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One county, 100 executions

Harris County and Texas – A lethal combination

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One of the cruellest anomalies of the modern system of capital punishment: Geography means everything

Houston Chronicle¹

In 1969, “Houston” became the first word to be spoken by a human being on the moon, beginning astronaut Neil Armstrong’s famous message back to earth. Four decades later, the City of Houston, or rather Harris County where both the city and NASA’s Johnson Space Center are located, has gained international notoriety for something that pushes the boundaries of human decency rather than space exploration.

For, while Texas is the execution centre of the USA, Harris County is that state’s main supplier of condemned human beings. This is a lethally symbiotic relationship that helps to create geographic bias in the US capital justice system on a grand scale.

Harris County is the third largest county in the United States, with a population of a little under four million inhabitants, or about 1.3 per cent of the US population. Between one and two per cent of the USA’s murders each year occur in Harris County. About four per cent of the country’s current death row inmates were tried in Harris County. Nine per cent of the men and 18 per cent of the women executed in the United States since judicial killing resumed there in 1977 were condemned to death in Harris County.

Ninety-seven men and two women prosecuted in Harris County have been put to death since Texas carried out its first execution of the “modern” era in 1982. At the time of writing, Lonnie Johnson was set to become the 100th such prisoner to be put to death, his execution scheduled for 24 July 2007. Johnny Connor was set to become the 101st on 22 August and Michael Richards the 102nd on 25 September.

If Harris County was a state, it would rank 26th in population among the US states, one above Oregon. Oregon has executed two people since 1977, both of whom had given up their appeals. There are about three or four times as many murders each year in Harris County as there are in Oregon, but Harris County accounts for 50 times as many executions as that west

¹ *A deadly distinction*. Houston Chronicle, 5 February 2001.

coast state. Indeed, if Harris County was a state, it would rank second only to Texas in the number of executions carried out since 1977.

Sources: Bureau of Justice Statistics and Texas Department of Criminal Justice	USA	Texas	Harris County
Death sentences, 1973-2005	7,662	994 13% of national total	283 29% of TX total
Death row, 31 December 2005	3,254	411 12.6% of national total	126 31% of TX total
Executions, 1977 – 20 July 2007	1,087	397 36.5% of national total	99 25% of TX total

There are currently 126 Harris County offenders under sentence of death in Texas. Only six states apart from Texas currently have more prisoners on death row – Alabama, California, Florida, North Carolina, Ohio, and Pennsylvania. Between them, those six states account for 23 times the population of Harris County, and see thousands more murders take place in them each year than occur in Harris County. Together, these six states have executed 185 inmates in the past three decades, only twice the number of Harris County offenders who have been put to death.

In Texas itself, Harris County is ahead of other local jurisdictions in ensuring a steady flow of individuals for the state’s lethal injection team to kill. The number of Harris County offenders executed or remaining on death row – 225 – is only equalled by grouping together the next *seven* largest Texas counties of Bexar, Dallas, Tarrant, Travis, El Paso, Hidalgo and Collin – counties whose jurisdictions include the cities of Austin, Dallas, El Paso, Fort Worth and San Antonio and whose combined populations account for nearly five million more inhabitants than Harris County and around a hundred more murders each year.²

This is not to say that Harris County is alone in obtaining large numbers of death sentences. Between 1976 and 2004, over half of murders in the USA occurred in cities with a population of 100,000 or more, and almost a quarter occurred in cities with a population of over one million. There are prosecuting authorities in some of these populous urban counties that have obtained large numbers of death sentences over the years.³ Nevertheless, the combination of Harris County and Texas has proved to be far more lethal than almost any other state/county mix.

² At the time of writing, 85 people prosecuted in these counties have been executed and 138 remain on death row (total: 223).

³ Counties may cover rural and urban areas. This is so with Harris County. Lonnie Johnson, for example, who at the time of writing was scheduled to become the 100th Harris County defendant to be put to death, was convicted of a crime committed in Tomball, in rural Harris County. See Urgent Action, AMR 51/124/2007, 19 July 2007, <http://web.amnesty.org/library/index/engamr511242007>.

- The USA's largest county is Los Angeles County in California, with a population more than two and a half times greater than that of Harris County. The annual number of murders in LA County is equivalently higher too. In 2000, for example, there were over 700 more murders in LA County than there were in Harris County. Since 1977, however, only two people convicted in LA County have been put to death, while 195 people prosecuted there remain on death row. Harris County's combined total of 225 executions and current death sentences is more than 12 per cent higher than obtained by its Californian counterpart despite being a much smaller county with far fewer murders than LA County.
- Cook County in Illinois is the USA's second most populous county, with about a million and a half more inhabitants than Harris County and, in 2000, nearly 350 more murders. In Illinois, between 1977 and 2003 when the state governor commuted all death sentences because of concern about the fairness and reliability of the capital justice system, Cook County prosecutors obtained 152 death sentences. Five executions of Cook County defendants were carried out. In the same period, Texas executed nearly 70 Harris County offenders.
- In Pennsylvania, there are 117 prisoners on death row (99 of them black) who were prosecuted in Philadelphia County, but only one prisoner tried there has been executed since 1977, 98 fewer than in the case of Harris County. The annual number of murders in Philadelphia County is similar to that in Harris County.
- Maricopa County in Arizona is a jurisdiction of similar population size to Harris County with around two thirds the number of murders that occur in Harris County. There are currently 61 Arizona death row prisoners who were prosecuted in Maricopa County, fewer than half of Harris County's total in Texas. Compared to Harris County's judicial death toll of 99, only six inmates prosecuted in Maricopa County have been executed.
- In 2000, there were 286 murders in Harris County. In the urban New York jurisdictions of Kings, Queens, Bronx and New York Counties, which combined have twice the population of Harris County, there were 635 murders in 2000. Between reinstatement of the death penalty in New York State in 1995 and the end of 2005, 10 death sentences were passed. In Harris County, during the same period, some 90 death sentences were handed down. There have been no executions in New York State since 1963.

The above examples show that what separates Harris County from other major death penalty jurisdictions is the sheer number of death sentences that are taken through to execution. In other words, if Harris County was in a state other than Texas, its lethality would apparently be lessened.

If the Harris County/Texas combination does have a peer in judicial lethality in the USA, it is the nexus of Oklahoma County and the State of Oklahoma. Although Harris County accounts for many more death sentences than Oklahoma County, the latter has a population over five times smaller than Harris County's and the annual number of murders there is equivalently

lower. Like Harris County in Texas, Oklahoma County has been its state's main supplier of condemned inmates. Thirty five of the 85 executions carried out in Oklahoma by July 2007 and 34 of the 84 prisoners on the state's death row in January 2007 were of individuals prosecuted in Oklahoma County. It is another indicator of the geographically southern nature of the death penalty in the USA that the states of Oklahoma and Texas – ranked first and second respectively in the USA in terms of their execution rate per capita of their populations – are neighbours.

The Harris County and Oklahoma County death sentencing practices also serve as a reminder that prosecutorial discretion lies at the heart of the US capital justice system. Unless a case is pursued under federal jurisdiction, it is county prosecutors who decide whether to pursue the death penalty in any particular case, which allows such officials to have a disproportionate impact on the national death penalty picture. In Oklahoma County, Robert Macy spent 21 years as District Attorney, sending several dozen people to death row before retiring in 2001. Curtis McCarty was one of them. McCarty spent 21 years on death row for a crime he did not commit, the victim of false testimony from a police chemist presented by the prosecution. He was released in May 2007 after DNA evidence proved his innocence. During their pursuit of the death penalty in this and other cases, prosecutors in Oklahoma, particularly in Oklahoma County, have regularly been cited by the appeal courts for their misconduct.⁴

Serious questions, too, have been raised about Harris County's prosecutorial conduct in capital cases, including under the term in office of District Attorney John Holmes. He retired in 2000 after two decades as Harris County's chief prosecutor, a period which saw well over 100 individuals sent to death row from the county. District Attorney Holmes would reportedly refer to inducting capital defendants into the "silver needle society", in reference to lethal injection.⁵

Harris County prosecutors and police were accused by a federal judge of "outrageous" conduct "designed and calculated to obtain . . . another 'notch in their guns'" in securing the conviction of Mexican national Ricardo Aldape Guerra for the murder of a Houston police officer. He remained on death row for nearly 14 years, coming within three hours of execution in 1992. In 1994, a federal judge overturned his conviction and death sentence, finding that police and prosecutors had intimidated witnesses into accusing Aldape Guerra and had manipulated evidence to ensure a conviction. The ruling was upheld in 1996 by the US Court of Appeals for the Fifth Circuit and Aldape Guerra was moved from death row to Harris County Jail to await a new trial. However, after the trial judge ruled that six key prosecution witnesses could not testify because their testimony had been influenced by police, and said that there was "overwhelming evidence" that Adalpe Guerra was not the gunman, the District Attorney Holmes dropped the prosecution. On arrival in Mexico in April 1997 after

⁴ See *Old habits die hard. The death penalty in Oklahoma*, AI Index: AMR 51/055/2001, April 2001, <http://web.amnesty.org/library/Index/ENGAMR510552001>. The Oklahoma Court of Criminal Appeals accused District Attorney Macy of "highly improper" conduct in the McCarty case.

⁵ *A deadly distinction*, Houston Chronicle, 5 February 2001.

his release, Aldape Guerra said that the Harris County authorities had “robbed me of 15 years of my life”.⁶

Gary Graham’s life was taken in the Texas lethal injection chamber in June 2000 for a crime he was convicted of committing when he was 17 years old. Harris County obtained a death sentence against him despite having no physical evidence and presenting testimony from only one eyewitness identifying Graham as the gunman. Perhaps the prosecution believed that Graham’s admitted involvement in other robberies and assaults around the time of the murder would make a jury more prone to convict and vote for execution for that crime. If so, the prosecution was helped by a defence attorney who apparently also believed in the defendant’s guilt, failing to do any investigation into his claims of innocence. Post-conviction investigations revealed compelling exculpatory eyewitness testimony not heard by the jury, but Gary Graham went to his execution protesting his innocence, without having had a hearing on the post-conviction evidence.

The Harris County District Attorney’s Office nevertheless asserts that it strives to “seek justice not just convictions”.⁷ Even for those who equate the death penalty with “justice”, which Amnesty International does not, Harris County has surely failed on occasion to meet its professed goal. Its prosecution of two men involved in the robbery of a Houston grocery store which resulted in the murder of Claude Shaffer is instructive in this regard.

Claude Shaffer died from a single bullet wound. Two men were tried for his murder. Willie Williams was brought to trial first. He pleaded guilty to killing the victim. The Harris County prosecutor presented the medical examiner’s evidence in support of its theory that Williams had shot Shaffer. The prosecutor told the jury: “Willie Williams is the individual who shot and killed Claude Shaffer. That is all there is to it. It is scientific. It is consistent. It is complete. It is final, and it is in evidence... there is only one bullet that could possibly have done it and that was Willie Williams’... Nichols is out the door.” The jury passed a death sentence and Willie Williams was executed on 20 January 1995.

Joseph Nichols was brought to trial after Williams had been sentenced to death. The Harris County prosecutor argued that regardless of who fired the fatal shot, Nichols was guilty under the “law of parties”. This is the Texas law under which the distinction between principal actor and accomplice in a crime is set aside and each defendant may be held equally culpable. The jury found Nichols guilty of capital murder, but a mistrial was declared after the jury was unable to reach a sentencing verdict. Following the trial, the prosecution interviewed some of the jurors and learned that their doubts about whether Joseph Nichols had been the person who had fired the fatal shot had left them unable to agree on the death penalty.

Joseph Nichols was retried by the same Harris County prosecutor. This time the prosecution primarily argued that Nichols had fired the fatal shot. It did not base this about-turn on any additional investigation. The prosecutor argued that “Willie could not have shot [Shaffer]...

⁶ *Mexican long held in Texas murder wins his freedom*. New York Times, 17 April 1997. In a tragic turn of events, he was killed in a car accident in Mexico four months later.

⁷ See Harris County District Attorney’s website, <http://app.dao.hctx.net/>.

[Nichols] fired the fatal bullet and killed the man in cold blood and he should answer for that”. The jury voted for a death sentence.

In 1992, a federal judge ruled that the prosecution had presented false evidence by changing its argument from Nichols’s first trial to his retrial (Nichols II). Judge David Hittner said: “The State argued, the jury found, and the court accepted the determination in the Williams trial that Williams was the triggerman, not just a party to the offence. That fact was established as the truth. This court has concluded that the prosecutor in charge of Nichols II offered evidence and argued to the jury and court that Nichols was the triggerman. By prior judicial determination, the evidence submitted was necessarily false. Accordingly, this court finds that the prosecutor in charge of Nichols II knowingly used false evidence to obtain the conviction and sentence in Nichols II.” Judge Hittner concluded that “the due process boundary upon prosecutorial misconduct and the appearance of basic fairness derived from that boundary command a determination that, in a criminal prosecution, the State is constitutionally [barred] from obtaining a fact finding in one trial and seeking and obtaining an inconsistent fact finding in another trial”. He said that “Williams and Nichols cannot both be guilty of firing the same bullet because physics will not permit it”. He ordered that Nichols be released or retried. However, the state appealed and the Fifth Circuit Court of Appeals overturned Judge Hittner’s ruling. Joseph Nichols was executed on 7 March 2007.⁸

Source: Texas Department of Criminal Justice	Harris County death sentences	Harris County offenders executed	African Americans as % of those executed
1924 – 1964	99	63	70%
1982 – 2007	283	99	54%

The Harris County District Attorney also professes “an absolute commitment to the ends of securing justice without regard to status, race, gender, or national origin, or the prominence of either the victims of crime or those charged with crimes.”⁹ The geographic disparity in US capital justice to which Harris County’s pursuit of executions contributes, however, is accompanied by indications that it also contributes to the racial bias that is one of the characteristics of the US death penalty.

As two renowned experts on racial discrimination and the death penalty in the USA put it, “the history of the death penalty in [the 20th] century has been a tale of denial and avoidance by state and federal courts, Congress, and state legislatures”.¹⁰ For all its modernity, the

⁸ See AI Urgent Action, <http://web.amnesty.org/library/Index/ENGAMR510332007>.

⁹ See Harris County District Attorney’s website, <http://app.dao.hctx.net/>.

¹⁰ David C. Baldus and George Woodworth, *Race discrimination and the death penalty: An empirical and legal overview*. In Acker, Bohm and Lanier, *America’s experiment with capital punishment*. Carolina Academic Press, 1998.

Harris County court building in downtown Houston is hosting a practice with a racist history and one which continues to display discrimination on the basis of race.

Studies conducted in the “modern” era of the death penalty have consistently shown that race, particularly race of the murder victim, is a factor in capital sentencing in the USA.¹¹ Eighty per cent of the US population is white, and almost 13 per cent black. Whites and blacks are the victims of murder in the USA in almost equal numbers. In 2005, for example, 7,133 whites and 7,125 blacks were the victims of murder. Nevertheless, 80 per cent of executions since 1977 were of prisoners convicted of killing whites. Most murders in the USA are intra-racial.

“I would like to say that I did not kill Bobby Lambert. That I’m an innocent black man that is being murdered. This is a lynching that is happening in America tonight. There’s overwhelming and compelling evidence of my defence that has never been heard in any court of America. What is happening here is an outrage for any civilized country to anybody anywhere to look at what’s happening here is wrong.”

22 June 2000. Final statement of Gary Graham, black, convicted by a Harris County jury of 11 whites and one black for the murder of a white man

In 2005, for example, in single victim/single offender murders, 83 per cent of cases involving white victims had white offenders, and 91 per cent of cases involving black victims had black offenders.¹² Yet across the USA since 1977, 54 per cent of executions have been of whites convicted of killing whites, while black-on-black cases accounted for 12 per cent of executions. Nationwide, 21 whites have been executed for killing blacks. In contrast, more than 220 blacks have been executed for killing whites. Murders of blacks appear not to be viewed with the same seriousness by the (overwhelmingly white) system as the murder of whites.

Harris County’s population is 74 per cent white and 18 per cent black. Fifty three of the 99 executed prisoners from Harris County were African American, as are the next three Harris County offenders scheduled for execution. Fifty-seven per cent of the Harris County offenders remaining on death row in Texas are black. Whatever the reasons for these disparities, the death penalty has a disproportionate impact on members of the black community in Harris County.

A 1998 study based on information collected from Dallas, Tarrant, Harris, and Bexar Counties revealed an “insidious portrait of racial disparities within the state: “Killers of whites are always over-represented among death sentences, but the extent of the over-representation depended on the race of the offender... In contrast, killers of minorities were under-represented. Killers of Blacks were under-represented, especially if the killer was White”. The study concluded that “the prevalence and consistency of disparities based on the race of the victim indicate a pattern of arbitrary sentencing. These findings are consistent with other studies performed in Texas and elsewhere, and represent one of the most enduring and

¹¹ See USA: *Death by discrimination – the continuing role of race in capital cases*, AI Index: AMR 51/046/2003, April 2003, <http://web.amnesty.org/library/index/engamr510462003>.

¹² FBI Uniform Crime Reports.

tragic consequences of capital punishment in the United States – prospective candidates for execution are screened and selected to a large extent on the basis of race.”¹³

No white has been put to death for killing a black person in Harris County since 1977, and as far as Amnesty International is aware no white was put to death for killing a black anywhere in Texas in the previous period of the death penalty in the state from 1924 to 1972.¹⁴

Sixty-six of the 99 people executed in Texas in the “modern” era after being condemned to death in Harris County were convicted of killing whites. Twenty seven of these cases were of black men convicted of killing white victims. Thirty-two of the 99 executions were white-on-white cases, and 17 involved black-on-black murders. Six Latinos and one Native American tried in Harris County have been put to death for killing whites. Two whites have been executed for killing Latinos, in the only two cases out of Harris County in which whites have been put to death for the murder of a member of a minority group.

In the US capital justice system, execution is supposed to be reserved for “the worst of the worst” crimes and offenders. Murder is not punishable by the death penalty without “aggravating” circumstances, for example murder during another offence such as robbery. In a society marked by social and economic inequalities, including along racial lines, such a death penalty law may contribute to racially disproportionate sentencing. The 1998 study suggested that “inter-racial crimes involving White victims are likely to be of a more serious nature than those involving intra-racial murders among minorities”. According to a Houston Chronicle review of Harris County death sentences, “the most common underlying felony to earn a death sentence is robbery, and those inclined to commit it come from lower economic classes, a disproportionate percentage of which is minority”.¹⁵

The divergent experiences and perspectives of blacks and whites in the USA may have an impact when they are called to serve as jurors. An African American juror may be better able than his or her white counterpart to identify or sympathize with the background or experience of a black defendant when presented with mitigating evidence, for example. Among research findings has been that a death sentence becomes three times more likely for a black defendant accused of killing a white victim where the jury has five or more white male jurors on it than for a black defendant who draws fewer such jurors.¹⁶

As elsewhere in the country, some black defendants in Harris County have faced juries consisting of 12 white jurors. For example, all-white Harris County juries passed death

¹³ Deon Brock et al., *Arbitrariness in the Imposition of Death Sentences in Texas: An Analysis of Four Counties by Offense Seriousness, Race of Victim, and Race of Offender*, 28 AM. J. CRIM. L. 43 (2000).

¹⁴ On 10 September 2003, Larry Hayes became the first and, at the time of writing only, white person to be put to death in Texas for killing a black. He was also convicted of killing a white. Hayes had given up appeals and “volunteered” for execution. Since executions resumed in Texas in 1982, some 82 blacks have been executed for killing whites.

¹⁵ *Capital punishment deeply rooted in the South*. Houston Chronicle, 5 February 2001.

¹⁶ William J. Bowers et al., *Sentencing in black and white: An empirical analysis of the role of jurors’ race and jury racial composition*. 3 U. Pa. J. Const. L. 171, February 2001.

sentences against African Americans Richard Wilkerson, Clifford Phillips, Antonio Bonham and Paul Rougeau – the first three of these men for the murder of white victims. All four prisoners have been executed. Gary Graham, executed in 2000 for a crime he may not have committed, was convicted by a jury of 11 whites and one black.

For Texas prosecutors to obtain a death sentence, they must persuade the jury that the defendant will pose a future danger to society if allowed to live, even in prison. A study published by the Texas Defender Service in 2004 concluded that predictions of “future dangerousness” in the Texas death penalty system were wrong in a majority of cases, and that “basing capital sentencing decisions on predictions of future dangerousness is unjustifiable – and not only because a system that so allots punishment in effect punishes defendants for offences they may or may not commit, thus violating the fundamental legal principle that the accused is innocent until proven guilty.”¹⁷

Harris County prosecutors persuaded a jury in 1982 that Donald Miller would be a future danger, even in prison. During his subsequent 25 years on death row, however, Miller was never disciplined for violent or aggressive behaviour towards other inmates, guards, or anyone else. In addition, following an evidentiary hearing, a federal judge ruled in 2004 that Harris County had withheld exculpatory evidence at the trial that was material to the question of sentencing: that is, the sentence might have been different if the evidence had not been suppressed. The US Court of Appeals for the Fifth Circuit overturned the ruling, although one of the three judges dissented, arguing that the withheld evidence could have undermined the prosecution’s portrayal of Miller as posing a future danger. Donald Miller was executed on 27 February 2007. One of the Harris County prosecutors who obtained the death sentence commented that it was “very disappointing” that it had taken so long to get Miller to the execution chamber, stating that “that’s 25 years he got to live that his victim didn’t.”¹⁸

In cases where all-white or majority-white juries are empanelled, this “future dangerousness” sentencing scheme may disproportionately impact minority defendants. In the above 2001 study on capital jurors and race, the researchers found that “whites more often than blacks see the [black] defendant as likely to be dangerous to society in the future and as likely to get back on the streets if not sentenced to death. Blacks in these cases more often see the defendant as remorseful and therefore deserving of mercy, and even wonder whether the defendant was the actual killer or at least whether the killing was a capital murder.” Furthermore, the research revealed “a lack of receptivity to mitigating evidence among white jurors when the defendant is black. White jurors often appear unable or unwilling to consider the defendant’s background and upbringing in context.”

This presupposes that the jury heard mitigating evidence in the first place. Texas has been notorious for the poor quality of defence representation provided to indigent capital defendants at trial and on appeal (although in 2001 the Texas legislature did pass the Fair

¹⁷ *Deadly speculation: Misleading Texas capital juries with false predictions of future dangerousness*, <http://www.texasdefender.org/DEADLYSP.pdf>.

¹⁸ *Inmate taking his side to grave*, Houston Chronicle, 26 February 2007. *Prisoner executed for fatal robbery near Houston*. Associated Press, 27 February 2007.

Defense Act in an effort to improve this situation, at least at the trial level).¹⁹ Thus in their pursuit of execution, well resourced and zealous Harris County prosecutors have frequently had the “advantage” of facing inexperienced, under-resourced, or unmotivated defence counsel. Or even, on occasion, a sleeping defence lawyer. Calvin Burdine, represented by a lawyer who slept during the Harris County trial, eventually had his death sentence overturned and was re-sentenced to life imprisonment in 2002.²⁰ Carl Johnson, sentenced to death in a Harris County courtroom in which the same lawyer was seen to sleep during some of the proceedings, was not so fortunate. Johnson, black, was executed in 1995. Another of the same lawyer’s Harris County clients, Larry Anderson, had been executed a year earlier after the US Court of Appeals for the Fifth Circuit found that the lawyer’s reputation for incompetence and “habitually [trying] capital cases in a perfunctory manner” was not relevant in Anderson’s case.²¹

Perfunctory would describe the performance of Kenneth Ransom’s defence lawyer at Ransom’s Harris County sentencing. By the time Kenneth Ransom was nine years old, he had suffered prolonged physical and emotional abuse at the hands of his mother and brothers. He was taken into care by the authorities, where the records of the Harris County Child Welfare agency show that the abuse had included whippings with electrical cord and hot wires. Social workers who examined the child noted that the wounds and burns covered almost his entire body. When he was 20, Kenneth Ransom was arrested for his part in the murder of four employees at a Houston amusement centre during a robbery. At the sentencing phase of the trial, when the jury would choose between life and death for the defendant, the jurors were left unaware of the abuse Ransom suffered as a child. This was despite the fact that his lawyers knew of his appalling childhood, as one of them had represented his mother when the state removed her children from her care. The defence presented no mitigating evidence and Kenneth Ransom was sentenced to death. His execution went ahead in 1997 despite a new statement from the only surviving defendant in the case, serving a life sentence, that Ransom had not killed any of the four victims.

Harris County prosecutors have been assisted in producing their steady output of condemned defendants by the substantial number of criminal trial judges (22) in the county with jurisdiction over capital cases. A majority of these judges – elected to four-year terms in partisan elections – are former prosecutors from the Harris County District Attorney’s Office. Of the 21 filled judgeships as of July 2007, at least 19 were previously Harris County prosecutors – and all had run for office on the Republican Party ticket. In 2001, when at least 20 of the 22 judges were former county prosecutors, 16 had reportedly received election

¹⁹ Serious concerns have been raised about the quality of state-appointed appellate counsel for Texas death row prisoners appealing their cases in the state courts. For example, in the case of Frederick McWilliams, sentenced to death in Harris County in 1997, his state appellate lawyer reportedly never met with McWilliams and did no investigation into the case. McWilliams was executed in November 2004. See also *USA: Texas – In a world of its own as 300th execution looms*, AI Index: AMR 51/010/2003, January 2003, <http://web.amnesty.org/library/index/engamr510102003>.

²⁰ See *The death penalty in Texas: Lethal injustice*, AI Index: AMR 51/010/1998, March 1998, <http://web.amnesty.org/library/Index/ENGAMR510101998>.

²¹ *Anderson v. Collins* (1994).

campaign contributions from defence lawyers who had been appointed by trial judges to represent defendants charged with capital crimes between 1998 and 2000.²²

Neither have the appeal courts proved to be much of an obstacle to slowing the Texas conveyor belt of death. The Harris County District Attorney's Office asserts that in more than 80 per cent of its cases, the death sentence is upheld on direct appeal to the Texas Court of Criminal Appeals, and that less than five per cent of defendants going on to appeal their convictions are successful.²³ The Texas Court of Criminal Appeals, whose nine current judges were all elected on Republican Party tickets, has upheld death sentences in numerous cases over the years which call into serious question the standards of justice it is willing to tolerate, including in Harris County. In the case of George McFarland, for example, the Court affirmed his death sentence even though the defence lawyer had slept through parts of the trial. The Harris County trial judge had allowed the trial to continue on the grounds that "the Constitution doesn't say the lawyer has to be awake".²⁴ In another case, Harris County defendant Pamela Perillo was granted a new trial by a federal judge who found that her trial lawyer had been labouring under a conflict of interest that adversely affected his performance, namely he represented one of Harris County's key witnesses against Perillo. The Court of Criminal Appeals had upheld Pamela Perillo's death sentence and conviction nonetheless. She was taken off death row in 2000 and is now serving a life sentence.

Even when there have been serious questions surrounding the state's evidence, the Court of Criminal Appeals has refused to stay an execution. In March 2003, an independent audit of the Houston Police Department (HPD) crime laboratory revealed serious defects in the lab's DNA analysis section, including poorly trained staff relying on outdated scientific techniques. The DNA section was shut down, and hundreds of criminal cases opened for review. In a number of cases, discrepancies between new tests and the original HPD analysis emerged. Several cases suggest that the lab's problems extended beyond its DNA section, for example into its ballistics expertise.

On 21 October 2004, a judge on the Texas Court of Criminal Appeals said that there should be "a moratorium on all executions in cases where convictions were based on evidence from the HPD crime lab until the reliability of the evidence has been verified". His was the only dissenting voice when the Court denied death row inmate Dominique Green's request for a stay of execution on the basis of concern around the accuracy of the HPD's ballistics work in his case, and the recent discovery of 280 boxes of mislabelled evidence that could impact thousands of criminal cases. A federal judge granted a stay until the HPD could complete the cataloguing of the boxes. The stay was overturned by the US Court of Appeals for the Fifth Circuit, and Dominique Green was executed on 26 October 2004. In his final statement, he

²² Dow, David R. How the death penalty really works. In Dow and Dow (eds), *Machinery of death: the reality of America's death penalty regime*. Routledge, 2002.

²³ See <http://app.dao.hctx.net/FAQs/AppellateDeathFAQ.aspx>.

²⁴ *Asleep on the job? Slaying trial boring, lawyer says*. Houston Chronicle, 14 August 1992. Cited in Stephen B. Bright, *Elected judges and the death penalty in Texas: Why full habeas corpus review by independent federal judges is indispensable to protecting constitutional rights*. Texas Law Review, Volume 78 (2000).

said that he was “disappointed that I was denied justice”. The Fifth Circuit’s rulings in Texas capital cases have recently raised the concern of the US Supreme Court, including in relation to issues of race, mental illness, and legal representation.²⁵

In some cases, it has been the defendant himself who has helped the Harris County prosecutors in their pursuit of execution. Harris County sought a death sentence against Mexican national Angel Maturino Reséndiz at his trial in 2000 despite compelling evidence of his serious mental illness, including paranoid schizophrenia. After the jury rejected his insanity defence and convicted him of capital murder for the murder of a doctor in Houston, Maturino Reséndiz joined the Harris County prosecution in asking for the death penalty. He instructed his court-appointed attorneys not to make an opening statement at sentencing phase of the trial, not to cross-examine the state’s witnesses and to present no testimony on his behalf. The jury passed a death sentence, which was carried out in June 2006.

What Harris County, or Texas, does in the field of capital justice should not be seen as reflecting “standards of decency” in the wider country, and the distorting effect these jurisdictions have on the national picture should not be allowed to undermine progress towards abolition in the USA. Harris County’s attitude towards the question of child offenders – those convicted of crimes committed before the age of 18 – is a case in point. By 2004, three child offenders prosecuted in Harris County had been put to death, and another 10 were on death row, three of whom were scheduled for execution in mid-2004. At that time, no whole *state* in the USA, apart from Alabama (and the rest of Texas), had more child offenders on death row than Harris County.

Further executions of child offenders were stopped by the US Supreme Court in 2005 when it found in *Roper v. Simmons* that there was a national consensus against such executions, and that standards of decency in the USA had evolved to the extent that such use of the death penalty was unconstitutional. Along with other child offenders in the USA, those prosecuted in Harris County had their death sentences commuted to life imprisonment as a result of the *Atkins* ruling. They included Tony Dixon, prosecuted in 1995 for a murder committed when he was 17 years old. In addition to his youth, he had an IQ of 65, within the range indicating possible mental retardation. Pursuing his execution, a Harris County prosecutor had described him to the trial jury in alarmist language as a “walking, talking, continuing threat to society”.²⁶ In similar vein, seeking a death verdict from another jury, a Harris County prosecutor had described Nanon Williams – also 17 at the time of the crime – as “a predator... He’s evil. He’s just flat-out evil...if this defendant isn’t a future danger, nobody is a future danger... It almost insults your intelligence to try to argue with you that he is not a future danger”. There are serious doubts about whether Nanon Williams – whose death sentence was

²⁵ Eg. *Tennard v. Dretke* (2004); *Miller-el v. Dretke* (2005); *Smith v. Dretke* (2007); *Abdul-Kabir v. Quarterman* (2007); *Brewer v. Quarterman* (2007); *Panetti v. Quarterman* (2007).

²⁶ *Debate fervent in mental cases*. Houston Chronicle, 5 February 2001.

also commuted to life imprisonment following the *Roper* ruling – committed the crime for which he was convicted.²⁷

Harris County prosecutors eventually persuaded a jury that Demetrius Simms was a future danger to society. It tried him four times before obtaining a death sentence, despite knowing that he had mental retardation. The first three trials resulted in hung juries before the jury at the fourth trial in 1996 voted for conviction and execution. Although Simms remained on death row at the time of writing, he can no longer be executed as it has been officially confirmed that he has mental retardation (with an IQ as low as 55) and therefore protected from the death penalty under the 2002 Supreme Court ruling in *Atkins v. Virginia*. As in the subsequent *Roper* ruling on child offenders, the Court found that standards of decency had evolved in the USA to create a national consensus against the use of the death penalty against offenders with mental retardation.

Over the years, Harris County has thus not only been shown to be out of touch with evolving standards of decency in the wider USA, but to be lagging behind much of the rest of the world which has turned against the use of the death penalty against anyone, let alone children and the mentally disabled. The Harris County District Attorney's ultimately unsuccessful pursuit of the death penalty against Andrea Yates at her trial in 2002 for drowning her young children when she was suffering from serious mental illness once again cast the spotlight on "the cultural norms of Harris County" when it comes to capital justice.²⁸

Today there are signs that the USA is slowly turning against judicial killing. The 53 executions carried out in 2006 represented the lowest annual total for a decade. The contribution of Texas and Harris County remained high: 17 per cent of these executions were of individuals prosecuted in Harris County, and 45 per cent were carried out in Texas. Of the 30 executions carried out in the USA in 2007 to 20 July, 18 (60 per cent) were conducted in Texas and six (20 per cent) were of people prosecuted in Harris County. Death sentencing continues to drop from its peak in the mid-1990s. The number of people sentenced to death in 2006 was under half of what it was in 1996 and the lowest since 1977. There are possible signs of this downturn in Harris County also. Between 1999 and 2004, Harris County juries handed down 40 death sentences at an average of six per year. In the two and a half years from January 2005 to July 2007, a total of five death sentences have been passed in Harris County.

"But someone is mad that a system that's supposed to protect and uphold what is just and right, has shown it's just as crooked as I am said to be. Now I lay here dead. But we have gave all Texans the sign that in some instances, and in some cases 'KILLING IS ALRIGHT TO DO AS LONG IT'S FOR JUSTICE OF THE AMERICAN PEOPLE'. So who win? No one do! Ain't no such thing as a closure!"

From final written statement of Richard Williams, sentenced to death in Harris County in 1998, executed on 25 February 2003

²⁷ See USA: *Dead wrong: The case of Nanon Williams, child offender facing execution on flawed evidence*, <http://web.amnesty.org/library/Index/ENGAMR510022004>.

²⁸ Denno, Deborah W. *Who is Andrea Yates? A short story about insanity*. Duke Journal of Gender Law and Policy, Volume 10:1 (2003).

The growing reluctance of capital jurors to hand down death sentences seems to reflect a broader downturn in public support for the death penalty, including in Harris County.²⁹ An erosion of the public's belief in the deterrence value of the death penalty (the number of murders in Houston have risen from 230 in 2000 to 377 in 2006, in a period which saw 180 prisoners executed in Texas, including 33 from Harris County), an increased awareness of the frequency of wrongful convictions in capital cases, and a greater confidence that public safety can be guaranteed by life prison terms rather than death sentences have all contributed to the waning of enthusiasm for capital punishment.

Officials in the USA often defend the death penalty as an example of “democracy” in action, but when public opinion appears to move against judicial killing, the same officials are slow to recognize it and act.³⁰ Steps to abolish the death penalty or impose a moratorium on executions can come from the courts, the executive or the legislature. In addition, at local level in the USA, a prosecutor's authority to decide if and when to pursue the death penalty allows that office-holder to step away from a punishment that a majority of governments in the world have stopped using. In addition to this evolving global abolitionist picture, international law and standards are abolitionist in outlook, and UN bodies have repeatedly held that abolition of the death penalty advances human dignity and respect for human rights.

Prosecutors have an obligation to defend such values while pursuing prosecutions. The United Nations Guidelines on the Role of Prosecutors require that such officials be made aware of “human rights and fundamental freedoms recognized by national and international law”, and in any criminal proceedings prosecutors must “respect and protect human dignity and uphold human rights”. The Harris County District Attorney Office's persistent choices in favour of the death penalty have left the county, and by association Texas and the USA, on the wrong side of history and on the wrong side of human rights.

NASA's Manned Spacecraft Center opened on its site south of Houston in September 1963.³¹ In the four and a half decades since then, more than 70 countries have legislated to abolish the death penalty, bringing to 129 the number of countries which are abolitionist in law or practice. In June 1964, NASA's Houston centre assumed formal responsibility as Mission Control Center for human space flights.³² The following month, the last execution in the Texas electric chair took place with the execution of Joseph Johnson, an African American man sentenced to death in Harris County. Johnson was the 63rd Harris County offender to be put to death between 1924 and 1964, a period which saw 362 executions in Texas, prior to the US Supreme Court overturning the country's death penalty laws in 1972. Harris County

²⁹ The 2005 survey found that a majority of Houston residents favoured life imprisonment without parole (LWOP) rather than execution for those who commit murder. The 64 per cent who chose LWOP represented an increase from 57% in 2003. According to the survey, support for the death penalty overall (with no alternative offered) dropped to 60%, down from 68% in 1999. Houston Chronicle, 6 May 2005, as reported by Death Penalty Information Center, www.deathpenaltyinfo.org.

³⁰ See USA: *Death and democracy*, AI Index: AMR 51/084/2007, 20 May 2007, <http://web.amnesty.org/library/Index/ENGAMR510842007>.

³¹ It was renamed as the Lyndon B. Johnson Space Center in August 1973.

³² Details of the history of NASA in Houston taken from The Handbook of Texas Online.

sentenced more defendants (99) to death than any other Texas county during this period, and more Harris County offenders were put to death than from any other Texas county.

Texas was one of the states which lost no time in rewriting its capital statute after the 1972 Supreme Court ruling, and resumed executions – by lethal injection rather than electrocution – six years after the Court had approved such laws in 1976. In its “modern” era of judicial killing, Harris County has resumed its role as the leading supplier of condemned inmates in Texas. In October 2001, Texas executed its 63rd Harris County offender since reinstatement of the death penalty.³³ Since then Texas and Harris County have outstripped their records from the earlier period, with the state approaching its 400th execution and Harris County its 100th.

Hosting the Johnson Space Center has placed Harris County on the cutting edge of modernity for 45 years. At the same time, the county is clinging to an anachronistic and dehumanizing tradition which contravenes commonly held standards of decency embraced across the globe. Harris County should modernize its criminal justice system by abandoning the death penalty.

Please send an appeal to the Harris County District Attorney. Write in your own words, using the following as a guide, and utilizing information in the above text as you see fit:

- expressing sympathy for the victims of violent crime and their families and acknowledging the state’s duty to bring to justice violent criminal offenders;
- explaining your opposition to the death penalty, and describing how Harris County’s continuing pursuit of executions contradicts the global abolitionist trend;
- urging the District Attorney to lead Harris County away from the death penalty by dropping pursuit of this punishment in potentially capital cases.

Charles A. Rosenthal, Jr.
Harris County District Attorney
1201 Franklin Street, Suite 600
Houston, Texas 77002-1923, USA
Email: ChuckRosenthal@dao.hctx.net.
Fax: +1 713 755 6865
Salutation: Dear District Attorney

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

³³ Gerald Mitchell, black, 17 at the time of the crime, was put to death on 22 October 2001.