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This article is the opinion of Beau Brock and does not reflect any official position taken by the U.S. Government and the U.S. Environmental Protection Agency.

The district attorney’s office in East Baton Rouge, Louisiana, has been very active over the past 11 years since the election of Judge Doug Moreau as district attorney. Through the past decade, First Assistant District Attorney John Sinquefield has been at Moreau’s side. In fact, Sinquefield has been in public service as a prosecutor in Louisiana for over three decades. The results achieved by this office under the direction of Moreau and Sinquefield are certainly noteworthy. One of the best compliments an office can receive is one from its opponents, and in April 1999, Jelpi Picou, Jr., director of the Louisiana State Indigent Defender Board testified that the East Baton Rouge District Attorney’s Office “have[ve] the best prosecutors on [its] staff, bar none, in the state.”

East Baton Rouge convictions have resulted in sentences accounting for 12 percent of all inmates housed at the Louisiana State Correctional Facility at Angola. Prosecutors in East Baton Rouge Parish have accounted for the issuance of an astounding 213 mandatory sentences of life imprisonment without probation, parole or suspension of sentence. In addition, since 1991, when Judge Moreau took office, the death penalty in East Baton Rouge Parish has been sought at trial by prosecutors 24 times and juries have returned verdicts of death 20 times. During Judge Moreau’s tenure, no other parish in the state has had as many death penalty verdicts. For one stretch, which ended in 1998, juries in East Baton Rouge Parish had recommended the death penalty 13 times in a row when prosecutors had asked for it at trial. In May of 1999, of the 76 men and one woman on death row in Louisiana, 17 were sent there from cases prosecuted by Judge Moreau’s office.

Capital punishment strains both sides of the bar’s resources and energies—prosecution and defense. From the prosecution side, it involves devoting countless hours to communication with the victim’s family and friends, case preparation, legal research and complex forensic evidence issues. These cases must be managed, in addition to the hundreds of other cases the prosecutor carries, with the utmost of dedication and attention to detail. Every prosecutor assigned such cases is firmly aware of the intense
scrutiny given to them by courts at all levels. The case for the district attorney’s office in
East Baton Rouge begins at the crime scene and does not end until the final appeal is
heard. The district attorney’s office has a duty schedule that follows the Criminal Court
duty schedule, and one of the many assignments of duty is to be present at homicide
crime scenes.

Participation in the case by the victim’s family is begun at the outset of the case. They
are subjected to an unnatural event in their lives that they will never shake from their
conscience. Imagine yourself being confronted with the following murder scene to which
Assistant District Attorney Lori Nunn was called.

“Prior to being killed, a 67-year-old woman had her house broken into by the defendant,
was dragged from room to room, stabbed multiple times, and then was raped,” Nunn
explained. The macabre scene was made all the more grisly as crime scene technicians
made determinations of the cause of a gross disfigurement of her face. The victim had
been bludgeoned by a sleeper sofa. It was lifted into the air and then smashed down on
her as she lay helpless on the floor. Dr. Alfredo Suarez later testified that the victim was
still alive when her face was crushed, although she did expire before the defendant
obtained a second knife and slit her throat.

“I never forgot the horror of what happened to that woman; it was beyond cruel,” Nunn
said. The family of the victim put her to rest after a closed casket service. “The victim’s
son lives with that image of his mother on the floor in a pool of her own blood,” Nunn
said.

The initial meeting with the family is quickly followed up once the family has been given
a chance to grieve and bury the dead. Assistant District Attorney Dana Cummings said
he cannot overemphasize the critical role played by the family. “Before the Grand Jury
[were convened] the victim’s family was contacted,” explained Cummings. This contact is
a critical stage and essential to begin the development of a base level of trust with the
family in the prosecutor’s judgment. The family is going through enormous psychological
trauma at this time, and may not understand the complexities of their decision to seek
the death penalty nor the actual steps they will be taking. Cummings suggested that due
to the family’s limited knowledge of the process at that time, they would be unable to
objectively make a complete decision. However, as the state’s advocate for the family,
Cummings said, “if they want the death penalty, and the case warrants it, then you want
them to be satisfied that justice has been served.” At times a representative is selected
as a liaison between the D.A.’s office and the family. Assistant District Attorney Wick
Cooper said that he has devoted much time “discussing the options of accepting a plea
versus going to trial with the family of the victim” in these cases. Survivors must be
provided a roadmap that empowers them and provides them with some sense of control
in this nightmare.#9 “They have to be made aware up front of these issues,” stated
Cummings.

“Throughout the whole process, we have close contact to advise them at every stage,”
Assistant District Attorney Kurt Wall said. “They play a major role in the penalty phase,
and basically, will have to relive the grief they experienced when they first learned about
the murder,” Wall said. “We try to explain to them the ‘unknown’ of the process, and
provide support for what they have to endure.”

“The advent of victim impact evidence in capital litigation has provided victims’ families a
new and powerful voice in the courtroom,” said Sinquefield.10# “For years, they sat
through trials listening in silence as defense attorneys told juries of the life stories of
defendants. Now, after Payne v. Tennessee#11 and State v. Jackson,#12 the humanity
of the victims is not forgotten and placed before the jury. I’ve tried cases before victim
impact and after its admission date, and its affect has been remarkable,” said
Sinquefield.
Legal issues particular to first degree murder cases are the subject of volumes of handbooks, treatises and guides for practitioners. Every time a defense attorney challenges the judicial system, at any level, that tactic is incorporated into capital litigation practice. In some cases, the defense has filed over 100 pre-trial motions. I try to streamline the process and provide as much to the defense as possible. This has worked up until the funding issues took center stage, and we simply aren’t in the business of creating unlimited sources of public monies for criminal defendants,” commented Sinquefield.

Any questions raised before a jury—legal or factual, compound upon one another in these cases throughout the trial. This is due to the nature of the capital jury system as mandated by our state constitution. Twelve jurors must unanimously decide guilt, and then must unanimously decide that the death penalty is warranted for a defendant to be sentenced to death. If one juror is unwilling or is even undecided about the penalty, the court automatically assigns a life imprisonment sentence to the defendant. Capital cases, because of this factor alone, are always extraordinary murders “that involve despicable acts that shock the ordinary senses of a common citizen,” Cummings said. The state’s case must run a gauntlet of 24 jurors’ votes that at any time will nullify even the possibility of a death verdict.

The human desire to set his world in order is a truly base one. It enables us all to reduce our anxieties caused by the unpredictability of daily living. These fears are heightened when we are confronted by imminent danger or evil. Jurors given the opportunity, when confronted with acts of evil, are not hesitant when outraged to choose to avenge the victim’s cause. However, “the guilt of the defendant cannot be a serious issue to the jury. Jurors know they are deciding the ultimate issue and hold the state to a higher burden of proof,” said Nunn. Thus, the evidence presented of guilt in these trials, for the most part, is overwhelming.

“A particular complication is mitigation experts,” Wall said. “You’re supposed to know what they are going to say beforehand, prior to trial. For whatever reason, their mitigation reports are not provided until the last minute,” he continued. The last minute occurs, of course, after months and maybe years of motions heard, after weeks of jury selection, after a full guilt phase of a trial, after the defendant has been found guilty of first degree murder, and just prior to the beginning of the penalty phase. This is frustrating because the prosecutor has spent hundreds of hours attempting to prepare for every contingency that might result. “More so than any other case, the amount of time you spend preparing for trial, selecting a jury, and actually trying a case is so consuming that it’s almost like preparing for the bar exam,” said Wall. Jurors deciding these cases demand the best available technology be used in processing evidence, and yet the state of Louisiana has not yet begun using DNA techniques at its own State Police Crime Lab. In order to satiate jurors’ desire to be absolutely sure in their verdict, prosecutors in East Baton Rouge parish have used contract labs, and the FBI DNA subunit in Washington, D.C., for DNA processing and analysis, when available.

“These cases must be handled totally different from other cases, and extreme caution is necessary as defendants have many more rights,” Cummings said.

Recently, many capital cases have been stayed for numerous months prior to the setting of a trial date. The principal reason has been that of funding sources for the defense. In light of these delays, when deciding whether to seek the death penalty, “[prosecutors] must deal with the practical realities of today’s system of justice,” said District Attorney Doug Moreau. However, “in some cases, it would be a disservice [to the family or our community] not to seek the death penalty,” Moreau said.

“The delays are maddening. Everything’s delayed. The victim’s family won’t get closure for up to 10 years, and that’s hard,” said Cummings. In East Baton Rouge Parish, the final authority in whether to seek a death penalty resides solely with the district attorney. This is done after consultation with the assistant handling the case and any meetings.
with family representatives particular to that case.

Capital litigation marks the memories, tears at the heart and shrouds the soul of prosecutors. All the prosecutors with whom I have spoken and who have been engaged in this practice express their thankfulness for the opportunity to serve the families they represented. The understanding of the grave obligation to the state and the surviving family and friends whose lives are forever scarred by the murder “eats up every moment of your day when preparing for these cases,” said Wall. “You share a common bond with the families, and still have contact with them over the years of the appellate process,” said Sinquefield.

Juries and survivors are witnesses to only some of the carnage inflicted. “Prosecutors must review the entirety of the record including the gruesomeness of autopsy pictures,” Cooper said. “They are tough things to put out of your mind at the end of the day when you see what humanity is capable of. However, these photos help to remind the jurors of the defendant’s hideous acts,” said Cooper. “At the conclusion of these cases, if you’re successful, you feel a true sense of accomplishment for the victim’s family and yourself,” Wall said.

“The courtroom drama is hard to match when you find yourself trying some of the worst criminals in the world, and you can only learn through experience how much stamina and focus are required to see such cases to the end,” stated Sinquefield.

No other case taps the financial, logistical and human resources of the district attorney’s office like a capital one. In East Baton Rouge, families who are subjected to crimes such as these expect and deserve the fullest attention and the expenditure of responsible resources available within the district attorney’s office. As long as Doug Moreau is district attorney and John Sinquefield is first assistant, I believe the public can rely on zealous prosecution of capital cases by their team of prosecutors.

Endnotes

1# Portions of this article were submitted to the local Baton Rouge Bar Association for publication in its March 2002 issue. The title of that article is “Interview with a Prosecutor—Capital Punishment Issues in the Capitol City.”

2# The East Baton Rouge District Attorney's office, the Nineteenth Judicial District, currently consists of 48 full-time attorneys and two part-time attorneys.

#3 M. Millhollon, “East Baton Rouge leads state in death penalty verdicts,” (The Advocate ONLINE May 9, 1999).

#4 Angola is also commonly referred to be prosecutors and defense attorneys alike as “the Farm.”

#5 For purposes of this article, interviews were conducted of District Attorney Doug Moreau, First Assistant District Attorney John Sinquefield, Assistant District Attorney Dana Cummings, Assistant District Attorney Wick Cooper and Assistant District Attorney Kurt Wall. Further, the author, as a former assistant district attorney, also prosecuted four capital cases, one in which a plea to a life sentence was taken and three that went to trial.

6# See, Millhollon, supra.

#7 See, Millhollon, supra.

#8 Throughout our country, from laypersons to those charged with seeking its ultimate consequences, capital punishment can be a highly divisive issue. It is no less a conflict even in
the United Kingdom which has no provision for the death penalty. A recent example highlights this point. During the first session of the British Parliament, after the terrorist acts against the World Trade Center of September 11, a back bench member of Parliament made an interesting suggestion about the future legal position of Osama Bin Laden. He suggested that in the unlikely event of capture by British troops, that arrangements be diplomatically made to turn him over to American authorities as “they have the death penalty over there.”

9# See, Dr. Charles Foster, There’s Something I Have to Tell You, How to Communicate Difficult News in Tough Situations, 147 (Harmony Books 1997), for an approach used to help families subjected to this trauma to develop trust in the prosecutor, and hope for answers through the judicial system.

#10 Sinquefield tried the first case in which victim impact evidence was introduced in the entire state.


#12 608 So. 2d 949 (La. 1992)

#13 This article is not intended to, in any way, address comprehensively the legal complications of capital litigation, in particular, the topical issue of funding and effective indigent defense in death penalty cases.

#14 One only need look to the recent success of Wilbert Rideau. His defense team has been able to obtain for him a fourth trial. In December 2000, the United States Fifth Circuit ordered a new trial on grounds that the system used to select the grand jurors, who indicted Rideau in 1961, discriminated against black people.

15# La. Const. Art. 1 § 17.

16# See, La. C.Cr.P. Art. 905.4 which lists the statutory aggravating factors for capital cases. One of these factors **must** be found by the jury in order for them to even consider voting for the death penalty.


#18 This issue is certainly not of lack of training or professional competence at the Louisiana State Police, but has been an issue of funding priority debates over the past eight years. For further dramatic reading on how jurors demand professionalism in forensic evidence collection and processing see V. Buglisi, OUTRAGE - The Five Reasons Why O.J. Simpson Got Away With Murder, 421 (Island Books 1996).

#19 Prosecutors are fully aware of such groups as “Project Innocence” which have been able to free persons originally found guilty at trial with later DNA tests. Required reading on this subject can be found in the National Institute of Justice Department of Justice research report, E. Connors, T. Lundregan, N. Miller, T. McEwen, Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial, (June 1996).