



Capital punishment on decline in county

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For more than two decades Harris County has been to the death penalty what Saudi Arabia is to oil.

Save for a couple of lean years, when prosecutions were stalled for legal reasons, it has done more than its share to keep the Texas death row full and the execution chamber busy.

On Tuesday night Harris County hit the century mark in executions, which places it ahead of any other state — not county, but state — in the nation. Virginia is close with 98, but the gap will only widen.

Of the 380 Texas inmates awaiting execution, Harris County can claim almost a third of them.

But a strange thing has happened in the numbers game. In the last 2 1/2 years, the deadliest county in America has apparently lost some of its taste for what former District Attorney Johnny Holmes used to call the "silver needle society." In that time it has condemned only six defendants to death, two fewer than Bexar County, which historically has ranked a distant third in capital contributions.

Defense attorneys have noticed a change.

"I don't think they are seeking death as actively as they were," said Terry Gaiser, a Houston defense lawyer who does capital cases. "I don't have any real statistics to back it up — it's just a sense that I have. My trial schedule for those types of cases has certainly decreased. I don't see the courts all tied up with death penalty cases like they used to be."

Stanley Schneider, who has been involved in death penalty cases for three decades, pinned the low number on changing laws. First came Supreme Court decisions that said defendants have a right to present mitigating evidence. Then the court exempted the mentally retarded and anyone under 18 at the time of the crime. Finally, the state of Texas gave jurors the right to sentence murderers to life without the possibility of parole.

"Life without parole has changed the public's perception," Schneider said. "If you have the idea that you are safe from somebody who will never get out of prison, some juries are satisfied with that. And for prosecutors, it's easy for them to try a non-death capital, get life without parole, and do it in a week. Time is saved and public resources are saved."

The trend is national

In its declining death sentences, Harris County is mirroring a strong national trend. They have dropped by more than 50 percent nationally over the last six years. Some say the public is losing its zeal for the death penalty in the wake of publicized exonerations and botched cases.

"We have the culmination of all these cases where DNA evidence was able to confirm claims of innocence — the weight of that says we have to be more careful in using the death penalty," said Richard Dieter, executive director of the Death Penalty Information Center, an organization opposed to capital punishment. "That has had a broad effect everywhere: on sentences, new laws, moratoriums and appeals court decisions. Everyone has taken a different view of the death penalty in recent years, and it's not surprising that it has had some effect in Texas and even Harris County."

Harris County District Attorney Chuck Rosenthal insists the decline in the number of death sentences has nothing to do with limited resources or a log-jammed court system — Harris County commissioners have always made sure the office is amply funded — and everything to do with the particulars of the crimes being committed.

"Everything is based on evidence of what we had," Rosenthal said. "If I don't think we had the evidence and I'm not comfortable we can secure death or ask a jury for death. In a number of cases, capital life is sufficient."

Harris County residents' support for capital punishment had been on the decline since 1993, as it has everywhere, but has held steady for the past couple of years. Seventy-nine percent of those surveyed in 1993 were in favor of the death penalty for convicted murderers. This year, 61 percent of the more than 600 residents responding to the Greater Houston Survey were in favor of death as punishment.

Greater concern about crime and terrorism may explain why capital cases have lost momentum, explained Stephen Klineberg, a Rice University sociology professor behind the survey. "Harris County attitudes toward the death penalty are no different than attitudes of Americans across the country, yet Harris County remains the death penalty capital of the world," Klineberg said. "I think the most interesting phenomenon in Harris County is the difference between public opinion and public policy."

If the last few years are a fair indication, policy and opinion may be moving into closer alignment.

Prosecutor Roe Wilson, who handles death penalty appeals, acknowledged the life without parole provision signed into law by Gov. Rick Perry in 2005 has taken some of the steam out of capital prosecutions. Even though a standard life sentence guarantees 40 years served before parole consideration, it still leaves open a door of possibility.

200 mark foreseen

None of which makes much difference to those already on death row, of course. The pipeline may have slowed to a trickle, a marked change from the first half of the 1990s when 10 to 15 a year were sent to Livingston, but even if it stopped altogether, Harris County eventually will pass 200.

As for the 100th execution, Rosenthal gave it little notice.

"It's a non-event," he said. "It's not the 100th and even if it were it still would not be significant."

Rosenthal said he considers next month's scheduled execution of Johnny Ray Conner as the true centennial execution. His office, unlike the Texas Department of Criminal Justice, does not include Kenneth Allen McDuff in its official count of those sentenced to death in Harris County. McDuff was to be tried in McClennan County, but was moved here through a change of venue request.

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