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Reconnecting the Broken Post-Katrina New Orleans Criminal Justice System

Graymond Martin

When Hurricane Katrina struck New Orleans and the levees protecting the city gave way in August 2005, an already struggling and weakened criminal justice system collapsed in spectacular fashion.

Damage within New Orleans extended far beyond the loss of physical infrastructure. The city's population was depleted by more than half. For those who remained or returned within the first year, spirits were crushed, uncertainty abounded, and the hard work of restoration was riddled by anxiety, conflict, opportunism, and battles for precious resources.

Longtime judge Leon Cannizzaro Jr., appalled at the near-complete dysfunction of the local criminal justice system, entered and won the race for Orleans Parish district attorney (OPDA). In November 2008, because of the urgency and enormity of the task ahead, he assumed the unexpired term of his elected predecessor, Eddie Jordan, who had resigned under clouds of scandal in October 2007.

Cannizzaro took office more than three years after the flood waters had receded but found his new agency's building still uninhabitable. While the OPDA's office had received three to four feet of flood water and had been designated by the Federal Emergency Management Agency (FEMA) as a high-priority critical infrastructure, what should have been a fairly easy restoration hadn't begun. Instead, residual moisture from the flood had festered for years, exacerbating the damage caused by inundation.

Their home office still in shambles, prosecutors were working on plastic picnic tables and folding chairs inside donated temporary office space in a downtown high-rise across from City Hall. The location was more than a mile and a half from the Criminal District Courthouse, New Orleans Police Department headquarters, the Orleans Parish Sheriff's Office, and the partially restored Orleans Parish Prison. Assistant district attorneys had limited space for witness interviews and were forced to carry large seafood boxes containing case files to their personal vehicles and then up the stairs of the criminal courthouse. The walk began from wherever they could find parking, first come first served.

Such logistical difficulties were only the beginning of prosecutors' troubles, soon to be compounded by the shortcomings of sister agencies.

The sheriff's office struggled to properly serve court notices and subpoenas and to bring detainees from the parish jail, so there was no assurance a defendant would appear at scheduled court hearings. Evidence custody could be an issue if a trial was scheduled and then postponed, because the NOPD's Central Evidence and Property Room would provide evidence to OPDA investigators but not always take it back. On the rare occasions that both defendant and evidence arrived in court at the same time, the absence of an essential witness to whom sheriff deputies failed to timely serve a subpoena could force unwanted continuances. Each misstep along the way

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increased the likelihood of case files, evidence, or even witnesses being lost or misplaced. Too many moving parts, it seemed, were moving in wrong directions.

Reconfiguring the operations of a single inefficient law enforcement agency is daunting enough, so imagine the challenge when the entire criminal justice system is disrupted and hobbled by multi-agency dysfunction. Three years removed from the city's great flood, a complete makeover was needed, and it would require unprecedented cooperation and effort from all stakeholders.

Post-Katrina rehabilitation was desperately needed on two fronts: the myriad issues related to cases pending when the levees failed, and those of the newer, post-flood cases brought by police.

Cases in the former category were beset by difficulties, such as lost or damaged evidence, victims and witnesses who had relocated around the country (often without forwarding contact information), and defendants who were incarcerated but dispersed and difficult to locate. Defendants who were at-large when the waters rose often simply disappeared, hoping their case files were misplaced. If their case files had been located on the ground floor and were water-logged, sometimes their hopes were realized.

Newer cases posed their own problems, introduced as they were into an overwhelmed, barely functional system. The simple logistics of working space, evidence storage and retrieval, records management, process service, and difficulty locating defendants, victims and witnesses likely were not being solved with ad hoc solutions.

Restorative measures also were road-blocked by the poor recent history between the DA's office and the NOPD. New Orleans' per-capita murder rate had swelled to eight times the national average during a period of finger-pointing and feuding between District Attorney Jordan and police department leadership. Police complained that the prior DA would not prosecute viable cases. The DA staff countered that police would not conduct thorough and timely investigations to produce prosecutable cases.

Violent offenders soon realized the dispute between the agencies meant that only a minimal number of murder cases were going to be prosecuted. New Orleans' streets produced sarcastic mentions of the "60-day murder" penalty—the time then allotted under state law for a suspect to be arrested and detained, then released if the state had by then failed to institute prosecution. Police often failed to provide investigative reports sufficient to support a prosecution within the specified time, so cell doors were flung open. Defendants still could be indicted in a state where murder charges do not prescribe. But there was no meaningful tracking system to pursue matters once a defendant won his pretrial release.

The acrimony between police and prosecutors boiled over in 2006, when more than three thousand of these Article 701 releases effectively terminated prosecutions of cases, including murders. New Orleans' mayor threatened to have District Attorney Jordan investigated for malfeasance. City council members and civic groups called for the DA's resignation. The community expressed outrage at the system's inability to hold violent offenders accountable for their criminal acts. The business community finally intervened, funding a soft landing for the DA in the private sector in exchange for his resignation and pledge not to seek re-election in 2008.

It was against this dire backdrop that Cannizzaro took over as the city's top prosecutor in November 2008. He immediately set about evaluating the deficiencies of the DA's office, as well as those of other agencies negatively impacting the performance of the DA's office. He declared that the OPDA no longer would allow underperforming partners in the criminal justice system to lower the bar for the prosecutors' office. But he also ordered a stop to public criticism of the police,

so that the relationship between the two critical law enforcement partner agencies might be repaired.

Cannizzaro sought to emphasize prosecutions of the most serious and violent crimes. After finding that misdemeanor violations consumed more than 40 percent of the Criminal District Court's docket, and that simple possession of marijuana made up about 60 percent of those misdemeanor cases, the new DA in 2009 asked the city council to adopt a municipal ordinance for the prosecution of minor weed possession in municipal court. The council initially balked, so Cannizzaro used his own authority to unilaterally transfer marijuana possession cases to municipal court under state jurisdiction. The move immediately freed up about 25 percent of the criminal district court docket, and eventually the city council adopted a full range of municipal law violations that moved the bulk of misdemeanor cases to the municipal court.

With the criminal district court docket now leaner, Cannizzaro turned his attention to refilling it with the most serious cases of violent crime. He asked the NOPD to begin a cold-case review of some 450 murder cases for which prosecution had previously been declined and lobbied the city council to double the size of the department's homicide unit to assist with the task.

Police, however, were not immediately on board with the new DA's workhorse ways. NOPD Superintendent Warren Riley, maintaining his antagonism toward the DA's office, actually declined the additional resources. So the council instead funded the hiring of six investigators to work six months for the DA's office, reviewing as many of the 450 cold murder cases as they could.

The group got through 150 cases, determining that 75 merited prosecution. But in a little more than half of those cases, the investigators found the murder suspects had themselves already been killed in subsequent homicides. Retribution killings are a hallmark of New Orleans' meanest streets.

About thirty-five remaining cases, refused years earlier, were resurrected and indicted, resulting in about twenty-seven convictions. It was the start of Cannizzaro's campaign against the city's murderous offenders that has seen more than seven hundred New Orleans killers successfully prosecuted in his first ten-plus years as DA.

The campaign required another innovation to put the "60-day murder" penalty to rest, and it would require a new bridge of trust, respect, and cooperation between the DA's office and NOPD headquarters. A new protocol was negotiated between Cannizzaro's office and the NOPD's Homicide Division, entitled, "Homicide arrest to indictment in 60 days." Both agencies pledged to improve communication to enhance the likelihood that a homicide arrest would develop into a prosecutable case.

Cannizzaro's office provided an on-call assistant DA and victim-witness coordinator who would accompany a senior investigator to homicide scenes, whether or not an arrest had been made. This protocol allowed for immediate interaction between the DA's office and potential witnesses and the victim's surviving family and demonstrated to detectives the DA's commitment to prosecuting these important cases. The protocol required investigators and prosecutors to meet within ten days to discuss a homicide case and to meet again within ten days of an arrest for case review and evaluation. Homicide detectives were obligated to submit a complete report to prosecutors within twenty-eight days of an arrest.

That report would become the subject of a charge conference, a weekly meeting between case-level investigators and prosecutors and their supervisors, where determinations would be made about whether cases were ready for prosecution. Previously, these conferences were being held at the deadline of a suspect's release under Article 701. If the investigation was complete and

sufficient for prosecution, it was accepted. If the investigation was incomplete or deficient in some way, it was refused. And under previous DA administrations, that would be that.

The new protocol required police and prosecutors to begin discussing within a month of arrest what problems or deficiencies a case might have, affording time to correct such faults through further investigation. Many cases now are reviewed between three and five times in the charge conference setting before a charging decision is made.

This repeated interaction has allowed for more thorough and complete investigations that are more likely to result in indictments and convictions. Where under the previous administration, about 50 percent of homicide cases were being refused and forgotten by the DA's office, Cannizzaro's office now accepts homicide cases for prosecution about 90 percent of the time and achieves conviction in those cases at an impressive 95 percent rate.

Rebuilding the relationship between the DA's office and NOPD not only has enhanced the performance of the city's criminal justice system but undoubtedly has made New Orleans a safer city. This cooperative effort to aggressively prosecute serial homicide offenders has contributed substantially to the historically low homicide rates of which New Orleans currently boasts.