.

Doing Time at Tulane and Broad (Part II)

Christopher Rose, "Doing Time at Tulane and Broad," The Times-Picayune, 27 September 1998.

On this day at the courthouse, the elevators are out of order, the bathrooms are filthy, their fixtures marginally functional. The majesty of this great building stands without human assistance; the mayor's Keep-It-Clean campaign has not made it to Tulane and Broad. The marble floors are unwaxed, the main hallway is unair-conditioned, and the basement corridor smells like fish. . . .

The defendant in a burglary case in Section B is shackled at the limbs with steel braces. In the courtroom behind him, his wife or girlfriend is crying. He motions with his head for her to come closer but his lawyer raises a hand from across the room to tell her: No. She sits back down, looking across the courtroom at him, searching. He averts his eyes at first, then looks, sees her misery and arches his eyebrows, mugs a little, tries to cheer her up. Two friends on either side of her rub her shoulders. The voices of lawyers arguing motions and the buzzing white noise of the courtroom air-conditioner join together in a fluorescent-tinged droning, the kind of sound into which everything slips away sometimes. . . .

Down in the basement, prospective jurors, culled from state voter and driver's license rosters, are packed into windowless waiting rooms. Josie Windhorst, a state jury commissioner, is in charge here. She paints the best face on the bleak-looking place, talking about the great ideals of democracy, honor, civic duty, and such. The worst thing, really, are the occasional odors that creep in from the coroner's office in the basement annex.

She is like a schoolteacher on a rainy day, trying to keep everyone happy while they fidget and wait. She handles the legion of excuses from those who'd prefer to jettison their duty to the commonwealth. "People have a tendency to reveal to me their entire medical history when all I really want is a doctor's note," she says.

On this day, there will be five trials, about the average number. Windhorst dispatches dozens of prospective jurors to each court for voir dire, the preliminary examination by lawyers of the jurors' fitness to serve. . . .

On this day of five trials, two are for heroin distribution, one is for possession of marijuana and a pistol, and two are for possession of a crack pipe. "They're kind of legendary around here," says one court official with a roll of his eyes. "Crack pipe cases." They eat the building's resources. The afternoon in both Sections F and J is consumed by cases trying to prove some sorry looking guy was in possession of a piece of drug paraphernalia.

It is the state's duty to do this. But both cases deadlock at five to one in the jury rooms. A holdout for not guilty in each case prompts mistrial rulings. The juries are thanked and dismissed; the suspects are led back to jail, but not before one of them, in an ill-fitting gray suit, asks for a moment with his father. It turns out not to be a Kodak moment it promised to be; the two start arguing over the defendant's clothes. . . .

It is now late afternoon, and trial results trickle in from around the building. In the drugs and weapons case in [Judge] Alarcon's court, the defendant is found guilty. An hour later, the day's third mistrial is declared in one of the heroin cases; this time because of an assistant DA's improper introduction of prejudicial evidence.

At 5:30 p.m., the building is clear except for Judge Julian Parker's courtroom, where the heroin distribution trial of Paul Washington is winding up. Washington was busted with 25 packets of heroin and a loaded .45. If convicted, he'll likely get a life sentence. . . . A 12-member jury finds Washington guilty, to which the defendant has no visible reaction. As the jurors file out of the courtroom, only one—like Washington, a young black man—looks him in the eye. One of the

sisters bolts from the room sobbing, while the other quietly buries her head in her hands. As he is led away, Washington looks back over his shoulder to wave good-bye but neither of them sees him.

At 6:45 p.m., two defense attorneys hardly older than the girls' brother comfort them at the top of the steps of the courtroom at Tulane and Broad, and for today at least, court is adjourned.

Note: A bond issue allowed some much needed renovations to the New Orleans courthouse, but there is little evidence now—Hurricane Katrina left 8 to 10 feet of water standing in the courthouse for over a month. Particularly hard hit was the evidence room in the clerk's office; many cases may never be prosecuted because of missing evidence.

By June 2006, part of the courthouse had reopened. But as we will see in the following chapters, judges, prosecutors, and defense attorneys face enormous challenges in trying to reestablish the criminal justice system in New Orleans.

DA Harry Connick Defends His Aggressive Tactics

District Attorney Harry Connick, Sr., was a fixture in New Orleans political life for three decades. (His son, Harry Connick, Jr., is a popular musician and actor.) In 1973 he challenged embattled District Attorney Jim Garrison and won. New Orleans District Attorney Jim Garrison had arrested businessman Clay Shaw in 1965 on the charge of conspiracy to assassinate President John F. Kennedy. At first, Garrison spoke of a "homosexual thrill killing" but later expanded the investigation to include conspiracy theories. Two years later the jury deliberated less than an hour in acquitting Shaw. Nationally, the city became associated with conspiracy theories and government plots to kill the president. Locally, community leaders thought that Garrison had embarrassed the city and sought a candidate who would restore civic pride. Connick proved to be their man.

Throughout his long tenure as DA, Connick was often at the epicenter of controversy, mostly of his own making. Internally, some assistants chafed under his tight management control. One hardworking assistant who thought she was unfairly fired appealed all the way to the U.S. Supreme Court (only to lose). Externally, Connick was quick to condemn publicly those who didn't share his law-and-order philosophy. Numerous judges (some of whom had previously worked in his office) were singled out for harsh criticism.

By the mid-1990s the Orleans Parish district attorney was again attracting national attention, this time over the issue of prosecutorial misconduct and innocents on death row (see Chapter 17). In *Kyles v. Whitely*, the U.S. Supreme Court used strong language to condemn the office for not disclosing exculpatory evidence in a death penalty case (see Chapter 12). After five trials, Connick eventually dismissed the charges in that case.

The same issue became pivotal in the murder trial of Shareef Cousin. On the night of the murder, Connie Babin told police that things were so confusing that she doubted she could identify the killer. Yet this key witness statement was not given to the defense. Connick and his assistants contended that they were under no legal obligation to disclose such information, but the vast majority of lawyers and judges strongly disagree.

The Shareef case is not the only case to cause Connick public embarrassment in recent years. A dying former prosecutor told his best friend that he had concealed evidence that could have cleared John Thompson, who had been convicted of murder and sentenced to death (Bell 2001). For the first time in his 25 years as district attorney, Connick asked a judge to put off the execution of a man his office had put on death row.

Harry Connick, Sr., easily won reelection in 1978, 1984, and 1990. But the 1996 campaign resembled a bare-knuckled political brawl, with the candidates attacking the fitness of their opponent to hold public office. The underlying issue was race. Connick, who is white, ran for

reelection in a city with a 64 percent African American voting population. His major challenger was former judge Morris Reed, an African American, who charged that Connick's office was racially biased and it was time to elect a African American DA. Connick won, though, by putting together a biracial coalition, benefiting greatly from the backing of Mayor Marc Morial, the city's top African American elected official.

In 2002, Connick retired. His successor is former U.S. Attorney Eddie Jordan, who is African American. Jordan swiftly moved to hire more African Americans in the office and quietly reversed some of the office's most controversial anti-defense attorney positions. Early on, Jordan replaced virtually all the white nonattorney staffers with African Americans. Arguing discrimination, the former staffers filed a lawsuit in federal court and won a \$3.58 million judgment. But whether they will ever collect any money is uncertain. Prior to Hurricane Katrina, the city of New Orleans (which finances the prosecutor's office) was too broke to pay the judgment. The city's finances were severely disrupted by Hurricane Katrina, and so the city is now even less likely to pay off the judgment. (Local governments are exempt from the usual methods of collecting court judgments.)

Hurricane Katrina overwhelmed the criminal justice system, the prosecutor's office included. Defendants arrested before and after the storm are scattered in various jails around the state, making it difficult for the DA's office to keep track of who is where. Moreover, many assistant DAs left the office, and the evidence rooms of both the police department and courthouse were severely damaged. In this environment, the office is trying to prosecute some 6,000 pending cases.

Limitations Facing the Defense

"I could win most of my cases if it weren't for the clients. . . . They will waltz into the witness box and blurt out things which are far better left unblurred" (Mortimer 1984, 11). This sentiment from the fictional British defense attorney Rumpole is shared by many real-life American attorneys, who might add, "Clients blurt out things to the police that are better left unblurred."

Late on the afternoon of March 27, 1995, the police arrested the defendant at his house and took him to the homicide division (located in central police headquarters). With his mother present, the police interrogated Cousin. Although he confessed to participating in four armed robberies, he did not directly admit to murdering Michael Gerardi in front of the Port of Call restaurant. However, when he was handed a copy of a police report about the murder, he immediately noted that the murder occurred on March 3, not February 3, as the report erroneously recorded. If he had taken the stand in his own defense, then the jury would almost certainly have been able to learn this damning tidbit.

Shareef Cousin was also very unlikely to take the stand in his own defense because of his past conduct. During police questioning, he admitted to participating in four armed robberies, and he later pled guilty to those crimes (see Chapter 13). As discussed in Chapter 14, defendants enjoy the protection against selfincrimination; that is, they cannot be forced to testify against themselves. But if a defendant takes the stand, then the prosecution can impeach the defendant's credibility by introducing evidence of past felony convictions. Thus, if Cousin took the witness stand in his own defense, the jury would learn of these crimes, several of which appeared to parallel the murder in front of the Port of Call restaurant.

Another limitation the defense had to work around was the defendant himself. It appears from the court record that Cousin was unpredictable. Outside of the presence of the jury, the defense hinted at medical and psychiatric issues but never presented them to the jury. This much is known, however. In the fall of 1994 Cousin spent several months in a hospital, and the admitting physician was a child psychiatrist. Moreover, during the sentencing phase of trial, Cousin made an angry statement of innocence, one that most certainly worked to the advantage of the prosecution.

Finally, the defense was forced to defend Cousin without any help from his family. Jumping ahead to material covered in Chapter 16, by the time of the penalty phase of the first-degree murder trial, family members firmly believed that the justice system was racist, and they would therefore not participate, not even to the extent of the mother's pleading for the jurors to spare her son's life.

Given these limitations, the defense proceeded on two fronts. One was to stress that Shareef Cousin had an alibi. The other was to limit the evidence the state could present at trial. Toward this end, the defense filed a series of motions, one of which was successful. The prosecution wanted to introduce the testimony of the victims of the four previous armed robberies. The trial judge ruled that the evidence of such signature crimes could be introduced at trial. But the appellate court overturned the trial judge, ruling, “The four prior armed robberies are not sufficiently distinctive or similar to the offense charged to justify their admission in evidence.” But the other efforts by the defense to limit the evidence that the prosecution could introduce—motions to suppress physical evidence and motions to suppress identification—were not successful.

In the aftermath of Hurricane Katrina, the public defender’s office, never strong to start with, was virtually destroyed. The office’s main financial source—fines from traffic tickets—was reduced to virtual zero, and as a result, half of the office lawyers left. Judge Arthur Hunter, an ex-cop, strongly decried the “pathetic and shameful state of affairs the criminal justice system finds itself.” Declaring that constitutional rights were being violated, he threatened to begin releasing poor defendants from jail on a case-by-case basis unless they were brought to trial with adequate legal representation (Filosa 2006b).

Judge Raymond Bigelow, Ex-Prosecutor

Raymond Bigelow first ran for a judgeship in 1992, but lost. The following year another vacancy opened up. In a crowded field of five, Bigelow won a plurality in the first election and won outright with 54 percent of the vote in the runoff, defeating Harry Tervalon, a former policeman, prosecutor, and public defender. During his campaign, Bigelow stressed the rights of victims. “It seems to me that the victims are kind of lost, kind of shuffled aside,” he said, promising to devise “creative ways to provide victims with comfort” (Cooper 1993).

Before becoming a judge, Bigelow was first assistant district attorney in Orleans Parish, a powerful position that runs the day-to-day operations of the office. Thus he enjoyed the political backing of his boss, DA Harry Connick (see Chapter 6). Indeed, Bigelow is one of several judges who had previously worked for Connick. But once on the bench, Bigelow's former boss and political mentor became his sharpest critic. In more than a dozen trials of defendants charged with possessing crack cocaine, Judge Bigelow found them innocent, ruling that simply possessing a crack pipe with residue invisible to the naked eye does not prove a defendant intended to possess cocaine. To Connick, the law was clear: They were smoking crack and should be punished. The appellate court, though, upheld Judge Bigelow's rulings. (The DA could have charged the defendants with the less serious offense of possession of drug paraphernalia, but chose not to.)

In terms of case processing time (see Chapter 5), Orleans Parish Criminal District Court is one of the fastest in the nation. Some judges, though, are faster than others, and Judge Bigelow is certainly one of these. In his section of court, the median time from arraignment to disposition is approximately 31 days. But even in speedy sections of court, complicated cases like murder take longer to reach disposition than simpler cases like possession of illegal drugs. Nonetheless, in the murder trial of Shareef Cousin, Judge Bigelow moved with dispatch; the case was tried 7 months after indictment and less than 11 months after the crime.

Predictably, both sides strenuously disagreed with some of Judge Bigelow's decisions during the trial. The defense objected to the improper use of rebuttal witnesses (an issue they would win on appeal). On the other hand, the prosecution objected to the decision to allow the defense several extra days to prepare for the penalty phase of the trial. Most important, the judge refused to grant a motion for a new trial. Cousin's supporters were quick to claim that the African American defendant was being "railroaded." They speculated that Bigelow did not want to appear to be soft on crime by granting a new trial for an accused killer because he was up for reelection in a few months. In the words of Reverend Raymond Brown, a local minister and supporter of the Cousin family, "The judge is afraid of the backlash" (Charles 1996).

Bigelow was reelected to a full six-year term, promising to keep his court's docket as low as possible and to refuse unjustified requests for continuances. But in the wake of Hurricane Katrina, this proved to be an impossible task. The ground floor, where the electrical and air

conditioning systems were located, was submerged for over a month. Nine months later, only 6 of 12 courtrooms were opened, and just on a limited basis. For security reasons, each courtroom could hold only six prisoners at a time (twice a day) (Filosa 2006). An ability to conduct only 240 hearings a day could hardly scratch the surface of a case backlog estimated at 6,000. DA Jordan angrily blamed the backlog on the judges, which in turn provoked a testy courtroom exchange with Judge Bigelow. An assistant DA requested a continuance because one of two police officers failed to show up for a preliminary hearing. Replied the judge, "I'm not going to continue any cases." As if on cue, the DA entered the courtroom as the judge continued, "Maybe the fact that his office [Jordan's] isn't ready to go forward or that fact that the police Department isn't ready to go forward" is the real problem (quoted in DeBerry 2006). In short, the devastating hurricane did nothing to smooth of historically rough waters separating the judges and prosecutors in New Orleans.

The Anguish of the Victims

For the last several decades, the politics of victims, and not the rights of defendants, have dominated criminal justice policymaking. The anguish of the victims in the Port of Call murder case, and their alternating emotions, provide a poignant close-up.

"My life is like a black void, a hole. I can't sleep at night, and I watch television until the wee hours of the morning," testified Sal Gerardi, the victim's father. His body heaving with sobs, he described roaring across Interstate 10 toward New Orleans after hearing that his son had been shot (Varney 1996b). One can only speculate that this victim statement during the penalty phase of the Shareef Cousin murder trial had a powerful impact on the jurors. It was all the more powerful because none of Cousin's relatives would take the witness stand to offer a counter emotion to taking Cousin's life.

When the guilty verdict was announced, Sal Gerardi dropped to one knee and crossed himself. Afterwards he commented, "There still really isn't any satisfaction," and then added, "I feel sorry for their family because they've lost a son now, too" (Varney 1996c).

The emotions of the victims were radically different two years later when DA Harry Connick announced that he would not retry Cousin. Connie Babin, now married, said the dismissal stung: “I am frustrated, I am devastated, I am angry. I am sad. I am frightened. I am all of those things.” She recounted the travails of having testified. Over the past four years, vandals had struck her home, callers had harassed her on the phone, and someone had hanged her in effigy in her front yard. On the witness stand defense attorneys attacked her credibility; outside the courtroom she was branded a racist.

But overall Babin blamed herself. “I was in such a state that night. I was on a mental shutdown, and I wasn’t able to express myself.” She went on to say, “I am sorry. I messed up, the DA messed up, but I didn’t mess up that badly.” She remained adamant that Cousin was the murderer (Coyle 1999).

New Orleans’o Bloodiest Week in Memory

The story of the murder of Michael Gerardi was as poignant as it was brutal. He had met Connie Babin just several nights before at a Mardi Gras party. He repeatedly called her, and on their first date he gave her a red rose.

His murder at the Port of Call restaurant was but one during what The Times-Picayune , New Orleans’ only major daily newspaper, headlined the “Bloodiest Week in Memory.” In just seven days, 21 people had died and 9 others were wounded (“A Week of Violence” 1995). Some were domestic homicides. Others appeared to be drug-related—a very elastic term that the police use to encapsulate everything from attempts to rob drug dealers to fights over territory to retaliation for selling bogus drugs. Other violence occurred during the course of armed robberies.

The murder of Michael Gerardi was not the most shocking of all that took place that week. That dubious distinction went to the murder of police officer Ronald Williams and two others working in a Vietnamese restaurant in the city. They were murdered execution-style by Antoinette Frank, a New Orleans police officer who was Ronald Williams' partner. She is currently on Louisiana's death row.

The murder wave in the first week of March 1995 solidified in the citizens' minds that their city was indeed a dangerous place. Just the year before, it had been identified as the murder capital of the nation. And 1995 proved to be even worse, with a total of 421 murders. Moreover, 60 percent of the African American residents reported that they heard gunfire a few times a year or even a few times a month (Howell 2000).

In high-profile murders, the police are under considerable pressure to solve the crime by making an arrest. This public pressure always produces the uncomfortable fear that the police might act in haste and arrest the wrong person. This point was made in the federal civil rights lawsuit filed by Cousin's attorneys (see Chapter 3) .The complaint mentions the newspaper article with the title " Bloodiest Week" and charges that the mayor and the police chief were under political pressure to solve the crime. The complaint goes on to inject race into the discussion, arguing that Police Chief Pennington, who is African American, "voiced his desire to do more for people in the French Quarter, due to the racially biased notion that murders in that part of town are somehow more important than deaths of poorer people in other sections of the city" (Cousin v. Small 2000).

Since 1995, the number of murders in New Orleans has declined dramatically, dipping to a low of 162 in 1999 (Philbin 2001). In the public's mind, the reduction in crime in the Crescent City was related to major changes in the activities of the police department. Amid widespread scandal in the department and general views of ineffectiveness, the newly elected mayor hired Pennington as the city's police chief. But Pennington often complained that the city had too few police officers and that those they had were underpaid.

This situation changed dramatically after another French Quarter murder, just a few blocks from the Port of Call, in December 1996. Shortly after arriving for work on Sunday morning, a waitress at the Louisiana Pizza Kitchen found three coworkers dead in the deep freezer, gunshot victims; a fourth person was in serious condition. (The murderers were arrested shortly thereafter and later convicted.) The following Thursday, a large contingent of French Quarter residents and merchants marched on City Hall, demanding that the city council do something to shore up the police department.

Within weeks, new taxes were imposed and the police budget was increased. In the aftermath, as noted, crime in the city did go down—although not all agree that police department actions were the cause. Still, the overall impact was clear—the police were making more arrests, resulting in more cases filed in Criminal District Court (see Chapter 4) and more jail cells needed for those arrested (see Chapter 11). As stressed in this chapter, an overwhelming number of those felony arrests were for drugs—almost two thirds of all case filings in the city.

Unfortunately, by 2003 the city's murder rate had once again increased dramatically, and the shortage of sworn police officers had become particularly acute (Young 2003). Prior to Hurricane Katrina, the city seemed poised to set a new homicide record. After the storm hit, the murder rate dropped to zero. By spring 2006, though, the murder rate returned to previous levels, and during the summer, the city was stunned by the killing of five youths in one car. Shortly thereafter, Louisiana National Guard units were assigned to help the New Orleans police. And yet the killings continued. A month later, four youths were gunned down in one incident.

Awaiting Trial in Foti's Fortress

Because he was charged with a capital offense, Shareef Cousin was not eligible for bail. Therefore, he awaited trial (and later retrial) in what is officially known as the Orleans Parish Prison. Informally, the facility is referred to as Foti's Fortress, a tribute to one of the most powerful officials in the area, Criminal Sheriff Charles Foti, Jr. In a city in which prisons are a growth industry, Sheriff Foti is one of the most ambitious entrepreneurs in town.

When Foti was first elected in 1973, the inmate population was less than 800. By 2005, the total number of local, state, and federal inmates had grown to more than 7,000, making it one of the largest jail populations in the country. What is collectively referred to as the Orleans Parish Prison (OPP) is in actuality 13 separate buildings that sprawl over a 12-block area, interspersed among the New Orleans police department headquarters, the district attorney's office, criminal district court, municipal court, and traffic court.

Some of the growth in jail capacity was spurred by federal lawsuits over conditions of confinement (see Chapter 15). Old Parish Prison, for example, constructed in 1929, was in danger of being closed by the federal courts in the 1970s because of poor safety and sanitary conditions. The growth in the local jail population is also due to the increased arrest activity of the New Orleans Police Department. As the police have become more proactive (see Chapter 10), they have made more arrests, requiring more cells. Another factor is prison overcrowding at the state level (see Chapter 15). With the state prisons filled to overflowing, many prisoners are held in local jails like OPP until they can be transferred to state prisons.

In turn, the sheriff has effectively mobilized public opinion to support building more prisons. During peak arrest periods (Mardi Gras, for example), the sheriff constructed a tent city on vacant land near the other prisons (Cooper 1993b). The sheriff has likewise cleverly publicized the problem of overcrowding. In the news media it became known as the "Foti Walk." Local

television stations routinely broadcast videotapes of a line of jeering criminals being released from OPP because of overcrowding.

How this prison expansion has been financed remains a persistent and mysterious issue in New Orleans politics. The sheriff takes the position that as an independently elected official, he does not have to share financial information with the public, so no one knows how much money the office has or where it comes from. The city is obligated under federal court order to pay \$19.65 a day per prisoner but is often late in making payments. Thus, Sheriff Foti finds it more profitable to hold prisoners for the state, which pays \$22 per day, or for the federal government.

A complex of this size and magnitude has its problems. One is escapes. When 15 prisoners escaped, the sheriff did not notify the public for several weeks (Woods 1993). Another is inmate deaths. Diabetic inmate JoAnn Johnson died while in custody, prompting a protest rally in front of the jail and the filing of a federal lawsuit by the ACLU, which alleged inadequate medical care.

Despite these periodic public relations problems, Sheriff Foti is one of the most popular local officials in New Orleans. He has been reelected every four years with little or no opposition. This is partly due to the variety of non-law enforcement programs he sponsors, including a Halloween haunted house for teens and an annual Thanksgiving dinner for the elderly. He also takes pride in a number of programs for prisoners, including the Prison Art Program, which has literally "painted the town" by creating colorful large-scale murals on public buildings. But critics claim that in reality Foti places a low priority on programs to assist prisoners in learning a skill or learning to read (Cooper 1993b).

In 2003 Foti successfully used his New Orleans political base to win the statewide office of Attorney General.

Hurricane Katrina caused considerable damage to the jail complex, and as a consequence, the jail population decreased to 1,000. All the prisoners were safely evacuated and transferred to a variety of jails in the region. But when they will return remains an open question. In turn, the scattered jail population makes it difficult for the courts to hear cases. As a result, some arrestees held on minor charges remain incarcerated a year after Katrina with no scheduled court appearances.

The DA Fails to Disclose a Witness Statement

The first police unit arrived at the Port of Call restaurant at 10:28 P.M ., only two minutes after the dispatcher logged the first call for assistance. As other units also arrived, some officers secured the chaotic murder scene while others searched for witnesses. They quickly determined that Connie Babin — Michael Gerardi 's date—was a witness and took her statement. She answered some questions but had trouble articulating the answers to many questions. The officers noted that she was hysterical and could not speak in complete sentences. She told the police that she did not get a good look at the gunman and probably would not be able to identify him.

Three days later, during an interview in her house, she stated that she was not wearing her glasses or contact lenses on the night of the murder and could only see patterns and shapes. Thus, she could describe the murderer only as an African American male in his late teens, 5 feet 7 or 8 inches tall, with curly hair and an “old man’s face,” wearing colorful socks. These statements would come to dominate later proceedings but not the trial itself—because the prosecutor chose not to disclose these statements to the defense prior to trial.

When Shareef Cousin became a suspect three weeks later, Detective Anthony Small compiled a photographic lineup, and Connie Babin made a positive identification of Cousin as the murderer. At trial, she repeated the positive identification. The defense learned of the existence of her statements through an anonymous tip (identified only as “an honest police officer” in

Cousin's federal lawsuit). Once the existence of these witness statements became known, the defense moved for a new trial, but the judge denied the motion. Later, the issue took center stage in the appeal to the Louisiana Supreme Court.

Why didn't DA Harry Connick's office disclose these statements (Chapter 6)? The brief for the State of Louisiana offers a tortured explanation at best. According to lawyers for Connick, somewhat similar statements had been disclosed prior to trial. Therefore, "even if the transcribed statement did contain information that could be considered exculpatory, the evidence was merely cumulative, and there is no reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." On appeal, the Louisiana Supreme Court dismissed the prosecutor's argument, calling the statement "obviously exculpatory," citing *Brady and Kyles (State v. Shareef Cousin 1998)*. The issue resurfaced again during preparation for the second trial. The trial judge issued what is for Louisiana a broad discovery order, requiring the prosecutor to turn over all evidence (except lawyer work product). This unusual remedy had been upheld in a previous case in which Connick's office had failed to disclose (*State v. Duc Nguyen 1998*), and the high court sanctioned its use in this case as well (*State v. Cousin 1998*).

Would the disclosure of the statements made by Connie Babin have mattered? In all likelihood, if the defense had known of these statements, the dynamics of the trial would have been fundamentally different. According to the news account (borne out by reading the actual transcript), on cross-examination, Cousin's defense team "tried to pick delicately at Babin's story" (*Varney 1996a*). Moreover, the defense argued during later motions that they were afraid to explore the issue of eyesight, fearing that the prosecutor was laying a trap.

To most observers, the revelation of Babin's initial statement that she would never be able to identify the murderer doomed subsequent prosecutions. Essentially, the state's case was reduced to a single witness (see Chapter 14), and with that witness identification called into question, a conviction would be highly unlikely.

Cousin and his sister filed a complaint with the Louisiana Attorney Disciplinary Board's Office of Disciplinary Counsel. After several rounds of hearings, the Louisiana Supreme Court sanctioned Roger Jordan, the lead prosecutor in the case, for failing to turn over the eyewitness statement to the defense. Jordan's law license was suspended for three months, but this was waived because he had no previous record of ethical violations. The Louisiana District Attorney's Association questioned the ruling and went on to note that the state's highest court still hadn't provided clear standards for prosecutors to use in evaluating Brady material (Finch 2005).

Pleading Guilty to Four Armed Robberies

The defendant appeared before the bar of the court attended by Willard Hill . Through counsel, the defendant withdrew the former plea of not guilty and tendered to the court a plea of guilty as charged to R.S. 3 (Cts) 14; 64.

The legal and bureaucratic prose of this docket entry of September 28, 1995, gives little indication of the importance of the event. Shareef Cousin and his lawyer Willard Hill entered a plea of guilty to four armed robberies in other cases. (Although Cousin would not be sentenced until after the murder trial, the record indicates that a 20-year sentence had been agreed upon.) The pleas were entered while both sides were busily preparing for the upcoming murder trial and had major impacts on subsequent developments.

First, the pleas of guilty virtually guaranteed that Shareef Cousin would not testify at trial. If he had taken the stand in his own defense, the prosecution would have impeached his credibility by introducing certified copies of his four previous armed robbery convictions. Indeed, this would have provided the prosecution a backdoor method of introducing what the law terms "signature crimes"—crimes committed by a criminal in a recurring and unique way.

Second, the four prior convictions were used during the penalty phase of the first-degree murder trial. Each of the four victims testified about the terror they experienced when robbed at gunpoint. One victim, for example, identified Shareef Cousin as the one who used a shotgun in a carjacking in which his 5-year-old daughter was present.

Third, the prosecution used the prior convictions to rule out mitigating circumstances during the penalty phase. One mitigating factor recognized by Louisiana law is that the defendant had no significant prior history of criminal activity. The defense now could not argue that issue to the jury.

Finally, two of the armed robberies were committed along with codefendant James Rowell. During trial, Rowell became a turncoat prosecution witness; he was supposed to testify that Cousin had bragged of committing a murder, but he did not (see Chapter 14) The prosecution's attempt to impeach the credibility of its own witness would be the principal reason for appellate court reversal (see Chapter 17) .

Two days after the jury recommended that Shareef Cousin die by lethal injection for the murder of Michael Gerardi , the defendant and his lawyers appeared before Judge Bigelow for sentencing on the four armed robbery pleas. After imposing the 20-year sentence, the judge allowed Cousin to fire his trial lawyers. The new counsel was Clive Stafford-Smith, who would later argue the appeal (see Chapter 17) and file the federal civil rights lawsuit discussed in Chapter 3.

Stafford-Smith immediately moved to set aside the four guilty pleas, arguing that Cousin had entered the pleas on "erroneous advice of counsel." Moreover, the motion argued that Cousin was factually innocent of two of the four crimes charged (Cousin admitted only to being in the car when the codefendants committed the armed robberies). The judge denied the motion, and the state's Fourth Circuit Court of Appeals agreed.

Anti-death penalty activists contend that Cousin was coerced into pleading to armed robbery, but the court record offers a different conclusion. On March 27, 1995, NOPD officer Christy

Williams asked Shareef Cousin (with his mother present) what he knew about the carjacking on March 4, and he replied: “It was me, Dwayne, James, and Brent.” After Dwayne committed the carjacking, “I jumped in the car.” Moreover, during the penalty phase of the trial, defense attorney Willard Hill admitted that Shareef had committed some despicable acts. As for the judge, he commented, “Some of us might agree he was going to receive a relatively light sentence for the armed robberies—20 years. I think as part of the plea, Mr. Hill may have mistakenly thought he wouldn’t be convicted in the murder trial.”

Two Trial-Day Surprises

In fictional courtrooms, trials proceed in an orderly manner with predictable outcomes. In real-world courtrooms, however, trials are sometimes disjointed, with unexpected developments. During the murder trial of Shareef Cousin, both sides experienced trial-day surprises. For the prosecution, a key witness became a turncoat. For the defense, a few frames of a videotape blurred the much-heralded alibi defense.

During its case-in-main, the prosecution called a variety of law enforcement officers who testified about the crime scene, provided diagrams of the crime scene, and so on. The coroner was also called to the stand to testify as to the cause of death. But establishing that a crime had been committed was the easy part; tying the crime to Shareef Cousin proved much more difficult. Several witnesses testified that they were only “reasonably certain” that Cousin was the killer. Thus, for the prosecution, the trial hinged on one and only one witness—the victim’s date. Connie Babin forcefully identified Shareef Cousin as the murderer. As discussed in Chapter 12, the defense could not vigorously cross-examine her because they did not know of her previous statements about being unable to identify any suspect.

To bolster the credibility of Connie Babin’s eyewitness identification, the prosecution called James Rowell, a 16-year-old friend of the defendant, who had earlier admitted to committing several armed robberies with Cousin (see Chapter 13). During opening arguments, the DA had promised jurors that Rowell would testify that Shareef Cousin had bragged that he had shot a

man outside a French Quarter restaurant during a botched robbery. But when Rowell took the stand, he would only say that that was the story the DA wanted him to testify to. Faced with a turncoat witness, prosecutor Roger Jordan asked Judge Bigelow to declare him a hostile witness and then tried to rehabilitate his own witness. Thus, the prosecution called Rowell's attorney, who testified that his client overheard Cousin boasting that he had killed someone. Indeed, Cousin was reputed to have said that after killing someone he would find killing easier the next time. But was this hearsay testimony solely to impeach the credibility of the witness, or did the prosecution offer this testimony as proof of the crime? The appeal (see Chapter 17) would center on this question.

For the defense, the trial hinged on the jury's believing that Shareef Cousin had an alibi for the time of the crime. According to Eric White, a basketball coach with the New Orleans Recreation Department, Shareef Cousin had been his star player the night of March 2, 1995, coming off the bench to score 10 points in a come-from-behind victory. Because the game ran late, he didn't drop Cousin off at his house until about 10:45 (some 20 minutes after the murder occurred). On cross-examination, however, the prosecution introduced a videotape of the game, and under hard questioning the coach was forced to admit that the quarters were actually six minutes long, not the eight he had testified to. Moreover, a clock in the gym seemed to suggest the game ended much earlier than his testimony indicated. The prosecution also pressed hard on a previous statement in which White had said the game ended about 9:20 or 9:25. In short, the prosecution used cross-examination to shred the alibi defense. Although the defense had stressed Cousin's alibi throughout the five-day trial, Hill only mentioned it briefly during his 30-minute closing argument.

The defense rested without calling Cousin to the stand, probably because of his previous convictions for four armed robberies.

At 11:30 on Friday night, the jury returned a unanimous verdict of guilty of first-degree murder. Their next task would be to decide whether Shareef Cousin would spend the rest of his life in prison or die by lethal injection.

Nine months after Hurricane Katrina, the criminal courts in New Orleans resumed trials but on a very limited basis. Finding jurors in a city where three fourths of the population fled is not an easy task. The civil court sent out 3,000 summons but many simply disappeared into the abyss of destroyed neighborhoods. Perhaps remarkably, 520 people did respond (Finch 2006). But even if the jurors could be assembled, finding witnesses proved to be a difficult ask. The first post- Katrina jury trial involved a common big-city event: a stolen car. The trial was brief because one of the two arresting officers in the stolen car case did not show up. Presented with a lack of physical evidence, the jury could not reach a verdict (Filosa 2006c). Finding lay witnesses is also challenging; the District Attorney's office has been forced to drop charges, even serious cases like murder, because witnesses cannot be found. Today, the crippled judicial system is still a factor aggravating the city's violent crime wave, because only a minority of offenders have been tried and convicted (Perlstein 2006).

Doing Time on the Farm

After denying defense motions for a new trial, Judge Bigelow officially ordered that Shareef Cousin die by lethal injection. Soon after, Cousin was transported to Louisiana's death row, featured in the movie *Dead Man Walking* . After the district attorney decided not to try Cousin a second time for murder, he was returned to the Louisiana State Penitentiary (LSP) at Angola, the largest maximum security prison in the United States. It houses some 5,100 men, three quarters of whom are African American and 85 percent of whom will die within its walls.

Angola has been a prison since the end of the Civil War. The prison is divided into six self-contained units, many of which are called camps. Camp F is death row. Each has its own warden, kitchen, and other facilities. According to the Louisiana State Penitentiary Museum website, "LSP consists of 18,000 acres of the finest farmland in the south. It is ideally situated for the prison as it is located in a rural area, surrounded on three sides by the Mississippi River, and bordered on the fourth side by the rugged Tunica Hills." The location is "ideal" in the sense that it is virtually escape-proof because it is so isolated. But this isolation also symbolizes one of the oldest of American traditions—NIMBY (Not In My Back Yard).

The rural area has embraced the prison because it provides employment for 1,517 correctional officers plus a host of medical and support staff. Many of these are third- or fourth-generation

employees, some of them living right on the prison grounds. At Angola, the principal activity is farming. The majority of medium and maximum security inmates work eight hours a day, five days per week, growing corn, soybeans, cotton, and food for the prison. The rural nature of the prison was featured in the 1998 documentary film *The Farm: Angola USA*. It is also famous for its annual prison rodeo, held every October. The rural focus of Angola is in stark contrast to its principal inhabitants—inmates from big cities. LSP provides some rehabilitation programs—education and self-help groups, primarily—but these programs are limited.

At one time Angola was one of the most violent prisons in the United States, notorious for beatings, rapes, and murder. In 1973, for example, there were 40 prison murders. In 1971 the first lawsuit protesting conditions of confinement was filed. In 1975 the federal courts took over the entire prison system, finding that conditions at Angola “shock the conscience of any right-thinking person” and “flagrantly violate basic constitutional requirements” (*Williams v. Edwards*). In the words of U.S. District Judge Frank Polozola, who has been overseeing the state prison system since 1973, when he first visited Angola “he couldn’t tell the difference between guards and inmates,” partly because guards did not wear uniforms and some “trusties” carried guns (*Wardlaw 1998*). The state was forced to spend massive amounts of money to improve conditions. Improvement in conditions have been major. For example, inmate murder is now a rarity. Finally, in 1999, the federal court order was dissolved.

Shareef Cousin was later transferred to the Washington Correctional Institute, another Louisiana prison. After serving 10 years of his 20-year sentence, Shareef Cousin was released on probation and parole, and his supervision was transferred to the state of Georgia. He works as a community organizer for the Southern Center for Human Rights, a nonprofit, public interest law firm in Atlanta.

The Jury Chooses Death

“Today we focus on the character of the man that you found guilty as charged of first-degree murder. That’s the character of Shareef Cousin.” With these words, Assistant DA Roger Jordan began the penalty phase of the murder trial. In urging the jury to recommend the death penalty, Jordan emphasized two aggravating circumstances: (1) the killer was perpetrating, or attempting to perpetrate, an armed robbery, and (2) the especially heinous, atrocious, and cruel manner of the crime.

Toward those ends, the prosecution called six witnesses. The first was Sal Gerardi, who tearfully offered a victim impact statement (see Chapter 9) about how empty his life had become since his son’s murder. Next, the state called the four victims of the armed robberies (see Chapter 13), who testified about the terror they experienced. Donald Rhodes, for example, was walking a few blocks from the Port of Call restaurant when Shareef Cousin pointed a gun in his face. After Rhodes gave him his wallet and watch, Shareef walked a few steps and then turned around, pointing his gun at Law in Controversy: Reducing Judicial Discretion Adherents of the due process model were concerned that excessive discretion resulted in a lack of fairness in sentencing. They perceived that criminal justice officials, ranging from police officers to parole boards, were making decisions in a discriminatory manner, especially on the basis of race. They were also concerned that judges’ sentencing discretion resulted in sentencing disparities. Thus, the political left saw determinate sentences as a means of reducing individual discretion and thereby (presumably) reducing disparity and discrimination. Adherents of the crime control model were far more concerned that excessive discretion resulted in a lack of effective crime control. They perceived that criminal justice officials were making decisions that produced undue leniency. Concern about disparity or discrimination was not part of the agenda. In particular, they viewed trial judges as all too ready to impose sentences well below the statutory maximum. They perceived that parole boards were too willing to release prisoners early; they were shocked that prisoners were back on the streets on parole well before the maximum sentence had expired. To conservatives, the essential problem was that sentencing was not reducing crime. In an effort to make sentencing more effective, a “justice” model of sentencing came into increasing prominence. Rhodes in the firing position. Finally, the prosecution called detective Christy Williams, who introduced into evidence Cousin’s confession to the four armed robberies. (Since Cousin did not take the witness stand in his own defense, the jury had not known of the previous armed robbery convictions.)

The defense countered with only three witnesses who offered substantive testimony. The first was Richard Collins from Worcester, Massachusetts, where Shareef Cousin had lived for a while with his older brother. Collins testified that the boy “was like a son to me” and was doing well in school until he left to return to New Orleans. Two New Orleans teachers also testified that

Cousin did well in their math classes (although under cross-examination one admitted that at times he had been a discipline problem).

Perhaps what was most significant about the defense during the penalty phase was who didn't testify. Outside the hearing of the jury, attorney Willard Hill informed the court of an ongoing problem during the trial: "I am referring to the reluctance of his family members, for whatever reason, to testify in this case. . . . We have spent many hours with the family trying to convince them to testify in this case. It has been our advice— our strong recommendation to the family that they do so. They have refused."

Events outside the courtroom (and therefore not observed by the jury) flesh out what Hill alluded to. Family members orchestrated a demonstration on the courthouse steps, claiming that authorities vigorously pressed their case against Cousin because "white people consider themselves superior to black people" (Varney 1996b).

In short, the jury never heard the other family members plead for mercy, imploring the jury to spare Shareef Cousin's life. During closing arguments, Hill tried to highlight the good aspects of Cousin's short life. He seemed to do well when a positive male role model was present, Hill asserted, but seemed to fall off the wagon when he returned from living with his brother near Boston.

During closing arguments, the prosecution pressed home the brazen nature of the armed robberies. Referring to Cousin's character witnesses, the DA drove home his point: "They didn't see the face that was pointing a gun. . . ." In midsentence, Shareef Cousin exploded, jumping from his seat and shouting "I wasn't out there. I'm innocent." His attorney ordered him to sit down, and the judge threatened to remove him from court. But the damage had been done. Seizing the opportunity, Roger Jordan pointed at Cousin and argued " that is the face that Michael Gerardi saw. That's the face that he saw and the anger in his eyes, with a gun in his hand."

Several hours later the jury returned, and Judge Bigelow read into the record their verdict:

Having found the below listed statutory aggravating circumstance or circumstances, and after consideration of the mitigating circumstances offered, the jury unanimously determines that the defendant should be sentenced to death. The aggravating circumstance: That the victim in this murder was killed when the offender was engaged in the perpetration or attempted perpetration of an armed robbery.

On July 2, 1996, Judge Bigelow formally imposed sentence, writing on the standard court form that the sentence for Shareef Cousin was “death by lethal injection.”

A Reversal on Narrow Grounds

Because the jury had imposed the death penalty, the conviction of Shareef Cousin was appealed directly to the Louisiana Supreme Court. The fact that it took longer for the appellate court to review the case (22 months) than it took to get the case to trial (10 months) is a reflection of how seriously these matters are treated. Some of this time lapse occurred because both sides requested additional time to prepare their briefs. In addition, the state’s highest court found that the original trial court record was defective and ordered the clerk of court for Criminal District Court to resubmit the entire record.

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The court heard oral argument in December 1997, with a total of 80 minutes allotted to both sides. To ensure that the workload is distributed equally, the Louisiana Supreme Court assigns opinion writing on a rotating basis. Thus, by rotation, the opinion was assigned to Justice Harry Lemmon. After working as a chemist for four years and serving in the army for two years, Lemmon graduated cum laude from Loyola University School of Law. He practiced law for several years before being elected to the state's intermediate court of appeals in 1970. Ten years later, he was elected to the Louisiana Supreme Court.

Justice Lemmon's 17-page opinion focuses primarily on the evidence introduced by the prosecution to impeach the credibility of James Rowell, their turncoat witness (see Chapter 14). His prior statements were hearsay but nonetheless admissible for the purposes of establishing a prior inconsistent statement—he had indeed earlier stated that he had a conversation with Shareef Cousin two days after the murder. But the prosecutor went too far when he introduced that evidence to show the substantive guilt of the defendant, the opinion noted. Moreover, the prosecutor compounded the error by “flagrant misuse” of hearsay evidence during closing arguments.

As for the prosecutor's failure to disclose the key state ments from Connie Babin, the opinion largely ducks the issue. At one point the court says that the evidence was clearly exculpatory (and therefore should have been given to the defense), but in a footnote says it does not reach the issue because the defense now knew about the statement. But if the court thought it could duck the contentious issue of prosecutorial misconduct, it was mistaken. For the next year and a half, the lawyers battled over the scope of discovery. Eventually, the state's high court granted broad discovery rights to the defense.

While examining the voluminous appellate court record, I made a surprise finding—a 10 × 12 × 4-inch box. Inside are hundreds of letters addressed to the Justice of the Supreme Court, Louisiana Supreme Court. I sampled a few that had been opened. Although handwritten, the letters were similar, urging the court to reverse Cousin’s conviction because he was too young to die and also because his alibi showed that he was innocent. Clearly, the murder trial of Shareef Cousin had become a national and in some cases an international cause célèbre, with anti–death penalty groups urging concerned citizens to write the court. There was no indication, however, that the letters had been read by any of the justices; indeed, most had never been read at all—they were still sealed, taking up space in the clerk of court’s office.

Unlike the trial courts in New Orleans, the appellate courts were quickly up and running after Hurricane Katrina. The Louisiana Supreme Court and the court of appeals moved just a few years ago to a newly renovated courthouse in the center of the French Quarter. The entire basement was flooded, and some records were damaged, but the building remained intact. The long-term implications of this move, though, are not clear. With no trials being held, the court of appeals will have few new cases making their way up the judicial ladder.

Few Options or Safeguards in a City’s Juvenile Courts

Excerpted from Fox Butterfield, “Few Options or Safeguards in a City’s Juvenile Courts,” *New York Times*, 22 July 1997. Reprinted by permission.

We have no way of knowing for certain whether Shareef Cousin was ever before juvenile court in New Orleans, because juvenile court records are sealed. But if he had ever been in juvenile court, and his troubled record certainly suggests that this was likely, this is some of what he would have experienced.

Clarence Richardson , the public defender appointed to represent a 12-year-old boy charged with driving a stolen car, met his client for the first time only a few minutes before the trial began.

They talked in the packed waiting area outside the courtroom because Mr. Richardson, like other public defenders here, has no office. Nor does he have a file cabinet, a telephone to contact defendants, or a clerk or secretary to help him draw up motions or conduct investigations.

As Judge Lawrence Lagarde, Jr., recited the evidence against his client and swiftly pronounced a two-year sentence in juvenile prison, Mr. Richardson sat largely silent. His defense table was conspicuously bare: no case files, law books, or even the police report on the defendant, to use to challenge the prosecutor.

Welcome to the Orleans Parish Juvenile Court, considered by many lawyers and children's rights advocates to be the most troubled juvenile court system in the country. Juvenile courts nationwide are in crisis, with the public and elected officials denouncing them as overwhelmed and ineffective, a revolving door for young predators. Congress, in fact, may soon pass legislation that would weaken the role of the juvenile courts by pushing large numbers of young people into the adult criminal system. But even as critics clamor for tougher laws dealing with crime by juveniles, an examination of the New Orleans juvenile court reveals another problem with the current system: a lack of constitutional protections like the right to adequate legal representation and due process for young people, an overwhelming majority of whom are poor and black.

In the tradition-bound world of New Orleans, public defenders are expected to play a subservient role, and prosecutors routinely rack up by far the highest conviction rate of any big-city juvenile court in the country. Some young defendants remain in detention centers for up to eight months without coming to trial, much longer than the 10- to 30-day limits imposed by most state laws.

But even the judges here are concerned about the system. "The juvenile court is the stepchild of the criminal justice system," said Ernestine Gray, the administrative judge of the New Orleans

juvenile court, “ and everything about how this court works suggests this is not a place that believes in innocent till proven guilty.” There are about a half-dozen public defenders, one for each courtroom, to handle the 2,200 delinquency cases brought here each year. Others who have worked in the New Orleans court were even blunter than Judge Gray. “It’s medieval,” said Anne Turissini, who spent five years as a public defender in juvenile court here until she gave up in disgust and moved to a similar job in suburban Jefferson Parish. Her salary, Ms. Turissini said, was \$18,000 a year, and with more than 100 cases at a time each, she and her colleagues were “overworked, underpaid, burned out, and demoralized.” “You are supposed to go along and get along with your judge,” Ms. Turissini said, “and if you object too often in court, they will have you fired.”

“All this has an effect on the kids, because they can sense the court is not serious, so they don’t take it seriously,” she added. “It is absolutely the worst situation, because these are kids with no self-esteem anyway, with parents and teachers telling them they have no value, which is why they shoot people for sneakers.” The ineffectiveness of the public defender system for juveniles here is forcing more and more poor young people to spend unnecessarily long periods in the city’s youth detention centers before they are brought to trial or even charged, said James Bell , a lawyer with the Youth Law Center, an advocacy group for children, in San Francisco.

Note: The juvenile justice system in New Orleans suffered even worse than the adult system. What few juvenile detention cells that were available have all but disappeared. In the short term, the damage and danger was not immediately apparent because few youth returned to the city mainly because the schools closed for the entire year. But some youth did return and were often at the center of a renewed wave of murders.